

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

REAGENT CHEMICAL &
RESEARCH, INC.,

Plaintiff,

v.

EUROTARGET S.R.L. and,
EUROTARGET USA LLC,

Defendants.

Civil Action No. 1:16-cv-000395 (JEJ)

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Reagent Chemical & Research, Inc. (“Reagent”), by and through and its attorneys, hereby asserts claims of patent infringement against Defendants, Eurotarget S.R.L. (“Eurotarget Italy”) and Eurotarget USA LLC (“Eurotarget USA” and, together with Eurotarget Italy, “Eurotarget”) for infringing U.S. Patent No. 5,947,475 (the “‘475 Patent”)¹ and alleges as follows:

THE PARTIES

1. Reagent is a corporation organized and existing under the laws of Delaware, having a principal place of business at 115 US-202, Ringoes, New Jersey. Reagent manufactures in the United States and sells launchable targets for

¹ A copy of the ‘475 Patent is attached as Exhibit A.

use in trap and skeet shooting throughout the United States. Among the targets sold by Reagent are the WHITE FLYER BIO brand targets. Reagent emphasizes the low toxicity levels in its marketing of the White Flyer Bio targets.

2. On information and belief, Eurotarget Italy is an Italian company, having its principal place of business at Via Meucci, 35/37, 42046 Reggio (RE), Italy.

3. On information and belief, Eurotarget USA purports to be a Pennsylvania limited liability company, having its principal place of business at 302 Tennessee Avenue, Elizabethville, Pennsylvania 17023.

4. On information and belief, Eurotarget Italy is engaged in the manufacture in Europe, the importation into the United States, and sale throughout the United States through Eurotarget USA of launchable targets used for trap and skeet shooting.

5. Among the targets that have been sold in the United States by Eurotarget Italy are low toxicity targets. Eurotarget indicates on the box in which these targets are sold that they are “Environmentally-Friendly” and comprised of, at least, thermoplastic resin and calcium carbonate (the “Accused Targets”).

6. On information and belief, the Accused Targets are the only targets that Eurotarget currently offers for sale or sells in the United States.

7. On information and belief, Eurotarget emphasizes the lower toxicity of the Accused Targets as compared to pitch-based targets in its marketing of the Accused Targets.

8. On information and belief, Eurotarget USA is the authorized distributor in the United States for Eurotarget Italy's products, including the Accused Targets.

9. On information and belief, Eurotarget USA engages in the importation, use, and sale of the Accused Targets throughout the United States.

JURISDICTION AND VENUE

10. The claims asserted in this Complaint arise under the patent laws of the United States, 35 U.S.C. § 271 *et seq.*

11. Subject matter jurisdiction is proper pursuant to 28 U.S.C. §§ 1331 and 1338.

12. On information and belief, Eurotarget has sold and/or offered to sell products, including targets for trap and skeet shooting, throughout the United States, including to companies located within the Commonwealth of Pennsylvania. On information and belief, Eurotarget has offered to sell and/or sold and marketed the Accused Targets to customers and/or potential customers that are located in the Commonwealth of the Commonwealth of Pennsylvania and has committed,

contributed to, and/or induced, acts of patent infringement, which result in injury to Reagent in this District.

13. This Court has general and specific personal jurisdiction over Eurotarget Italy because: (a) Eurotarget Italy has admitted to being subject to personal jurisdiction in Pennsylvania (see Eurotarget’s Memorandum in Support of Defendant’s Motion to Dismiss for Lack of Personal Jurisdiction, filed in *Reagent Chemical & Research, Inc. v. Eurotarget S.R.L., et al.* Civil Action No. 16-CV-282 (D.N.J.) (the “New Jersey Action”)² at D.I. 13, pg. 6 (“Eurotarget S.R.L. is subject to [personal] jurisdiction in Pennsylvania”); (b) Eurotarget Italy has registered itself as doing business in the Commonwealth of Pennsylvania (*see id.* at D.I. 13, Chubb Decl. Ex. A); (c) Eurotarget Italy admits it has offered for sale and sold the Accused Targets to companies in the Commonwealth of Pennsylvania (*see id.* at D.I. 13, Chubb Decl. Ex. A); and (d) Eurotarget Italy has imported the Accused Targets into Pennsylvania for distribution by its exclusive distributor Eurotarget USA, which is located in Elizabethville, Pennsylvania (*see id.* at D.I. 13, Chubb Decl. Ex. A).

14. This Court has general and specific personal jurisdiction over Eurotarget USA, because (a) Eurotarget USA has its principal place of business in

² A copy of the Motion and Memorandum filed in the New Jersey Action with exhibits is attached as Exhibit B.

Elizabethville, Pennsylvania within this District; (b) Eurotarget USA's sole member resides in this District; and (c) Eurotarget USA admits it has offered to sell and sold and/or is selling and marketing the Accused Targets and other products to companies located within Pennsylvania. *See id.* at Chubb Decl.

15. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400 because Eurotarget USA resides in this District and Eurotarget Italy committed acts of infringement and does business through Eurotarget USA.

THE PATENT IN SUIT

16. The '475 Patent, entitled "Environmentally Safe Projectable Targets", was lawfully issued by the United States Patent and Trademark Office ("PTO") on September 7, 1999. The '475 Patent issued from U.S. Patent Application Serial No. 08/857,813, filed May 16, 1997.

17. The '475 Patent was assigned to Reagent. Reagent is the rightful owner of the '475 Patent and holds the entire right, title and interest in the '475 Patent.

18. The '475 Patent describes and claims a projectable, frangible and friable object and method of making the object, and to a shooting activity such as trap and skeet shooting with a target of low toxicity.

19. The '475 Patent was filed May 16, 1997. Prior to the invention claimed in the '475 Patent, conventional trap and skeet targets had been formed

from pitch, a petroleum byproduct. Trap and skeet shooting is often done in natural fields and broken targets and target debris typically remain on those fields after the shooting activity is over. The pitch materials that were available at that time led to various toxicity concerns.

20. A trap and skeet target must be strong enough to be launched into the air without breaking and stable enough to be stored for extended periods of time without deteriorating. However, a trap and skeet target must also be brittle enough, so that it shatters reliably when hit with bird shot from the shooter, who commonly stands approximately 27 yards from the trap launching the targets. It is undesirable to use a target that does not break when a target is hit by three or more pellets fired from the shotgun.

21. For many years prior to the invention claimed in the '475 Patent, there were efforts at developing a trap and skeet target with lower toxicity than the targets that were commonly available. However, those targets were either not strong enough to be launched from the trap and/or not brittle enough to break consistently. None of those targets were acceptable substitutes for the conventional targets of the time.

22. A target in accordance with the '475 Patent satisfied the desire for a low toxicity target, which can be launched from a trap and break reliably when hit

by three or more shot pellets fired from a shotgun. Targets in accordance with the invention have an LD50 (Lethal Dose 50%) toxicity level greater than 15 g/kg.

BACKGROUND FACTS

23. The '475 Patent will expire May 16, 2017. Accordingly, Reagent's statutory right to exclusivity in the invention claimed in the '475 Patent will expire in just over a year. Reagent has never licensed the '475 Patent.

24. On information and belief, until Eurotarget began importing and selling the Accused Targets in the United States in 2015, Reagent had experienced over 15 years of exclusivity in the United States in the manufacture and sale of targets that are covered by the claims of the '475 Patent, including Reagent's White Flyer Bio targets.

25. The Accused Targets are suitable for trap or skeet shooting.

26. On information and belief, the Accused Targets comprise a binder.

27. On information and belief, the Accused Targets comprise calcium carbonate powder. Calcium carbonate is commonly referred to as limestone.

28. The Accused Targets have an LD50 toxicity level greater than 15 g/kg.

29. The Accused Targets are formed by casting the targets in a mold.

30. The Accused Targets are cast in a state of sufficient brittleness, such that when shot at with bird shot from a twelve gauge shotgun, fired by shooters

that are at a distance of 27 yards from the trap launching the targets, if any of those targets are hit by at least one pellet fired from the shotgun, but remain unbroken, less than about 10% of those hit, but unbroken targets will have been hit by three or more pellets.

31. The Accused Targets are cast in a state of sufficient brittleness, such that when shot at with bird shot from a twelve gauge shotgun, fired by shooters that are at a distance of 27 yards from the trap launching the target, if any of those targets are hit by at least one pellet fired from the shotgun, but remain unbroken, less than about 4% of those hit, but unbroken targets will have been hit by three or more pellets.

32. The Accused Targets have sufficient brittleness to break into five or more pieces more than 80% of the time when hit with pellets fired from a shotgun by shooters standing about 27 yards from the trap launching the target.

33. The Accused Targets have substantially the weight and dimensions of conventional pitch targets.

34. The Accused Targets are sufficiently stable, such that if the targets are stored in a box for more than 45 days, fewer than 2% of the targets will develop cracks.

COUNT I – DIRECT INFRINGEMENT UNDER 35 USC § 271(a)

35. Reagent hereby incorporates by reference Paragraphs 1 through 34 above, as though fully set forth herein.

36. On information and belief, Eurotarget has directly infringed one or more claims of the ‘475 Patent under 35 U.S.C. §271(a) – particularly, but not limited to, claims 1, 18, 20, 26, 27, 29, 34, 37 and 39 – by using, selling, offering for sale and importing in the United States products and methods concerning a target suitable for trap or skeet shooting embodying the patented invention, including, but not limited to, the Accused Targets and shooting of the same.

37. Reagent satisfied its requirements for marking its patented products with the patent number of the ‘475 Patent pursuant to 35 U.S.C. § 287.

38. Over the years, Reagent has promoted the fact that its White Flyer Bio targets are protected by the ‘475 Patent.

39. Eurotarget was aware of the ‘475 Patent when it began selling the Accused Targets.

40. Eurotarget became aware of the ‘475 Patent and Reagent’s allegation that Eurotarget was directly infringing the ‘475 Patent when Eurotarget received the complaint in the New Jersey Action.

41. On information and belief, before and/or after receiving the complaint in the New Jersey Action, Eurotarget learned that there is a high probability they

are directly and indirectly infringing the '475 Patent. To the extent Eurotarget does not know it is directly and indirectly infringing the '475 Patent, such lack of knowledge results from willful blindness and a failure to investigate such infringement.

42. Eurotarget USA is embodied by Allen Chubb, who holds himself out as the North American Import/Export Manager. He is the sole member of Eurotarget USA. The actions of Mr. Chubb, with respect to Eurotarget USA, are the actions of Eurotarget USA.

43. On information and belief, Mr. Chubb is the direct or indirect owner of Keystone Shooting Park ("KSP") which is located in Pennsylvania. On information and belief, Mr. Chubb can exert control over the actions of KSP, including the selection of targets provided for use in the shooting activities that take place there.

44. KSP is a shooting range, where shooters can pay to shoot at targets with a shotgun firing birdshot pellets. On information and belief, KSP has members and both members and non-members take part in trap shooting at KSP.

45. On information and belief, shooters cannot shoot at targets at KSP without first agreeing to abide by the rules and regulations of KSP. On information and belief, shooters at KSP must sign a written agreement before they are permitted to shoot at KSP.

46. On information and belief, Allen Chubb caused the targets provided for use in trap shooting at KSP to be the Accused Targets. On information and belief, the Accused Targets were supplied to KSP by Eurotarget with the intention that shooters at KSP attempt to break targets launched by KSP with bird shot fired from a shotgun. Eurotarget profits from replacing those targets after they are used at KSP. KSP profits from the fees paid by the shooters for the opportunity to shoot at the Accused Targets. KSP does nothing to affect the breakage characteristics of the Accused Targets, which break in accordance with their inherent breakage properties resulting from how they were made by Eurotarget.

47. On information and belief, Allen Chubb, in his capacity as Eurotarget USA, when shooting at KSP and elsewhere, provides himself with the Accused Targets, causes those targets to be launched into the air and then shoots at those targets in an attempt to break those targets with shot fired from a 12 gauge shotgun and thereby directly infringes the '475 Patent.

48. On information and belief, Eurotarget practices the method of claims 29, 34, 37 and 39 (the "Method Claims") in the United States. On information and belief, Allen Chubb practices the Method Claims both for his personal enjoyment and in an effort to promote sales of the Accused Targets at KSP and elsewhere.

49. The Accused Targets do not have any substantial uses that do not infringe the '475 Patent – particularly, but not limited to, claims 1, 18, 20, 26, 27, 29, 34, 37, and 39.

50. As a consequence of Eurotarget's direct infringement, literal infringement and infringement by the doctrine of equivalents of the '475 Patent, with full knowledge of the '475 Patent, Reagent has been damaged in an amount not yet determined.

51. On information and belief, Eurotarget's infringement of the '475 Patent will continue in the future, and Reagent will continue to suffer monetary and irreparable damages as a consequence, unless Eurotarget's infringing acts are enjoined by this Court.

52. On information and belief, Eurotarget's infringement of the '475 Patent has been, and continues to be, willful.

COUNT II – INDIRECT INFRINGEMENT UNDER 35 USC §271(b)

53. Reagent hereby incorporates by reference Paragraphs 1 through 52 above, as though fully set forth herein.

54. On information and belief, Eurotarget has indirectly infringed one or more claims of the '475 Patent under 35 U.S.C. §271(b) and (c) – particularly, but not limited to, claims 29, 34, 37 and 39 – by actively inducing and contributing to the direct infringement by others, including but not limited to individual shooters,

shooting clubs, shooting ranges and shooters acting in concert or as a joint enterprise with those clubs or ranges, to practice the claimed shooting activity methods with the Accused Targets.

55. Eurotarget was aware of the '475 Patent when it began and when it continued and continues inducing and contributing to the infringement by others to engage in the patented shooting activity in the United States, with the Accused Targets, at least because of Reagent's promotion and marketing of White Flyer Bio Targets marked with the '475 Patent for over a decade and because the '475 Patent was well-known in the industry. Eurotarget was at least aware of the '475 Patent after it was served with the complaint in the New Jersey Action, on January 19, 2016.

56. The Accused Targets do not have any substantial uses that do not infringe the '475 Patent.

57. On information and belief, Eurotarget provides documentation or other written and oral materials and instructions to its customers so that its customers know that Eurotarget believes that the Accused Targets should be used for trap shooting. Eurotarget encourages their customers to use the Accused Targets. Such encouragement is knowingly or willfully blind to infringement of the '475 Patent.

58. Eurotarget has contributed to the infringement of the Method Claims by selling and encouraging use of the Accused Targets for their intended purpose. The Accused Targets are material to the practice of the Method Claims. On information and belief, both before and after receipt of the complaint in the New Jersey Action, Eurotarget has been aware that the Accused Targets are especially made or adapted for performing the shooting activity of the Method Claims. Eurotarget knows that the Accused Targets have no substantial noninfringing use, other than in infringing those claims.

59. On information and belief, Eurotarget has been and continues to induce infringement of claims 29, 34, 37 and 39 of the '475 Patent.

60. On information and belief, both before and after receiving the complaint in the New Jersey Action, Eurotarget has possessed the specific intent to encourage its customers to shoot the Accused Targets to break them, such that they need to be replaced with more of the Accused Targets to enhance Eurotarget's sales.

61. On information and belief, some of Eurotarget's customers are gun clubs. Those clubs, through their members, practice the Method Claims by providing the Accused Targets, launching those targets and then shooting at those targets.

62. On information and belief, some of Eurotarget's customers form a joint enterprise and/or single entity and practice the Method Claims by entering into arrangements with shooters. Eurotarget's customers provide the Accused Targets and launch those targets. The shooters shoot at and break those targets in the manner described in the Method Claims. On information and belief, those shooters do not shoot at the targets until they have come to an agreement with the Eurotarget customer for the purpose of performing the shooting activity of the Method Claims. The Eurotarget customer profits from that agreement and shooting activity. The shooter and Eurotarget customer share responsibility for when and how the shooting activity will take place. The activity does not take place without the consent and action of both the customer and the shooter.

63. Eurotarget knows that when their customers use the Accused Targets for their intended purpose, that they will be performing the method recited in the Method Claims, knowing or being willfully blind to the fact that such method infringes the '475 Patent. Eurotarget knows that substantially each time one of the Accused Targets is used for its intended purpose, it must be replaced, which increases sales.

64. Eurotarget's customers either alone or by forming a joint enterprise and/or single entity with shooters, directly infringe claims 29, 34, 37 and 39 of the '475 Patent. By actively encouraging the purchase of the Accused Targets and

their use for their intended purpose, Eurotarget has actively induced the direct infringement of claims 29, 34, 37 and 39 of the '475 Patent.

65. Over the years, Reagent has consistently promoted the fact that its White Flyer Bio targets are protected by the '475 Patent.

66. On information and belief, Eurotarget has indirectly infringed one or more claims of the '475 Patent by inducing others to directly infringe the '475 Patent and/or is contributing to the infringement of the '475 Patent.

67. As a consequence of Eurotarget's direct infringement, indirect infringement, literal infringement and infringement by the doctrine of equivalents of the '475 Patent, with full knowledge of the '475 Patent, Reagent has been damaged in an amount not yet determined.

68. On information and belief, Eurotarget's indirect infringement of the '475 Patent will continue in the future, and Reagent will continue to suffer monetary and irreparable injury as a consequence, unless Eurotarget's infringing acts are enjoined by this Court.

69. On information and belief, Eurotarget's indirect infringement of the '475 Patent has been, and continues to be, willful.

PRAYER FOR RELIEF

WHEREFORE, Reagent respectfully requests that the Court enter judgment against Eurotarget:

A. determining that Eurotarget has directly and/or indirectly infringed and continues to infringe one or more claims of the '475 Patent;

B. preliminarily and permanently enjoining Eurotarget, their respective officers, agents, servants, directors, employees and attorneys, and all persons acting in concert or participation with them, directly or indirectly, or any of them who receive actual notice of the judgment, from further infringing, inducing other to infringe, or contributing to the infringement of any claims of the '475 Patent;

C. ordering Eurotarget to account for and pay Reagent all damages suffered by Reagent as a consequence of Eurotarget's infringement of the '475 Patent, together with interest and costs as fixed by the Court;

D. ordering Eurotarget to pay ongoing royalties to Reagent to compensate Reagent for any further direct or indirect infringement by Eurotarget of any claim of the '475 Patent after the verdict in this case;

E. trebling Eurotarget's damages under U.S.C. § 284 on the ground that Eurotarget's infringement of the '475 Patent was deliberate and willful;

F. declaring that this case is exceptional and awarding Reagent its costs and attorney fees in accordance with 35 U.S.C. § 285; and

G. granting Reagent such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Dated: April 1, 2016

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DEMAND FOR JURY TRIAL

Plaintiff Reagent Chemical & Research, Inc. hereby demands a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure as to all triable issues in this lawsuit.

Respectfully submitted,

Dated: April 1, 2016

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