

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

KNOWLES ENTERPRISES, INC.,
a Florida corporation,

Plaintiff,

v.

AKESO HEALTH SCIENCES, LLC,
a California limited liability company,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff KNOWLES ENTERPRISES, INC. (“KEI”) sues Defendant AKESO HEALTH SCIENCES, LLC. (“Akeso”) for a declaratory judgment of its rights under the Patent Act, and complains as follows:

JURISDICTION AND VENUE

1. This is an action to declare the rights of the parties pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, and the Patent Laws of the United States, 35 U.S.C. § 271, et seq.
2. This court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1338(a).
3. Upon information and belief, this court has personal jurisdiction over Akeso pursuant to Fla. Stat. Ch. 48.193(1) and (2) by virtue of its substantial, continuous and not isolated activity in the Southern District of Florida, including selling supplements embodying the

Patents-in-Suit directly and through distributors having operations in this District and throughout the State of Florida. Discovery may be required as to the full extent of such activity.

4. Venue is proper in this District, pursuant to 28 U.S.C. § 1391, because Akeso is subject to personal jurisdiction in the District, and because a substantial part of the events giving rise to this claim for declaratory relief and the subject matter thereof occurred within the District, including, without limitation, that KEI received a cease-and-desist letter from Akeso in this District, and that KEI's principal place of business is located in this District.

THE PARTIES

5. KEI is a Florida corporation having its principal place of business at 16210 SW 49th Court, Miramar, Florida.

6. Upon information and belief, Akeso is a California limited liability company having its principal place of business at 4607 Lakeview Canyon #561, Westlake Village, California.

BACKGROUND

7. On information and belief, Akeso is the owner by assignment of U.S. Patent No. 6,068,999, entitled "Dietary Supplement for Supporting Cerebrovascular Tone and Treating Migraine Headaches" and issued on May 30, 2000 ("the '999 Patent"). A copy of the '999 Patent is attached as Exhibit "A" hereto.

8. On information and belief, Akeso is the owner by assignment of U.S. Patent No. 6,500,450, entitled "Composition for Treating Migraine Headaches" and issued on December 31, 2002 ("the '450 Patent"). The '450 Patent was filed as a continuation-in-part of the '999 Patent. A copy of the '450 Patent is attached as Exhibit "B" hereto.

9. On June 24, 2016, counsel for Akeso sent a letter to KEI, entitled “Notice of Infringement of U.S. Patent 6,500,450” but alleging direct and indirect infringement by KEI of at least Claim 1 of the ‘999 Patent and Claim 16 of the ‘450 Patent, through the making, using, selling and offering to sell a supplement named Migraine Prevention Formula (“the Accused Product”). Further to its infringement allegations, Akeso demanded KEI pay it two hundred thousand dollars (\$200,000.00) in exchange for a non-exclusive license for the Accused Product under the ‘999 and ‘450 Patents, which will both expire on June 25, 2018. A copy of the letter from counsel is attached as Exhibit “C” hereto.

10. The Accused Product does not include elements required for literal infringement of either the ‘999 or ‘450 Patents, nor do these elements occur under the doctrine of equivalents.

11. Upon information and belief, the ‘999 and ‘450 Patents are each invalid in light of the prior art.

12. As a result Akeso’s June 24, 2016 letter, an actual controversy exists between the parties. Akeso’s unfounded accusations of patent infringement and demand for significant monetary payment threaten potentially serious consequences to the business operations of KEI.

13. KEI is entitled to be able to continue its marketing and sale of the Accused Product in an atmosphere free of Akeso’s unfounded accusations, and therefore believes it is necessary to invoke the protections of the Federal Declaratory Judgment Act in this matter.

14. Because of the serious nature of Akeso’s accusations and demands, KEI believes that the accusations and demands must be addressed now, or else they will persist and cause damage to KEI as a result.

COUNT I
DECLARATORY JUDGMENT FOR NON-INFRINGEMENT OF THE '999 PATENT

15. This Count seeks a declaration of rights pursuant to the protections of the Federal Declaratory Judgment Act, 28 U.S.C. § 2201. KEI repeats and realleges Paragraphs 1 – 14 above.

16. KEI has not made, used, offered to sell or sold or imported any products covered by any claim of the '999 Patent.

17. KEI has not contributorily infringed or induced the infringement of the '999 Patent.

18. KEI is in need of, and entitled to, a judicial declaration that it has not infringed the '999 Patent via its manufacture, marketing and sales of the Migraine Prevention Formula supplement, or any other supplement.

COUNT II
DECLARATORY JUDGMENT FOR INVALIDITY OF THE '999 PATENT

19. This Count seeks a declaration of rights pursuant to the protections of the Federal Declaratory Judgment Act, 28 U.S.C. § 2201. KEI repeats and realleges Paragraphs 1 – 14 above.

20. KEI has reason to further question the validity of the '999 Patent, pursuant to 35 U.S.C. §§ 102 and 103, although it is still in the process of gathering evidence of patent invalidity for anticipation or obviousness in light of prior art. Further investigation and discovery are required in this regard.

21. KEI is in need of, and entitled to, a judicial declaration that the '999 Patent is invalid and unenforceable.

COUNT III
DECLARATORY JUDGMENT FOR NON-INFRINGEMENT OF THE '450 PATENT

22. This Count seeks a declaration of rights pursuant to the protections of the Federal Declaratory Judgment Act, 28 U.S.C. § 2201. KEI repeats and realleges Paragraphs 1 – 14 above.

23. KEI has not made, used, offered to sell or sold or imported any products covered by any claim of the '450 Patent.

24. KEI has not contributorily infringed or induced the infringement of the '450 Patent.

25. KEI is in need of, and entitled to, a judicial declaration that it has not infringed the '450 Patent via its manufacture, marketing and sales of the Migraine Prevention Formula supplement, or any other supplement.

COUNT IV
DECLARATORY JUDGMENT FOR INVALIDITY OF THE '450 PATENT

26. This Count seeks a declaration of rights pursuant to the protections of the Federal Declaratory Judgment Act, 28 U.S.C. § 2201. KEI repeats and realleges Paragraphs 1 – 14 above.

27. KEI has reason to further question the validity of the '450 Patent, pursuant to 35 U.S.C. §§ 102 and 103, although it is still in the process of gathering evidence of patent invalidity for anticipation or obviousness in light of prior art. Further investigation and discovery are required in this regard.

28. KEI is in need of, and entitled to, a judicial declaration that the '450 Patent is invalid and unenforceable.

DEMAND FOR JURY TRIAL

KEI requests that all issues in this case be tried to a jury.

WHEREFORE, KEI prays that this Court enter judgment that:

- A. KEI has not committed any act of infringement of the '999 Patent with respect to its Migraine Prevention Formula supplement, or any other supplement;
- B. The '999 Patent is invalid and unenforceable;
- C. KEI has not committed any act of infringement of the '450 Patent with respect to its Migraine Prevention Formula supplement, or any other supplement;
- D. The '450 Patent is invalid and unenforceable;
- E. This case is exceptional, under 35 U.S.C. § 285, and that Akeso reimburse KEI's reasonable attorney fees and costs incurred in connection therewith; and
- F. Grant KEI such other relief as this Court deems appropriate.

Respectfully submitted,

s/ Brian M. Taillon

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