

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AdvaTect Diagnostics, LLC,

Plaintiff,

v.

Vibrant America, LLC and Vibrant Wellness,
LLC,

Defendants.

C.A. No.

TRIAL BY JURY DEMANDED

COMPLAINT

Plaintiff AdvaTect Diagnostics, LLC, for its Complaint against Defendants Vibrant America, LLC and Vibrant Wellness, LLC (collectively “Vibrant”), hereby alleges as follows:

THE PARTIES

1. Plaintiff AdvaTect Diagnostics, LLC (“AdvaTect”) is a limited liability company formed and existing under the laws of the State of Texas.

2. Defendant Vibrant America, LLC is a corporation organized and existing under the laws of the State of Delaware.

3. Defendant Vibrant Wellness, LLC is a corporation organized and existing under the laws of the State of Delaware.

JURISDICTION AND VENUE

4. This case involves patent infringement and arises under the Patent Laws of the United States, Title 35, United States Code. Thus, this Court has subject matter jurisdiction under at least 28 U.S.C. § 1331 (federal question) and § 1338 (patent actions).

5. This Court has personal jurisdiction over Vibrant at least because Vibrant is incorporated in and, thus, is fairly regarded as being at home in the State of Delaware.

6. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1400(b) at least because Vibrant is incorporated in and, thus, resides in the State of Delaware.

THE PATENTS-IN-SUIT

7. U.S. Patent No. 9,182,398 (“the ‘398 Patent”), entitled “Methods and Compositions For Detecting Fungi and Mycotoxins,” was issued by the United States Patent & Trademark Office on November 10, 2015, to AdvaTect. The ‘398 Patent is attached as Exhibit 1.

8. AdvaTect is the owner of all right, title, and interest in the ‘398 Patent.

9. The ‘398 Patent has not expired and is in full force and effect.

10. Pursuant to 35 U.S.C. § 282, each of the ‘398 Patent claims is presumed valid.

11. Vibrant has had knowledge of the ‘398 Patent and its contents and scope since at least March 25, 2018.

12. U.S. Patent No. 10,036,748 (“the ‘748 Patent”), entitled “Methods and Compositions For Detecting Fungi and Mycotoxins,” was issued by the United States Patent & Trademark Office on July 31, 2018, to AdvaTect. The ‘748 Patent is attached as Exhibit 2.

13. AdvaTect is the owner of all right, title, and interest in the ‘748 Patent.

14. The ‘748 Patent has not expired and is in full force and effect.

15. Pursuant to 35 U.S.C. § 282, each of the ‘748 Patent claims is presumed valid.

16. Defendant has had knowledge of the ‘748 Patent and its contents and scope since at least March 25, 2018.

17. U.S. Patent No. 10,274,493 (“the ‘493 Patent”), entitled “Methods And Compositions For Detecting Fungi And Mycotoxins,” was issued by the United States Patent & Trademark Office on April 30, 2019, to AdvaTect. The ‘493 Patent is attached as Exhibit 3.

18. AdvaTect is the owner of all right, title, and interest in the ‘493 Patent.

19. The '493 Patent has not expired and is in full force and effect.

20. Pursuant to 35 U.S.C. § 282, each of the '493 Patent claims is presumed valid.

21. Defendant has had knowledge of the '493 Patent and its contents and scope since at least the date of this Complaint.

FACTUAL BACKGROUND

22. Vibrant is a science and technology company that offers a variety of diagnostic tests to clinicians and patients. Upon information and belief, Vibrant operates and performs, or otherwise maintains control over, all of its testing services, including: processing, testing, reporting, and interpreting its test results.

23. Vibrant offers the Vibrant Mycotoxins Test and corresponding testing services ("the Accused Testing Service"), which includes at least processing, testing, reporting, and interpreting the test results of urine samples examined for the presence of mycotoxins.

24. A sample report for the Accused Testing Service is attached as Exhibit 4, and is available online at <https://www.vibrant-wellness.com/wp-content/uploads/2019/02/Mycotoxins-Sample.pdf>.

25. Upon information and belief, when mycototoxins are present in a urine sample, the Accused Testing Service includes extracting and recovering mycotoxins, including tricothecenes, aflatoxins, and ochratoxins.

26. Upon information and belief, when mycotoxins are present in a urine sample, the Accused Testing Service includes contacting mycotoxins with antibodies directed against the mycotoxins.

27. Upon information and belief, when mycototoxins are present in a urine sample, the Accused Testing Service includes detecting and quantifying such mycotoxins.

28. Upon information and belief, the Accused Testing Service will detect 0.2 ng/ml of tricothecene mycotoxins.

29. Upon information and belief, the Accused Testing Service will detect 1.0 ng/ml of aflatoxin.

30. Upon information and belief, the Accused Testing Service will detect 2.0 ng/ml of ochratoxin.

31. Upon information and belief, the Accused Testing Service will determine whether a patient has been exposed to mold.

32. Upon information and belief, the Accused Testing Service is intended to determine whether a patient is at risk for a fungal infection.

33. Upon information and belief, the Accused Testing Service is intended to determine whether a patient has developed a disease state related to a fungal infection.

34. Upon information and belief, the Accused Testing Service is intended to determine whether a patient has a fungal infection.

35. Upon information and belief, Vibrant performs all of the procedures of the Accused Testing Service.

36. Upon information and belief, Vibrant performs all of the procedures of the Accused Testing Service, within the United States.

37. Upon information and belief, Vibrant continues to perform all of the procedures of the Accused Testing Service in the United States.

38. Vibrant has offered to sell the Accused Testing Service in the United States.

39. Vibrant continues to offer to sell the Accused Testing Service in the United States.

40. Upon information and belief, Vibrant has sold the Accused Testing Service in the United States.

41. Upon information and belief, Vibrant continues to sell the Accused Testing Service in the United States.

COUNT I – DIRECT INFRINGEMENT OF U.S. PATENT NO. 9,182,398

42. AdvaTect incorporates by reference paragraphs 1 through 41 as if restated fully herein.

43. Upon information and belief, Vibrant has directly infringed and continues to directly infringe one or more claims of the ‘398 Patent in violation of 35 U.S.C. § 271(a), including at least claims 1 and 3, either literally or under the doctrine of equivalents, by performing the Accused Testing Service in the United States as set forth in at least paragraphs 23-28 and 31-41.

44. Vibrant has had knowledge of the ‘398 Patent and its contents and scope since at least March 25, 2018 when it received a letter from Plaintiff’s counsel. Furthermore, Vibrant is familiar with both numerous articles by Plaintiff’s leading developer in mycotoxin technology as well as the patented technology. Thus, upon and information and belief, Vibrant has been aware of the ‘398 patent since well-before March 25, 2018. Upon information and belief, Vibrant’s infringement of the ‘398 Patent has been and continues to be willful.

45. AdvaTect has been damaged and irreparably harmed by Vibrant’s infringement of the ‘398 Patent.

46. AdvaTect will continue to be damaged and irreparably harmed by Vibrant’s infringement of the ‘398 Patent unless such infringement is enjoined.

COUNT II – DIRECT INFRINGEMENT OF U.S. PATENT NO. 10,036,748

47. AdvaTect incorporates by reference paragraphs 1 through 46 as if restated fully herein.

48. Upon information and belief, Vibrant has directly infringed and continues to directly infringe one or more claims of the ‘748 Patent in violation of 35 U.S.C. § 271(a), including at least claims 1 and 7, either literally or under the doctrine of equivalents, by performing the Accused Testing Service in the United States as set forth in at least paragraphs 23-28 and 31-41.

49. Vibrant has had knowledge of the ‘748 Patent and its contents and scope since at least March 25, 2018 when it received a letter from Plaintiff’s counsel. Furthermore, Vibrant is familiar with both numerous articles by Plaintiff’s leading developer in mycotoxin technology as well as the patented technology. Thus, upon and information and belief, Vibrant has been aware of the ‘748 patent since well-before March 25, 2018. Upon information and belief, Vibrant’s infringement of the ‘748 Patent has been and continues to be willful.

50. AdvaTect has been damaged and irreparably harmed by Vibrant’s infringement of the ‘748 Patent.

51. AdvaTect will continue to be damaged and irreparably harmed by Vibrant’s infringement of the ‘748 Patent unless such infringement is enjoined.

COUNT III – DIRECT INFRINGEMENT OF U.S. PATENT NO. 10,274,493

52. AdvaTect incorporates by reference paragraphs 1 through 51 as if restated fully herein.

53. Upon information and belief, Vibrant has directly infringed and continues to directly infringe one or more claims of the ‘493 Patent in violation of 35 U.S.C. § 271(a),

including at least claims 1 and 6, either literally or under the doctrine of equivalents, by performing the Accused Testing Service in the United States as set forth in at least paragraphs 23-27 and 29-41.

54. Upon information and belief, since at least March 25, 2018, Vibrant has had knowledge of the application for the '493 Patent and its contents and scope, because it indisputably had knowledge of the '398 patent (a parent application of the '493 patent), since at least March 25, 2018 when it received a letter from Plaintiff's counsel. As such, upon information of belief, Vibrant has had knowledge of the '493 patent prior to, and at least since, its date of issuance. Furthermore, Vibrant is familiar with both numerous articles by Plaintiff's leading developer in mycotoxin technology as well as the patented technology. As such, upon information and belief, Vibrant's infringement of the '493 Patent has been and continues to be willful.

55. AdvaTect has been damaged and irreparably harmed by Vibrant's infringement of the '493 Patent.

56. AdvaTect will continue to be damaged and irreparably harmed by Vibrant's infringement of the '493 Patent unless such infringement is enjoined.

PRAYER FOR RELIEF

Wherefore, AdvaTect demands judgment in its favor and against Vibrant as follows:

1. A judgment under 35 U.S.C. § 271(a) that Vibrant has directly infringed the '398 Patent, the '748 Patent, and the '493 Patent;

2. An order under 35 U.S.C. § 283 preliminarily and permanently enjoining Vibrant and its officers, agents, subsidiaries, successors, employees, representatives, and assigns from infringing the '398 Patent, the '748 Patent, and the '493 Patent.

3. An award of damages under 35 U.S.C. § 284 adequate to compensate AdvaTect for Vibrant's infringement of the '398 Patent, the '748 Patent, and the '493 Patent and an accounting to determine the proper amount of such damages;
4. A three-fold increase in damages as a result of Vibrant's willful acts of infringement;
5. An award under 35 U.S.C. § 284 of costs and prejudgment and post-judgment interest on the compensatory damages to be awarded to AdvaTect;
6. An award under 35 U.S.C. § 285 of AdvaTect's attorney's fees incurred in this action; and
7. Such further relief as this Court deems just and proper.

Dated: May 3, 2019

BARNES & THORNBURG LLP

/s/ Chad S.C. Stover

Chad S.C. Stover (No. 4919)
1000 N. West Street, Suite 1500
Wilmington, DE 19801
Telephone: (302) 300-3474
Facsimile: (302) 300-3456
E-mail: chad.stover@btlaw.com

Deborah Pollack-Milgate (*pro hac vice* forthcoming)
Sean M. Phipps (*pro hac vice* forthcoming)
11 South Meridian Street
Indianapolis, IN 46204
Telephone: 317-231-1313
Facsimile: 317-231-7433
Email: deborah.pollackmilgate@btlaw.com
Email: sean.phipps@btlaw.com

Attorneys for Plaintiff AdvaTect Diagnostics, LLC