

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

PURECIRCLE USA INC. and
PURECIRCLE SDN BHD,

Plaintiffs,

v.

ALMENDRA AMERICAS LLC and
ALMENDRA (THAILAND)
COMPANY LIMITED,

Defendants.

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JURY TRIAL
DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs PureCircle USA Inc. and PureCircle Sdn Bhd (collectively, “PureCircle”), by and through the undersigned counsel, file this Complaint for Patent Infringement relating to U.S. Patent No. 10,398,160 (“the ’160 Patent”) against Defendants Almendra (Thailand) Company Limited (“Almendra Thailand”) and Almendra Americas LLC (“Almendra Americas”) (Almendra Thailand and Almendra Americas are collectively referred to herein as “Defendants”), and allege as follows:

NATURE OF ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 et seq., specifically including 35 U.S.C. § 271.

THE PARTIES

2. Plaintiff PureCircle USA Inc. is a Delaware corporation with its principal place of business at 200 W. Jackson Blvd., 8th Floor, Chicago, Illinois 60606. PureCircle USA Inc. is a subsidiary of PureCircle Limited.

3. Plaintiff PureCircle Sdn Bhd is a Malaysian corporation with its principal place of business at Level 12, West Wing, Rohas PureCircle, No. 9 Jalan P. Ramlee, 50250 Kuala Lumpur, Malaysia. PureCircle Sdn Bhd is a subsidiary of PureCircle Limited.

4. On information and belief, Defendant Almendra Thailand is a Thai

Limited Company with its principal place of business at Two Pacific Place #2402, 142 Sukhumvit Rd., Klong Toey, Bangkok, Thailand 10110.

5. On information and belief, Defendant Almendra Americas is a Limited Liability Company organized under the laws of the State of Georgia with its principal place of business at One West Court Square, Suite 750, Decatur, Georgia 30030.

JURISDICTION AND VENUE

6. Plaintiff PureCircle's claims for patent infringement arise under the patent laws of the United States, 35 U.S.C. §§ 101 *et seq.*, including 35 U.S.C. §§ 271 and 281-285.

7. This Court has subject matter jurisdiction over Plaintiff PureCircle's claims for patent infringement pursuant to the laws of the United States, 28 U.S.C. §§ 1331 and 1338.

8. On information and belief, Defendants transact and conduct business within this District and the State of Georgia, and are subject to the personal jurisdiction of this Court.

9. On information and belief, Defendant Almendra Americas has minimum contacts within the State of Georgia and this District, and has purposefully availed itself of the privileges of conducting business in the State of

Georgia and in this District by, *inter alia*, being registered as a limited liability company in this District, and maintaining its principal place of business in Decatur, Georgia, which is located in this District and Division.

10. Defendant Almendra Americas also maintains a registered agent for service—CT Corporation System at 289 S Culver St, Lawrenceville, GA, 30046-4805—which is in this District, and is thus amenable to service in this District.

11. On information and belief, Defendant Almendra Americas has a regular and established place of business in the State of Georgia and within this District and Division.

12. On information and belief, Defendant Almendra Thailand has minimum contacts within the State of Georgia and this District, and has purposefully availed itself of the privileges of conducting business in the State of Georgia and in this District by, *inter alia*, maintaining a commercial relationship with Defendant Almendra Americas.

13. Furthermore, Defendant Almendra Thailand has minimum contacts with the United States, and conducts business in the United States, which means there is at least jurisdiction over Defendant Almendra Thailand in this District under Federal Rule of Civil Procedure 4(k)(2).

14. Plaintiff PureCircle's cause of action for patent infringement arises

directly from Defendants' business contacts and other activities in the State of Georgia and in this District.

15. On information and belief, Defendants have committed acts of infringement, both directly and indirectly, within this District and the State of Georgia by, *inter alia*, making, using, selling, offering for sale, importing, advertising, and/or promoting products in this District that infringe one or more claims of the '160 Patent, and/or inducing others to commit such acts in this District.

16. On information and belief, Defendants, directly and/or through intermediaries, use, sell, ship, distribute, offer or sale, advertise, and otherwise promote their products in the United States, the State of Georgia, and this District, and/or induce others to commit such acts in this District.

17. On information and belief, Defendants solicit customers in the State of Georgia and this District, and have customers who are residents of the State of Georgia and this District who use Defendants' products in the State of Georgia and in this District.

18. Venue for Defendant Almendra Americas is proper in this District and Division. On information and belief, Defendant Almendra Americas is registered as an LLC in this District, has committed acts of infringement in this District, and

has a regular and established place of business in this District and Division.

19. Defendant Almendra Thailand is a foreign corporation that has committed acts of infringement—or induced others (including, but not limited to, Defendant Almendra Americas) to commit acts of infringement—within this District. Moreover, there is personal jurisdiction over Defendant Almendra Thailand in this District, and thus, venue is proper in this District for this additional reason.

THE '160 PATENT

20. Plaintiff PureCircle Sdn Bhd owns by assignment the entire right, title and interest in the '160 Patent, which is entitled “Glucosylated steviol glycoside as a flavor modifier.”

21. The '160 Patent issued on September 3, 2019 to inventors Siddhartha Purkayastha and Avetik Markosyan.

22. A true and correct copy of the '160 Patent is attached as Exhibit A to this Complaint.

23. Plaintiff PureCircle Sdn Bhd conducts all business related to the '160 Patent in the United States through Plaintiff PureCircle USA Inc. Plaintiff PureCircle USA Inc. is the exclusive licensee with rights to sell products practicing the '160 Patent.

24. The '160 Patent has claims directed to a taste and flavor profile modifying composition that includes a blend of glycosylated steviol glycosides, residual steviol glycosides, and maltodextrin.

FACTUAL BACKGROUND

25. Since its founding in 2002, PureCircle Limited, the parent company of Plaintiffs PureCircle Sdn Bhd and PureCircle USA Inc., has been the industry pioneer in large-scale, high-purity stevia ingredient production and commercialization.

26. Plaintiff PureCircle products are derived from the stevia plant, which contains over 40 naturally occurring molecules known as steviol glycosides that can be extracted for, among other things, use as taste and flavor modifiers.

27. The success of Plaintiff PureCircle is the result of innovation at every stage of the supply chain, from developing high-yield varieties of the stevia plant to developing sophisticated processes to extract and modify the steviol glycosides for specific food and beverage applications.

28. Plaintiff PureCircle works with leading companies in the food and beverage industries to investigate new stevia-derived ingredients for application in food and beverage products.

29. In 2008, as a result of the efforts of PureCircle Limited and its

subsidiaries, Rebaudioside A (“Reb A”), a high-purity stevia ingredient, was approved as a food ingredient by the U.S. Food and Drug Administration (“FDA”) and by the World Health Organization.

30. The market for stevia-derived ingredients has continued to open since that time, with regulatory approvals having been obtained in the European Union, Australia, New Zealand, Canada, Turkey, Russia, South Africa, Pakistan, India, Brazil, and many other countries.

31. More than 5 billion consumers now live in markets where stevia-derived ingredients have been approved as a food and beverage ingredient.

32. Plaintiff PureCircle has also been the industry pioneer in the development of stevia-derived glucosylated steviol glycoside (“GSG”) compositions.

33. GSG compositions are used for taste improvement and flavor modification in food and beverage products, such as carbonated beverages and yogurt.

34. GSG compositions were approved by the FDA as sweeteners in 2013 and as flavors in 2015.

35. PureCircle’s NSF-02 product, a flavor and taste modifying composition, was the basis for FEMA GRAS No. 4728.

36. “FEMA” is the Flavor and Extract Manufacturers Association (<https://www.femaflavor.org>).

37. GRAS is an acronym for the designation “Generally Recognized As Safe” as used by the FDA.

38. Under FEMA GRAS No. 4728, GSG flavors can be imported into the United States.

39. Under FEMA GRAS No. 4728, GSG flavors can be used by food and beverage manufacturers as “natural flavors.”

40. Plaintiff PureCircle has protected its innovative processes and compositions by, among other things, filing and procuring patents.

41. Plaintiff PureCircle currently owns or co-owns more than 75 U.S. patents, including the ’160 Patent.

42. The Plaintiff’s portfolio includes more than 90 commercial stevia-derived ingredients and more than 300 custom stevia-derived ingredients.

43. On approximately November 1, 2016, Defendant Almendra announced that FEMA approved its “Steviarome™” product in August 2016.

44. Defendant Almendra describes Steviarome as a “range of natural flavors.”

45. Defendant Almendra has stated that Steviarome meets the

specifications for use under FEMA GRAS No. 4728, which is entitled “Glucosyl Steviol Glycosides.”

46. Compositions that meet the specifications for use under FEMA GRAS No. 4728 must meet the following criteria: “[t]otal steviol glycosides 80-90%,” “Rebaudioside A 1-6%,” “Stevioside 2-4%,” “[o]ther steviol glycosides not further glucosylated each less than 3%,” and “Maltodextrin 3-20%.”

47. Defendants’ Steviarome product incorporates, without license or permission, the inventions protected by at least claim 1 of the ’160 Patent.

48. Claim 1 of the ’160 Patent recites:

A taste and flavor modifying composition comprising
at least 80% total steviol glycosides,

the total steviol glycosides comprising a sum of
glycosylated and non-glycosylated steviol glycosides
wherein:

(a) the glycosylated steviol glycosides comprise
shortchain glycosylated steviol glycosides having one to
four α -1,4-glucosyl residues;

(b) the non-glycosylated steviol glycosides comprise
residual steviol glycoside molecules comprising
stevioside, rebaudioside A, and rebaudioside, C, and
having β -configured glucosyl residues; and

(c) maltodextrin.

49. In order to protect its substantial investments in research and

development, it has become necessary for Plaintiff PureCircle to defend against the unlawful use of its patented technology by Defendants.

COUNT I

Defendants' Infringement of the '160 Patent

50. Defendant PureCircle repeats and re-alleges paragraphs 1-49 above as if fully set forth herein.

51. Defendants are making, using, offering to sell, selling and/or importing into the United States products that infringe at least claim 1 of the '160 Patent, including but not limited to the Steviarome product.

52. Steviarome is a taste and flavor modifying composition comprising at least 80% total steviol glycosides, and including both glycosylated and non-glycosylated steviol glycosides.

53. On information and belief, Steviarome includes short-chain glycosylated steviol glycosides having one to four alpha-1,4-glucosyl residues.

54. Steviarome includes residual steviol glycoside molecules comprising stevioside, Rebaudioside A, and Rebaudioside C, each of which have beta-configured glucosyl residues.

55. Steviarome includes maltodextrin.

56. The following claim chart compares claim 1 of the '160 Patent to

Defendants' Steviarome product:

Claim 1 of '160 Patent	Defendants' Steviarome™ Product
<p>A taste and flavor modifying composition comprising</p>	<p>According to Defendants' website, "Steviarome™ is a range of natural flavors." http://almendra.com/steviarome.html.</p> <p>According to Defendant Almendra's November 1, 2016 press release: "On August 16th, 2016 the Flavor and Extract Manufacturers Association (FEMA) of the United States approved the Steviarome™ range of glucosyl steviol glycosides (GSG) manufactured by Almendra."</p> <p>Defendant Almendra has indicated that Steviarome meets the specifications for use under FEMA GRAS No. 4728, which requires a taste and flavor modifying composition.</p>
<p>at least 80% total steviol glycosides,</p>	<p>According to Defendant Almendra's November 1, 2016 press release: "On August 16th, 2016 the Flavor and Extract Manufacturers Association (FEMA) of the United States approved the Steviarome™ range of glucosyl steviol glycosides (GSG) manufactured by Almendra."</p> <p>Defendant Almendra has indicated that Steviarome meets the</p>

Claim 1 of '160 Patent	Defendants' Steviarome™ Product
	specifications for use under FEMA GRAS No. 4728, which requires at least 80% total steviol glycosides.
the total steviol glycosides comprising a sum of glycosylated and non-glycosylated steviol glycosides wherein:	<p>According to Defendant Almendra's November 1, 2016 press release: "On August 16th, 2016 the Flavor and Extract Manufacturers Association (FEMA) of the United States approved the Steviarome™ range of glucosyl steviol glycosides (GSG) manufactured by Almendra."</p> <p>Defendant Almendra has indicated that Steviarome meets the specifications for use under FEMA GRAS No. 4728, which requires both glycosylated and non-glycosylated steviol glycosides.</p>
(a) the glycosylated steviol glycosides comprise shortchain glycosylated steviol glycosides having one to four α -1,4-glucosyl residues;	<p>According to Defendant Almendra's November 1, 2016 press release: "On August 16th, 2016 the Flavor and Extract Manufacturers Association (FEMA) of the United States approved the Steviarome™ range of glucosyl steviol glycosides (GSG) manufactured by Almendra."</p> <p>Defendant Almendra has indicated that Steviarome meets the specifications for use under FEMA GRAS No. 4728, which requires glycosylated steviol glycosides.</p>

Claim 1 of '160 Patent	Defendants' Steviarome™ Product
	Steviarome includes short-chain, glycosylated steviol glycosides having one to four alpha-1,4-glucosyl residues.
(b) the non-glycosylated steviol glycosides comprise residual steviol glycoside molecules comprising stevioside, rebaudioside A, and rebaudioside, C, and having β -configured glucosyl residues; and	<p>According to Defendant Almendra's November 1, 2016 press release: "On August 16th, 2016 the Flavor and Extract Manufacturers Association (FEMA) of the United States approved the Steviarome™ range of glucosyl steviol glycosides (GSG) manufactured by Almendra."</p> <p>Defendant Almendra has indicated that Steviarome meets the specifications for use under FEMA GRAS No. 4728, which requires residual steviol glycoside molecules including stevioside and rebaudioside A, each of which have beta-configured glucosyl residues. Steviarome also includes Rebaudioside C, which also has beta-configured glucosyl residues.</p>
(c) maltodextrin.	<p>According to Defendants' website, "Steviarome™ is a range of natural flavors." http://almendra.com/steviarome.html.</p> <p>According to Defendant Almendra's November 1, 2016 press release: "On August 16th, 2016 the Flavor and Extract Manufacturers</p>

Claim 1 of '160 Patent	Defendants' Steviarome™ Product
	<p>Association (FEMA) of the United States approved the Steviarome™ range of glucosyl steviol glycosides (GSG) manufactured by Almendra.”</p> <p>Defendant Almendra has indicated that Steviarome meets the specifications for use under FEMA GRAS No. 4728, which requires at least 3% maltodextrin.</p>

57. Defendants were aware of the invention disclosed in the '160 Patent prior to this lawsuit.

58. On April 16, 2019, Defendants filed their own patent application, U.S. Patent Application No. 16/386012, published as US2019/0313669.

59. In Defendants' U.S. Patent Publication 2019/0313669, Defendants reference International Publication WO2012/129451.

60. International Publication WO2012/129451 is a Plaintiff PureCircle international patent application for GSG taste and flavor modifying compositions, and is one of the patent applications that led to the issuance of the '160 Patent.

61. In addition, a December 19, 2018, letter from Plaintiff PureCircle's Chief Commercial Officer sent to Defendant Almendra Thailand's CEO identified

at least 29 PureCircle patents that had issued as of that date.

62. The December 19, 2018, letter from Plaintiff PureCircle identified several issued patents in the same patent family as the '160 Patent having the same patent specification as the '160 Patent.

63. Among the patents identified in the December 19, 2018, letter were U.S. Patent Nos. 8,275,948, 8,318,459, 8,647,844, 8,735,101, 9,107,436, and 9,585,420.

64. U.S. Patent Nos. 8,275,948, 8,318,459, 8,647,844, 8,735,101, 9,107,436, and 9,585,420 are the great-great-great-great grandparent, great-great-great grandparent, great-great grandparent, great grandparent, grandparent, and parent, respectively, of the '160 Patent.

65. U.S. Patent Nos. 9,107,436, and 9,585,420 have specifications nearly identical to the '160 Patent.

66. Because these patents were listed in the December 19, 2018, letter, Defendant Almendra Thailand knew about the inventions described in the '160 Patent prior to this lawsuit.

67. Because these patents were listed in the December 19, 2018, letter, Defendant Almendra US knew about the inventions described in the '160 Patent prior to this lawsuit.

68. Because Defendants knew about Plaintiff PureCircle's WO2012/129451 patent application, Defendants also knew about the '160 Patent prior to this lawsuit.

69. Because Defendants knew about the patents listed in the December 19, 2018, letter, that were parents, grandparents, and other ancestors of the '160 Patent, Defendants knew that they were likely to infringe the '160 Patent prior to this lawsuit.

70. Because Defendants knew about Plaintiff PureCircle's issued patents having the same specification as the '160 Patent prior to this lawsuit, Defendants also knew about the '160 Patent prior to this lawsuit.

71. While knowing about the '160 Patent, Defendants have induced and will continue to induce the infringement of one or more claims of the '160 Patent, in violation of 35 U.S.C. § 271(b), by, among other things, intentionally, actively, and knowingly aiding and abetting others (such as their customers who incorporate Steviarome into products) to infringe the '160 Patent with the specific intent to encourage their infringement, through activities such as marketing Defendants' products and working with customers to incorporate Steviarome into products.

72. Defendants have contributed to the infringement of one or more claims of the '160 Patent, in violation of 35 U.S.C. § 271(c), by, among others,

customers who incorporate Steviarome into products, because Defendants know that Steviarome embodies a material part of the claimed inventions of the '160 Patent, that they are specially made or specially adapted for use in an infringement of the claims, and that they are not staple articles of commerce suitable for substantial non-infringing use.

73. After receiving actual knowledge of the '160 Patent, Defendants have continued to make, use, sell, offer for sale, and/or import infringing products into the United States despite knowing that there was an objectively high likelihood of infringement of the '160 Patent.

74. To the extent Defendants did not know of the objectively high likelihood of infringement, the risk was so obvious that it should have been known to Defendants.

75. Defendants' past and continuing infringement has been deliberate and willful.

76. Plaintiff PureCircle has been damaged by Defendants' infringement and has suffered and will continue to suffer irreparable injury for which there is no adequate remedy at law, unless Defendants are enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff PureCircle demands judgment against Defendants:

A. Entering judgment that Defendants have, directly and/or indirectly, infringed the '160 Patent in violation of 35 U.S.C. § 271;

B. Issuing a permanent injunction enjoining Defendants and their affiliates, agents, attorneys, servants, successors, assigns, employees and any and all parties acting in concert with any of them from directly and/or indirectly infringing in any manner the '160 Patent;

C. Ordering that Plaintiff PureCircle be awarded damages in an amount to be determined at trial, to compensate Plaintiff PureCircle for the infringement of the '160 Patent under 35 U.S.C. § 284, together with costs and pre-judgment and post-judgment interest;

D. Entering judgment declaring that Defendants' infringement was willful, and awarding Plaintiff PureCircle treble or other enhanced damages pursuant to 35 U.S.C. § 284

E. Declaring that this case is exceptional, and awarding Plaintiff PureCircle its reasonable attorneys' fees and expenses against Defendants pursuant to 35 U.S.C. § 285;

F. Awarding Plaintiff PureCircle other fees, costs, and/or expenses and such other relief as this Court may determine to be just and equitable.

JURY DEMAND

PureCircle demands a trial by jury on all matters alleged herein in accordance with the Seventh Amendment to the U.S. Constitution and Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: April 6, 2020

Respectfully submitted,

DLA PIPER LLP (US)

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CERTIFICATE OF COMPLIANCE

I hereby certify that this pleading has been prepared in compliance with Northern District of Georgia Local Rule 5.1. This pleading has been prepared in Times New Roman 14-point font.

/s/ Steven Park