

HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER

**FOR THE SOUTHERN DISTRICT
OF TEXAS
HOUSTON DIVISION**

STOLLER ENTERPRISES, INC.;	§	
THE STOLLER GROUP, INC.;	§	
and STOLLER USA, INC.	§	
	§	
Plaintiffs,	§	Case No. 4:20-cv-00750
	§	
v.	§	Judge: The Honorable Andrew S.
	§	Hanen
FINE AGROCHEMICALS LTD.,	§	
FINE AMERICAS INC.;	§	
CJB INDUSTRIES, INC.; and	§	
VIVID LIFE SCIENCES, LLC,	§	
	§	
Defendants.	§	

FOURTH AMENDED COMPLAINT OF PLAINTIFF STOLLER ENTERPRISES, INC.¹

Plaintiffs hereby submit this FOURTH Amended Claim of Stoller Enterprises, Inc.

I. CLAIMS

Plaintiff Stoller Enterprises, Inc., (“Stoller” or Plaintiff) sues Defendants Fine Agrochemicals Ltd., Fine Americas Inc., (collectively “Fine”), CJB Industries, Inc., (“CJB”), and Vivid Life Sciences, LLC (“Vivid”) (all collectively “Defendants”) and alleges its claims as follows:

¹ This is Plaintiff Stoller Enterprises, Inc.’s first complaint since the parties were realigned but is denominated as the Fourth Complaint to be numbered sequentially from previous counterclaims.

Nature Of The Action

1. This is a patent infringement action in which Plaintiff seeks compensatory damages, at least a reasonable royalty, attorneys' fees, and declaratory and injunctive relief.

Jurisdiction And Venue

2. This claim arises under the United States patent laws, 35 U.S.C. § 271, *et seq.*, and this Court has original subject-matter jurisdiction over this claim action pursuant to 28 U.S.C. §§ 1331, 1338(a) and (b).

3. Defendants have availed themselves of this Court, and this claim arises under the patent laws of the United States.

Parties

4. Plaintiff Stoller Enterprises, Inc., is a Texas corporation having its principal places of business in Houston, Texas.

5. Defendant Fine Agrochemicals Ltd. is a U.K. limited liability company with a principal place of business in the United Kingdom.

6. Defendant Fine Americas Inc., is a Delaware limited liability company having a principal place of business in Walnut Creek, California.

7. Defendant CJB Industries, Inc. ("CJB") is a Georgia corporation having a principal place of business in Valdosta, Georgia. Defendant CJB is an EPA manufacturing establishment with a registered facility at least at 2114 Cypress St, Valdosta, GA 31603.

8. Defendant Vivid Life Sciences, LLC ("Vivid") is a Florida limited liability company having its principal place of business in Princeton, Minnesota.

9. Each Defendant has appeared in this action. Personal jurisdiction over Defendants is proper, as each brought this action as Plaintiffs in their original declaratory

judgment action, and are now Defendants after realignment of the parties.

Factual Allegations

10. Plaintiff Stoller Enterprises, Inc. is, and at all times relevant hereto has been, a developer and innovator in the field of plant growth regulators (“PGRs”). Plaintiff Stoller Enterprises, Inc is the owner of all right, title and interest to U.S. Patent No. 10,104,883 entitled “Non-Aqueous Solution of Plant-Growth Regulators and Polar and/or Semi-Polar Organic Solvent(s)” issued October 23, 2018 (hereinafter also referred to as “the ‘883 patent”) and U.S. Patent No. 10,980,229 entitled “Non-Aqueous Solution of Plant-Growth Regulator(s) and Polar and/or Semi-Polar Organic Solvent(s)” issued April 20, 2021 (hereinafter also referred to as “the ‘229 patent”).

11. Defendants have sold, offered for sale, made, manufactured, and used PGRs and products embodying PGRs throughout the U.S. and in this District.

12. Fine formulated products sold as Registration Names [REDACTED] and are sold variously sometimes under the brand names Vigeo®, Periscope, Hone, Crest, Advantigro®, Mascrop and Maxport. These formulations have the following EPA Registration Numbers: 62097-43, 62097-44, 62097-45, 62097-50, 62097-51, 62097-55, and 62097-57. Vigeo® and Periscope and Advantigro® have plant growth hormones in non-aqueous solution, with an organic solvent, including 0.001 to 1 wt. % of at least one auxin, 0.001-0.3 wt. % of at least one gibberellin, and 0.001-0.3 wt. % of at least one cytokinin.

13. Fine engaged CJB as a contract manufacturer, who made product in Georgia that was sold throughout the United States. Vivid acted as a distributor of the Vigeo® product and was induced into selling the product by CJB and Fine. At least since November 2018 when CJB

and Vivid received notice letters, Defendants knowingly sold the Vigeo® product with full knowledge that it infringed U.S. Patent No. 10,104,883. Fine has also engaged Growmark, Inc. and/or Exacto, Inc. to distribute a product named Periscope, and Wilbur Elis to distribute a product [REDACTED] throughout the United States with full knowledge that it infringed U.S. Patent No. 10,104,883. [REDACTED]

[REDACTED]

[REDACTED].

COUNT I - PATENT INFRINGEMENT
U.S. PATENT NOS. 10,104,883 and 10,980,229

14. Plaintiff alleges as if fully set forth herein the allegations of paragraphs 1 through 13.

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

16. U.S. Patent No. 10,104,883 entitled “Non-Aqueous Solution of Plant-Growth Regulators and Polar and/or Semi-Polar Organic Solvent(s)” issued October 23, 2018 (hereinafter also referred to as “the ‘883 patent”). U.S. Patent No. 10,980,229 entitled “Non-Aqueous Solution of Plant-Growth Regulator(s) and Polar and/or Semi-Polar Organic Solvent(s)” issued April 20, 2021 (hereinafter also referred to as “the ‘229 patent”).

17. Defendants have willfully and knowingly made, used, sold and/or offered for sale products embodying the patented invention that constitute infringement of the ‘883 patent in violation of 35 U.S.C. §271, *et seq.* including claims 1 through 20. Defendants have willfully and knowingly made, used, sold and/or offered for sale products embodying the patented invention that constitute infringement of the ‘229 patent in violation of 35 U.S.C. §271, *et seq.* including claims 1 through 21

18. Stoller Enterprises, Inc. owns all right, title, and interest in, and has standing to sue for infringement of, the '883 patent and the '229 patent.

19. Independent Claims 1, 2, and 18 of the '883 patent are recited as follows:

20. Claim 1: A non-aqueous solution comprising: a) a plant growth regulator mixture including 0.001 to 1 wt. % at least one auxin, 0.001-0.3 wt. % at least one gibberellin, and 0.001-0.3 wt. % at least one cytokinin; b) at least one organic solvent selected from the group consisting of ethanol, n-propanol, iso-propanol, ethyl lactate, 3-hydroxybutyrate (ethyl and propyl esters), glycols, glycerol, polyethylene glycol, polypropylene glycol, propylene carbonate and combinations thereof; and c) optionally at least one mineral, optionally at least one surfactant, optionally at least one antifoam, optionally at least one preservative, and optionally combinations thereof, and d) less than 5 wt. % water; wherein said non-aqueous solution is stable and said at least one organic solvent and said less than 5 wt. % water are the only solvents present in said non-aqueous solution.

21. Claim 2: A non-aqueous solution comprising: a) a plant growth regulators mixture including 0.005 to 1 wt. % at least one auxin, 0.005-0.11 wt. % at least one gibberellin, and 0.0015-0.165 wt. % at least one cytokinin; b) at least one organic solvent selected from the group consisting of ethanol, n-propanol, iso-propanol, ethyl lactate, 3-hydroxybutyrate (ethyl and propyl esters), glycols, glycerol, polyethylene glycol, polypropylene glycol, propylene carbonate and combinations thereof; and c) optionally at least one mineral, optionally at least one surfactant, optionally at least one antifoams, optionally at least one preservative, and optionally combinations thereof, and d) less than 5 wt. % water; wherein said non-aqueous solution is stable and said at least one organic solvent and said less than 5 wt. % water are the only solvents present in said non-aqueous solution.

22. Claim 18: A non-aqueous solution consisting of: d) a plant growth regulator mixture including at least one auxin and at least one additional plant growth regulators; e) at least one organic solvent selected from the group consisting of ethanol, n-propanol, iso-propanol, ethyl lactate, 3-hydroxybutyrate (ethyl and propyl esters), glycols, glycerol, polyethylene glycol, polypropylene glycol, propylene carbonate and combinations thereof; and f) optionally at least one mineral, optionally at least one surfactant, optionally at least one antifoam, optionally at least one preservative, and optionally combinations thereof, and d) less than 5 wt. % water; wherein said non-aqueous solution is stable and said at least one organic solvent and said less than 5 wt. % water are the only solvents present in said non-aqueous solution.

23. Independent claims 1, 7 and 17 of the '229 patent are recited as follows:

24. Claim 1: A solution comprising: a) from about 0.005 to about 0.05 wt. % indole-3-butyric acid; b) from 0.009 to 0.10 wt. % kinetin; c) from 0.003 to 0.1 wt. % gibberellic acid (GA3); and d) at least one organic solvent selected from the group consisting of ethanol, n-propanol, iso-propanol, ethyl lactate, ethyl 3-hydroxybutyrate, propyl 3-hydroxybutyrate, glycols, glycerol, and combinations thereof, wherein the solution comprises less than 1 wt. % water and wherein said at least one organic solvent and said less than 1 wt. % water are the only solvents present in said solution.

25. Claim 7: A non-aqueous solution comprising: a) from about 0.005 to about 0.85 wt. % indole-3-butyric acid; b) from about 0.003 to about 0.3 wt. % kinetin; and c) at least one organic solvent selected from the group consisting of ethanol, n-propanol, iso-propanol, ethyl lactate, ethyl 3-hydroxybutyrate, propyl 3-hydroxybutyrate, glycols, glycerol, and combinations

thereof, wherein the solution comprises less than 5 wt. % water and wherein said at least one organic solvent and said less than 5 wt. % water are the only solvents present in said solution.

26. Claim 17: A composition comprising: a) from about 0.001 to about 10 wt. % indole-3-butyric acid; b) from 0.0015 to 0.15 wt. % kinetin; c) from 0.003 to 0.1 wt. % gibberellic acid (GA3); and d) at least one organic solvent selected from the group consisting of ethanol, n-propanol, iso-propanol, ethyl lactate, ethyl 3-hydroxybutyrate, propyl 3-hydroxybutyrate, glycols, glycerol, and combinations thereof, wherein the composition comprises less than 1 wt. % water and wherein said at least one organic solvent and said less than 1 wt. % water are the only solvents present in said solution.

27. Claims 1, 2, and 18 of the '883 patent are presumed valid and enforceable pursuant to 35 U.S.C. § 282.

28. Claims 1, 7 and 17 of the '229 patent are presumed valid and enforceable.

29. Defendants infringe on one or more of the foregoing claims.

30. Vigeo® and Periscope contain the following active ingredient: Cytokinin (as kinetin) 0.01%. Advantigro® contains the following active ingredient: Cytokinin (as kinetin) 0.009%.

31. Vigeo® and Periscope and Advantigro® contain the following active ingredient: Indole Butyric Acid 0.005%.

32. Vigeo® and Periscope contain the following active ingredient: Gibberellic Acid (A3) 0.004%. Advantigro® contains the following active ingredient: Gibberellic Acid (A3) 0.005%.

33. Vigeo® and Periscope and Advantigro® contain the following ingredients: 99.981%, is a non-aqueous solution and has only organic solvent(s) and less than 5 wt. % water.

34. The solvent(s) used in the Vigeo® and Periscope and Advantigro® products are organic solvents selected from the group consisting of ethanol, n-propanol, iso-propanol, ethyl lactate, 3-hydroxybutyrate (ethyl and propyl esters), glycols, glycerol, polyethylene glycol, polypropylene glycol, propylene carbonate and combinations thereof. The solution also includes a preservative of [REDACTED]. Registration Names [REDACTED] [REDACTED] have plant growth hormones and organic solvents in a non-aqueous solution that infringe one or more claims of the ‘883 and ‘229 Patents.

35. Defendants make, use, and sell Formulations having the following designations, all of which infringe: Products developed under the “[REDACTED]” of FAL product identifier number e.g., [REDACTED] [REDACTED], and any other designation including all FAL-series designations sold under various product names listed above, including Ascend SL and Ascend PRO.

36. Plaintiff seeks damages for Defendants’ infringement in an amount no less than a reasonable royalty, and any lost profits attributable to the infringement.

37. To the extent required by law, Stoller complied with the provisions of 35 U.S.C. § 287 with respect to the ‘883 and ‘229 patents.

38. Defendants have been aware of the ‘883 patent since at least November of 2018, which was prior to Stoller’s counterclaim, because this is when CJB and Vivid received notice letters that they infringed U.S. Patent ‘883. Defendants have been aware of the ‘229 patent since issuance.

39. Despite having knowledge of the ‘883 patent and ‘229 patent, Defendants continued their unlicensed and unauthorized infringement with no regard for the ‘883 and ‘229

patents. This infringement continued despite an objectively high likelihood that Defendants' actions would constitute infringement of the '883 patent and the '229 patent. This objectively high likelihood of infringement was known to Defendants, or was so obvious that it should have been known to Defendants. To date, Defendants have not presented any competent advice of counsel upon which they have relied; nor have they presented any reasonable defence of non-infringement, invalidity, or unenforceability.

40. All Defendants acted individually and in concert to infringe despite an objectively high likelihood that their actions constituted infringement of a valid patent. This objective risk was either known or so obvious that it should have been known to each and all of them such that each and all either knew or should have known their individual and collective actions were at least reckless. Defendants' infringement of the '883 patent and '229 patent under 35 U.S.C. § 271, *et seq.* is therefore wilful, deliberate, and objectively reckless.

41. Defendants' infringement of the '883 patent and '229 patent has injured and will continue to injure Stoller unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining Defendants' further manufacturing, sale, and use of the products that infringe the claimed solutions and formulations of the '883 patent and the '229 patent.

42. Plaintiff has been damaged and continues to be damaged in an amount to be proven at trial.

COUNT II - PATENT INFRINGEMENT INDUCING INFRINGEMENT

43. Plaintiff alleges as if fully set forth herein the allegations of paragraphs 1 through 41.

44. Defendants have willfully and knowingly made, used, sold, and/or offered for sale

products embodying the patented invention that constitute infringement of the ‘883 in violation of 35 U.S.C. § 271, *et seq.*

45. Fine induced Winfield Solutions, Inc. or Winfield United, sometimes referred to as Winfield Solutions, LLC (RSA) or RSA MicroTech, at 510 E Trail Street, Dodge City, KS 67801, or Land O’Lakes, Inc., (collectively “Winfield”), to infringe the patents in suit by supplying both [REDACTED]

46. Ascend SL and Ascend Pro contain the following active ingredients: Cytokinin (as kinetin) 0.090%, Indole Butyric Acid 0.045%, and Gibberellic Acid 0.030%.

47. Ascend SL and Ascend Pro contain the following ingredients: 99.981%, is a non-aqueous solution and has only organic solvent(s) and less than 5 wt. % water.

48. The solvent(s) used in the Ascend SL and Ascend Pro products are organic solvents selected from the group consisting of ethanol, n-propanol, iso-propanol, ethyl lactate, 3-hydroxybutyrate (ethyl and propyl esters), glycols, glycerol, polyethylene glycol, polypropylene glycol, propylene carbonate and combinations thereof. The solution also includes a preservative of [REDACTED]. These formulations have plant growth hormones and organic solvents in a non-aqueous solution that infringe one or more claims of the ‘883 and ‘229 Patents

49. Under various agreements, Winfield purchased active ingredients from Fine, which Winfield then utilized to manufacture Ascend SL and Ascend Pro pursuant to a confidential formulation that was also provided to Winfield by Fine. In a March 1, 2013 Development Agreement, [REDACTED]

[REDACTED]. In a subsequent March 12, 2015 Supply and Distribution Agreement,

[REDACTED]

[REDACTED]

[REDACTED].

50. These 2013 and 2015 agreements were entered into pursuant to a separate confidentiality agreement.

51. At all times, Fine maintained the formulation for Ascend SL as confidential.

52. At all times, Fine maintained the formulation for Ascend PRO as confidential.

53. Fine is unaware of Winfield breaching its obligations of confidentiality or that Winfield disclosed the Ascend SL formulation to any third parties.

54. Fine is unaware of Winfield breaching its obligations of confidentiality or that Winfield disclosed the Ascend PRO formulation to any third parties.

55. In other agreements, Winfield agreed that [REDACTED]

[REDACTED]

[REDACTED]. From at least the time after the '883 patent issued through August, 2021, [REDACTED]

[REDACTED]. [REDACTED]

[REDACTED]

[REDACTED].

56. Upon information and belief, Winfield did not sell any product under any of its agreements with Fine until at the earliest mid-2015, and did not sell Ascend SL or Ascend PRO until late 2015.

57. Winfield did not sell Ascend SL, or any non-aqueous formulation provided by Fine, in 2014.

58. Winfield and Fine claim to be parties to a common interest agreement in this litigation based on their knowledge of and liability for infringement of the patents in suit. Winfield at all times knew about the patents in suit and, in spite of that knowledge, continued to make, use, and sell infringing product using the active ingredients and confidential formulation purchased from Fine. In January 2019, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Winfield has known of the patents since this suit was initiated and of its own infringement of one or more claims of the patents in suit. Fine [REDACTED]

[REDACTED]

[REDACTED].

59. Defendants CJB has and continues to [REDACTED]
[REDACTED] and to warehouse those actives [REDACTED]
[REDACTED] as requested by Fine for Winfield. All the while CJB has known they were holding product shipped to a manufacturing facility for Winfield in Dodge City, Kansas for the purpose of making infringing products.

60. CJB manufactures and makes finished formulations for Fine in various factories owned or controlled by CJB and its owner and founder, Robert Clinton Beeland. CJB is an EPA registered manufacturing establishment (EPA Est. No. 70815-GA-001) with an address for manufacturing at 2114 Cypress St, Valdosta, GA 31603. Georgia property records show that this

manufacturing facility is owned by another entity, Calc Investments LLC (“Calc”), for which Beeland is registered agent. On information and belief, these entities are one and the same and fail to adhere to corporate formalities and instead act at the direction and control of Beeland. These entities, each associated with Beeland, are each involved in making the accused products utilizing the confidential formulations known to Beeland through CJB and its relationship with Fine.

61. The factory known as the [REDACTED] makes accused products utilizing machinery and equipment used by CJB from its related shell entities, such as Calc, and the manufacturing facility is owned by CJB-related shell entities, such as Calc. These factories make accused product for CJB and provide CJB with the facilities and means for production. CJB operates in these facilities as if they were its own. These factories and businesses are the alter egos of CJB and Beeland and should be treated as one and the same for liability purposes.

62. Defendants Fine and CJB are liable for directing activities that result in infringement, and are inducing infringement, under 35 U.S.C. § 271(b). Fine has provided its [REDACTED] with the affirmative intent to have CJB and Winfield directly infringe the patent and knew or should have known that the product formulation would infringe the ‘883 Patent and the ‘229 patent. [REDACTED]

[REDACTED] and CJB directed Vivid to sell product under at least the brand Vigeo®. Both Fine and CJB had the affirmative intent to have CJB, Winfield, and Vivid directly infringe the patent and knew or should have known that the product formulation would infringe the ‘883 patent and the ‘229 patent as Fine, Vivid, Winfield, and CJB were well aware of the patent and its scope at the time of their infringement. Fine and CJB induced [REDACTED]

[REDACTED] controlled by CJB and
Fine.

63. Defendants' inducing infringement of the '883 patent and '229 patent have injured and will continue to injure Stoller unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining Defendants' further manufacturing, sale, and use of the products, services, and technologies that infringe the claimed solutions of the '883 patent.

64. Plaintiff has been damaged as a result of Defendants' inducing infringement in an amount to be proven at trial.

WHEREFORE, Plaintiffs pray for:

- A. Entry of judgment denying Defendants' claims;
- B. Entry of judgment dismissing Defendants' Complaint with prejudice;
- C. Entry of judgment declaring U.S. Patent No. 10,104,883 valid and/or enforceable;
- D. Entry of judgment declaring U.S. Patent No. 10,980,229 valid and/or enforceable;
- E. Entry of judgment declaring that Plaintiffs did not practice inequitable conduct in the prosecution of U.S. Patent No. 10,104,883;
- F. Entry of judgment declaring that Plaintiffs did not practice inequitable conduct in the prosecution of U.S. Patent No. 10,980,229
- G. Entry of judgment awarding Plaintiffs' their costs in this action, declaring that this is an exceptional case under 35 U.S.C. § 285, and awarding Plaintiffs' reasonable attorneys' fees;
- H. Entry of judgment in favor of Plaintiff as follows:
 - 1. Adjudging that Defendants have infringed, and actively induced infringement of the '883 patent and the '229 patent, and that such infringement, and

active inducement of infringement have been willful;

2. Declaring and adjudging that the manufacture, use, sale, and/or offer for sale of Advantigro, Hone, Crest, Revel, Seed Fuel, Luster, Throttle, Vigeo®, Mascrop Maxport, Ascend SL® and Ascend Pro® constitutes infringement, and active inducement of infringement of the ‘883 patent and the ‘229 patent;

3. Enjoining Defendants, their officers, directors, employees, attorneys, agents, representatives, parents, subsidiaries, affiliates, and all other persons acting in concert, participation, or privity with them, and their successors and assigns, from infringing, and/or inducing others to infringe the ‘883 patent and the ‘229 patent;

4. Enjoining Defendants, their officers, directors, employees, attorneys, agents, representatives, parents, subsidiaries, affiliates, and all other persons acting in concert, participation, or privity with them, and their successors and assigns, from continuing to use and/or derive commercial advantage from infringement of the ‘883 patent and the ‘229 patent;

5. Awarding Plaintiff damages adequate to compensate it for infringement of the ‘883 patent and the ‘229 patent, including no less than a reasonable royalty, all profits lost due to the infringement, and increased threefold for willfulness, together with interest and costs, pursuant to 35 U.S.C. § 284;

6. Adjudging this to be an exceptional case and awarding Plaintiff its attorneys’ fees pursuant to 35 U.S.C. § 285; and

7. Awarding Plaintiff such other and further relief as this Court may deem just and proper.

8. Plaintiff demands a trial by jury on all matters.

This 14th day of January 2022.

Respectfully submitted,

/s/ James D. Petruzzi

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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing FOURTH AMENDED CLAIMS OF PLAINTIFFS STOLLER ENTERPRISE, INC. to be electronically filed under seal with the Clerk of the United States District Court for the Southern District of Texas by using the CM/ECF system, which will send notice of such filing to all counsel of record.

This 14th day of January 2022.

/s/ Gregory L. Porter