

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

RAININ INSTRUMENT, LLC, a Delaware
limited liability company,

Case No. 6:07cv96

Plaintiff,

**COMPLAINT FOR PATENT
INFRINGEMENT
(JURY TRIAL DEMANDED)**

v.

MOLECULAR BIOPRODUCTS, INC., a
California corporation,

Defendant.

Plaintiff Rainin Instrument LLC (“Rainin”) alleges as follows:

PARTIES

1. Rainin is a Delaware limited liability company with its principal place of business located at 7500 Edgewater Drive, Oakland, CA 94621.
2. Molecular BioProducts, Inc. (“MBP”), is a California corporation having a place of business at 9880 Mesa Rim Road, San Diego, California 92121-2979. MBP may be served with process by serving Mr. John Fry, VP and General Manager, at Molecular BioProducts, Inc., 9880 Mesa Rim Road, San Diego, CA 92121.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States of America, 35 U.S.C. section 1, *et seq*, including 35 U.S.C. § 271. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) in that this is a civil action arising out of the patent laws of the United States of America.

4. Venue in the Eastern District of Texas is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because a substantial part of the events or omissions giving rise to Rainin's claims occurred in this judicial district, and MBP may be found and/or resides in this judicial district. Such events include, inter alia, MBP's sales and/or offers for sale of infringing products throughout the State of Texas and in this judicial district. MBP regularly and deliberately places infringing products in the stream of commerce with the knowledge and intent that these infringing products will be used, sold, or offered for sale in the State of Texas and in this judicial district.

FACTS

5. Rainin is engaged in the development, manufacture, and distribution of the world's most advanced pipetting products and services. Rainin is a leading provider of ergonomic and traditional pipettes and pipette tips, and holds numerous patents relating to those products.

6. On January 2, 2001, the United States Patent and Trademark Office issued U.S. Patent No. 6,168,761 entitled "Pipette with Improved Pipette Tip and Mounting Shaft" (the "'761 patent"), a copy of which is attached hereto as Exhibit A.

7. Since its issuance, the '761 patent has been in full force and effect. Rainin is the owner of the entire right, title, and interest in and to the '761 patent, including the right to sue for infringement thereof, by assignment from the assignee-at-issue, Rainin Instrument Co., Inc.

8. On November 22, 2005 the United States Patent and Trademark Office issued U.S. Patent No. 6,967,004 entitled "Pipette with Improved Pipette Tip and Mounting Shaft" (the "'004 patent"), a copy of which is attached hereto as Exhibit B.

9. Since its issuance, the '004 patent has been in full force and effect. Rainin is the owner of the entire right, title, and interest in and to the '004 patent, including the right to sue for infringement thereof.

10. On February 20, 2001 the United States Patent and Trademark Office issued U.S. Patent No. D437,940 entitled "Pipette Tip" (the "'940 patent"), a copy of which is attached hereto as Exhibit C.

11. Since its issuance, the '940 patent has been in full force and effect. Rainin is the owner of the entire right, title, and interest in and to the '940 patent, including the right to sue for infringement thereof, by assignment from the assignee-at-issue, Rainin Instrument Co., Inc.

12. On March 13, 2001 the United States Patent and Trademark office issued U.S. Patent No. D438,981 entitled "Pipette Tip" (the "'981 patent"), a copy of which is attached hereto as Exhibit D.

13. Since its issuance, the '981 patent has been in full force and effect. Rainin is the owner of the entire right, title, and interest in and to the '981 patent, including the right to sue for infringement thereof, by assignment from the assignee-at-issue, Rainin Instrument Co., Inc.

14. On October 2, 2001 the United States Patent and Trademark Office issued U.S. Patent No. D448,853 entitled "Pipette Tip" (the "'853 patent"), a copy of which is attached hereto as Exhibit E.

15. Since its issuance, the '853 patent has been in full force and effect. Rainin is the owner of the entire right, title, and interest in and to the '853 patent, including the right to sue for infringement thereof, by assignment from the assignee-at-issue, Rainin Instrument Co., Inc.

FIRST COUNT

(Patent Infringement – U.S. Patent No. 6,168,761)

16. Rainin incorporates by reference paragraphs 1-15 of this Complaint and realleges them as though fully set forth herein.

17. Rainin has sold and/or sells pipettes and pipette tips that individually or in combination embody the inventions claimed in the '761 patent under the name "LTS®."

18. On information and belief, MBP designs, manufactures, markets and sells pipette tips, including but not limited to its MBP "L"-style pipette tips, that are specifically designed, marketed and sold for use with Rainin's LTS pipettes.

19. MBP has infringed and is continuing to infringe the '761 patent in violation of 35 U.S.C. §271(a) by engaging in acts that include making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, pipette tips incorporating the patented invention described and claimed in the '761 patent. These products include, but may not be limited to, MBP's "L" style pipette tips.

20. Third parties directly infringe the '761 patent by using MBP's "L" style pipette tips that are manufactured, marketed and/or sold by MBP to practice the invention claimed in the '761 patent.

21. MBP is aware that such third parties thereby directly infringe the '761 patent.

22. MBP actively and knowingly induces infringement of the '761 patent within the United States in violation of 35 U.S.C. § 271(b) by causing third parties to practice the invention claimed in the '761 patent within the United States, in connection with MBP's advertising, marketing, sales, distribution, and information dissemination concerning its "L" style pipette tips.

23. MBP knowingly contributes to the infringement of the '761 patent by selling and/or offering to sell within the United States its "L" style pipette tips, which are a material part of practicing the invention claimed in the '761 patent. MBP knows that its "L" style tips are especially made or adapted for use in the infringement of the '761 patent and are not a staple article or commodity of commerce suitable for substantial noninfringing use.

24. MBP does not have an express or implied license from Rainin.

25. MBP will continue to infringe the '761 patent unless enjoined by this Court. As a result of the MBP's infringing conduct, Rainin has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Rainin is entitled to injunctive relief against such infringement pursuant to 35 U.S.C. 283 and under traditional principles of equity.

26. As a result of MBP's infringement, Rainin has been damaged and will be damaged further, and is entitled to be compensated for such damages pursuant to 35 U.S.C. § 284 in an amount that cannot presently be ascertained, but that will be determined at trial. Rainin is entitled to recover damages adequate to compensate it for the infringement complained of herein, but in no event less than a reasonable royalty.

27. On information and belief, MBP's past and continuing infringement of the '761 patent has been deliberate and willful, and this case is an exceptional case, which warrants an award of treble damages and attorney's fees to Rainin in accordance with 35 U.S.C. §§ 284 and 285.

SECOND COUNT

(Patent Infringement – U.S. Patent No. 6,697,004)

28. Rainin incorporates by reference paragraphs 1-27 of this Complaint and realleges them as though fully set forth herein.

29. Third parties directly infringed the '004 patent by using MBP's "L" style pipette tips that are manufactured, marketed and/or sold by MBP to practice the invention claimed in the '004 patent.

30. MBP is aware that such third parties thereby directly infringed the '004 patent.

31. MBP actively and knowingly induced infringement of the '004 patent within the United States in violation of 35 U.S.C. § 271(b) by causing third parties to practice the invention claimed in the '004 patent within the United States, in connection with MBP's advertising, marketing, sales, distribution, and information dissemination concerning its "L" style pipette tips.

32. MBP knowingly contributed to the infringement of the '004 patent by selling and/or offering to sell within the United States its "L" style pipette tips, which are a material part of practicing the invention claimed in the '004 patent. MBP knows that its "L" style tips are especially made or adapted for use in the infringement of the '004 patent and are not a staple article or commodity of commerce suitable for substantial noninfringing use.

33. MBP does not have an express or implied license from Rainin.

34. As a result of the MBP's infringing conduct, Rainin has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Rainin is entitled to injunctive relief against any future infringement pursuant to 35 U.S.C. 283 and under traditional principles of equity.

35. As a result of MBP's infringement, Rainin has been damaged and is entitled to be compensated for such damages pursuant to 35 U.S.C. § 284 in an amount that cannot presently be ascertained, but that will be determined at trial. Rainin is entitled to recover damages

adequate to compensate it for the infringement complained of herein, but in no event less than a reasonable royalty.

36. On information and belief, MBP's past infringement of the '004 patent has been deliberate and willful, and this case is an exceptional case, which warrants an award of treble damages and attorney's fees to Rainin in accordance with 35 U.S.C. §§ 284 and 285.

THIRD COUNT

(Patent Infringement – U.S. Patent No. D437,940)

37. Rainin incorporates by reference paragraphs 1-36 of this Complaint and realleges them as though fully set forth herein.

38. MBP has infringed and is infringing the '940 patent in violation of 35 U.S.C. §271(a) by engaging in acts that include making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, pipette tips incorporating the patented design claimed in the '940 patent.

39. MBP will continue to infringe the '940 patent unless enjoined by this Court. As a result of the MBP's infringing conduct, Rainin has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Rainin is entitled to injunctive relief against such infringement pursuant to 35 U.S.C. 283 and under traditional principles of equity.

40. As a result of MBP's infringement, Rainin has been damaged and will be damaged further, and is entitled to be compensated for such damages pursuant to 35 U.S.C. § 284 in an amount that cannot presently be ascertained, but that will be determined at trial. Rainin is entitled to recover damages adequate to compensate it for the infringement complained of herein, but in no event less than a reasonable royalty.

41. On information and belief, MBP's past and continuing infringement of the '940 patent has been deliberate and willful, and this case is an exceptional case, which warrants an award of treble damages and attorney's fees to Rainin in accordance with 35 U.S.C. §§ 284 and 285.

FOURTH COUNT

(Patent Infringement – U.S. Patent No. D438,981)

42. Rainin incorporates by reference paragraphs 1-41 of this Complaint and realleges them as though fully set forth herein.

43. MBP has infringed and/or is infringing the '981 patent in violation of 35 U.S.C. §271(a) by engaging in acts that include making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, pipette tips incorporating the patented design claimed in the '981 patent.

44. MBP will continue to infringe the '981 patent unless enjoined by this Court. As a result of the MBP's infringing conduct, Rainin has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Rainin is entitled to injunctive relief against such infringement pursuant to 35 U.S.C. 283 and under traditional principles of equity.

45. As a result of MBP's infringement, Rainin has been damaged and will be damaged further, and is entitled to be compensated for such damages pursuant to 35 U.S.C. § 284 in an amount that cannot presently be ascertained, but that will be determined at trial. Rainin is entitled to recover damages adequate to compensate it for the infringement complained of herein, but in no event less than a reasonable royalty.

46. On information and belief, MBP's past and continuing infringement of the '981 patent has been deliberate and willful, and this case is an exceptional case, which warrants an award of treble damages and attorney's fees to Rainin in accordance with 35 U.S.C. §§ 284 and 285.

FIFTH COUNT

(Patent Infringement – U.S. Patent No. D448,853)

47. Rainin incorporates by reference paragraphs 1-46 of this Complaint and realleges them as though fully set forth herein.

48. MBP has infringed and/or is infringing the '853 patent in violation of 35 U.S.C. §271(a) by engaging in acts that include making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, pipette tips incorporating the patented design claimed in the '853 patent.

49. MBP will continue to infringe the '853 patent unless enjoined by this Court. As a result of the MBP's infringing conduct, Rainin has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Rainin is entitled to injunctive relief against such infringement pursuant to 35 U.S.C. 283 and under traditional principles of equity.

50. As a result of MBP's infringement, Rainin has been damaged and will be damaged further, and is entitled to be compensated for such damages pursuant to 35 U.S.C. § 284 in an amount that cannot presently be ascertained, but that will be determined at trial. Rainin is entitled to recover damages adequate to compensate it for the infringement complained of herein, but in no event less than a reasonable royalty.

51. On information and belief, MBP's past and continuing infringement of the '853 patent has been deliberate and willful, and this case is an exceptional case, which warrants an award of treble damages and attorney's fees to Rainin in accordance with 35 U.S.C. §§ 284 and 285.

PRAYER FOR RELIEF

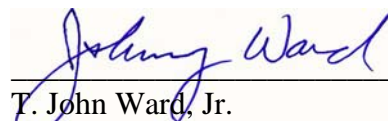
WHEREFORE, Rainin requests that the Court:

- A. Adjudge that the '761, '004, '940, '981 and '853 patents are valid and enforceable;
- B. Adjudge that MBP is infringing and has infringed, and has induced and/or contributed to infringement of, the '761, '004, '940, '981 and '853 patents and that such infringement is willful and deliberate;
- C. Enjoin MBP and its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns and all those acting for it and on its behalf, or acting in concert with it, from further infringement of the '761, '004, '940, '981 and '853 patents;
- D. Award compensatory damages to Rainin, together with interest;
- E. Award treble damages to Rainin for MBP's willful infringement of the '761, '004, '940, '981 and '853 patents;
- F. Award Rainin its costs and attorneys' fees pursuant to 35 U.S.C. § 285.
- G. Award Rainin such other and further relief as it deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Rainin hereby demands a jury trial on all issues so triable.

Respectfully Submitted,

A handwritten signature in blue ink that reads "T. John Ward, Jr." is positioned above a horizontal line.

T. John Ward, Jr.

Tex. Bar No. 00794818

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