IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

ALTICOR INC.,	Case No.
Plaintiff,	
v.	Judge:
TRISTRATA TECHNOLOGY, INC. and	
NEOSTRATA, INC.,	Robert Holmes Bell
Defendants.	Chief, U.S. District Judge

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff Alticor Inc. ("Alticor"), for its complaint against Tristrata Technology, Inc. ("Tristrata") and Neostrata, Inc. ("Neostrata") alleges as follows:

PARTIES

1. Plaintiff Alticor is a corporation organized under the laws of the state of Michigan, with its principal place of business in Ada, Michigan.

2. On information and belief, Defendant Tristrata is a Delaware corporation with a place of business in Wilmington, Delaware.

3. On information and belief, Defendant Neostrata has a principal place of business in Princeton, New Jersey.

4. On information and belief, Tristrata is a wholly owned subsidiary of Neostrata.

5. On information and belief, Tristrata is the assignee of the patents at issue in this Complaint, namely U.S. Patent No. 5,091,171; U.S. Patent No. 5,385,938; U.S. Patent No.

5,389,677; U.S. Patent No. 5,422,370; and U.S. Patent No. B1 5,547,988 (collectively referred to as the "Tristrata Patents").

6. On information and belief, Neostrata manufactures and/or sells skin care products allegedly covered by at least one of the Tristrata Patents throughout the United States, and in the state of Michigan.

JURISDICTION

7. This is an action under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202 for a declaration pursuant to the patent laws of the United States, 35 U.S.C. § 1 *et seq.* that the Tristrata Patents are not infringed by Alticor and that the Tristrata Patents are invalid.

8. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question), 28 U.S.C. § 1332 (diversity of parties), and 28 U.S.C. § 1338(a) (action arising under an Act of Congress relating to patents).

9. On information and belief, this Court has personal jurisdiction over Defendants because Defendants have constitutionally sufficient contacts with Michigan so as to make personal jurisdiction proper in this Court.

VENUE

10. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) & (c).

GENERAL ALLEGATIONS

11. Alticor, by and through its subsidiary companies, has sold skin care products under its "Artistry" brand name for many years..

12. Defendants have alleged that various Alticor skin care products in Alticor's "Artistry" product line infringe the following five patents, which are referred to collectively in this Complaint as "the Tristrata Patents":

a. U.S. Patent No. 5,091,171 (the "'171 Patent), issued on February 25, 1992, entitled "Amphoteric Compositions and Polymeric Forms of Alpha Hydroxyacids, and Their Therapeutic Use", and which reexamination certificate B2 issued on July 15, 1997;

b. U.S. Patent No. 5,385,938 (the "'938 Patent"), issued on January 31, 1995, entitled "Method of Using Glycolic Acid for Treating Wrinkles", and which reexamination certificate B1 issued on July 15, 1997;

c. U.S. Patent No. 5,389,677 (the "'677 Patent), issued on February 14, 1995, entitled "Method of Treating Wrinkles Using Glycolic Acid", and which reexamination certificate B1 issued on July 15, 1997;

d. U.S. Patent No. 5,422,370 (the "'370 Patent), issued on June 6, 1995, entitled "Method of Using 2-Hydroxypropanoic Acid (Lactic Acid) for the Treatment of Wrinkles", and which reexamination certificate B1 issued on July 15, 1997;

e. U.S. Patent No. 5,547,988 (the "'988 Patent), issued on August 20, 1996, entitled "Alleviating Signs of Dermatological Aging With Glycolic Acid, Lactic Acid or Citric Acid", and which reexamination certificate B1 issued on July 15, 1997;

13. True and correct copies of each of these patents are attached hereto as Exhibits A through E.

14. On August 22, 2003, Defendants through their legal counsel Mayer, Brown, Rowe & Maw, wrote to the office of the President of Alticor in Ada, Michigan identifying the five Tristrata Patents allegedly infringed by products from Alticor's "Artistry" skin care product line that contain alpha hydroxy acids. Defendants' letter went on to state that "[b]ased upon Alticor Incorporated's clear interest in using alpha hydroxy acid technology and claiming that its products reduce fine lines and wrinkles in various advertisements, TTI anticipates that Alticor

may be interested in discussing the possibility of a license agreement under TTI's patents." No licensing discussions ensued.

15. Nearly two years later, on August 4, 2005, Defendants, again through their legal counsel from Mayer, Brown, Rowe & Maw, wrote to the office of the President of Alticor in Ada, Michigan. This letter also identified the five Tristrata Patents allegedly infringed by products from Alticor's "Artistry" skin care product line that contain alpha hydroxy acids. Defendants also advised Alticor of Defendants' recent patent infringement jury trial against Mary Kay, Inc. and made the following threat: "TTI is diligently enforcing its patents and is putting you on notice that your continued infringement of these patents will result in litigation" (emphasis added).

16. Defendants have been aggressive in filing patent infringement lawsuits concerning the Tristrata Patents. As presently advised, Defendants have sued at least twenty (20) different companies, alleging infringement of at least one or more of the Tristrata Patents.

17. Three months have passed since Defendants made their unequivocal threat that Alticor's "[alleged] continued infringement of these patents will result in litigation." Alticor has invested substantial resources in developing, manufacturing, marketing and selling its Artistry brand of skin care products, including those skin care products containing alpha hydroxyacids. By virtue their threats of litigation, Defendants have placed a cloud of uncertainty over Alticor's Artistry alpha hydroxyacid skin care products.

18. Because of Defendants' actions and demands, Alticor has been placed in reasonable apprehension of a patent infringement suit relating to the Tristrata Patents.

19. Alticor denies that any of its skin care products infringe any valid claim of any of the Tristrata Patents.

20. An actual and justiciable controversy exists between Defendants and Alticor concerning whether Alticor infringes any valid claim of the Tristrata Patents. Alticor now seeks declaratory judgment that it does not infringe any valid claim of the Tristrata Patents.

FIRST CLAIM FOR RELIEF
(Declaratory Relief as to the '171 Patent)

21. Alticor incorporates by reference paragraphs 1 through 20 above as though fully set forth herein.

22. Alticor is not directly infringing, contributorily infringing, or actively inducing others to infringe any valid claim of the '171 Patent as properly construed.

23. Additionally, the '171 Patent is invalid for failing to meet the statutory requirements for patentability set forth in 35 U.S.C. §101 et. seq.

SECOND CLAIM FOR RELIEF
(Declaratory Relief as to the '938 Patent)

24. Alticor incorporates by reference paragraphs 1 through 23 above as though fully set forth herein.

25. Alticor is not directly infringing, contributorily infringing, or actively inducing others to infringe any valid claim of the '938 Patent as properly construed.

26. Additionally, the '938 Patent is invalid for failing to meet the statutory requirements for patentability set forth in 35 U.S.C. §101 et. seq.

THIRD CLAIM FOR RELIEF
(Declaratory Relief as to the '677 Patent)

27. Alticor incorporates by reference paragraphs 1 through 26 above as though fully set forth herein.

28. Alticor is not directly infringing, contributorily infringing, or actively inducing others to infringe any valid claim of the '677 Patent as properly construed.

29. Additionally, the '677 Patent is invalid for failing to meet the statutory requirements for patentability set forth in 35 U.S.C. §101 et. seq.

FOURTH CLAIM FOR RELIEF
(Declaratory Relief as to the '370 Patent)

30. Alticor incorporates by reference paragraphs 1 through 29 above as though fully set forth herein.

31. Alticor is not directly infringing, contributorily infringing, or actively inducing others to infringe any valid claim of the '370 Patent as properly construed.

32. Additionally, the '370 Patent is invalid for failing to meet the statutory requirements for patentability set forth in 35 U.S.C. §101 et. seq.

FIFTH CLAIM FOR RELIEF
(Declaratory Relief as to the '988 Patent)

33. Alticor incorporates by reference paragraphs 1 through 32 above as though fully set forth herein.

34. Alticor is not directly infringing, contributorily infringing, or actively inducing others to infringe any valid claim of the '988 Patent as properly construed.

35. Additionally, the '988 Patent is invalid for failing to meet the statutory requirements for patentability set forth in 35 U.S.C. §101 et. seq.

PRAYER FOR RELIEF

WHEREFORE, Alticor prays for relief against Defendants as follows:

1. For a declaration that Alticor does not infringe any valid claim of the Tristrata Patents;

2. For a declaration that the Tristrata Patents are invalid under 35 U.S.C. §101 et. seq.;

3. For a declaration that this is an exceptional case under 35 U.S.C. § 285 and for an award to Alticor of its attorneys' fees and expenses in this action; and

4. For such other relief as the Court may deem just and proper.

Dated: November 9, 2005

James R. Sobieraj
BRINKS HOFER GILSON & LIONE
NBC Tower
455 Cityfront Plaza Drive, Suite 3600
Chicago, Illinois 606011
Tel.: 312-321-4200
Fax: 312-321-4299

James K. Cleland
BRINKS HOFER GILSON & LIONE
524 S. Main Street, Suite 200
Ann Arbor, Michigan 48104
Tel: 734-302-6034
Fax: 734-994-6331

Albertus Hultink
Catherine Lynem
ALTICOR INC.
7575 Fulton Street East
Ada, Michigan 49355-0001
Telephone: (616) 787-6000
Facsimile: (616) 787-9027

Attorneys for ALTICOR INC.