

UNITES STATES DISTRICT COURT
DISTRICT OF MINNESOTA

BIOPOLYMER ENGINEERING, INC., d/b/a
BIOTHERA, a Minnesota corporation,

COMPLAINT

Plaintiff,

v.

FENCHEM ENTERPRISES, LTD.,
a Chinese corporation,

Defendant.

Plaintiff, BIOPOLYMER ENGINEERING, INC. d/b/a BIOTHERA
("Biothera") for its complaint states and alleges as follows:

JURISDICTION AND VENUE

1. This is an action for, among other things, patent infringement pursuant to the laws as set forth in Title 35 of the United States Code. Jurisdiction in this Court is based on 28 U.S.C. §§ 1331 and 1338 and under the doctrine of pendant and ancillary jurisdiction. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c) and 1400(b).

PARTIES

2. Biothera is a Minnesota corporation having its principal place of business at 3388 Mike Collins Drive, Eagan, Minnesota 55121.

3. Upon information and belief, Defendant Fenchem Enterprises, Ltd. is a Chinese corporation, having its principal place of business at 1911-1915 Fortune Building, No. 359, Hongwu Road, Nanjing 210002, China.

FACTUAL BACKGROUND

4. Biothera is a biotechnology company that engineers complex carbohydrates for a wide range of therapeutic, diagnostic and industrial applications. Biothera is a leading developer of complex carbohydrate biopolymers — molecular strands of sugars that are essential to life in every cell.

5. Biothera develops beta glucan compounds, including whole glucan particles and neutral soluble glucans, for use as nutritional supplements and pharmaceuticals. Beta Glucan is derived from the cell walls of baker's yeast.

6. Upon information and belief, Fenchem has imported, offered to sell and/or sold a product named GreenShield Beta Glucan (“GreenShield”) to potential customers in the United States. Fenchem advertises GreenShield as containing beta glucan that is derived from the cell walls of baker’s yeast.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 4,992,540

7. Biothera hereby restates and realleges the allegations set forth in paragraphs 1 through 6 and incorporates them by reference.

8. On February 12, 1991, United States Patent No. 4,992,540 entitled “Glucan Composition and Process for Preparation Thereof” (the “540 Patent”) was duly and legally issued to Massachusetts Institute of Technology, as the assignee of the inventors Spiros Jamas, ChoKyun Rha, and Anthony J. Sinskey.

9. Biothera is the owner of the '540 Patent and any and all causes of action for infringement, including this cause of action, by way of assignment from Massachusetts Institute of Technology.

10. Fenchem has infringed, and still is infringing, the '540 Patent by making, using, offering for sale, selling, or importing GreenShield within the United States, without the consent of Biothera, and will continue to do so unless enjoined by this Court.

11. Upon information and belief, Fenchem's infringement of the '540 Patent has been willful and wanton.

12. Fenchem's infringement of the '540 Patent has injured Biothera in the District of Minnesota and will continue to do so unless enjoined by this Court.

COUNT II: INFRINGEMENT OF U.S. PATENT NO. 5,037,972

13. Biothera hereby restates and realleges the allegations set forth in paragraphs 1 through 12 and incorporates them by reference.

14. On August 6, 1991, United States Letters Patent No. 5,037,972 entitled "Glucan Composition and Process for Preparation Thereof" (the "972 Patent") was duly and legally issued to Massachusetts Institute of Technology, as the assignee of the inventors Spiros Jamas, ChoKyun Rha, and Anthony J. Sinskey.

15. Biothera is the owner of the '972 Patent and any and all causes of action for infringement, including this cause of action, by way of assignment from Massachusetts Institute of Technology.

16. Fenchem has infringed the '972 Patent by making, using, offering for sale, selling, or importing GreenShield within the United States, without the consent of Biothera, and will continue to do so unless enjoined by this Court.

17. Upon information and belief, Fenchem's infringement of the '972 Patent has been willful and wanton.

18. Fenchem's infringement of the '972 Patent has injured Biothera in the District of Minnesota and will continue to do so unless enjoined by this Court.

COUNT III: INFRINGEMENT OF U.S. PATENT NO. 6,020,324

19. Biothera hereby restates and realleges the allegations set forth in paragraphs 1 through 18 and incorporates them by reference.

20. On February 1, 2000, United States Letters Patent No. 6,020,324 entitled "Glucan Dietary Additives" (the "'324 Patent") was duly and legally issued to The Collaborative Group, Ltd., as the assignee of the inventors Spiros Jamas, D. Davidson Easson, Jr., and Bruce R. Bistrrian.

21. Biothera is the owner of the '324 Patent and any and all causes of action for infringement, including this cause of action, by way of assignment from The Collaborative Group, Ltd.

22. Fenchem has infringed of the '324 Patent by making, using, offering for sale, selling, or importing GreenShield within the United States, without the consent of Biothera, and will continue to do so unless enjoined by this Court.

23. Upon information and belief, Fenchem's infringement of the '324 Patent has been willful and wanton.

24. Fenchem's infringement of the '324 Patent has injured Biothera in the District of Minnesota and will continue to do so unless enjoined by this Court.

COUNT IV: INFRINGEMENT OF U.S. PATENT NO. 6,143,731

25. Biothera hereby restates and realleges the allegations set forth in paragraphs 1 through 24 and incorporates them by reference.

26. On November 7, 2000, United States Letters Patent No. 6,143,731 entitled "Glucan Dietary Additives" (the "731 Patent") was duly and legally issued to The Collaborative Group, Ltd., as the assignee of the inventors Spiros Jamas, D. Davidson Easson, Jr., and Bruce R. Bistran.

27. Biothera is the owner of the '731 Patent and any and all causes of action for infringement, including this cause of action, by way of assignment from The Collaborative Group, Ltd.

28. Fenchem has infringed of the '731 Patent by making, using, offering for sale, selling, or importing GreenShield within the United States, without the consent of Biothera, and will continue to do so unless enjoined by this Court.

29. Upon information and belief, Fenchem's infringement of the '731 Patent has been willful and wanton.

30. Fenchem's infringement of the '731 Patent has injured Biothera in the District of Minnesota and will continue to do so unless enjoined by this Court.

COUNT V: INFRINGEMENT OF U.S. PATENT NO. 4,962,094

31. Biothera hereby restates and realleges the allegations set forth in paragraphs 1 through 30 and incorporates them by reference.

32. On October 9, 1990, United States Letters Patent No. 4,962,094 entitled “Glucan Dietary Additives” (the “094 Patent”) was duly and legally issued to Alpha Beta Technology, Inc. as the assignee of the inventors Spiros Jamas, D. Davidson Easson, Jr., and Bruce R. Bistran.

33. Biothera is the owner of the ‘094 Patent and any and all causes of action for infringement, including this cause of action, by way of assignment from Alpha Beta Technology, Inc.

34. Fenchem has infringed the ‘094 Patent by making, using, offering for sale, selling, or importing GreenShield within the United States, without the consent of Biothera, and will continue to do so unless enjoined by this Court.

35. Upon information and belief, Fenchem’s infringement of the ‘094 Patent has been willful and wanton.

36. Fenchem’s infringement of the ‘094 Patent has injured Biothera in the District of Minnesota and will continue to do so unless enjoined by this Court.

DEMAND FOR RELIEF

WHEREFORE, Biothera asks this Court to:

- a. Enter judgment for Biothera on its complaint;
- b. Enter a preliminary and permanent injunction to enjoin Fenchem and those in privity with or acting in concert with Fenchem from further infringement of the ‘540 Patent, the ‘972 Patent, the ‘324 Patent, the ‘731 Patent, and the ‘094 Patent during the remainder of the term for which the patents have been granted;

- c. Award Biothera damages against Fenchem adequate to compensate Biothera for such acts of infringement and to increase the damages to three times the amount found or assessed in accordance with 35 U.S.C. § 284;
- d. Award Biothera its reasonable attorneys' fees pursuant to the contracts and also in accordance with 35 U.S.C. § 285;
- e. Award Biothera interest in costs; and
- f. Award Biothera such other and further relief as is just and proper.

JURY DEMAND

Biothera hereby demands a trial by jury of all issues so triable.

Dated: March 16, 2005

s/Darren B. Schwiebert
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