

UNITES STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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

COMPLAINT

Plaintiff,

v.

CYPRESS SYSTEMS INC., a California
corporation,

Defendant.

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

FACTS AND JURISDICTION

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

2. Upon information and belief, Defendant Cypress Systems, Inc. ("Cypress") is a California corporation, having its principal place of business at 3381 North Bond Avenue, Suite 101, Fresno, California 93726.

3. 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.

4. 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.

5. 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).

6. Upon information and belief, Cypress has sold a product named Beta-Precise to Natrol, who incorporated Beta-Precise into its products. Natrol sells those products in Minnesota. Thus, it was reasonably foreseeable to Cypress that Beta-Precise would end up in Minnesota when Cypress sold Beta-Precise to Natrol.

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. Cypress has infringed, and still is infringing, the '540 Patent by making, using, offering for sale, selling, or importing Beta-Precise within the District of Minnesota and elsewhere 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, Cypress' infringement of the '540 Patent has been willful and wanton.

12. Cypress' infringement of the '540 Patent has injured Biothera 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. Cypress has infringed the '972 Patent by making, using, offering for sale, selling, or importing Beta-Precise within the District of Minnesota and elsewhere 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, Cypress' infringement of the '972 Patent has been willful and wanton.

18. Cypress' infringement of the '972 Patent has injured Biothera and will continue to do so unless enjoined by this Court.

COUNT III: INFRINGEMENT OF U.S. PATENT NO. 5,576,015

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

20. On November 19, 1996, United States Letters Patent No. 5,576,015 entitled "Substantially Purified Beta (1,3) Finely Ground Yeast Cell Wall Glucan Composition With Dermatological and Nutritional Uses" (the "'015 Patent") was duly and legally issued to the inventor Bryon A. Donzis.

21. Biothera is the owner of the '015 Patent and any and all causes of action for infringement, including this cause of action, by way of assignment from Bryon A. Donzis.

22. Cypress has infringed the '015 Patent by making, using, offering for sale, selling, or importing Beta-Precise within the District of Minnesota and elsewhere 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, Cypress' infringement of the '015 Patent has been willful and wanton.

24. Cypress' infringement of the '015 Patent has injured Biothera and will continue to do so unless enjoined by this Court.

COUNT IV: INFRINGEMENT OF U.S. PATENT NO. 5,702,719

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

26. On December 30, 1997, United States Letters Patent No. 5,702,719 entitled “Substantially Purified Beta (1,3) Finely Ground Yeast Cell Wall Glucan Composition With Dermatological and Nutritional Use” (the “719 Patent”) was duly and legally issued to the inventor Bryon A. Donzis.

27. Biothera is the owner of the ‘719 Patent and any and all causes of action for infringement, including this cause of action, by way of assignment from Bryon A. Donzis.

28. Cypress has infringed the ‘719 Patent by making, using, offering for sale, selling, or importing Beta-Precise within the District of Minnesota and elsewhere 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, Cypress’ infringement of the ‘719 Patent has been willful and wanton.

30. Cypress’ infringement of the ‘719 Patent has injured Biothera and will continue to do so unless enjoined by this Court.

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

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

32. 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.

33. 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.

34. Cypress has infringed of the ‘324 Patent by making, using, offering for sale, selling, or importing Beta-Precise within the District of Minnesota and elsewhere 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, Cypress’ infringement of the ‘324 Patent has been willful and wanton.

36. Cypress’ infringement of the ‘324 Patent has injured Biothera and will continue to do so unless enjoined by this Court.

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

37. Biothera hereby restates and realleges the allegations set forth in paragraphs 1 through 36 and incorporates them by reference.

38. 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. Bistrrian.

39. 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.

40. Cypress has infringed of the '731 Patent by making, using, offering for sale, selling, or importing Beta-Precise within the District of Minnesota and elsewhere within the United States, without the consent of Biothera, and will continue to do so unless enjoined by this Court.

41. Upon information and belief, Cypress' infringement of the '731 Patent has been willful and wanton.

42. Cypress' infringement of the '731 Patent has injured Biothera and will continue to do so unless enjoined by this Court.

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

43. Biothera hereby restates and realleges the allegations set forth in paragraphs 1 through 42 and incorporates them by reference.

44. 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.

45. 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.

46. Cypress has infringed the '094 Patent by making, using, offering for sale, selling, or importing Beta-Precise within the District of Minnesota and elsewhere within the United States, without the consent of Biothera, and will continue to do so unless enjoined by this Court.

47. Upon information and belief, Cypress' infringement of the '731 Patent has been willful and wanton.

48. Cypress' infringement of the '094 Patent has injured Biothera 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 Cypress and those in privity with or acting in concert with Cypress from further infringement of the '540 Patent, the '972 Patent, the '015 Patent, the '719 Patent, the '324 Patent, the '731 Patent, and the '094 Patent during the remainder of the term for which the patent has been granted;
- c. Award Biothera damages against Cypress 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 14, 2005

s/Darren B. Schwiebert
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