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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

DAVID W. DANIEL, CLERK
U.S. DISTRICT COURT, E.D.N.C.
BY _____ DEP. CLERK

MICHAEL FOODS, INC.)
and NORTH CAROLINA STATE)
UNIVERSITY)
)
Plaintiffs,)
)
v.)
)
ROSE ACRE FARMS, INC.)
)

Defendants.)

CIVIL ACTION NO. 5:02-CV-477-H

COMPLAINT AND JURY DEMAND

Plaintiffs, Michael Foods, Inc. ("Michael Foods") and North Carolina State University ("NCSU"), by and for its complaint against defendants, Rose Acre Farms, Inc. ("Rose Acre"), alleges as follows:

I. THE PARTIES

1. Michael Foods is a corporation duly organized and existing under the laws of the State of Minnesota, having a principal place of business at Minnetonka, Minnesota.
2. NCSU is a constituent institution of the University of North Carolina, has its principal place of business at Raleigh, North Carolina, and is an arm of the State of North Carolina.
3. Upon information and belief, defendant Rose Acre is a corporation organized and existing under the laws of the State of Indiana, having a place of business at Seymour, Indiana.

II. STATEMENT OF JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

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5. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Upon information and belief, defendant does business in this state generally, has substantial sales of egg products, advertise in trade journals directed to residents and companies in this district, advertise products at issue in this complaint on a web page or web pages, thereby offering such products for sale in this district.

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400.

III. CAUSE OF ACTION FOR PATENT INFRINGEMENT

8. The invention of United States Patent Nos. 4,808,425; 4,994,291; 4,957,759; and 5,019,408, all reexamination certificates thereto and for Reissued Patent RE37,225E (the "'425," "'291," "'759," "'408" and "'225" or collectively referred to as "the patents in suit," copies provided as Exhibits 1-9) were developed at NCSU in Raleigh, North Carolina by Kenneth Swartzel, Hershell Ball and Mohammad Hamid Samimi.

9. The patents in suit are owned by NCSU and rights have been licensed to Michael Foods, Inc. and have the right to bring suit for infringement thereof.

10. On information and belief, Rose Acre has been, for a time past, and is currently infringing, contributing to the infringement of, and inducing the infringement of directly and indirectly, the patent in suit by, among other things, making, using, selling and/or offering for sale, certain liquid whole egg products within the territorial boundaries of the United States that are covered by one or more claims of the patents in suit.

11. On information and belief, Rose Acre's infringement of the patents in suit has been and is willful, and will continue unless enjoined by this Court. Michael Foods and NCSU have suffered, and will continue to suffer, irreparable injury as a result of this willful infringement. Pursuant to 35 U.S.C. § 284, Michael Foods and NCSU are entitled to damages

for infringement and treble damages pursuant to 35 U.S.C. § 283, Michael Foods and NCSU are entitled to a preliminary permanent injunction against further infringement.

12. Michael Foods and NCSU have given Rose Acre notice of said infringement. Notwithstanding such notice and action by Michael Foods, Rose Acre has continued to willfully and deliberately infringe the patents in suit by manufacturing, using and selling liquid whole egg products made in accordance with the inventions of the patents in suit, in this district and elsewhere.

13. On information and belief, Rose Acre and/or its agents monitored the progress of the patents in suit during their reexamination and/or reissue. Further, Rose Acre and/or its agents filed at least one protest on January 24, 1995 in the reissue proceeding in an effort to impede the prosecution of the patents.

14. On information and belief, Rose Acre and/or its agents collaborated with one or more third parties in the filing of at least one of the third party requests for reexamination or protest of the NCSU patents.

15. This case is exceptional and, therefore, Michael Foods and NCSU are entitled to attorneys' fees pursuant to 35 U.S.C. § 285.

IV. DEMAND FOR JURY TRIAL

16. Plaintiffs Michael Foods and NCSU demand a trial by jury on all disputed issues. WHEREFORE, Michael Foods and NCSU pray for relief as follows:

V. PRAYER FOR RELIEF

- A. That Rose Acre is adjudged to have infringed the patents in suit;
- B. That Rose Acre, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from directly or indirectly infringing the patents in suit;

C. An accounting for damages by virtue of Rose Acre's infringement of the patents in suit;

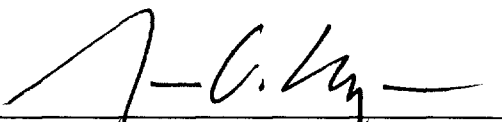
D. An award of damages to compensate Michael Foods and NCSU for Rose Acre's infringement, pursuant to 35 U.S.C. § 284, said damages to be trebled because of Rose Acre's willful infringement.

E. An assessment of pre-judgment and post-judgment interest and costs against defendants, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284;

F. That Rose Acre be directed to pay Michael Foods and NCSU's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285; and

G. That Michael Foods and NCSU have such other and further relief as this Court may deem just and proper.

This 8th day of July 2002.



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