

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORIGIA  
GAINESVILLE DIVISION

NUSEP INC. and )  
NUSEP HOLDINGS LTD., )

Plaintiffs, )

v. )

CIVIL ACTION

THERMO FISHER SCIENTIFIC, INC., )  
PIERCE BIOTECHNOLOGY, INC., )  
EXPEDEON LTD. and EXPEDEON, INC., )

FILE NO. 2:10-CV-225-WCO

Defendants. )

**JURY TRIAL DEMANDED**

**COMPLAINT**

This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code, Section 1 *et seq.*, including Title 35 of the United States Code, Section 271. Plaintiffs NuSep Inc. and NuSep Holdings Ltd. allege as follows against defendants Thermo Fisher Scientific, Inc., Pierce Biotechnology, Inc., Expedeon Ltd. and Expedeon, Inc.:

**Parties**

1.

Plaintiff NuSep Inc. is a Delaware corporation with its headquarters in Bogart, Georgia. NuSep Inc. is the U.S. sales and service arm (and a wholly-owned subsidiary) of Plaintiff NuSep Holdings Ltd.

2.

Plaintiff NuSep Holdings Ltd. is a publicly traded life sciences company formed under the laws of Australia and headquartered in New South Wales, Australia. In April 2010, “NuSep Ltd.” formally changed its name to NuSep Holdings Ltd. The remainder of this complaint at times refers collectively to NuSep Inc., NuSep Ltd. and NuSep Holdings Ltd. as “NuSep.”

3.

Defendant Thermo Fisher Scientific Inc. (“Thermo Fisher”) is a science supplies company with annual revenues of roughly \$10 billion and over 30,000 employees. Thermo Fisher is a Delaware corporation headquartered in Waltham, Massachusetts.

4.

Defendant Pierce Biotechnology, Inc. (“Pierce”) is a Delaware corporation headquartered in Rockford, Illinois. Pierce is a wholly-owned subsidiary of

Thermo Fisher since approximately 2003, when Thermo Fisher purchased Pierce's then-parent Perstorp AB (a Swedish company).

5.

Defendant Expedeon Ltd. is a developer, maker and seller of laboratory supplies headquartered in the United Kingdom and formed under the laws of the United Kingdom.

6.

Defendant Expedeon, Inc. is a California corporation with its headquarters in San Diego, California. Expedon, Inc. is the U.S. sales and service arm (and a wholly-owned subsidiary) of Defendant Expedeon Ltd. The remainder of this complaint at times refers collectively to Expedeon, Inc. and Expedeon Ltd. as "Expedeon."

### **Service of Process**

7.

Defendant Thermo Fisher is registered to do business in Georgia and may be served through its registered agent, Capital Corporate Services Inc., at 3675 Crestwood Parkway, NW, Suite 350, Duluth, GA 30096.

8.

Pursuant to Federal Rules of Civil Procedure 4(h), defendant Pierce may be served through its registered agent, Capital Corporate Services Inc., at 118 W. Edwards St. #200, Springfield, IL 62704.

9.

Pursuant to Federal Rules of Civil Procedure 4(h), defendant Expedeon, Inc. may be served through its registered agent, Jill Nunez, at 11211 Sorrento Valley Rd. #A, San Diego, CA 92121.

10.

Pursuant to Federal Rules of Civil Procedure 4(f) and 4(h) and the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, defendant Expedeon Ltd. may be served by certified mail or hand delivery to its corporate headquarters at Unit 1A Button End, Harston, Cambridgeshire CB22 7GX, United Kingdom. Expedeon Ltd. may also be served by proper service to Expedeon, Inc., its United States subsidiary.

### **Jurisdiction and Venue**

11.

This Court has subject matter jurisdiction over Plaintiffs' claim for patent infringement pursuant to 28 U.S.C. §§ 1331 and 1338 (a).

12.

Defendant Thermo Fisher is subject to the personal jurisdiction of this Court. Thermo Fisher regularly transacts and solicits business in Georgia; sells products to laboratories and other customers in Georgia; has an office in Suwanee, Georgia; and employs over a hundred employees, including its southeastern sales representative(s), in Georgia. Thermo Fisher has committed acts of infringement in this district, including by offering for sale and selling infringing products in this district.

13.

Defendant Pierce is subject to the personal jurisdiction of this Court. Pierce regularly transacts and solicits business in Georgia and sells products to laboratories and other customers in Georgia. Upon information and belief, Thermo Fisher is phasing out and rolling Pierce's operations into Thermo Fisher, and thus Thermo Fisher's Georgia office and employees promote and sell both Thermo Fisher and Pierce products. Pierce has committed acts of infringement in this district, including by offering for sale and selling infringing products in this district.

14.

Defendants Expedeon, Inc. and Expedeon Ltd. are subject to the personal jurisdiction of this Court. Expedeon has committed acts of infringement in this district, including (a) manufacturing (or supervising/directing the manufacture of) infringing products that Expedeon knows are intended for sale in the United States, including in this district, and that are in fact marketed and sold in this district, and (b) actually offering for sale and selling infringing products in this district.

15.

Venue is proper in this Judicial District and Division pursuant to 28 U.S.C. §§ 1391 and 1400 and Local Rule 3.1 because (a) defendants Thermo Fisher and Pierce reside in Forsyth County, Georgia and have a regular and established place of business in Forsyth County, Georgia, and (b) all defendants have committed acts of infringement in this District and Division.

### **Factual Background**

16.

NuSep is the owner by assignment of United States Patent No. 5,954,934 (“the ‘934 patent”), entitled “Cassette for Electrophoresis Gels.” A copy of the ‘934 patent is attached hereto as Exhibit A.

17.

The '934 patent is directed to gel-holding cassettes for use in electrophoresis. Electrophoresis is a laboratory test procedure in which molecules (such as proteins, DNA, or RNA fragments) are separated according to size and electrical charge by applying an electric current to them.

18.

The '934 patent was duly and legally issued by the United States Patent and Trademark Office on September 21, 1999.

19.

Defendant Expedeon manufactures gel cassettes that it markets and sells under the brand name "RunBlue" to customers in the United States and elsewhere. Expedeon markets RunBlue cassettes to customers in this district, including through its website, which allows customers in Georgia to order RunBlue cassettes for shipment to Georgia.

20.

Defendant Expedeon also manufactures gel cassettes that it sells to defendants Thermo Fisher and Pierce to be marketed under their "Pierce Protein" brand. Thermo Fisher and Pierce market and sell Pierce Protein cassettes to

customers in this district, including through their shared website, which allows customers to order Pierce Protein cassettes for shipment to Georgia.

21.

Expedeon knows and intends that the Pierce Protein cassettes it manufactures for Thermo Fisher and Pierce be sold throughout the United States, including in Georgia.

22.

On or around August 12, 2010, counsel for NuSep wrote letters to Expedeon and Thermo Fisher notifying them that their cassettes infringe upon the '934 patent. On information and belief, Pierce has knowledge of these letters because it is Thermo Fisher's subsidiary.

23.

On or around September 8, 2010, counsel for Expedeon responded by letter, denying infringement and calling NuSep's claims "exaggerated."

**COUNT I: Infringement of the '934 Patent**

24.

NuSep realleges and incorporates by reference the allegations set forth in paragraphs 1-23 above.



25.

The gel cassettes produced by Expedeon and marketed and sold by Expedeon, Thermo Fisher and Pierce infringe upon the '934 patent.

26.

Expedeon, Thermo Fisher and Pierce have been, and currently are, directly and indirectly infringing the '934 patent by making, using, selling, distributing, offering for sale, contributing to the use of by others, and/or inducing others to use products that infringe upon the '934 patent.

27.

Defendants' infringement on the '934 patent has been and continues to be willful and deliberate.

28.

By reason of the infringement by Expedeon, Thermo Fisher and Pierce, NuSep has suffered and continues to suffer irreparable harm and damages in an amount not yet determined for which NuSep is entitled to relief.

29.

Upon information and belief, Expedeon, Thermo Fisher and Pierce will not cease infringing on the '934 patent unless enjoined by this Court.

**Prayer for Relief**

**WHEREFORE**, NuSep requests an entry of judgment in its favor and against defendants Thermo Fisher, Pierce, and Expedeon as follows:

- A. Judgment by the Court declaring that Expedeon, Thermo Fisher, and Pierce have infringed NuSep's '934 patent, have induced infringement of NuSep's '934 patent, and have contributed to infringement of NuSep's '934 patent;
- B. A permanent injunction restraining and enjoining Expedeon, Thermo Fisher, and Pierce and their respective officers, agents, suppliers, employees, distributors and all other persons acting in concert or participation with or controlled by defendants from further acts of infringement, either directly, contributorily or by active inducement of the '934 patent;
- C. An award of damages, together with interest and costs, to compensate NuSep for defendants' infringement of the '934 patent, and in no event less than a reasonable royalty, any monetary award to be increased three times the amount found or assessed in accordance with Title 35 of the United States Code;

- D. An award of NuSep's reasonable attorneys' fees pursuant to 35 U.S.C. § 285 and any other applicable rule of law;
- E. An award of pre-judgment and post-judgment interest and costs to NuSep under 35 U.S.C. § 284;
- F. An award of actual costs; and
- G. An award of such other and further relief as the Court may deem just, proper and equitable under the circumstances.

This 2nd day of November, 2010.

Respectfully submitted,

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