

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AXIS-SHIELD ASA, a Norway corporation,

Plaintiff,

vs.

COMPETITIVE TECHNOLOGIES, INC., a
Delaware corporation,

Defendant.

) CIVIL ACTION NO:

) **JURY TRIAL DEMANDED**

) **NOVEMBER 10, 2004**

**COMPLAINT FOR DECLARATORY RELIEF OF INVALIDITY OF PATENT
AND NONINFRINGEMENT, INJUNCTION AGAINST INFRINGEMENT
ACTION, AND DAMAGES FOR UNFAIR COMPETITION**

Plaintiff Axis-Shield ASA for its Complaint states as follows:

THE PARTIES

1. Plaintiff, Axis-Shield ASA (“Axis-Shield” or “Plaintiff”) is a corporation organized and existing under the laws of the Country of Norway and has its principal place of business in Norway.

2. Upon information and belief, Defendant, Competitive Technologies, Inc., (“CTI” or “Defendant”) is a corporation organized and existing under the laws of the State of Delaware and has a principal place of business at 1960 Bronson Road, Bldg. 1, Fairfield, Connecticut 06824. CTI was formerly known as University Patents, Inc.

JURISDICTION AND VENUE

4. This is an action for Declaratory Relief under 28 U.S.C. §§ 2201 and 2202, adjudging that U.S. Patent No. 4,940,658, and particularly Claim 13, to be invalid, not infringed by Plaintiff, and unenforceable

5. This Court has original and exclusive jurisdiction under 28 U.S.C. §§ 1338.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 (b), (c).

COUNT I
***(DECLARATORY RELIEF OF INVALIDITY OF
PATENT AND NON-INFRINGEMENT)***

7. Axis-Shield realleges incorporates paragraphs 1-6 as though fully set forth herein.

8. CTI is the owner of U.S. Patent No.4,940,658, entitled "Assay For Sulfhydryl Amino Acids And Methods For Detecting And Distinguishing Cobalamin And Folic Acid Deficiency" ('658 patent) issued on July 10, 1990, to University Patents, Inc., of Westport, Connecticut, the predecessor to CTI, as assignee of inventors Robert H. Allen, Sally B. Stabler, and John Lindenbaum. (A copy of the '658 patent is attached as Exhibit "1".)

9. On May 20, 1997, United States Patent No. 5,631,127 entitled "Enzymatic Assay For Homocysteine and a Kit Therefore" ('127 patent) was duly and legally issued to Axis-Shield as assignee for the inventor Erling Sundrehagen. On September 28, 1999, United States Patent No. 5,958,717 entitled "Immunoassay For Homocysteine" ('717 patent) was duly and legally issued to Axis-Shield as assignee for the inventor Erling Sandrehagen. Axis-Shield is the owner of the entire right, title and interest in and to United States Patent Nos. 5,631,127 and 5,958,717 and has been and still is the owner thereof. (Copies of the '127 patent and the '717 patent are attached as Exhibits "2" and "3" respectively.)

10. Axis-Shield has been and is at present manufacturing and selling products that measure Homocysteine ("Hcy") in human blood samples to licensees and others in the United States.

11. Axis-Shield has not infringed and is not now infringing the above-mentioned '658 patent.

12. By letter dated October 25, 2004, CTI has given Axis-Shield formal written notice of infringement of the '658 patent by Axis-Shield's manufacture and sale of products that measure Hcy in human blood. Axis-Shield denies infringement of the above-mentioned '658 patent and asserts that it is entitled to manufacture, use, and sell any of such products that measure Hcy in human blood without interference by Defendant.

13. By reason of the above, an actual controversy has arisen and exists between the parties as to the validity of the above-mentioned '658 patent and its alleged infringement by the manufacture and sale of products that measure Hcy in human blood.

14. The above-mentioned '658 patent is invalid and void for the reasons stated below:

(a) Prior to the alleged invention by the inventors of the '658 patent, or more than one year prior to the dates of the application for the '658 patent, the alleged invention was patented described in printed publications in the United States or in foreign countries.

(b) Prior to the alleged invention by the inventor, the alleged invention had been known to or used by others in the United States.

(c) The differences between the subject matters sought to be patented and the prior art are such that the subject matters as a whole would have been obvious, at the time the alleged invention was made, to a person having ordinary skill in the art to which such subject matters pertained, and such subject matters did not involve a patentable invention.

(d) With respect to the '658 patent, the specifications in the application fail to contain written descriptions of the alleged inventions, and of the manner and process of making and using them, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which they pertain, or with which they are most clearly connected, to make and use them, and fail to set forth the best mode contemplated by the inventor of carrying out (his or her) alleged inventions.

(e) The claims set forth in the patent application are vague and indefinite and fail to particularly point out or distinctly claim the subject matter that CTI regards as its invention.

(f) If such patent is construed to cover the products that measure Hcy in human blood that are made, used, or sold by Axis-Shield, the patent is invalid in view of the prior art.

(g) In view of the prior state of the art and the language of the claims of the patent, and by reason of the proceedings had or taken in the United States Patent and Trademark Office in the prosecution of the patent application, CTI is estopped from maintaining that the claims of the patent have such scope as to cover or embrace any of the products that Axis-Shield may have made, used, or sold

COUNT II
(UNFAIR COMPETITION)

15. Axis-Shield realleges incorporates paragraphs 1-14 as though fully set forth herein.

16. Axis-Shield is informed and believes that CTI has engaged in unfair competitive practices in the trade by threats of litigation against Axis-Shield, its licensees, and user's of Axis-Shield's products, and by actual litigation against others in the health industry. As a result of Defendant's unfair competitive activities, Axis-Shield is faced with the alternative of ceasing production or defending expensive and unwarranted patent litigation.

17. As a direct and proximate result of CTI's unfair competitive practices of threatening to file and filing litigation against Axis-Shield's licensees and users of Axis-Shield's products, which actions have knowingly and intentionally interfered with and disrupted Axis-Shield's economic relations and contracts, Axis-Shield has been damaged in the minimum sum of \$100,000.00, and according to proof at the time of trial.

18. CTI's acts and conduct of threatening litigation and filing litigation against Axis-Shield's licensees and users of Axis-Shield's products were done with malice, oppression or fraud, and Axis-Shield is entitled to an award of exemplary/punitive damages against CTI.

19. Unless CTI is enjoined from the above-mentioned acts, it will continue to assert that Axis-Shield is infringing CTI's above-mentioned patent by making and selling products that measure Hcy in human blood and will continue to interfere with Axis-Shield's business.

Wherefore, Plaintiff Axis-Shield requests that:

1. This court grant and enter a judgment or decree declaring that United States Patent No. 4,940,658 is invalid and void and that such patent is not infringed by the products that measure Hcy in human blood made, used, or sold by Plaintiff Axis-Shield.

2. This court enter a judgment or decree that it is the right of Plaintiff Axis-Shield to continue to make, use, and sell such products that measure Hcy in human blood, without any threat or other interference whatsoever against Plaintiff Axis-Shield by Defendant CTI, based on or arising out of the ownership of the United States Patent No. 4,940,658 or any interest in such patent.

3. This court enter a judgment and decree that United States Patent No. 4,940,658 is unenforceable against Plaintiff Axis-Shield.

4 Defendant CTI be enjoined pending the final adjudication of this action, and permanently afterwards, from prosecuting or bringing or threatening to bring any action against any licensees, buyers, sellers, or users of Plaintiff Axis-Shield's products that measure Hcy in human blood.

5. Defendant CTI, its officers, agents, employees, and attorneys, and all others acting through them, directly or indirectly, be enjoined pending the final adjudication of this action, and permanently afterwards, from charging or asserting that the manufacture, use, or sale of products that measure Hcy in human blood manufactured and sold by Plaintiff Axis-Shield is in violation of or infringes Defendant CTI's alleged patent rights under the patent.

6. For general and compensatory damages according to proof at trial.

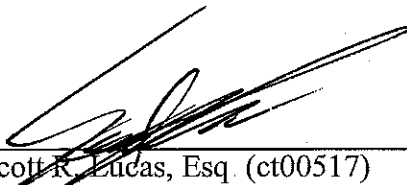
7. For exemplary/punitive damages.

8. The costs of this action be assessed against Defendant.

9. Plaintiff Axis-Shield have such other and further relief as is just, including attorney's fees.

DATED: November 10, 2004

By:



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