

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

XY, LLC

PLAINTIFF,

v.

TRANS OVA GENETICS, LC

DEFENDANT.

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Civil Action No. 5:12-cv-208

JURY DEMAND

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff XY, LLC (“XY”) files this Original Complaint for damages against Trans Ova Genetics, LC (“Defendant”). In support of its Original Complaint, XY shows as follows:

THE PARTIES

1. XY is a limited liability company duly organized and existing under the laws of Delaware, having an office and place of business at 9200 Broadway, Suite 111, San Antonio, Texas 78217.

2. Defendant, Trans Ova Genetics, LC, is an Iowa limited liability company with a principal place of business located at 2938 380th Street, Sioux Center, Iowa 51250. Defendant may be served by delivering a copy of the complaint to its registered agent for service of process, Chad Feenstra, 2938 380th Street, Sioux Center, Iowa 51250.

NATURE OF THE ACTION

3. This is a civil action for the infringement of United States Patent No. 7,820,425, United States Patent No. 6,357,307, United States Patent No. 6,604,435, United States Patent No. 6,782,768, United States Patent No. 6,263,745, United States Patent No. 7,713,687, United States Patent No. 7,771,921, United States Patent No. 6,149,867, United States Patent No.

6,524,860, and United States Patent No. 7,195,920 (the “Asserted Patents”) under the Patent laws of the United States, 35 U.S.C. § 271 *et seq.*

JURISDICTION

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.* This Court has personal jurisdiction over the Defendant in that it has committed acts within Texas and this judicial district giving rise to this action and the Defendant has established minimum contacts with the forum such that the exercise of jurisdiction over the Defendant would not offend traditional notions of fair play and substantial justice.

VENUE

5. Defendant has committed acts within this judicial district giving rise to this action and does business in this district, having a location at 1233 State Hwy 7, Centerville, Texas 75833. Defendant has committed acts of patent infringement at its Centerville location, including offering and performing livestock reproductive services using XY’s patented methods, apparatuses, and chemical compositions for the sex-selection of sperm cells. Venue is proper in this district pursuant to 28 U.S.C. §§1391(b), 1391(c), and 1400(b).

FACTUAL BACKGROUND

6. XY researches, develops, and commercializes technology for sex selection of non-human mammals such as cattle and horses. Such technology typically involves the use of a flow cytometer, a machine that is used to separate sperm cells that carry an X chromosome from those that carry a Y chromosome. Once separated in this fashion, the sperm cells can be used for sex selection to produce offspring of a desired gender. XY owns patents on many valuable technological advances in the field of flow cytometer-based sex selection (the “XY Patents”).

7. In 2004, XY and Defendant entered into a limited, field-of-use license agreement covering the XY Patents, including the Asserted Patents (“the Agreement”).

8. Subsequent to entering into the Agreement, Defendant began engaging in activity that exceeds the scope of the limited, field-of-use license, and in doing so, materially and incurably breached various provisions of the Agreement. As a result, the Agreement was terminated on November 20, 2007, or has otherwise expired according to its terms.

9. After termination of the Agreement, Defendant has continued to practice XY’s patented inventions and has therefore infringed, and continues to infringe, the Asserted Patents, including, without limitation, through Defendant’s use of flow cytometers or other similar apparatuses for sex selection of sperm cells and the sale of semen produced using such apparatuses; Defendant’s use of fluids and other chemical compositions designed for use in flow cytometry-based sex selection; and Defendant’s use of flow cytometry-based sex selection protocols and procedures.

10. This Complaint seeks relief solely for acts of infringement committed after the termination of the Agreement.

COUNT I — INFRINGEMENT OF U.S. PATENT NO. 7,820,425

11. The above paragraphs are incorporated by reference as if fully restated herein.

12. On October 26, 2010, United States Patent No. 7,820,425 (the “’425” Patent) was duly and legally issued for an invention entitled “Method of Cryopreserving Selected Sperm Cells.” A true and correct copy of the ’425 Patent is attached hereto as Exhibit A. XY is the Owner/Assignee of the ’425 Patent and has the right to sue on and seek enforcement of the ’425 Patent. XY has owned the ’425 Patent at all times relevant to this complaint and still owns the ’425 patent.

13. Based on the conduct of Defendant described in paragraph 9 above, Defendant has infringed and continues to infringe the '425 Patent, either directly or by contributory infringement or by inducing infringement. With regard to Defendant's indirect infringement, the direct infringers include, but are not limited to, Defendant's employees, users, and customers. Defendant is liable for infringement of the '425 Patent pursuant to 35 U.S.C. § 271.

14. Upon information and belief, Defendant has been aware of the '425 Patent since the date it issued and has been aware of the application that matured into the '425 Patent since at least as early as the date the application maturing into the '425 Patent was published, and Defendant's continued infringement of the '425 Patent is and has been willful and deliberate.

15. Upon information and belief, Defendant's acts of willful infringement have caused damage to XY, and XY is entitled to recover from Defendant the damages sustained by XY as a result of Defendant's wrongful acts, and such damages should be increased pursuant to 35 U.S.C. § 284, in an amount subject to proof at trial.

COUNT II — INFRINGEMENT OF U.S. PATENT NO. 6,357,307

16. The above paragraphs are incorporated by reference as if fully restated herein.

17. On March 19, 2002, United States Patent No. 6,357,307 (the "'307" Patent) was duly and legally issued for an invention entitled "System and Method of Flow Cytometry and Sample Handling." A true and correct copy of the '307 Patent is attached hereto as Exhibit B. XY is the Owner/Assignee of the '307 Patent and has the right to sue on and seek enforcement of the '307 Patent. XY has owned the '307 Patent at all times relevant to this complaint and still owns the '307 patent.

18. Based on the conduct of Defendant described in paragraph 9 above, Defendant has infringed and continues to infringe the '307 Patent, either directly or by contributory

infringement or by inducing infringement. With regard to Defendant's indirect infringement, the direct infringers include, but are not limited to, Defendant's employees, users, and customers. Defendant is liable for infringement of the '307 Patent pursuant to 35 U.S.C. § 271.

19. Upon information and belief, Defendant has been aware of the '307 Patent since at least as early as the effective date of the Agreement, and Defendant's continued infringement of the '307 Patent is and has been willful and deliberate.

20. Upon information and belief, Defendant's acts of willful infringement have caused damage to XY, and XY is entitled to recover from Defendant the damages sustained by XY as a result of Defendant's wrongful acts, and such damages should be increased pursuant to 35 U.S.C. § 284, in an amount subject to proof at trial.

COUNT III — INFRINGEMENT OF U.S. PATENT NO. 6,604,435

21. The above paragraphs are incorporated by reference as if fully restated herein.

22. On August 12, 2003, United States Patent No. 6,604,435 (the "'435" Patent) was duly and legally issued for an invention entitled "Low Acceleration Method of Flow Cytometry." A true and correct copy of the '435 Patent is attached hereto as Exhibit C. XY is the Owner/Assignee of the '435 Patent and has the right to sue on and seek enforcement of the '435 Patent. XY has owned the '435 Patent at all times relevant to this complaint and still owns the '435 patent.

23. Based on the conduct of Defendant described in paragraph 9 above, Defendant has infringed and continues to infringe the '435 Patent, either directly or by contributory infringement or by inducing infringement. With regard to Defendant's indirect infringement, the direct infringers include, but are not limited to, Defendant's employees, users, and customers. Defendant is liable for infringement of the '435 Patent pursuant to 35 U.S.C. § 271.

24. Upon information and belief, Defendant has been aware of the '435 Patent since at least as early as the effective date of the Agreement, and Defendant's continued infringement of the '435 Patent is and has been willful and deliberate.

25. Upon information and belief, Defendant's acts of willful infringement have caused damage to XY, and XY is entitled to recover from Defendant the damages sustained by XY as a result of Defendant's wrongful acts, and such damages should be increased pursuant to 35 U.S.C. § 284, in an amount subject to proof at trial.

COUNT IV — INFRINGEMENT OF U.S. PATENT NO. 6,782,768

26. The above paragraphs are incorporated by reference as if fully restated herein.

27. On August 31, 2004, United States Patent No. 6,782,768 (the "'768" Patent) was duly and legally issued for an invention entitled "Flow Cytometer Nozzle." A true and correct copy of the '768 Patent is attached hereto as Exhibit D. XY is the Owner/Assignee of the '768 Patent and has the right to sue on and seek enforcement of the '768 Patent. XY has owned the '768 Patent at all times relevant to this complaint and still owns the '768 patent.

28. Based on the conduct of Defendant described in paragraph 9 above, Defendant has infringed and continues to infringe the '768 Patent, either directly or by contributory infringement or by inducing infringement. With regard to Defendant's indirect infringement, the direct infringers include, but are not limited to, Defendant's employees, users, and customers. Defendant is liable for infringement of the '768 Patent pursuant to 35 U.S.C. § 271.

29. Upon information and belief, Defendant has been aware of the '768 Patent since the date it issued and has been aware of the application that matured into the '768 Patent since at least as early as the effective date of the Agreement, and Defendant's continued infringement of the '768 Patent is and has been willful and deliberate.

30. Upon information and belief, Defendant's acts of willful infringement have caused damage to XY, and XY is entitled to recover from Defendant the damages sustained by XY as a result of Defendant's wrongful acts, and such damages should be increased pursuant to 35 U.S.C. § 284, in an amount subject to proof at trial.

COUNT V — INFRINGEMENT OF U.S. PATENT NO. 6,263,745

31. The above paragraphs are incorporated by reference as if fully restated herein.

32. On July 24, 2001, United States Patent No. 6,263,745 (the "'745" Patent) was duly and legally issued for an invention entitled "Flow Cytometer Nozzle and Flow Cytometer Sample Handling Methods." A true and correct copy of the '745 Patent is attached hereto as Exhibit E. XY is the Owner/Assignee of the '745 Patent and has the right to sue on and seek enforcement of the '745 Patent. XY has owned the '745 Patent at all times relevant to this complaint and still owns the '745 patent.

33. Based on the conduct of Defendant described in paragraph 9 above, Defendant has infringed and continues to infringe the '745 Patent, either directly or by contributory infringement or by inducing infringement. With regard to Defendant's indirect infringement, the direct infringers include, but are not limited to, Defendant's employees, users, and customers. Defendant is liable for infringement of the '745 Patent pursuant to 35 U.S.C. § 271.

34. Upon information and belief, Defendant has been aware of the '745 Patent since at least as early as the effective date of the Agreement, and Defendant's continued infringement of the '745 Patent is and has been willful and deliberate.

35. Upon information and belief, Defendant's acts of willful infringement have caused damage to XY, and XY is entitled to recover from Defendant the damages sustained by

XY as a result of Defendant's wrongful acts, and such damages should be increased pursuant to 35 U.S.C. § 284, in an amount subject to proof at trial.

COUNT VI — INFRINGEMENT OF U.S. PATENT NO. 7,713,687

36. The above paragraphs are incorporated by reference as if fully restated herein.

37. On May 11, 2010, United States Patent No. 7,713,687 (the "'687" Patent) was duly and legally issued for an invention entitled "System to Separate Frozen-Thawed Spermatozoa into X-Chromosome Bearing and Y-Chromosome Bearing Populations." A true and correct copy of the '687 Patent is attached hereto as Exhibit F. XY is the Owner/Assignee of the '687 Patent and has the right to sue on and seek enforcement of the '687 Patent. XY has owned the '687 Patent at all times relevant to this complaint and still owns the '687 patent.

38. Based on the conduct of Defendant described in paragraph 9 above, Defendant has infringed and continues to infringe the '687 Patent, either directly or by contributory infringement or by inducing infringement. With regard to Defendant's indirect infringement, the direct infringers include, but are not limited to, Defendant's employees, users, and customers. Defendant is liable for infringement of the '687 Patent pursuant to 35 U.S.C. § 271.

39. Upon information and belief, Defendant has been aware of the '687 Patent since the date it issued and has been aware of the application that matured into the '687 Patent since at least as early as the effective date of the Agreement, and Defendant's continued infringement of the '687 Patent is and has been willful and deliberate.

40. Upon information and belief, Defendant's acts of willful infringement have caused damage to XY, and XY is entitled to recover from Defendant the damages sustained by XY as a result of Defendant's wrongful acts, and such damages should be increased pursuant to 35 U.S.C. § 284, in an amount subject to proof at trial.

COUNT VII — INFRINGEMENT OF U.S. PATENT NO. 7,771,921

41. The above paragraphs are incorporated by reference as if fully restated herein.

42. On August 10, 2010, United States Patent No. 7,771,921 (the “’921” Patent) was duly and legally issued for an invention entitled “Separation Systems of Frozen-Thawed Spermatozoa into X-Chromosome Bearing and Y-Chromosome Bearing Populations.” A true and correct copy of the ’921 Patent is attached hereto as Exhibit G. XY is the Owner/Assignee of the ’921 Patent and has the right to sue on and seek enforcement of the ’921 Patent. XY has owned the ’921 Patent at all times relevant to this complaint and still owns the ’921 patent.

43. Based on the conduct of Defendant described in paragraph 9 above, Defendant has infringed and continues to infringe the ’921 Patent, either directly or by contributory infringement or by inducing infringement. With regard to Defendant’s indirect infringement, the direct infringers include, but are not limited to, Defendant’s employees, users, and customers. Defendant is liable for infringement of the ’921 Patent pursuant to 35 U.S.C. § 271.

44. Upon information and belief, Defendant has been aware of the ’921 Patent since the date it issued and has been aware of the application that matured into the ’921 Patent since at least as early as its date of publication, and Defendant’s continued infringement of the ’921 Patent is and has been willful and deliberate.

45. Upon information and belief, Defendant’s acts of willful infringement have caused damage to XY, and XY is entitled to recover from Defendant the damages sustained by XY as a result of Defendant’s wrongful acts, and such damages should be increased pursuant to 35 U.S.C. § 284, in an amount subject to proof at trial.

COUNT VIII — INFRINGEMENT OF U.S. PATENT NO. 6,149,867

46. The above paragraphs are incorporated by reference as if fully restated herein.

47. On November 21, 2000, United States Patent No. 6,149,867 (the “’867” Patent) was duly and legally issued for an invention entitled “Sheath Fluids and Collection Systems for Sex-Specific Cytometer Sorting of Sperm.” A true and correct copy of the ’867 Patent is attached hereto as Exhibit H. XY is the Owner/Assignee of the ’867 Patent and has the right to sue on and seek enforcement of the ’867 Patent. XY has owned the ’867 Patent at all times relevant to this complaint and still owns the ’867 patent.

48. Based on the conduct of Defendant described in paragraph 9 above, Defendant has infringed and continues to infringe the ’867 Patent, either directly or by contributory infringement or by inducing infringement. With regard to Defendant’s indirect infringement, the direct infringers include, but are not limited to, Defendant’s employees, users, and customers. Defendant is liable for infringement of the ’867 Patent pursuant to 35 U.S.C. § 271.

49. Upon information and belief, Defendant has been aware of the ’867 Patent since at least as early as the effective date of the Agreement, and Defendant’s continued infringement of the ’867 Patent is and has been willful and deliberate.

50. Upon information and belief, Defendant’s acts of willful infringement have caused damage to XY, and XY is entitled to recover from Defendant the damages sustained by XY as a result of Defendant’s wrongful acts, and such damages should be increased pursuant to 35 U.S.C. § 284, in an amount subject to proof at trial.

COUNT IX — INFRINGEMENT OF U.S. PATENT NO. 6,524,860

51. The above paragraphs are incorporated by reference as if fully restated herein.

52. On February 25, 2003, United States Patent No. 6,524,860 (the “’860” Patent) was duly and legally issued for an invention entitled “Methods for Improving Sheath Fluids and Collection Systems for Sex-Specific Cytometer Sorting of Sperm.” A true and correct copy of the ’860 Patent is attached hereto as Exhibit I. XY is the Owner/Assignee of the ’860 Patent and has the right to sue on and seek enforcement of the ’860 Patent. XY has owned the ’860 Patent at all times relevant to this complaint and still owns the ’860 patent.

53. Based on the conduct of Defendant described in paragraph 9 above, Defendant has infringed and continues to infringe the ’860 Patent, either directly or by contributory infringement or by inducing infringement. With regard to Defendant’s indirect infringement, the direct infringers include, but are not limited to, Defendant’s employees, users, and customers. Defendant is liable for infringement of the ’860 Patent pursuant to 35 U.S.C. § 271.

54. Upon information and belief, Defendant has been aware of the ’860 Patent since at least as early as the effective date of the Agreement, and Defendant’s continued infringement of the ’860 Patent is and has been willful and deliberate.

55. Upon information and belief, Defendant’s acts of willful infringement have caused damage to XY, and XY is entitled to recover from Defendant the damages sustained by XY as a result of Defendant’s wrongful acts, and such damages should be increased pursuant to 35 U.S.C. § 284, in an amount subject to proof at trial.

COUNT X — INFRINGEMENT OF U.S. PATENT NO. 7,195,920

1. The above paragraphs are incorporated by reference as if fully restated herein.
2. On March 27, 2007, United States Patent No. 7,195,920 (the “’920” Patent) was duly and legally issued for an invention entitled “Collection Systems for Cytometer Sorting of Sperm.” A true and correct copy of the ’920 Patent is attached hereto as Exhibit J. XY is the Owner/Assignee of the ’920 Patent and has the right to sue on and seek enforcement of the ’920 Patent. XY has owned the ’920 Patent at all times relevant to this complaint and still owns the ’920 patent.
3. Based on the conduct of Defendant described in paragraph 9 above, Defendant has infringed and continues to infringe the ’920 Patent, either directly or by contributory infringement or by inducing infringement. With regard to Defendant’s indirect infringement, the direct infringers include, but are not limited to, Defendant’s employees, users, and customers. Defendant is liable for infringement of the ’920 Patent pursuant to 35 U.S.C. § 271.
4. Upon information and belief, Defendant has been aware of the ’920 Patent since the date it issued and has been aware of the application that matured into the ’920 Patent since at least as early as the effective date of the Agreement, and Defendant’s continued infringement of the ’920 Patent is and has been willful and deliberate.
5. Upon information and belief, Defendant’s acts of willful infringement have caused damage to XY, and XY is entitled to recover from Defendant the damages sustained by XY as a result of Defendant’s wrongful acts, and such damages should be increased pursuant to 35 U.S.C. § 284, in an amount subject to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, XY prays for judgment and seeks relief against Defendant as follows:

- (a) For Judgment that Defendant has infringed the '425 Patent;
- (b) For Judgment that Defendant has infringed the '307 Patent;
- (c) For Judgment that Defendant has infringed the '435 Patent;
- (d) For Judgment that Defendant has infringed the '768 Patent;
- (e) For Judgment that Defendant has infringed the '745 Patent;
- (f) For Judgment that Defendant has infringed the '687 Patent;
- (g) For Judgment that Defendant has infringed the '921 Patent;
- (h) For Judgment that Defendant has infringed the '867 Patent;
- (i) For Judgment that Defendant has infringed the '860 Patent;
- (j) For Judgment that Defendant has infringed the '920 Patent;
- (k) For Judgment that Defendant's infringement of any or all of the asserted patents is and has been willful;
- (l) For an accounting of all damages sustained by XY as the result of the acts of infringement by Defendant, but not less than a reasonable royalty under 35 U.S.C. § 284;
- (m) For actual damages together with prejudgment interest;
- (n) For enhanced damages pursuant to 35 U.S.C. § 284;
- (o) For a preliminary and final injunction against Defendant's continuing infringement;
- (p) For an award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;

- (q) For all costs of suit; and
- (r) For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a jury trial.

Dated: March 5, 2012

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Kirt S. O'Neill

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