

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

FILED
DES MOINE

01 SEP -5 1

CLERK U.S. DISTRICT
SOUTHERN DISTRICT

IOWA STATE UNIVERSITY RESEARCH
FOUNDATION, INC.

an Iowa Non-profit Corporation, and
METABOLIC TECHNOLOGIES INC.

an Iowa Corporation,

Plaintiffs,

v.

DAVID ALLAN LOPEZ, a Sole Proprietor, d/b/a
SUPPLEMENT DIRECT

Defendant.

Civil Action No. _____

4:01 - CV - 80534

COMPLAINT
JURY TRIAL DEMANDED

Plaintiffs Iowa State University Research Foundation, Inc. and Metabolic Technologies
Inc. state, as their Complaint versus Supplement Direct, the following:

**DIVISION I - THE PARTIES, NATURE OF ACTION,
JURISDICTION AND VENUE**

1. Plaintiff, Iowa State University Research Foundation, Inc. (hereinafter referred to
as "ISURF"), is an Iowa non-profit corporation with its principal place of business at 310 Lab of
Mechanics, Ames, Iowa 50011-2131.

2. Plaintiff, Metabolic Technologies Inc. (hereinafter referred to as "MTI"), is an
Iowa corporation with its principal place of business at 2625 North Loop Drive, Ames, Iowa
50010.

3. Defendant, David Allen Lopez, d/b/a Supplement Direct, is, upon information and
belief, a sole proprietor, with a business address of 12338 Los Osos Valley Road, San Luis

Obispo, California 93405, which has advertised its products in Iowa via the internet, and presumably has sold products to residents of the State of Iowa.

4. This action is for patent infringement, based on 35 U.S.C. §271.

5. As such, subject matter jurisdiction is exclusive to this Court based upon 28 U.S.C. §1338(a).

6. Personal jurisdiction is based on Federal Rule of Civil Procedure 4(e), and on sufficient minimum contacts between the Defendant and this jurisdiction such that the exercise of personal jurisdiction by this Court comports with the applicable state, federal, and constitutional requirements. To that end, Defendant maintains contacts within this jurisdiction, does business in this jurisdiction, and committed in this jurisdiction certain acts alleged herein to constitute the violations of Plaintiffs' rights.

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

DIVISION II – PATENT INFRINGEMENT

8. ISURF is the owner of the following United States Letters Patents:

4,992,470 entitled "Method of Enhancing Immune Response of Mammals," duly and legally issued on February 12, 1991;

5,348,979 entitled "Method of Promoting Nitrogen Retention in Humans," duly and legally issued on September 20, 1994;

5,360,613 entitled "Method of Reducing Blood Levels of Total Cholesterol and Low-Density Lipoprotein Cholesterol," duly and legally issued on November 1, 1994;

6,103,764 entitled "Method for Increasing the Aerobic Capacity of Muscle," duly and legally issued on August 15, 2000.

(Hereinafter collectively referred to as the "ISURF Patents"). Each of the ISURF Patents continues in full force and effect to this day, and ISURF has the right to enforce the ISURF Patents.

9. By and through a license agreement between ISURF and MTI entered into on May 16, 1990, MTI is the exclusive licensee of the ISURF PATENTS, and MTI has the right to enforce the ISURF Patents and to collect any damages resulting from any such enforcement.

10. To the best of the Plaintiffs' knowledge, the ISURF Patents in conjunction with other patents owned by ISURF and licensed exclusively to MTI, cover all known uses of the substance β -hydroxy- β -methylbutyrate (hereinafter referred to as HMB), in both animals and humans, and in all forms of HMB including its free acid, salt, ester, and lactone forms. Furthermore, HMB is not a staple article of commerce as that term is used and understood in 35 U.S.C. §271(c).

11. Plaintiffs have taken reasonable steps to ensure that all authorized products incorporating the patented technology have been marked in accordance with the notice provisions of 35 U.S.C. §287.

12. Defendant actively sells HMB, and has presumably sold HMB within this jurisdiction, and either maintained, or has maintained, a commercial interactive Internet Web site for the purpose of selling, *inter alia*, HMB. The Web site is accessible at the following address: <http://www.supplementdirect.com>. Defendant has profited from its commercial activities related to HMB.

13. Defendant's aforementioned commercial activities related to HMB constitute contributory infringement and/or inducement to infringe one or all of the ISURF Patents under 35 U.S.C. §271(b), and/or (c).

14. Defendant is aware of the Plaintiffs' rights in the ISURF Patents. Defendant was informed by registered letter of said rights, wherein said letter was dated August 9, 2001, and delivered to Defendant on August 16, 2001. In light of its knowledge and disregard of Plaintiffs' patent rights, and to the extent that Defendant's conduct persisted after such notice, Defendant's conduct constitutes willful infringement of the ISURF Patents.

15. As a result of Defendant's infringing conduct, Plaintiffs have been irreparably damaged and denied the benefit of the protections afforded to Plaintiffs under the ISURF Patents.

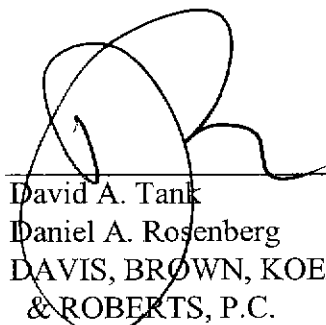
WHEREFORE, Plaintiffs demand the following relief:

- a) that this Court adjudge that MTI is the exclusive licensee, and that ISURF is the lawful owner, of the ISURF Patents and that both are entitled to the right of recovery thereunder;
- b) that this Court adjudge that the ISURF Patents are good and valid in law and that Defendant has infringed one or all of the ISURF Patents;
- c) that a temporary and a permanent injunction be issued enjoining Defendant and its subsidiaries, affiliates, agents, servants, and employees, and all other persons in active concert with them from further infringing conduct;
- d) that an accounting be made for the damages arising out of Defendant's infringing conduct and that damages so ascertained be trebled and awarded to Plaintiffs together with interest thereon;
- e) that Plaintiffs be awarded its reasonable attorneys' fees, costs, and expenses encored in this action under 35 U.S.C. §285 due to the exceptional nature of this case; and

f) that this Court grant Plaintiffs such other and further relief as it may deem just and appropriate.

JURY DEMAND

Plaintiffs, Iowa State University Research Foundation, Inc and Metabolic Technologies Inc. demand a jury to hear all issues so triable in this action.



David A. Tank #478603141
Daniel A. Rosenberg PK0015578
DAVIS, BROWN, KOEHN, SHORS
& ROBERTS, P.C.
666 Walnut Street
2500 Financial Center
Des Moines, Iowa 50309-3993
Telephone: 515/288-2500
Facsimile: 515/243-0654

ATTORNEYS FOR PLAINTIFFS