

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

_____)	
SMARTWATER, LTD.)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
APPLIED DNA SCIENCES, INC.)	
)	
Defendant.)	
_____)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Smartwater, Ltd. (“Smartwater”), by its undersigned counsel, for its Amended Complaint against Applied DNA Sciences, Inc. (“ADNAS”) states as follows:

Introduction

1. This is an action against ADNAS for infringement of one or more claims in United States Patent 5,605,650 which is entitled *Security of Articles, Goods, Vehicles or Premises* (the “‘650 Patent”) and for infringement of one or more claims in United States Patent 5,811,152 which is entitled *Method of Identifying a Surface* (the “‘152 Patent”).

Parties

2. Smartwater is a corporation formed under the laws of the United Kingdom of Great Britain and Northern Ireland. Smartwater has offices and does business in this judicial district.

3. Upon information and belief, ADNAS is a Delaware corporation with a principal place of business in Stony Brook, New York.

Jurisdiction and Venue

4. This is an action for patent infringement, arising under the Patent Laws of the United States, 35 U.S.C. §1 et seq. This Court has jurisdiction over the subject matter of this case under 28 U.S.C. §§ 1331 and 1338(a).

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

The ‘650 Patent

6. On February 25, 1997, the United States Patent and Trademark Office (the “USPTO”) duly and legally issued the ‘650 Patent. Smartwater owns the entire right, title and interest to the ‘650 Patent and such ownership rights are confirmed by assignments recorded in the USPTO. A true and accurate copy of the ‘650 Patent is attached hereto as **Exhibit 1**.

7. ADNAS’ makes, uses, sells or offers for sale products including, but not limited to: (i) SmartDNA Intruder Tagging Systems; (ii) Signature DNA, and (iii) DNANet products that infringe one or more claims of the ‘650.

8. ADNAS has also infringed one or more claims of the ‘650 Patent by knowingly and actively inducing others to infringe, by contributing to the infringement of others and by intentionally aiding, assisting and encouraging the infringement of others through the sale, offer for sale, manufacture and use of ADNAS’ products including, but not limited to: (i) SmartDNA Intruder Tagging Systems; (ii) Signature DNA, and (iii) DNANet products.

9. Upon information and belief, ADNAS transacts business in this judicial district and has committed acts of infringement in this judicial district, at least by selling and offering for sale its products including, but not limited to: (i) SmartDNA Intruder Tagging Systems; (ii) Signature DNA, and (iii) DNANet products which are accused of infringing the ‘650 Patent, as well as conducting other business in this judicial district.

The '152 Patent

10. On September 22, 1998, the USPTO duly and legally issued the '152 Patent. Smartwater owns the entire right, title and interest to the '152 Patent and such ownership rights are confirmed by assignments recorded in the USPTO. A true and accurate copy of the '152 Patent is attached hereto as **Exhibit 2**.

11. ADNAS makes, uses, sells or offers for sale products including, but not limited to: (i) SmartDNA Intruder Tagging Systems; (ii) Signature DNA, and (iii) DNANet products that infringed one or more claims of the '152 Patent.

12. ADNAS has also infringed one or more claims of the '152 Patent by knowingly and actively inducing others to infringe, by contributing to the infringement of others and by intentionally aiding, assisting and encouraging the infringement of others through the sale, offer for sale, manufacture and use of ADNAS' products including, but not limited to: (i) SmartDNA Intruder Tagging Systems; (ii) Signature DNA, and (iii) DNANet products.

13. Upon information and belief, ADNAS transacts business in this judicial district and has committed acts of infringement in this judicial district, at least by selling and offering for sale its products including, but not limited to: (i) SmartDNA Intruder Tagging Systems; (ii) Signature DNA, and (iii) DNANet products which are accused of having infringed the '152 Patent, as well as conducting other business in this judicial district.

COUNT I
(Infringement of the '650 Patent)

14. Smartwater hereby incorporates paragraphs 1 through 13 by reference as though they were set forth fully herein.

15. ADNAS has committed and continues to commit acts of infringement with respect to one or more claims of the '650 Patent.

16. Upon information and belief, ADNAS' infringement of the '650 Patent has been and continues to be willful and deliberate.

17. ADNAS will continue its infringing activities unless enjoined by the Court.

18. By reason of the above acts, Smartwater has suffered and will continue to suffer damages in an amount to be determined at trial and has been and continues to suffer irreparable injury for which there is no adequate remedy at law.

COUNT II
(Infringement of the '152 Patent)

19. Smartwater hereby incorporates paragraphs 1 through 18 by reference as though they were set forth fully herein.

20. ADNAS has committed acts of infringement with respect to one or more claims of the '152 Patent.

21. Upon information and belief, ADNAS' infringement of the '152 Patent was willful and deliberate.

22. By reason of the above acts, Smartwater has suffered damages in an amount to be determined at trial.

WHEREFORE, Smartwater prays for judgment against the defendant ADNAS as follows:

- A. for judgment to be entered that ADNAS has infringed the '650 Patent;
- B. for judgment to be entered that ADNAS has infringed the '152 Patent;
- C. for injunctive relief, both preliminary and permanent, enjoining ADNAS, its officers, directors, agents, servants, employees, and all their entities and individuals acting in concert with them or on their behalf from further infringement of the '650 Patent;

- D. for an award of compensatory damages resulting from ADNAS' infringement of the '650 Patent, pursuant to 35 U.S.C. § 284;
- E. for an award of compensatory damages resulting from ADNAS' infringement of the '152 Patent, pursuant to 35 U.S.C. § 284;
- F. for an award of enhanced damages resulting from ADNAS' willful infringement of the '650 Patent, pursuant to 35 U.S.C. § 285;
- G. for an award of enhanced damages resulting from ADNAS' willful infringement of the '152 Patent, pursuant to 35 U.S.C. § 285;
- H. for an award of attorneys' fees pursuant to 35 U.S.C. § 285 based on, but not limited to, ADNAS' willful infringement of the '650 Patent;
- I. for an award of attorneys' fees pursuant to 35 U.S.C. § 285 based on, but not limited to, ADNAS' willful infringement of the '152 Patent;
- J. for an award of costs, pre-judgment and post-judgment interest on any damages awarded, pursuant to 35 U.S.C. § 284 and other applicable law; and
- K. for such other and further relief as the Court deems just and reasonable.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Smartwater hereby demands a trial by jury in this action on all claims and issues so triable.

Dated: August 24, 2012

Respectfully submitted,

SMARTWATER, LTD.

By its counsel,

/s/David Brafman

David Brafman, Esq.
Akerman Senterfitt
222 Lakeview Avenue, Fourth Floor
West Palm Beach, FL 33401-6147
Phone: (561) 653-5000
Fax: (561) 659-6313
david.brafman@akerman.com

Of Counsel¹:

/s/ Jeffrey E. Francis

Jeffrey E. Francis (BBO # 639944)
jfrancis@pierceatwood.com
Joseph Maraia (BBO # 650569)
jmaraia@pierceatwood.com
PIERCE ATWOOD LLP
100 Summer Street, Suite 2250
Boston, MA 02110
Telephone: (617) 488-8100
Facsimile: (617) 824-2020

¹ Mr. Francis and Mr. Maraia are not admitted in this judicial district but will seek admission *pro hac vice* to represent the plaintiff in this matter.