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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED

AUG 08 2014

POLYMER TECHNOLOGY SYSTEMS,
INC.

U.S. CLERK'S OFFICE
INDIANAPOLIS, INDIANA

Plaintiff,

CIVIL ACTION NO. _____

v.

JANT PHARMACAL CORPORATION
INFOPIA AMERICA LLC
INFOPIA CO., LTD.

JURY TRIAL DEMANDED

1 : 1 4 -cv- 1 3 1 7 RLY -DKL

Defendants.

**COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES AND
DEMAND FOR JURY TRIAL**

Plaintiff, Polymer Technology Systems, Inc., (hereinafter "PTS"), for its Complaint
against Defendants, alleges and states as follows:

PARTIES

1. PTS is a corporation organized under the laws of the State of Indiana and
having its principal place of business at 7736 Zionsville Road, Indianapolis, Indiana 46268. PTS
is in the business of researching, developing, manufacturing, and selling point-of-care diagnostic
products for the human healthcare market. PTS also does business under the name Chek
Diagnostics.

2. Defendant Jant Pharmacal Corporation (hereinafter "Jant") is a corporation
organized under the laws of the State of California and having its principal place of business at
16255 Ventura Blvd. #505, Encino, CA 91436.

3. Defendant Infopia America LLC (hereinafter “Infopia America”) is a Florida Limited Liability Company having a principal place of business at 1410 White Dr., Titusville, FL 32780.

4. Defendant Infopia Co., Ltd. (hereinafter “Infopia Korea”) is a foreign corporation organized under the laws of Korea and having a principal place of business at #1603, Dongil Technotown A Bldg., 889-3, Kwanyang2-Don, Donan – Gu, Anyang, Kyunggi 431-716, Korea.

NATURE OF THE ACTION

5. This is an action for patent infringement pursuant to 35 U.S.C. § 271 *et seq.*, and for federal unfair competition in violation of the Lanham Act, 15 U.S.C. 1125(a).

JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction over PTS’s claims pursuant to 28 U.S.C. §§1331, 1332, and 1338.

7. Jant is subject to personal jurisdiction in this District because, upon information and belief, it places products into the stream of commerce knowing such products will be, and are, sold in this District, transacts business in this District, including through directing sales into this District, and has committed, contributed to, and/or induced acts of patent infringement in this District.

8. Infopia America is subject to personal jurisdiction in this District because, upon information and belief, it places products into the stream of commerce knowing such products will be, and are, sold in this District, transacts business in this District, including through directing sales into this District, and has committed, contributed to, and/or induced acts of patent infringement in this District.

9. Infopia Korea is subject to personal jurisdiction in this District because, upon information and belief, it places products into the stream of commerce knowing such products will be, and are, sold in this District, transacts business in this District, including through directing sales into this District, and has committed, contributed to, and/or induced acts of patent infringement in this District.

10. Venue in this district is proper under 28 U.S.C. §§ 1391 and 1400(b).

SUBSTANTIVE ALLEGATIONS

A. The Patents in Suit

11. PTS is a local Indiana company with over 100 employees in Indianapolis. PTS has approximately four hundred investors, most of whom are residents of Indianapolis, Indiana. PTS has been a vital part of the local economy since 1992 and was recently ranked as one of the 5,000 fastest growing private companies in America.

12. PTS produces a hand-held, point-of-care testing system that can test for total cholesterol, high-density lipoproteins (HDL), and triglycerides with a single drop of blood. The test strip used is referred to as a "Multi-Analyte Strip" and is the only strip for multiple cholesterol analytes that does not require a laboratory or multiple (and annoying) finger pricks to produce blood samples. The test results and the low-density lipoprotein (LDL) and total cholesterol-to-HDL ratio calculated from them provide for the ready determination of major risk factors for heart disease. The PTS system is branded CardioChek[®] and is PTS's flagship product.

13. On August 8, 2006, United States Patent No. 7,087,397 ("the '397 Patent") entitled "Method for determining HDL concentration from whole blood or plasma" was duly and legally issued to PTS. A true copy of the '397 Patent is attached as Exhibit A.

14. This patent represents a significant part of the innovative technology embodied in the CardioChek® Multi-Analyte Strip. The CardioChek® Multi-Analyte Strip includes a test area for detecting HDL cholesterol. A feature of this stack is the inclusion of an HDL separation layer. This HDL separation layer is an important and innovative aspect of the '397 Patent.

B. Defendants' Infringing Activities

15. Infopia Korea has developed a test strip and handheld system that may be used with a test strip that tests for total cholesterol, HDL, and triglycerides with multiple drops of blood. This system is branded as the LipidPlus Lipid Profile Test Strip (hereinafter "LipidPlus Profile Strip"). Infopia Korea imports the LipidPlus Profile Strip to the United States, and Infopia USA and Jant sell the LipidPlus Profile Strip in the United States.

16. On information and belief, Defendants are offering their product at an extremely low price that is below cost. A recent advertisement (see Exhibit B) is being sent to PTS distributors offering significant SPIFF rebates for sales. SPIFF rebates are immediate promotions offered to sales people.

17. On information and belief, much of the technology incorporated into the LipidPlus Profile Strip is copied from PTS's CardioChek® Multi-Analyte Strip. Copied aspects include the concepts and applicability of such a strip, the analytes selected for analysis in the tri-panel strip, the structure of the strip, and the chemistries used. Moreover, Defendants have copied the trade dress of PTS's CardioChek® Multi-Analyte Strip packaging to sell their product.

18. The LipidPlus Profile Strip recites chemistry that provides for separating non-HDL chemicals from a sample. As stated in Infopia Korea's 510(K) FDA Submission Summary

(K090405), a portion of which is displayed below (the entirety is attached as Exhibit C), the enzymes used by Infopia Korea are identical to PTS's and the color fixatives are almost identical. On information and belief, the copied HDL portion of The LipidPlus Profile Strip infringes the '397 Patent.

Similarities and Differences of the Lipid profile measuring system		
Item	LipidPro™ lipid measuring system	PTS PANELS Lipid Panel Test Strips (k023558)
Detection method	Spectrophotometry	Spectrophotometry
Enzyme	TC: Cholesterol esterase, Cholesterol oxidase, Peroxidase HDL-C: Cholesterol esterase, Cholesterol oxidase, Peroxidase TG: Lipase lipoprotein, Glycerol kinase, Glycerol-3-Phosphate Oxidase, Peroxidase	TC: Cholesterol esterase, Cholesterol oxidase, Peroxidase HDL-C: Cholesterol esterase, Cholesterol oxidase, Peroxidase TG: Lipase lipoprotein, Glycerol kinase, Glycerol-3-Phosphate Oxidase, Peroxidase
Color Fixatives	TC, HDL-C, TG: 4-aminoantipyrine Substituted aniline derivatives	TC, HDL-C: 4-aminoantipyrine Substituted aniline derivatives TG: 4-aminoantipyrine N,N-disubstituted aniline

Exhibit C, p.4.

19. Infopia Korea, Infopia America, and Jant also sell the LipidPlus HDL-Cholesterol Test Strips, which also use the same chemistry as the HDL portion of the LipidPlus Profile Strip. The LipidPlus HDL-Cholesterol Test Strips are merely a single test panel, only testing for HDL Cholesterol.

COUNT 1 – Patent Infringement of the '397 Patent

20. PTS re-alleges and incorporates by reference the preceding paragraphs of this Complaint.

21. PTS owns, by assignment, all right, title, and interest to the '397 Patent.

22. On information and belief, the LipidPlus Profile Strip and LipidPlus HDL-Cholesterol Test Strip use the same method for the detection of HDL cholesterol as claimed in the '397 Patent. Among other identical features, the LipidPlus Profile Strip and LipidPlus HDL-Cholesterol Test Strip include the non-HDL separation layer claimed in the '397 Patent.

23. Infopia Korea, Infopia America, and Jant have infringed and are still infringing one or more claims of the '397 Patent by importing, making, selling, using, or offering to sell test strips, including, but not limited to, the LipidPlus Profile Strip and LipidPlus HDL-Cholesterol Test Strip.

24. Upon information and belief, Defendants Infopia Korea, Infopia America, and Jant have induced and continue to induced others to infringe one or more claims of the '397 Patent in violation of 35 U.S.C § 271(b) by, among other things, actively and knowingly aiding and abetting others to infringe, including, but not limited to, its customers, whose use of such products constitutes direct infringement of one or more claims of the '397 Patent.

25. Upon information and belief, Defendants Infopia Korea, Infopia America, and Jant have committed and continue to commit acts of contributory infringement by, among other things, making, using, selling, offering for sale, and/or importing products that do not have substantially non-infringing uses and providing such products to their customers, whose use of such products constitute direct infringement of one or more claims of the '397 Patent in violation of 35 U.S.C § 271(b).

26. PTS has been and will continue to be damaged and irreparably harmed by Defendants Infopia Korea, Infopia America, and Jant's actions of infringement of the '397 Patent unless their infringement is enjoined preliminarily and permanently by this Court.

COUNT II – Violation of the Lanham Act, 15 U.S.C. 1125(a)

27. PTS re-alleges and incorporates by reference the preceding paragraphs of this Complaint.

28. Defendants Infopia USA and Jant have intentionally constructed their packaging and marketing to resemble PTS's CardioChek® Multi-Analyte Strip.

29. Defendants Infopia Korea, Infopia America, and Jant have intentionally designed their LipidPlus test strip bottles (see Exhibit D) to resemble PTS's test strip bottles (See Exhibit E). As shown below, the LipidPlus bottles (top image) include a color stripe on top of a white label of the bottle, the same design used by PTS's bottles (bottom image). Additionally, the LipidPlus strips and bottles are copies of the PTS bottles because they are color coded for different analytes such that the color of the strip matches the color of the strip on the bottle.

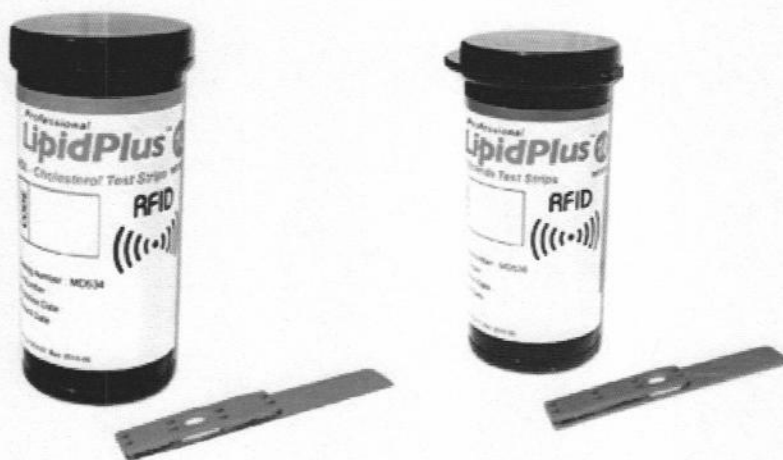


Exhibit D, p. 2



Exhibit E, p. 1 and 2

30. Defendants Infopia Korea, Infopia USA, and Jant have intentionally targeted PTS's distributors and channels of commerce. By presenting copied products, in a copied bottle design, and distributing it via the same distribution channels using the same distributors that PTS uses, Defendants Infopia Korea, Infopia America, and Jant are creating a likelihood of confusion, deception and mistake concerning the source of the products. Defendants Infopia Korea, Infopia America, and Jant are copying an entire line of PTS's business and misappropriating PTS's goodwill.

31. Defendants, Defendants Infopia Korea, Infopia America, and Jant are intentionally infringes PTS's nonfunctional trade dress rights in violation of the Lanham Act, including 15 U.S.C. § 1125(a).

32. PTS has been and will continue to be damaged and irreparably harmed by, Defendants Infopia Korea, Infopia America, and Jant's actions of attempting to pass off their products as PTS's and violating PTS's trade dress rights unless their actions are enjoined preliminarily and permanently by this Court.

33. Due to Defendants Infopia Korea, Infopia America, and Jant's infringement, inducement of infringement, and contributory infringement of the '397 Patent, Plaintiff has suffered damages and will continue to suffer damages in the future.

34. Pursuant to 35 U.S.C. § 285, attorney fees may be awarded to the prevailing party for patent infringement in exceptional cases.

35. Pursuant to 15 U.S.C. § 1117, attorney fees may be awarded to the prevailing party for trade dress infringement and other violations of the Lanham Act in exceptional cases.

36. Defendants' intentional copying of PTS's Multi-Analyte Strip makes Defendants' infringement intentional and this case exceptional.

37. Accordingly, PTS is entitled to attorney fees under 35 U.S.C. §285 and 15 U.S.C. § 1117.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment and relief including:

- (A) That the Court enter a judgment declaring the '397 Patent to be valid and enforceable;
- (B) That the Court enter a judgment declaring that Infopia Korea, Infopia America, and Jant and the LipidPlus Profile Strip do directly or indirectly infringe, contribute to the infringement by another, or induce the infringement of the '397 Patent, either literally or under the doctrine of equivalents;
- (C) That the Court enter a judgment declaring that Defendants Infopia Korea, Infopia America, and Jant have unfairly competed with PTS by infringing and misappropriating PTS's trade dress;
- (D) That Defendants be required to account for all of its gains, profits, and advantages realized from its infringement and unlawful use and practice of the '397 Patent;

- (E) That PTS be awarded lost profits and a reasonable royalty against Defendants for their acts of patent infringement and trade dress infringement, including pre- and post-judgment interest;
- (F) That PTS be awarded treble damages for the willful, intentional, and deliberate character of Defendants' patent infringing acts, pursuant to 35 U.S.C. Section 284;
- (G) That the Court permanently enjoin Defendants Infopia Korea, Infopia America, and Jant, and each of their parents, subsidiaries, affiliates, members, managers, officers, directors, agents, employees, and all persons acting or attempting to act in active concert or participation with one of more of them or on their behalf, from:
 - 1. Infringing the '397 Patent by making, using, importing, exporting, or offering for sale infringing product; and
 - 2. Unfairly competing with PTS by infringing PTS's trade dress and otherwise misappropriating PTS's goodwill.
- (H) That the Court enter a judgment declaring this case to be exceptional pursuant to 35 U.S.C. § 285 and/or 15 U.S.C. § 1117 and granting PTS its attorney fees and costs; and
- (I) Such other and further equitable relief as this Court may deem just and proper.

Plaintiff Demands A Trial By Jury Of All Issues So Triable

Plaintiff demands a trial by jury of all issues so triable.

Respectfully submitted this 8th day of August, 2014.

Respectfully submitted,



David J. Hensel, Atty No.: 15455-49

Julie Smith, Atty No.: 27351-71

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Attorneys for Plaintiffs

Index of Exhibits

- Exhibit A:** August 8, 2006, United States Patent No. 7,087,397, issued August 8, 2006, entitled "Method for determining HDL concentration from whole blood or plasma"
- Exhibit B:** August 1, 2014, LipidPlus Advertisement
- Exhibit C:** December 1, 2009, LipidPro™ 510K Submission
- Exhibit D:** August 1, 2014, Image from Jant website: <http://www.lipidplus.com/products-lipidplus-test-strips.php>
- Exhibit E:** August 1, 2014, Image from PTS website: <http://www.cardiochek.com/>