

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

VERDESIAN LIFE SCIENCES U.S., LLC,

Plaintiff,

v.

REDOX CHEMICALS, LLC,

Defendant.

CIVIL CASE NO. _____

JURY TRIAL DEMANDED

Plaintiff Verdesian Life Sciences U.S., LLC (“Verdesian”) files its Complaint against Defendant Redox Chemicals, LLC (“Redox”) and alleges as follows:

NATURE AND BASIS OF ACTION

1. This is an action for patent infringement that arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, for Redox’s infringement of United States Patent No. 6,831,040 (“the ’040 Patent”). A true and correct copy of the ’040 Patent is attached as Exhibit A.

THE PARTIES

2. Plaintiff Verdesian, a Delaware limited liability company with its principal place of business in Cary, North Carolina, is a leader in the development of innovative nutrient management and efficiency technologies, and is the licensee of several patents, including the ’040 Patent, that cover innovative technologies related to these products. These technologies

include nutritionals and micronutrients, seed treatments and inoculants, crop health chemistry and biologicals, as well as soil surfactants for the agriculture, turf and ornamental industries.

3. Defendant Redox is an Idaho corporation and is headquartered at 130 South 100 West Burley, Idaho 83318. Redox imports, sells, and/or offers for sale fertilizer and related products in the United States, including within Georgia and this judicial district.

JURISDICTION AND VENUE

4. This action arises under the Patent Act, Title 35 of the United States Code, and is an action for patent infringement under § 271.

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Redox pursuant to the laws of the State of Georgia, including under the provisions of the Georgia Long Arm Statute, O.C.G.A. § 9-10-91, based on, among other things, Redox's conduct of business in Georgia and commission of a tortious act within this State, namely the infringement of Los Alamos's '040 Patent.

7. Redox has offered for sale and sold products comprising an infringing composition in Georgia, and has purposely shipped or caused to be shipped infringing products into Georgia. Upon information and belief, Redox has significant contacts in Georgia and has built established distribution channels in Georgia.

8. Redox is registered to do business in Georgia and maintains a registered agent in Georgia located at 4314 Loch Laurel Rd., Valdosta, Georgia, 31601.

9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2) and 1400(b) because, upon information and belief, Redox has, in the Valdosta Division of this District,

distributed the proline-containing products at issue in this matter and a substantial number of the acts giving rise to the claims in this case occurred in this judicial district.

10. Venue is also proper in this Court pursuant to Local Rule 3.4 and 28 U.S.C. § 1391(b)(2) because a substantial number of the acts giving rise to the claims in this case occurred in this judicial district. Redox has continuously and systematically advertised, offered for sale, and sold in the Valdosta Division of this District the products at issue in this matter, and committed a substantial number of the acts of infringement giving rise to the claims in this case in this District. Further, Redox has a regular and established place of business in this district because Redox is registered to do business in Georgia and maintains a registered agent in Valdosta, Georgia.

PLAINTIFFS' INNOVATIONS IN AGRICULTURAL TECHNOLOGY

11. Rapid plant growth and improved crop production technologies are in high demand. Plaintiffs have developed products that impact both plant growth and development.

12. The application of proline (a type of α -amino acid) to plant roots or foliage has been found to lead to an overall increase in plant growth. These prolines include 2-hydroxy-5-oxyproline and 2-pyrrolidone-5-carboxylic acid.

13. Verdesian manufactures and markets nutrient management technologies, which are applied to plants and algae to act as growth enhancers. For example, Verdesian manufactures and markets products including Take Off,[®] which includes proline.

14. Plaintiff has expended significant resources and made substantial investments in research and development directed toward efficiently increasing healthy plant yields. A portfolio of patents, including the '040 Patent, was developed to protect that investment.

U.S. PATENT NO. 6,831,040

15. On December 14, 2004, the United States Patent and Trademark Office duly and lawfully issued the '040 Patent, which is titled "Use of Prolines for Improving Growth and Other Properties of Plants and Algae."

16. The '040 Patent is directed to the use of the chemical class of compounds known as prolines to improve the properties and performance of plants and algae. In particular, the '040 patent is directed to a method of increasing the rate of growth of plants comprising contacting a plant with a proline selected from the group consisting of 2-hydroxy-5-oxoproline (2-oxoglutaramate), 5-oxoproline (interchangeably referred to as 2-pyrrolidone-5-carboxylic acid or PCA), or a mixture of the two.

17. Los Alamos National Security, LLC ("Los Alamos") is the lawful owner of all right, title, and interest in and to the '040 Patent. Verdesian is the exclusive lawful licensee of the '040 Patent entered into with Los Alamos. As licensee, Verdesian has the right to sue on and recover for infringement of the '040 Patent with the permission of Los Alamos. The term of the '040 Patent has not expired.

REDOX'S KNOWLEDGE OF THE '040 PATENT

18. On September 8, 2016, Verdesian sent a cease and desist letter to Redox, which provided notice of its patent directed to fertilizer products containing 2-pyrrolidone-5-carboxylic acid ("PCA"), and alleged that Redox's P-58 product contained PCA. Verdesian explicitly referenced the '040 Patent in that correspondence.

19. On September 22, 2016, Verdesian received correspondence from Redox, confirming receipt of Verdesian's cease and desist letter.

CLAIM I – INFRINGEMENT OF U.S. PATENT NO. 6,831,040

20. The allegations contained in Paragraphs 1 through 19 above are incorporated herein by reference as if set forth fully herein.

21. Upon information and belief, Redox has offered to sell, sold, and/or imported into the United States 5-oxoproline-containing products and its product identified as P-58, and continues to do so, without authority from the '040 Patent assignee (Los Alamos) or licensee (Verdesian).

22. On information and belief, Redox has known about Plaintiff's technology and has known that Plaintiff's technology is patented by, *inter alia*, the '040 Patent, since at least as early as September 8, 2016, when Verdesian sent a cease and desist letter to Redox.

23. In correspondence to Verdesian dated September 22, 2016, Redox confirmed its receipt of Verdesian's September 8 correspondence and that Redox has been aware of the '040 Patent since no later than September 22, 2016.

24. Redox has directly and indirectly infringed at least Claim 1 of the '040 Patent in violation of at least 35 U.S.C. §§ 271(a), 271(b) and 271(g), and continues to do so.

25. On information and belief, Redox is a United States wholesale distributor that imports into the United States, makes, offers to sell, sells, or uses within the United States the P-58 product, which contains an infringing composition. Redox's use, sale, offer for sale, or importation into the United States of the P-58 product directly infringes, and actively induces and contributes to infringement of the '040 Patent.

26. On information and belief, Redox markets and distributes the P-58 product to resellers, growers, and end users of the P-58 product. Redox knowingly and intentionally accompanies the P-58 product with a product label that includes instructions for using and applying the P-58 product. Accordingly, Redox induces resellers, growers, and end users of the P-58 product to directly infringe one or more claims of the '040 Patent. In addition, on information and belief, Redox encourages acts of direct infringement with knowledge of the '040 Patent and knowledge that it is encouraging infringement.

27. Upon information and belief, Redox's infringement of the '040 Patent has been willful, egregious, and deliberate and the infringement was either known to Redox or so obvious that it should have been known to Redox that its actions constitute infringement of the '040 Patent.

28. Verdesian has been and will continue to be damaged and irreparably injured unless this Court enjoins Redox's infringing activities.

DEMAND FOR JURY TRIAL

29. Plaintiff respectfully requests a trial by jury on all the issues triable thereby pursuant to Rule 38 of the Federal Rules of Civil Procedure as to all issues in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully seeks that the Court grant the following relief:

1. Enter judgment for Plaintiff against Redox for direct and indirect infringement of the '040 Patent pursuant to 35 U.S.C. §§ 271(a), 271(b) and 271(g);

2. Permanently enjoin Redox, its officers, agents, servants, employees, attorneys, and all other persons acting in concert or participation with them, from directly or indirectly infringing, inducing infringement or contributing to the infringement of any claim of the '040 Patent pursuant to 35 U.S.C. § 283;

3. Enter judgment in favor of Plaintiff and against Redox for an amount that will adequately compensate it for Redox's infringement, but under no circumstances an amount less than a reasonable royalty for Redox's use of the '040 Patent;

4. Enter judgment in favor of Plaintiff and against Redox for pre-judgment interest and post-judgment interest on all damages awarded;

5. Enter judgment in favor of Plaintiff and against Redox for three times the amount of damages pursuant to 35 U.S.C. § 284 because of Redox's willful infringement;

6. Enter judgment in favor of Plaintiff and against Redox for Plaintiff's attorneys' fees and costs pursuant to 35 U.S.C. § 285;

7. Enter judgment in favor of Plaintiff and against Redox for Plaintiff's costs of suit; and

8. Enter other such and further relief as the Court may deem just and proper.

Respectfully submitted, this 2nd day of June, 2017.

/s/ Matthew W. Howell

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