

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

**VETGEN LLC, THE REGENTS OF
THE UNIVERSITY OF MICHIGAN,
AND THE BOARD OF TRUSTEES
OF MICHIGAN STATE UNIVERSITY,**

Plaintiffs,

v.

**MEDICAL DIAGNOSTIC
LABORATORIES, L.L.C. AND
VETNOSTIC LABORATORIES,**

Defendants.

Civil Action No: T/B/D

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs VetGen LLC ("VetGen"), The Regents of The University of Michigan ("University of Michigan") and The Board of Trustees of Michigan State University ("Michigan State University") file this action for patent infringement against Defendants Medical Diagnostic Laboratories, L.L.C. ("MDL") and VetNostic Laboratories ("VetNostic") seeking damages and injunctive relief. Plaintiffs allege as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 et seq., alleging infringement of United States Patent Nos. 6,040,143 ("the '143 patent"); 6,074,832 ("the '832 patent"); 6,410,237 ("the '237 patent"); 6,767,707 ("the '707 patent") and 6,780,583 ("the '583 patent"). Copies of the patents are

attached hereto as Exhibits A-E respectively, and are incorporated herein by reference in their entirety.

JURISDICTION AND VENUE

2. This Court has exclusive subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over the Defendants because Defendants have corresponded with Plaintiffs in this district concerning their infringing products and the patents-at-issue. Defendants also have, upon information and belief, conducted business in this district and infringed Plaintiffs' patents in this district (at a minimum by offering for sale and/or selling DNA testing services which fall within the scope of the claims of the '143, '832, '237, '707, and '583 patents).

4. Moreover, upon information and belief, Defendants continue to conduct business in this district and infringe the '143, '832, '237, '707, and '583 patents in this district.

5. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(b), 1391(c) and/or 1400(b), in that a substantial part of the events giving rise to Plaintiffs' claims occurred in the Eastern District of Michigan and the Defendants are subject to personal jurisdiction in the Eastern District of Michigan (and thus for purposes of venue the Defendants reside in the District of Michigan).

THE PARTIES

6. Plaintiff VetGen is a business organized and existing under the laws of Delaware and having its principal place of business at 3728 Plaza Dr. Ste. One, Ann Arbor, MI 48108.

7. Plaintiff The Regents of the University of Michigan is a public university organized and existing under the laws of Michigan, having a principal address of 1600 Huron Parkway, Second Floor, Ann Arbor, Michigan 48109-2590.

8. Plaintiff Michigan State University is a public university organized and existing under the laws of Michigan, having a principal address of 325 E. Grand River, Suite 350, East Lansing MI, 48823.

9. Upon information and belief and after a reasonable opportunity for further discovery, Defendants MDL and VetNostic are corporations organized and existing under the laws of the state of New Jersey, having a principal place of business at 2439 Kuser Rd, Hamilton, NJ 08690.

THE PATENTS IN SUIT

10. In both dogs and humans von Willebrand's disease ("vWD") is a bleeding disorder of variable severity that results from a quantitative or qualitative defect in von Willebrand factor ("vWF"). There are three types of vWD. Type 1 vWD is the most common form and can cause serious bleeding problems. It is generally less severe than the other two types. In Type 2 vWD, patients have essentially normal levels of vWF, but the factor is abnormal and can lead to complications. Type 3 vWD is the most severe form of the disease. Serious bleeding episodes require transfusions of blood or cryoprecipitate to supply the missing vWF.

11. The inventors of the patents-at-issue were driven to identify the nucleic acid sequence encoding canine vWF and to provide tests from which it could be determined whether a patient carried a vWD DNA mutation. This led to the claimed inventions.

12. The '143 patent is entitled "DNA Encoding Von Willebrand Factor and Methods of Use" and was duly and legally issued on March 21, 2000.

13. The '832 patent is entitled "DNA Encoding Canine Von Willebrand Factor and Methods of Use" and was duly and legally issued June 13, 2000.

14. The '237 patent is entitled "DNA Encoding Canine Von Willebrand Factor and Methods of Use" and was duly and legally issued June 25, 2002.

15. The '707 patent is entitled "DNA Encoding Canine Von Willebrand Factor and Methods of Use" and was duly and legally issued July 27, 2004.

16. The '583 patent is entitled "DNA Encoding Canine Von Willebrand Factor and Methods of Use" and was duly and legally issued August 24, 2004.

17. The assignees of the patents are the University of Michigan and Michigan State University (together, "the Universities").

18. VetGen is the exclusive licensee of the '143, '832, '237, '707 and '583 patents.

19. The '143, '832, '237, '707 and '583 patents are valid and enforceable and have been at all times relevant to this action.

20. The '143 patent was previously litigated against infringer Genesearch LLC. In that action, Genesearch LLC was found to infringe on summary judgment. *The Regents of the University of Michigan et al. v. Genesearch, L.L.C. et al.*, Civ No. 5:00-cv-60250-MOB, 2002 WL 32341282 (E.D. Mich. July 11, 2002). The judgment was appealed, and the judgment was affirmed. *The Regents of the University of Michigan et al. v. Genesearch, L.L.C. et al.*, 81 Fed. Appx. 335 (Fed. Cir. 2003). The '143 patent therefore is a strong, battle-tested patent.

21. The '143, '832, '237, '707 and '583 patents claim the sequence of the canine vWF cDNA, the deduced amino acid sequence and methods of testing whether a patient (*e.g.*, canine) carries a vWD DNA mutation.

22. Claim 15 of the '143 patent is a representative claim. Claim 15 claims a nucleotide which can hybridize to a vWF gene:

Claim 15: An isolated oligonucleotide sequence consisting of contiguous nucleotides of the nucleic acid sequence of SEQ ID NO. 1 and capable of specifically hybridizing with the canine von Willebrand Factor gene.

'143 patent, Col. 49, lns. 21-24.

23. The claims of the patents-at-issue also embody methods of detecting vWF for genetic mutations that give rise to vWD. Claim 17 of the '143 patent is representative of such claims:

Claim 17: A method of detecting a canine von Willebrand Factor gene in a sample comprising the steps of:

- a) contacting the sample with an oligonucleotide comprising contiguous nucleotides of the nucleic acid sequence of SEQ ID NO. 1 and capable of specifically hybridizing with the canine von Willebrand Factor gene, under conditions favorable for hybridization of the oligonucleotide to any complementary sequences of nucleic acid in the sample; and
- b) detecting hybridization, thereby detecting a canine von Willebrand Factor gene.

'143 patent, Col. 49, lns. 30-41.

THE INFRINGING PRODUCTS

24. Defendants MDL and VetNostic make, use, offer for sale and sell genetic testing for canines, including, but not limited to, genetic tests for von Willebrand Disease Type I, von Willebrand Disease Type III (for Scottish Terriers) and/or von Willebrand Disease Type III (for Shetland Sheepdogs).

25. The performance of and the components utilized in these tests fall within the '143, '832, '237, '707 and/or '583 patents. For example, Defendants claim that their von Willebrand Disease Type I, von Willebrand Disease Type III (for Scottish Terriers) and/or von Willebrand Disease Type III (for Shetland Sheepdogs) tests can determine whether or not canine samples

contain “one or two copies of the vWD causing gene.” Exhibit F, VetNostic Webpage for vWD services, available at <http://www.vetnostic.com/von-willebrand-disease-type-1.html> (“VetNostic Laboratories’ genetic tests for von Willebrand Disease can reliably identify dogs that are either clear, or possess one or two copies of the vWD causing gene.”). Because Defendants can determine if there are multiple copies of the vWD causing gene, their tests (upon information and belief) must utilize probes which bind to the mutation sites on the vWD causing gene, and therefore must infringe the asserted patents.

26. Defendants MDL and VetNostic do not have a license or other authorization to practice the claims set forth in the patents.

27. MDL’s and VetNostic’s infringement has harmed Plaintiffs at a minimum by taking sales that VetGen would have otherwise made.

DEFENDANTS’ WILLFUL INFRINGEMENT

28. MDL and VetNostic are aware of at least the '143 and '832 patents.

29. VetGen’s webpages prominently display that the vWF testing services offered by VetGen fall within the '143 and '832 patents.

30. Upon information and belief, and after an opportunity for further discovery, VetNostic visited VetGen’s webpages, including pages marked with the '143 and '832 patents.

31. At a minimum, by March 2010, MDL and VetNostic were aware of at least two of the patents at issue.

32. From March 2010 to December 15, 2011, Plaintiffs communicated with MDL and VetNostic in an attempt to amicably resolve this situation. MDL and VetNostic, however, refused to stop marketing their services, and continued offering services that infringed Plaintiffs’ patents.

33. During these communications, MDL and VetNostic refused to provide evidence for how their services, tests and components utilized in such tests differed from the claims of the patents-at-issue.

34. Despite their knowledge of at least the '143 and '832 patents, and knowing with an objectively high likelihood they were infringing, MDL and VetNostic continued to offer infringing tests and utilized components in those tests that fell within the scope of the patents-at-issue.

COUNT I
MDL AND VETNOSTIC'S PATENT INFRINGEMENT UNDER 35 U.S.C. § 271
OF THE '143 PATENT

35. Plaintiffs incorporate by reference the allegations of paragraphs 1-34.

36. MDL and VetNostic have directly infringed the '143 patent at a minimum by making, using, selling and offering for sale tests and/or components that fall within the scope of the '143 patent, including, but not limited to, the genetic tests described above.

37. Upon information and belief, MDL and VetNostic have infringed the '143 patent in this district and elsewhere in the United States.

38. MDL and VetNostic have caused and will continue to cause Plaintiffs substantial damage and irreparable injury by virtue of their continuing infringement.

39. Plaintiffs are entitled to recover from MDL and VetNostic the damages sustained by Plaintiffs as a result of MDL and VetNostic's wrongful acts in an amount subject to proof at trial and an injunction preventing MDL and VetNostic from continuing its wrongful acts.

40. Upon information and belief and after an opportunity for further discovery, Defendants' infringement of the '143 patent is willful and deliberate.

COUNT II
MDL AND VETNOSTIC'S PATENT INFRINGEMENT UNDER 35 U.S.C. § 271
OF THE '832 PATENT

41. Plaintiffs incorporate by reference the allegations of paragraphs 1-40.
42. MDL and VetNostic have directly infringed the '832 patent at a minimum by making, using, selling and offering for sale tests and/or components that fall with the scope of the '832 patent, including, but not limited to, the genetic tests described above.
43. Upon information and belief, MDL and VetNostic have infringed the '832 patent in this district and elsewhere in the United States.
44. MDL and VetNostic have caused and will continue to cause Plaintiffs substantial damage and irreparable injury by virtue of their continuing infringement.
45. Plaintiffs are entitled to recover from MDL and VetNostic the damages sustained by Plaintiffs as a result of MDL and VetNostic's wrongful acts in an amount subject to proof at trial and an injunction preventing MDL and VetNostic from continuing their wrongful acts.
46. Upon information and belief and after an opportunity for further discovery, MDL and VetNostic's infringement of the '832 patent is willful and deliberate.

COUNT III
MDL AND VETNOSTIC'S PATENT INFRINGEMENT UNDER 35 U.S.C. § 271
OF THE '237 PATENT

47. Plaintiffs incorporate by reference the allegations of paragraphs 1-46.
48. MDL and VetNostic have directly infringed the '237 patent at a minimum by making, using, selling and offering for sale tests and/or components that fall with the scope of the '237 patent, including, but not limited to, the genetic tests described above.
49. Upon information and belief, MDL and VetNostic have infringed the '237 patent in this district and elsewhere in the United States.

50. MDL and VetNostic have caused and will continue to cause Plaintiffs substantial damage and irreparable injury by virtue of their continuing infringement.

51. Plaintiffs are entitled to recover from MDL and VetNostic the damages sustained by Plaintiffs as a result of MDL and VetNostic's wrongful acts in an amount subject to proof at trial and an injunction preventing MDL and VetNostic from continuing their wrongful acts.

52. Upon information and belief and after an opportunity for further discovery, MDL and VetNostic's infringement of the '237 patent is willful and deliberate.

COUNT IV
MDL AND VETNOSTIC'S PATENT INFRINGEMENT UNDER 35 U.S.C. § 271
OF THE '707 PATENT

53. Plaintiffs incorporate by reference the allegations of paragraphs 1-52.

54. MDL and VetNostic have directly infringed the '707 patent at a minimum by making, using, selling and offering for sale tests and/or components that fall within the scope of the '707 patent, including, but not limited to, the genetic tests described above.

55. Upon information and belief, MDL and VetNostic have infringed the '707 patent in this district and elsewhere in the United States.

56. MDL and VetNostic have caused and will continue to cause Plaintiffs substantial damage and irreparable injury by virtue of their continuing infringement.

57. Plaintiffs are entitled to recover from MDL and VetNostic the damages sustained by Plaintiffs as a result of MDL and VetNostic's wrongful acts in an amount subject to proof at trial and an injunction preventing MDL and VetNostic from continuing their wrongful acts.

58. Upon information and belief and after an opportunity for further discovery, MDL and VetNostic's infringement of the '707 patent is willful and deliberate.

COUNT V
MDL AND VETNOSTIC'S PATENT INFRINGEMENT UNDER 35 U.S.C. § 271
OF THE '583 PATENT

59. Plaintiffs incorporate by reference the allegations of paragraphs 1-58.

60. MDL and VetNostic have directly infringed the '583 patent at a minimum by making, using, selling and offering for sale tests and/or components that fall within the scope of the '583 patent, including, but not limited to, the genetic tests described above.

61. Upon information and belief, MDL and VetNostic have infringed the '583 patent in this district and elsewhere in the United States.

62. MDL and VetNostic have caused and will continue to cause Plaintiffs substantial damage and irreparable injury by virtue of their continuing infringement.

63. Plaintiffs are entitled to recover from MDL and VetNostic the damages sustained by Plaintiffs as a result of MDL and VetNostic's wrongful acts in an amount subject to proof at trial and an injunction preventing MDL and VetNostic from continuing their wrongful acts.

64. Upon information and belief and after an opportunity for further discovery, MDL and VetNostic's infringement of the '583 patent is willful and deliberate.

WHEREFORE, Plaintiffs respectfully requests that the Court enter a judgment as follows:

A. That Defendants have infringed the '143, '832, '237, '707, and '583 patents under 35 U.S.C. § 271;

B. Permanently enjoining and restraining Defendants, their officers, directors, agents, servants, employees, licensees, successors, assigns, those in concert and participation with them, and all persons acting on their behalf or within their control under 35 U.S.C. § 283 from further acts that infringe the '143, '832, '237, '707, and '583 patents, including but not

limited to, making, using, selling, offering to sell, importing, exporting, advertising, or otherwise using, contributing to the use of, or inducing the use of all infringing services or tests produced by Defendants;

C. Requiring Defendants to:

1. Send a copy of any decision in this case in favor of Plaintiffs to each person or entity to whom Defendants have offered for sale or sold infringing tests or services or otherwise utilized any components found to infringe the '143, '832, '237, '707, and '583 patents, and informing such persons or entities of the judgment and that the sale or solicited commercial transaction was wrongful;

2. Destroy or deliver to Plaintiffs all infringing tests and components for such tests produced or utilized by Defendants to Plaintiffs;

3. File with the Court and serve upon Plaintiffs, within thirty (30) days after entry of final judgment in this case, a report in writing and subscribed under oath setting forth in detail the form and manner in which Defendants have complied with the Court's orders as prayed for;

4. Prohibit the release of any test results obtained by Defendants' for its customers, whether the tests are scheduled, ongoing or occurred in the past; and

5. Prominently post a copy of any final decision in Plaintiffs' favor on the Defendants' websites.

D. Awarding Plaintiffs patent infringement damages and pre-judgment interest pursuant to 35 U.S.C. § 284 including, but not limited to, lost profits and/or a reasonable royalty;

E. Awarding treble damages for willful infringement pursuant to 35 U.S.C. § 284;

F. Declaring the case exceptional and awarding Plaintiffs reasonable costs and attorneys fees pursuant to 35 U.S.C. § 285;

G. Granting Plaintiffs such other and further relief as justice and equity may require.

JURY DEMAND

Plaintiffs request a jury trial.

Respectfully submitted,

VETGEN LLC, THE REGENTS OF THE UNIVERSITY
OF MICHIGAN, AND THE BOARD OF TRUSTEES OF
MICHIGAN STATE UNIVERSITY

Dated: May 15, 2012

By its attorneys,
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