

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

METABOLON, INC.,

Plaintiff,

v.

STEMINA BIOMARKER DISCOVERY, INC.,

Defendant.

No. 12-cv-618

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY DEMAND

Plaintiff Metabolon, Inc. ("Metabolon"), by and through its attorneys, alleges for its Complaint against Stemina Biomarker Discovery, Inc. ("Stemina") as follows:

NATURE OF THE ACTION

1. Metabolon brings this action to recover damages and obtain injunctive and other relief arising from Stemina's infringement of Metabolon's patents. Metabolon is the co-owner of patented technology relating to diagnostic products and services for the global analysis of complex biological samples for the discovery of markers and pathways associated with drug action, toxicity and disease. Metabolon's claims arise out of Stemina's services that directly infringe the claims of U.S. Patent No. 7,550,258 B2 ("the '258 Patent") and U.S. Patent No. 7,910,301 B2 ("the '301 patent").

PARTIES

2. Plaintiff Metabolon is a corporation organized and existing under the laws of Delaware, with a principal place of business at 617 Davis Drive, Suite 400, Durham, North Carolina, 27713.

1 3. Upon information and belief, Defendant Stemina is a corporation organized and
2 existing under the laws of Wisconsin, with a principal place of business at 504 S. Rosa Road,
3 Suite 150, Madison, Wisconsin 53719.

4 **JURISDICTION AND VENUE**

5 4. This Court has jurisdiction over Metabolon's claims for infringement of the '258
6 and '301 Patents under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, pursuant to 28
7 U.S.C. §§ 1331 and 1338(a).

8 5. This Court has personal jurisdiction over Stemina because Stemina is incorporated
9 in the State of Wisconsin and maintains its principal place of business within this judicial district.
10 Upon information and belief, Stemina performs, offers for sale or license, sells or licenses, and
11 advertises its platform and services within the State of Wisconsin and this judicial district, has
12 purposefully availed itself of the privileges and benefits of the laws of the State of Wisconsin, and
13 committed acts of patent infringement during the course of its business in this judicial district.

14 6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c) and
15 (d) and 1400(b).

16 **METABOLON'S CLAIMS OF INFRINGEMENT**

17 **Metabolon and Its '258 and '301 Patents**

18 7. Metabolon is a diagnostic products and services company with a leading
19 biochemical profiling platform employing the methods of the patents in suit. Metabolon's
20 methods of analyzing biological samples enable the identification of biomarkers used in the
21 development of a wide range of diagnostics. Metabolon develops technology and methodologies
22 that detect and quantify small molecules present in complex biological specimens. These small
23 molecules represent the products of cellular metabolism, which change in response to disease,
24 drug therapies and toxins.

25 8. On June 23, 2009, the '258 Patent entitled "Methods for Drug Discovery, Disease
26 Treatment, and Diagnosis Using Metabolomics" was duly and legally issued by the United States
27 Patent and Trademark Office. A true and correct copy of the '258 Patent is attached as Exhibit 1.
28

9. Each of the inventors of the '258 Patent has assigned the '258 Patent to Metabolon and Cornell Research Foundation, Inc., ("Cornell Research"). Therefore, Metabolon has joint ownership with Cornell Research of all right, title and interest to and in the '258 Patent. Pursuant to the agreement between Cornell Research and Metabolon, Metabolon has a) the exclusive right to license the '258 Patent, b) the right to bring suit as sole plaintiff for infringement of the '258 Patent and c) the right to recover damages for infringement of the '258 Patent.

10. On March 22, 2011, the '301 Patent entitled "Methods for Drug Discovery, Disease Treatment, and Diagnosis Using Metabolomics" was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '301 Patent is attached as Exhibit 2.

11. Each of the inventors of the '301 Patent has assigned the '301 Patent to Metabolon and Cornell Research. Therefore, Metabolon has joint ownership with Cornell Research of all right, title and interest to and in the '301 Patent. Pursuant to the agreement between Cornell Research and Metabolon, Metabolon has a) the exclusive right to license the '301 Patent, b) the right to bring suit as sole plaintiff for infringement of the '301 Patent and c) the right to recover damages for infringement of the '301 Patent.

Stemina and Its Infringement of the '258 and '301 Patents

12. Stemina's website states that it "offers a broad suite of metabolomics services focused on identifying metabolites and biomarkers of many biological processes. By focusing on changes in small molecules, either secreted or consumed by cells, the metabolomics platform is capable of identifying metabolite patterns associated with toxicology, cellular response to drugs or chemicals, or biomarkers associated with disease."

13. Upon information and belief, Stemina's services are performed at Stemina's facilities located in this District.

14. Upon information and belief, and as more fully set forth below, in the course of performing the services that Stemina is offering for sale and selling in this United States and in

1 this District, either directly or through distributors, Stemina is practicing the methods of the '258
2 and '301 patents.

3 15. Prior to the filing of this suit, Metabolon notified Stemina of its infringement of
4 the '258 and '301 patents. Metabolon offered to Stemina a patent license, which would have
5 allowed Stemina to practice the methods of the '258 and '301 patent, as well as the claims of
6 other patents in Metabolon's Metabolomics Methods Patent Portfolio, on reasonable financial
7 terms. After almost five months of negotiation, Stemina declined to sign a license agreement with
8 Metabolon.

9 **FIRST CAUSE OF ACTION**

10 **Patent Infringement**

11 16. Metabolon hereby realleges and incorporates by reference each and every
12 allegation set forth in paragraphs 1 through 15 above.

13 17. Metabolon, which has the exclusive right to license the '258 Patent, has not
14 licensed or otherwise authorized Stemina to make, use, offer for sale, or sell any services that
15 employ the invention of the '258 Patent.

16 18. On information and belief, Stemina has directly infringed and continues to directly
17 infringe one or more claims of the '258 Patent by offering, selling and providing, in the United
18 States metabolomics services, including services utilizing brain tumor stem cells ("BTSC"),
19 human embryonic stem cells ("hESC") and human and animal tissue and fluid, which services
20 employ methods which use the inventions of the '258 patent.

21 19. Upon information and belief, Stemina's infringement of one or more claims of
22 Metabolon's '258 Patent has been and will continue to be willful, wanton and deliberate.

23 20. Metabolon is damaged and irreparably injured by Stemina's infringing activities
24 and will continue to be so damaged and irreparably injured unless and until Stemina's infringing
25 activities are enjoined by this Court.

SECOND CAUSE OF ACTION

Patent Infringement

21. Metabolon hereby realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 15 above.

22. Metabolon, which has the exclusive right to license, the '301 patent, has not licensed or otherwise authorized Stemina to make, use, offer for sale, or sell any services that employ the invention of the '301 Patent.

23. On information and belief, Stemina has directly infringed and continues to directly infringe one or more claims of the '301 Patent by offering, selling and providing in the United States metabolomics services, including services utilizing hESC cells which services employ methods which use the inventions of the '301 patent.

24. Upon information and belief, Stemina's infringement of one or more of the claims of Metabolon's '301 Patent has been and will continue to be willful, wanton and deliberate.

25. Metabolon is damaged and irreparably injured by Stemina's infringing activities and will continue to be so damaged and irreparably injured unless and until Stemina's infringing activities are enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Metabolon prays for judgment as follows:

A. An entry of judgment that the '258 Patent and '301 Patent are each valid and enforceable;

B. An entry of judgment holding Stemina liable for infringement of one or more claims of each of the '258 Patent and the '301 Patent;

C. An order permanently enjoining Stemina, its officers, agents, representatives, employees, attorneys and affiliated companies, their assigns and successors in interest, and those persons in active concert or participation with them, from continued acts of infringement of the '258 Patent and the '301 Patent;

1 D. An order awarding Metabolon all damages adequate to compensate for Stemina's
2 infringement of the '258 Patent and the '301 Patent, and in no event less than a reasonable royalty
3 for Stemina's acts of infringement, together with prejudgment and post-judgment interest;

4 E. Trebling of damages under 35 U.S.C. § 284 in view of the willful and deliberate
5 nature of Stemina's infringement of the '258 Patent and the '301 Patent, together with
6 prejudgment and post-judgment interest;

7 F. An order awarding Metabolon its costs and attorneys' fees pursuant to 35 U.S.C. §
8 285; and

9 G. Any and all other legal and equitable relief as may be available under the law and
10 which the Court may deem proper.

11 **DEMAND FOR A JURY TRIAL**

12 Metabolon hereby demands a jury trial on all issues so triable under the law as provided
13 by Rule 38(b) of the Federal Rules of Civil Procedure.

1 Dated: August 24, 2012

Respectfully Submitted,

3 By: /s/ Patricia A. Martone

4 Patricia A. Martone
5 (application for *Pro Hac Vice*
6 admission pending)
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