

United States District Court,
S.D. California.

BECTON DICKINSON AND COMPANY,
Plaintiff.

v.

SYNTRON BIORESEARCH, INC,
Defendant.

SYNTRON BIORESEARCH, INC,
Counterclaimant.

v.

BECTON DICKINSON AND COMPANY,
Counterdefendant.

No. 97-CV-1634 K JAH

Dec. 21, 1998.

Edward F. Mallowney, Fish & Neave, Palo Alto, California, Robert D. Rose, Lorenz Alhadeff Cannon & Rose, LLP, San Diego, California, for Plaintiff and Counter-Defendant.

Arthur M. Lieberman, Eieberman & Nowak, LLP, New York, NY, R.J. Coughlan, Jr., Coughlan, Semmer & Lipman, San Diego, California, for Defendant and Counter-Claimant.

CONSENT JUDGMENT AND DISMISSAL

KEEP, J.

The parties, Becton Dickinson and Company ("Becton Dickinson") and Syntron Bioresearch, Inc. ("Syntron"), having resolved their differences in the above-captioned matter. hereby consent, through their respective counsel, to the entry of the following judgment:

IT IS HEREBY ORDERED:

1. The Court has jurisdiction over the parties and the subject matter of this action.
2. In all matters between the parties, United States Patent No. 4,703,017 ("the '017 patent") is in all respects valid and enforceable.
3. The '017 patent has been (and, but for the Campbell License Agreement entered into between the parties to settle this action, would continue to be) infringed by Syntron's manufacture, use, offer for sale, and sale of PRODUCTS (as that term is defined in the Campbell License Agreement).

4. As to the '017 patent, in addition to claim preclusive effect, this Consent Judgment also will have issue preclusive effect as to Syntron and its assignees, successors in interest, subsidiaries and divisions.

5. Subject to and conditioned upon timely payments by Syntron of the amounts provided in the Campbell License Agreement for royalties on Syntron's pre-January 1, 1999 sales of PRODUCTS, all of the parties' claims and defenses that are based on the '017 patent (i.e., Becton Dickinson's claim of infringement and Syntron's defenses and counterclaims of invalidity, unenforceability, and non-infringement) are dismissed *with* prejudice.

6. All of the parties' claims and defenses that are based on U.S. Patent No. 5,591,645 ("the '645 patent") (i.e., Becton Dickinson's claim of infringement and Syntron's defenses and counterclaims of invalidity, unenforceability, and non-infringement) are dismissed *without* prejudice. Thus, each party retains all of its rights in regard to the '645 patent.

7. Because the claims related to the '645 patent are dismissed *without* prejudice, the protective order governing confidential information shall be modified to allow outside counsel for each party to maintain one copy only of the documents produced to them by the opposing party.

8. The parties shall comply with the terms of the Campbell License Agreement and the Settlement Agreement entered into between the parties to settle this action, and the Court retains jurisdiction for the purpose of enforcing that license agreement, including the imposition of appropriate remedies for non-compliance. The Court also retains jurisdiction for the purpose of resolving disputes concerning the scope and effect of this Consent Judgment.

9. Each party shall bear its own costs and attorneys' fees incurred in this action.

10. The parties waive all right to appeal from this Consent Judgment.

S.D.Cal.,1998.

Becton Dickinson and Co. v. Syntron Bioresearch, Inc.

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