

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

PATECT, LLC,
Relator,
v.

CORNING INCORPORATED,
Defendant.

Civil Action No.

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR FALSE PATENT MARKING

Relator Patect, LLC (“Relator”) makes the following allegations against Corning Incorporated (“Corning” or “Defendant”):

NATURE OF THE ACTION

1. This is a *qui tam* action for false patent marking under 35 U.S.C. § 292.

PARTIES

2. Relator is a Texas limited liability company having a principal place of business at 1177 West Loop South, Suite 1700, Houston, TX 77027. Relator has appointed Law Tech Services, Inc., 1177 West Loop South, Suite 1700, Houston, TX 77027, as its agent for service of process.

3. On information and belief, Corning is a New York corporation with its principal place of business at One Riverfront Plaza, Corning, NY 14831. Corning has appointed Corporation Service Company, 80 State Street, Albany, NY 12207-2543, as its agent for service of process.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this Forum, including: (i) at least a portion of the false marking, affixing, or advertising alleged herein; and/or (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and/or services provided to individuals in Texas and in this District.

6. Venue is proper in this district under 28 U.S.C. §§1391(b), 1391(c), and 1395(a). Defendant has and/or continues (and/or has and continues to cause others) to transact business in this District, and has and/or continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising, in this District, the product(s) subject to this Complaint, which Defendant has and/or continues (and/or has and continues to cause others) to make, use, offer for sale, or sell in, and/or import into, this District.

FACTS

7. Corning has and/or continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising patents, including, by way of example only, U.S. Patent No. 4,568,649 ("the '649 Patent"), a true and correct copy of which is attached as Exhibit A, in connection with Defendant's products and/or related product packaging and advertisements, including, by way of example only, the Corning[®] Nonbinding Surface (NBS[™]) Microplates products, as illustrated in both Exhibits B-C.

8. The '649 Patent (Exhibit A), which is titled "Immediate Ligand Detection Assay," was filed in the United States on February 22, 1983 and issued on February 4, 1986.

9. The '649 Patent expired, at the very latest, on February 22, 2003.

10. When the '649 Patent expired, all future rights in that patent ceased to exist.

11. Subsequent to expiration of the '649 Patent, Corning has and/or continues (and/or has and/or continues to cause others) to mark upon, affix to, and/or use in advertising the '649 Patent in combination with its Corning[®] Nonbinding Surface (NBS[™]) Microplates products. *See, e.g., Exhibit B* (containing product literature, which was available on Corning's website at the time of filing of this Original Complaint,¹ bearing a copyright date of 2007, and marking, affixing, and/or advertising the Corning[®] Nonbinding Surface (NBS[™]) Microplates products in combination with the '649 Patent); *see also Exhibit C* (containing product literature, bearing a copyright date of 2007, and marking, affixing, and/or advertising the Corning[®] Nonbinding Surface (NBS[™]) Microplates products in combination with the '649 Patent).

12. Corning is a large, sophisticated company. *See, e.g., Exhibit D* at p. 17 (containing, in part, Corning's 2009 Annual Report, which indicates that Corning's stock is traded on the New York Stock Exchange); *see also id.* at p. 1 ("Corning is a global, technology based-based corporation that operates in five reportable business segments: Display Technologies, Telecommunications, Environmental Technologies, Specialty Materials and Life Sciences. Corning manufactures and processes products at approximately 60 plants in 13 countries.").

13. Corning has, and routinely retains, sophisticated legal counsel. *See, e.g., Exhibit D* at p. 8 (noting Corning's general counsel).

¹ Corning's website, www.corning.com/uploadedFiles/Lifesciences/PDFs/ProductInformation/HTSAssayLabelFreeDetection/ddg_nbsmicroplate_ss_alsp_nbs_003_rev1.pdf (last visited Aug. 21, 2010).

14. Corning has decades of experience applying for, obtaining, licensing, and/or litigating patents. *See, e.g., Exhibit D* at p. 5 (“Inventions by members of Corning’s research and engineering staff have been, and continue to be, important to [Corning’s] growth. Patents have been granted on many of these inventions in the United States and other countries. Some of these patents have been licensed to other manufacturers In 2009, Corning was granted over 180 patents in the U.S. and over 300 patents in countries outside the U.S.”).

15. Corning knows, and at the very least reasonably should know, that an expired patent does not cover any of the accused Corning products, or any products whatsoever. *See, e.g., Exhibit D* at p. 6 (acknowledging Corning’s ability to calculate a patent’s lifetimes by stating that “[b]etween 2010 and 2012, approximately 11% of [Corning’s 4,350] patents will expire . . .”).

16. As a result of its false marking, Corning has injured the United States Government, including its sovereign interest, and Defendant’s existent and potential competitors, as well as the general public, including Relator—a member of the general public incurring the time and expense associated with enforcement. *See, e.g., Exhibit D* at p. 6 (“Corning believes that its patent portfolio will continue to provide a competitive advantage in protecting Corning’s innovation, although Corning’s competitors in each of its businesses are actively seeking patent protection as well.”).

CLAIM

17. Relator incorporates paragraphs 1–16 as if fully set forth herein. Corning has violated 35 U.S.C. § 292 by falsely marking, affixing, and/or advertising its products,

including the Corning[®] Nonbinding Surface (NBS[™]) Microplates products, with intent to deceive the public.

PRAYER FOR RELIEF

WHEREFORE, Relator respectfully requests that this Court enter:

- (a). A judgment in favor of Relator that Defendant has falsely marked items in violation of 35 U.S.C. § 292;
- (b). A monetary award pursuant to 35 U.S.C. § 292 in the form of a civil fine of \$500 per falsely marked article, or an alternative amount, as set by the Court, one-half of any such award to be paid to the United States;
- (c). An accounting for any falsely marked articles not presented at trial and a monetary award set by the Court for such falsely marked articles;
- (d). An award of pre-judgment and post-judgment interests on any monetary award;
- (e). An injunction prohibiting Defendant, and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from violating 35 U.S.C. §292; and
- (f). Any and all other relief, at law or equity, to which Relator may show itself to be entitled.

DEMAND FOR JURY TRIAL

Relator, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: August 22, 2010

Respectfully submitted,

By: /s/ Hao Ni

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