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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALLTECH, INC.,

Plaintiff,

vs.

CENZONE TECH, INC. and JUNG
FU WU,

Defendants.

CASE NO. 06 CV 0153 JM (RBB)

ORDER (1) DENYING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT ON
PATENT INVALIDITY, (2)
GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT ON PATENT
INFRINGEMENT, (3) GRANTING
PLAINTIFF'S MOTION ON NO
ANTICIPATION BY
DEVEGOWDA REFERENCES, (4)
GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT ON DEFENDANTS'
ANTITRUST CLAIM, AND (5)
DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT ON
DEFENDANTS' INEQUITABLE
CONDUCT DEFENSE

Unsealed Order

CENZONE TECH, INC., and JUNG
FU WU,

Counterclaimants,

vs.

ALLTECH, INC.,

Counterdefendant.

BACKGROUND

This patent infringement case is now before the court on the parties' cross-

1 motions for summary judgment ("MSJ"). The subject patent is the 6,045,834 patent
2 (the "'834 Patent") owned by Plaintiff and entitled "Compositions and Methods for
3 Removal of Mycotoxins from Animal Feed", claims a composition of "modified yeast
4 cell wall extract" ("MYCWE")¹ and mineral clay used as an animal feed additive. The
5 '834 Patent is directed to the industry problem of mold-created toxins, called
6 mycotoxins, present in animal feed which, if ingested by the animals, causes health
7 problems such as malnutrition, organ malfunction, and even death. The composition
8 claimed in the '834 Patent binds mycotoxins, thereby preventing the mycotoxins from
9 being absorbed into the animal's bloodstream and mitigating the adverse effects of the
10 mycotoxins on the animal. On January, 4, 2007, the court issued its claim construction
11 order pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996).

12 Plaintiff alleges that Defendants have infringed the '834 Patent. In response,
13 Defendants contend, among other things, that the '834 Patent is invalid. In the
14 alternative, Defendants argue Plaintiff has engaged in inequitable conduct and
15 therefore its patent is unenforceable. Finally, Defendants also assert a counterclaim
16 alleging that Plaintiff's filing of this suit constitutes a violation of the federal antitrust
17 laws.

18 Plaintiff now moves for summary judgment on the following four issues: (1)
19 patent infringement, (2) no anticipation by Devegowda references,² (3) no antitrust
20 liability, and (4) no inequitable conduct. Defendants move for summary judgment
21 solely the issue of patent validity. The pleadings have been filed under seal pursuant
22 to a protective order. The court hereby makes the following rulings, the reasons for
23 which are provided in a separate version of this order that has been filed under seal.

24 **CONCLUSION**

25 Defendants' motion for summary judgment on patent invalidity is **DENIED**. See

26 _____
27 ¹The use of "MYCWE" in this order shall refer to the court's construction of the
28 term "modified yeast cell wall extract" pursuant to its claim construction order of
January 4, 2007 unless otherwise indicated.

²Devegowda is the name of an individual who authored two printed publications
on which Defendants rely to prove their cross-claims.

1 Docket No. 175. Plaintiff's motion for summary judgment on patent infringement is
2 **GRANTED.** See Docket No. 164. Plaintiff's motion for summary judgment on no
3 anticipation by Devegowda References is **GRANTED.** See Docket No. 165.
4 Plaintiff's motion for summary judgment on Defendants' antitrust claims is
5 **GRANTED.** See Docket No. 166. Plaintiff's motion for summary judgment on
6 Defendants' inequitable conduct defense is **DENIED.** See Docket No. 167.

7
8 **IT IS SO ORDERED.**

9
10 DATED: 7/26, 2007

11 
12 **JEFFREY T. MILLER**

13 United States District Judge

14 cc: all parties
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U.S. District Court

Southern District of California

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Case Name: Alltech Inc v. Cenzone Tech Inc, et al

Case Number: 3:06-cv-153

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Docket Text:

ORDER (1) denying [175] Defendants' motion for summary judgment on patent invalidity, (2) granting [164] Plaintiff's motion for summary judgment on patent infringement, (3) granting [165] Plaintiff's motion on no anticipation by devegowda references, (4) granting [166] Plaintiff's motion for summary judgment on defendants' antitrust claim, (5) denying [167] Plaintiff's motion for summary judgment on defendants' inequitable conduct defense. Signed by Judge Jeffrey T. Miller on 07/26/07. (jpp)

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