

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

_____ )		
ECOLAB USA INC. AND KLEANCHECK )	)	
SYSTEMS, LLC )	)	
	)	
Plaintiffs, )	)	Civil Action No. _____
	)	
v. )	)	
	)	
DIVERSEY, INC. )	)	<b><u>JURY TRIAL DEMANDED</u></b>
	)	<b><u>INJUNCTIVE RELIEF REQUESTED</u></b>
Defendant, )	)	
_____ )	)	

**COMPLAINT**

Come now the Plaintiffs, and for their Complaint against Defendant, state and allege as follows:

**PARTIES**

1. Plaintiff Ecolab USA Inc. ("Ecolab") is incorporated in the state of Delaware and has a principal place of business at Ecolab Center, 370 North Wabasha Street, St. Paul, Minnesota 55201.

2. Plaintiff Kleantech Systems, LLC ("Kleantech") is a limited liability company formed under the laws of Massachusetts and has a principal place of business at 53 Tower Road, Hingham, Massachusetts 02043.

3. Upon information and belief, Defendant Diversey, Inc. ("Diversey") is incorporated in the state of Delaware and has a principal place of business at 8310 16th Street, Sturtevant, Wisconsin 53177.

Patent  
7,718,395  
7,780,453

**JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the patent laws of the United States of America, 35 U.S.C. § 1, et seq., including 35 U.S.C. §§ 271 and 282-85.

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) in that this is a civil action arising out of the patent laws of the United States of America.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400. This court has personal jurisdiction over Diversey. Diversey conducted and does conduct substantial ongoing business within the State of Minnesota and has a registered office address with the Minnesota Secretary of State of 380 Jackson Street #700, St. Paul, Minnesota 55101. Diversey, as such, has purposely availed itself of the laws and jurisdiction of this District.

**COUNT I - INFRINGEMENT OF U.S. PATENT NO. 7,718,395**

7. Plaintiffs restate the allegations set forth in paragraphs 1-6 and incorporate them herein by reference.

8. On May 18, 2010, United States Patent No. 7,718,395 B2 (hereinafter “the ’395 patent”) entitled MONITORING CLEANING OF SURFACES was duly and legally issued to Kleantech as assignee; and since that date Kleantech has owned right, title, and interest in the ’395 patent. A copy of the ’395 patent is attached hereto as Exhibit A.

9. Ecolab is the worldwide exclusive licensee of the ’395 patent with respect to use of the claimed method in hospitals or hospital affiliates.

10. Defendant has directly infringed, contributed to the infringement of, and/or induced infringement of the ’395 patent through the manufacture, use, sale, and/or offer for sale of its VeriClean Fluorescent Marking Spray.

11. Diversey has infringed and is still infringing the ’395 patent by making, using, selling, and offering for sale its VeriClean Fluorescent Marking Spray. Diversey has used and

continues to use its VeriClean Fluorescent Marking Spray in a method that embodies the invention of the '395 patent.

12. Diversey also has contributed to, and continues to contribute to, the infringement of the '395 patent by selling and offering for sale its VeriClean Fluorescent Marking Spray.

13. Diversey's VeriClean Fluorescent Marking Spray comprises a material part of the claimed invention of the '395 patent, is not a staple article of commerce, and has no substantial noninfringing use. Indeed, when used according to Diversey's own instructions, the use of VeriClean Fluorescent Marking Spray infringes the '395 patent.

14. Diversey is aware of the '395 patent, has been aware of the '395 patent during the period of infringement, and knowingly made the VeriClean Fluorescent Marking Spray for use in a process that is claimed in the '395 patent.

15. Diversey's customers—namely, hospitals that purchase the VeriClean Fluorescent Marking Spray from Diversey—also directly infringe the '395 patent by using the VeriClean Fluorescent Marking Spray in a process that embodies the invention of the '395 patent. Diversey knows that its customers use, and indeed instructs its customers to use, the VeriClean Fluorescent Marking Spray in a manner that infringes the '395 patent.

16. Diversey has also induced, and continues to induce, infringement of the '395 patent by selling its VeriClean Fluorescent Marking Spray to hospitals. Diversey has instructed and continues to instruct hospitals to use the VeriClean Fluorescent Marking Spray in a process that infringes the '395 patent. Diversey also has assisted and continues to assist those hospitals in using the VeriClean Fluorescent Marking Spray in a process that infringes the '395 patent.

17. Diversey is and has been aware of the '395 patent and knows that its sale of the VeriClean Fluorescent Marking Spray and instructions for use of the same induce Diversey's

customers to directly infringe the '395 patent. Diversey's knowledge of the '395 patent, combined with Diversey's instructions for use of the VeriClean Fluorescent Marking Spray in the manner specified by the '395 patent, demonstrate that Diversey intended to induce its customers to infringe the '395 patent.

18. When using the VeriClean Fluorescent Marking Spray as directed by Diversey, Diversey's customers—namely hospitals that purchase the VeriClean Fluorescent Marking Spray from Diversey—directly infringe the '395 patent by using the VeriClean Fluorescent Marking Spray in a process that embodies the invention of the '395 patent.

19. Kleantech and Ecolab have been damaged by Diversey's infringement of the '395 patent in an amount to be proven at trial and will continue to be damaged in the future unless Diversey is permanently enjoined from infringing the '395 patent, and from contributing to or inducing the infringement of the '395 patent by others.

20. Diversey is aware of the '395 patent was duly and legally issued and that Diversey's use, manufacture, sale, and/or offer for sale of the VeriClean Fluorescent Marking Spray infringes the '395 patent and contributes to and induces the infringement of the '395 patent by others.

21. Diversey's infringement of the '395 patent is now and has been willful and will continue unless enjoined by the Court.

22. By reason of Diversey's willful infringement, Ecolab and Kleantech are entitled to recover actual damages, treble damages, attorneys' fees, and the costs of this litigation pursuant to 35 U.S.C. §§ 284 & 285 and injunctive relief pursuant to 35 U.S.C. § 283.

**COUNT II - INFRINGEMENT OF U.S. PATENT NO. 7,780,453**

23. Plaintiffs restate the allegations set forth in paragraphs 1-22 and incorporates them herein by reference.

24. On August 24, 2010, United States Patent No. 7,780,453 B2 (hereinafter “the ’453 patent”) entitled MONITORING CLEANING OF SURFACES was duly and legally issued to Kleantech as assignee; and since that date Kleantech has owned right, title, and interest in the ’453 patent. A copy of the ’453 patent is attached hereto as Exhibit B.

25. Ecolab is the worldwide exclusive licensee of the ’453 patent with respect to use of the claimed method in hospitals or hospital affiliates.

26. Defendant has directly infringed, contributed to the infringement of, and/or induced infringement of the ’453 patent through the manufacture, use, sale, and/or offer for sale of its VeriClean Fluorescent Marking Spray.

27. Diversey has infringed and is still infringing the ’453 patent by making, using, selling, and offering for sale its VeriClean Fluorescent Marking Spray. Diversey has used and continues to use its VeriClean Fluorescent Marking Spray in a method that embodies the invention of the ’453 patent.

28. Diversey also has contributed to, and continues to contribute to, the infringement of the ’453 patent by selling and offering for sale its VeriClean Fluorescent Marking Spray.

29. Diversey’s VeriClean Fluorescent Marking Spray comprises a material part of the claimed invention of the ’453 patent, is not a staple article of commerce, and has no substantial noninfringing use. Indeed, when used according to Diversey’s own instructions, the use of VeriClean Fluorescent Marking Spray infringes the ’453 patent.

30. Diversey is aware of the ’453 patent, has been aware of the ’453 patent during the period of infringement, and knowingly made the VeriClean Fluorescent Marking Spray for use in a process that is claimed in the ’453 patent.

31. Diversey's customers—namely, hospitals that purchase the VeriClean Fluorescent Marking Spray from Diversey—directly infringe the '453 patent by using the VeriClean Fluorescent Marking Spray in a process that embodies the invention of the '453 patent. Diversey knows that its customers use, and indeed instructs its customers to use, the VeriClean Fluorescent Marking Spray in a manner that infringes the '453 patent.

32. Diversey has also induced, and continues to induce, infringement of the '453 patent by selling its VeriClean Fluorescent Marking Spray to hospitals. Diversey has instructed and continues to instruct those hospitals to use the VeriClean Fluorescent Marking Spray in a process that infringes the '453 patent. Diversey also has assisted and continues to assist those hospitals in using the VeriClean Fluorescent Marking Spray in a process that infringes the '453 patent.

33. Diversey is and has been aware of the '453 patent and knows that its sale of the VeriClean Fluorescent Marking Spray and instructions for use of the same induce Diversey's customers to directly infringe the '453 patent. Diversey's knowledge of the '453 patent, combined with Diversey's instructions for use of the VeriClean Fluorescent Marking Spray in the manner specified by the '453 patent, demonstrate that Diversey intended to induce its customers to infringe the '453 patent.

34. When using the VeriClean Fluorescent Marking Spray as directed by Diversey, Diversey's customers—namely hospitals that purchase the VeriClean Fluorescent Marking Spray from Diversey—directly infringe the '453 patent by using the VeriClean Fluorescent Marking Spray in a process that embodies the invention of the '453 patent.

35. Kleantech and Ecolab have been damaged by Diversey's infringement of the '453 patent in an amount to be proven at trial and will continue to be damaged in the future

unless Diversey is permanently enjoined from infringing the '453 patent, and from contributing to or inducing the infringement of the '453 patent by others.

36. Diversey is aware of the '453 patent was duly and legally issued and that Diversey's use, manufacture, sale, and/or offer for sale of the VeriClean Fluorescent Marking Spray infringes the '453 patent and contributes to and induces the infringement of the '453 patent by others.

37. Diversey's infringement of the '453 patent is now and has been willful and will continue unless enjoined by the Court.

38. By reason of Diversey's willful infringement, Ecolab and Kleantech are entitled to recover actual damages, treble damages, attorneys' fees, and the costs of this litigation pursuant to 35 U.S.C. §§ 284 & 285 and injunctive relief pursuant to 35 U.S.C. § 283.

**PRAYER FOR RELIEF**

WHEREFORE, Ecolab and Kleantech pray for judgment that:

A. United States Patent Nos. 7,718,395 and 7,780,453 are valid and have been infringed by Diversey;

B. Diversey, its officers, agents, servants and employees and those persons in active concert or participation with any of them be enjoined from further infringing, contributing to the infringement, or inducing the infringement of United States Patent Nos. 7,718,395 and 7,780,453;

C. An accounting be had for the damages arising out of Diversey's infringement of United States Patent Nos. 7,718,395 and 7,780,453, including treble damages for willful infringement as provided by 35 U.S.C. §§ 284 and 285, with interest;

D. Diversey, its officers, agents, servants and employees and those persons in active concert or participation with any of them be enjoined from continued use, importation, offer for sale, or sale of Diversey's products used to infringe said patents;

E. Ecolab and Kleantech be awarded their attorneys' fees, costs, and expenses in this action;

F. Ecolab and Kleantech be awarded such other and further relief as this Court may deem necessary and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated this 14th day of August, 2012

Respectfully submitted,

ECOLAB INC.

By its attorneys,

s/Rachel K. Zimmerman

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