

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

INGURAN, LLC d/b/a STGENETICS,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 20-cv-85
v.	§	
	§	JURY TRIAL DEMANDED
ABS GLOBAL, INC. and	§	
GENUS PLC,	§	
	§	
Defendants.	§	

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PLAINTIFF’S COMPLAINT

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Plaintiff, Inguran, LLC d/b/a STGenetics (“ST”) files this Complaint for infringement, damages, and injunctive relief against ABS Global, Inc. (“ABS Global”) and Genus, plc (“Genus”) (referred to collectively as “ABS,” unless otherwise specified) based on new acts that have occurred subsequent to entry of the Final Judgment on U.S. Patent No. 8,206,987 (“the ’987 patent”) in civil action no. 3:14-cv-00503-wmc (W.D. Wis.) (the “First Litigation”).

Claims 1, 2, and 7 of the ’987 patent were adjudged valid and infringed by ABS’s pre-commercial sperm sorting system called Genus Sexed Semen (“GSS”), and ABS was ordered to pay ongoing royalties for ABS’s anticipated commercial use of the GSS system to make and sell artificial insemination (“AI”) straws of sexed semen in the United States. This action is for new infringing conduct not covered by the judgment in the First Litigation, namely: (i) infringement of claims 1, 2, and 7 of the ’987 patent arising from ABS’s sales, licensing, leasing, or otherwise transferring interests in and/or rights to possess and use the infringing GSS system to others in the United States; (ii) infringement of claims 1, 2, and 7 of the ’987 patent arising from ABS’s importation and sale of sexed semen made abroad using the infringing GSS system; and (iii) for

damages stemming from ABS's infringement of claims 1, 2, and 7 of the '987 patent in producing GSS sexed semen for use in making sexed embryos via *in vitro* fertilization (IVF).

In support of the Complaint, Plaintiff shows as follows.

### **I. THE PARTIES**

1. ST is a limited liability company organized under Delaware law. ST's principal place of business is at 22575 SH 6 South, Navasota, Texas.

2. ABS Global is a corporation organized under Delaware law. ABS Global's principal place of business is in DeForest, Wisconsin. ABS Global may be served by delivering a copy of the complaint to its registered agent for service of process, Corporation Service Company, 8040 Excelsior Drive, Suite 400, Madison, Wisconsin, 53717.

3. Genus plc is a corporation organized under the laws of the United Kingdom. On information and belief, Genus plc's principal place of business is in Basingstoke in the United Kingdom.

### **II. NATURE OF THE ACTION**

4. This civil action includes claims against ABS for multiple new acts of infringement that were not the subject of the First Litigation and which are not covered by the ongoing royalty obligation incorporated into the First Litigation's final judgment. ST's claims in the current litigation are for:

- preliminary and permanent injunction under 35 U.S.C. §271(b) and § 283 against sales, leases, licensing, or otherwise transferring interests and/or rights to possess and use GSS sorting machines to domestic third parties, as well as offers to make such sales, leases, licenses, or transfers;

- damages for induced infringement under 35 U.S.C. § 271(b) and § 284 due to ABS knowingly selling, leasing, licensing, or otherwise transferring interests and/or rights to possess and use GSS sorting machines to domestic third parties;
- preliminary and permanent injunction under 35 U.S.C. § 271(g), § 271(b) and § 283 prohibiting ABS from importing or inducing others to import sexed semen produced abroad with GSS sorting machines and further prohibiting sale of any such imported semen;
- damages for infringement under 35 U.S.C. § 271(g), § 271(b), and § 284 due to ABS importing or actively inducing others to import sexed semen produced abroad with GSS sorting machines, and for ABS's sales of such imported semen;
- preliminary and permanent injunction under 35 U.S.C. § 283 prohibiting ABS from using GSS sorting machines to create sexed semen doses and distributing those doses to its affiliates or others, for use in the performance of IVF services (i.e., sexed embryo production); and
- damages under 35 U.S.C. § 284 for ABS's infringing use of GSS sorting machines in connection with sexed embryo production services provided by ABS or its affiliates.

### **III. JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including at least 35 U.S.C. § 271, § 283, and § 284.

6. This Court has personal jurisdiction over ABS Global because ABS Global is headquartered in this district, has continuous and systematic contacts with this state, and has committed acts within Wisconsin and this judicial district that gave rise to this action.

7. This Court has personal jurisdiction over Genus because it has continuous and systematic contacts with this state and have committed acts within Wisconsin and this judicial district that give rise to this action. In addition, Genus is ABS Global's parent company and directs and controls certain actions of ABS Global within this state and judicial district that pertain to the allegations in this Complaint.

8. Venue is proper against ABS Global under at least 28 U.S.C. § 1400 because it has committed acts of infringement in this district and has a regular and established place of business in this district. Venue is also proper against ABS Global under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in this district.

9. Venue is proper against Genus under at least 28 U.S.C. § 1400 because it has committed acts of infringement in this district and has a regular and established place of business in this district. Venue is also proper against Genus under at least 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in this district. To the extent Genus is not deemed to reside in this district for any particular claim or claims, venue is proper under 28 U.S.C. § 1391(c)(3), which mandates that defendants not resident in the United States may be sued in any judicial district.

#### **IV. FACTUAL BACKGROUND**

##### ***ST and Its Technology***

10. ST researches, develops, and commercializes technology for selecting the sex of mammalian offspring, with an emphasis on producing sexed bovine semen. As part of its business, ST provides semen sorting services to "bull studs," which sell both sexed and conventional semen to dairy and beef farmers in doses packaged in "straws" in sperm concentrations specifically suited for use in artificial insemination ("AI"). ST also sells such AI straws of semen harvested from ST's own bulls. ST sells AI straws and sells sorting services

under a “single use artificial insemination” (or “single use AI”) restriction that limits the use of the straw to the artificial insemination of one female bovine for producing a single offspring.

***The '987 Patent***

11. The '987 patent is entitled “Photo-Damage Method for Sorting Particles.”

12. The application that issued as the '987 patent was filed on May 12, 2011, and the U.S. Patent and Trademark Office issued the '987 patent on June 26, 2012. The invention of the '987 patent generally relates to a method for sorting sperm cells that involves, among other things, selectively photo-damaging sperm cells to produce an enriched population of sperm cells with respect to a particular characteristic, such as the gender-determining X- or Y- chromosome.

***ABS and Its GSS Sperm Sorting System***

13. ABS is a bull stud provider of bovine semen and bovine reproduction services. From 2006 to 2017, ABS Global contracted for ST to sort semen from ABS's bulls, which ABS sold to its dairy and beef farming customers in the form of sexed AI straws.

14. When the semen sorting agreement between ABS Global and ST expired at the end of August 2017, ABS commercially launched “Sexcel”-branded sexed semen that ABS produces with the infringing GSS system.

15. ABS sells Sexcel to its customers under a contractual “single use artificial insemination” restriction.

16. ABS sorts sperm using a process that infringes claims 1, 2, and 7 of the '987 patent, specifically by staining sperm cells and selectively photo-damaging them to produce an enriched population of sperm with respect to whether the cells have an X-chromosome or a Y-chromosome. ABS implements this method by using a laser-ablation sperm sorting machine called GSS. In the GSS system, stained sperm cells are flowed through a microfluidic chip and categorized by gender (X or Y) based on the amount of fluorescence emitted by the cells. The

GSS system then sorts the sperm cells by using a laser to kill or damage the undesired population of sperm cells, thereby producing a gender enriched population of sperm cells.

***The First Litigation***

17. In the First Litigation, ST claimed against ABS for, among other things, infringement of claims 1, 2, and 7 of the '987 patent.

18. At the first trial, ABS did not dispute that the use of the GSS system infringes the method of claims 1, 2, and 7 of the '987 patent, and the jury found that claims 1 and 7 of the '987 patent were not invalid. Because the GSS system had not been commercially launched at the time of trial, the jury assessed no running royalties for past infringement, instead rendering a verdict that ABS would owe \$1.25 royalty per straw when commercial sales of GSS sexed semen commenced. Judgment was entered on the verdict.

19. In lieu of an injunction against future infringement, the judgment included an “ongoing royalty” of \$1.25 per straw of sexed semen processed by ABS with the GSS technology in the United States and sold by ABS. That royalty is owed by ABS for AI straws ABS produces from semen harvested from its own bulls, and it is owed for AI straws ABS produces for other bull studs (i.e., sorting as a service).

20. The ongoing royalty in the judgment did not account for other potential ways that ABS could exploit the GSS technology to infringe the '987 patent or other potential ways that ABS could commercialize the infringing GSS technology. For example, it does not compensate ST, for sales of the GSS machines to third parties for the production of sexed semen by others using the methods of claims 1, 2, or 7 of the '987 Patent. Likewise, it does not compensate ST if ABS imports sexed semen made abroad by GSS machines owned or operated by ABS affiliates or third parties who acquire GSS machines from ABS. And it does not compensate ST for GSS sexed semen that is used by ABS or its affiliates to render in vitro fertilization services to third

parties or produced sexed embryos for sale (unconstrained by the “single use artificial insemination” restriction universally imposed on customers of GSS sexed semen straws).

21. On appeal from this Court’s judgment, the Seventh Circuit held that claims 1, 2, and 7 of the ’987 patent were not obvious and remanded the case for a re-trial on the limited issue of whether the asserted claims of the ’987 patent met the “enablement” requirement of 35 U.S.C. § 112.

22. On remand, the jury found that claims 1, 2, and 7 of the ’987 Patent are not invalid due to lack of enablement.

23. As a matter of issue preclusion, ABS is estopped from denying that the use of the GSS system infringes claims 1, 2, and 7 of the ’987 Patent.

24. On the same basis, ABS is also estopped from denying or challenging the validity of claims 1, 2, and 7 of the ’987 Patent.

**V. COUNT I – INDUCED INFRINGEMENT UNDER §271(b) BY SELLING OR LICENSING GSS MACHINES TO THIRD PARTIES**

25. Each of the above paragraphs 1 through 24 are incorporated by reference into this count as if fully restated herein.

26. Subsequent to entry of the final judgment in the First Litigation, and with full knowledge that use of the GSS system infringes claims 1, 2, and 7 of the ’987 patent, ABS has commenced to infringe and has threatened to infringe claims 1, 2, and 7 of the ’987 patent under 35 U.S.C. § 271(b) by intentionally inducing domestic third party bull studs and/or custom collection service providers to infringe claims 1, 2 and 7 of the ’987 patent. ABS induces this infringement by selling, leasing, licensing or otherwise transferring interests in and rights to use GSS sorting machines to produce sexed semen to domestic third parties.

27. ABS has known that use of the GSS system to sort sperm infringes valid claims of the '987 patent since at least as early as August 15, 2016, when the jury returned its verdict in the original litigation.

28. Subsequent to entry of the final judgment in the First Litigation, and with full knowledge that use of the GSS system infringes the '987 patent, on information and belief, ABS has offered to sell and has sold the GSS system to bull studs under the brand name "Intelligen." These sales and offers to sell include: licensing, offers to license, leasing, offers to lease, and/or other transfers, or offers to transfer, possession or control that enable the bull studs to operate the GSS machine, whether independently of ABS, or in a joint venture or partnership arrangement with ABS, or both.

29. Upon information and belief, these sales, licenses, and offers to sell or license included the machinery, instructions and protocols for how to use the machinery, and training of the third party by ABS in the use of the GSS system to infringe claims 1, 2, and 7 of the '987 patent.

30. ABS has sold/licensed and offered to sell/license the GSS system with the intent that the bull studs would use the GSS to create sexed semen using the method claimed in claims 1, 2, and 7 the '987 patent.

31. ABS's Chief Operating Officer, Nate Zwald, testified to these activities at the September 2019 trial before this Court, as exemplified by the following testimony he gave on direct examination as ABS's corporate representative at the trial:

**Q. Does ABS also sell its sexed-semen technology, not the product, to other bull studs?**

A. It does. We sell that technology called IntelliGen Technology in two different ways. So one is we would provide the services of sexing of different bull studs' semen for them. So they would bring us an ejaculate, we would sex that product and give them straws back. And the second way is **we actually sell**

**the machine and license the technology to them and teach them how to use the machine and the process and basically enable them to sex their own semen.**

and Trial Tr. (Day 2, PM) (Zwald) at 37:10-20 (emphasis added).

Q. Now, you mentioned that you are also supplying the IntelliGen Technology to certain customers. Are there differences between how ABS supplies its technology to its customers and how ST was supplying its own technology to customers?

A Yes. So ST provides the service of sexed semen meaning you give them an ejaculate and they give you back a sex straw of semen. That was our agreement with ST and that's how they have dealt with, in my knowledge, with other AI companies or bull studs. How we're approaching that is we'll do that, we'll do the same thing, offer that service to competing companies or other bull studs, but **we also go ahead and enable them with the technology and license that technology so they can sort their own semen on their own bulls with their own people.**

32. On information and belief, ABS's sales, licensing, and attempts to sell and license GSS systems to third party bull studs in the United States occurred with the intent that those third parties use the GSS system to sort sperm, and ABS is aware that the third parties have actually used the GSS system in that manner.

Q. And how has your IntelliGen Technology program done in the marketplace?

A. Very well again. Very similarly to Sexcel. **Our customers are coming back for more product. They are acquiring more tables** and they're asking for more product to be sexed by us for them.

Trial Tr. (Day 2, PM) (Zwald) at 38:21-39:16 (emphasis added). ABS further knows that this use of the GSS system in the United States necessarily infringes claims 1, 2, and 7 of the '987 patent.

33. The ongoing royalty provision of the judgment from the First Litigation was not designed to compensate, nor can it adequately compensate, ST for such sales and licensing activities by ABS.

34. If ABS is not enjoined from licensing or selling the GSS system to third parties in the United States, ST is likely to be irreparably harmed along multiple lines. For example, ABS's GSS machine sales have caused and will cause ST to lose market share, revenues, and customers in the sorting services market. Bull studs who buy GSS machines, or who enter into sorting contracts with third parties who buy GSS machines, would not enter sorting agreements with ST.

35. ST would also lose market share, revenues and customers in the domestic AI straw market (which is a distinct market from the sorting services market at issue in the First Litigation). Dairy farmers will buy GSS machines and process their own sexed semen, resulting in ST losing sales to those dairy farmers and their downstream customers.

36. ST will also be at an unfair competitive disadvantage vis-à-vis third parties who buy GSS machines. These third parties would be free-riders who have not taken a license to the '987 patent, have not engaged in their own research and development, and who have not undertaken the effort and expense of demonstrating a legal right to relief from ST's right, under the patent laws, to exclude others from using the '987 Patent. In other words, the third parties would effectively be getting an unfair head start in competing with ST.

37. Moreover, ABS's sales and/or licensing of the GSS machine may unilaterally force ST to pursue separate patent infringement actions against every company that buys a GSS machine. Not only would these actions be costly and time-consuming, ST would also suffer irreparable reputational damage by causing current and potential customers to develop ill will toward ST. In light of all the foregoing, a preliminary and permanent injunction is necessary to avoid irreparable injury to ST.

38. Additionally, ABS's sales and licensing of infringing GSS systems to third parties has harmed ST, and pursuant to 35 U.S.C. § 284, ST is entitled to damages in an amount no less than a reasonable royalty to compensate for ABS's infringement.

**VI. COUNT II – INFRINGEMENT UNDER §271(g) BY IMPORTING STRAWS MADE OUTSIDE THE UNITED STATES USING THE GSS TECHNOLOGY**

39. Each of the above paragraphs 1 through 38 are incorporated by reference into this count as if fully restated herein.

40. Subsequent to entry of the Amended Final Judgment in the First Litigation, and with full knowledge that use of the GSS system infringes the '987 patent, ABS has commenced to infringe claims 1, 2, and 7 of the '987 patent under 35 U.S.C. § 271(g) by importing straws of sexed semen made using the GSS system outside the United States. ABS further infringes under 35 U.S.C. § 271(g) by selling and offering to sell those imported straws of sexed semen in the United States.

41. As a matter of issue preclusion stemming from the First Litigation, the use of the GSS system outside the United States would infringe claims 1, 2, and 7 of the '987 patent if it occurred within the United States.

42. Aside from the exclusionary right created by 35 U.S.C. § 271(g), there is no adequate remedy under the patent laws for ABS's importation and/or sale of the GSS sexed semen made abroad, because the use of the GSS system occurs outside the United States and because the sexed semen product itself is not covered by the '987 Patent.

43. The sexed semen ABS imports into the United States is not materially changed by subsequent processes, nor does it become a trivial or nonessential component of another product.

44. As an example, in October 2017, ABS licensed the GSS technology to a Norwegian company called Geno and sold or otherwise transferred GSS machines to Geno in

Norway. Geno uses the GSS sorting machines in Norway to produce sexed semen harvested mainly from the “Norwegian Red” breed of cattle.

45. ABS then imports the Geno-produced sexed semen into the United States and sells it to ABS’s customers.

46. Alternatively, to the extent that Geno (or another entity) is deemed to be the entity who “imports” the Geno-produced sexed semen into the United States, ABS knowingly and intentionally induces that directly infringing act of importation and therefore is liable for infringement under 35 U.S.C. § 271(b).

47. As a further example, on information and belief, Genus and/or its foreign subsidiaries or affiliates also produce sexed semen abroad using the GSS and import it into the United States. ABS Global and Genus knowingly and intentionally induce that directly infringing act of importation and are liable for infringement under 35 U.S.C. § 271(b)

48. ABS’s importation and sale of sexed semen produced outside of the United States using the invention of claims 1, 2, and 7 of the ’987 patent will irreparably harm ST if ABS is not enjoined. For example, and without limitation, ST has lost and would continue to lose market share in the domestic market for AI straws of sexed semen (as distinct from the sale of sex-selection services), particularly for specialized foreign breeds similar to “Norwegian Red” cattle that are in high demand in the United States. But for ABS’s infringement, this sexed semen would not be available in the United States, and ABS’s access to this semen gives ABS an unfair competitive edge in the domestic AI straw market.

49. ABS also uses imported Norwegian Red sexed semen as part of a crossbreeding service offering that competes directly with a similar crossbreeding service offered by ST. If

ABS is allowed to continue its infringing importation, ST will likely suffer irreparable harm in the form of lost sales and customers in its crossbreeding program.

50. ST's irreparable harm is compounded by the fact that it has no adequate legal remedies as against Geno or the other foreign entities that are processing the GSS sexed semen outside the United States.

51. Moreover, ABS's direct or indirect importation of sexed semen produced outside of the United States using the invention of claims 1, 2, and 7 of the '987 patent, and its subsequent sales or offers to sell that imported semen, has damaged ST. Under 35 U.S.C. § 284, ST is entitled to damages in an amount no less than a reasonable royalty to compensate for this infringement.

52. These importation activities had not occurred prior to entry of judgment in the First Litigation and so the ongoing royalty provision of the judgment from the First Litigation was not designed to compensate, nor can it adequately compensate, ST for such infringement. Accordingly, ST has received no compensation for ABS's infringing importation or its sales of imported straws.

53. Alternatively, to the extent that ABS contends that it is obligated by the judgment in the First Litigation to pay ST a \$1.25 per straw ongoing royalty for the GSS-created sexed semen they import into the United States, that royalty rate is legally insufficient. Under 35 U.S.C. § 284, ST is entitled to no less than a reasonable royalty for ABS's infringement. In these circumstances, a reasonable royalty would necessarily reflect that the economics of ABS creating and selling AI straws of sexed semen in the United States are different than importing and selling straws of sexed semen created by a foreign licensee or affiliate. A reasonable royalty on ABS's infringing act of importation and post-importation sales would be greater than \$1.25 per straw.

Thus, the ongoing royalty obligation in the judgment from the First Litigation—which does not cover importation—would be inadequate to compensate ST for ABS’s infringing importation activities.

**VII. COUNT III – FOR DAMAGES AND INJUNCTIVE RELIEF FOR ABS’S USE OF THE GSS SYSTEM TO PRODUCE SEXED IVF DOSES**

54. Each of the above paragraphs 1 through 53 are incorporated by reference into this count as if fully restated herein.

55. Subsequent to entry of the final judgment in the First Litigation, and with full knowledge that use of the GSS system infringes claims 1, 2, and 7 of the ’987 patent, Defendants, in concert with their affiliates, have commenced to infringe claims 1, 2, and 7 of the ’987 patent under 35 U.S.C. § 271(a) by making sexed semen for use in in vitro fertilization (“IVF doses”). These sexed IVF doses are produced principally for use within the Genus family of companies to produce sexed embryos for unaffiliated third parties. Instead of selling the straw of sexed semen to end users for artificial insemination (such sales always accompanied by a contractual restriction limiting the buyer’s use to “single use artificial insemination”), ABS provides the doses of sexed semen to a wholly-owned Genus subsidiary called In Vitro Brasil (“IVB”).

56. IVB uses the ABS-produced GSS-sexed semen in an *in vitro* fertilization (“IVF”) procedure to create multiple sexed embryos. On information and belief, either IVB charges the customer for the in vitro fertilization service (not for the dose of sexed semen per se), or for the resulting sexed embryos, or both. In any case, regardless whether the dose is furnished to IVB packed in a “straw,” the customary “single use artificial insemination” contractual restriction imposed on buyers of Sexcel straws is not imposed on IVB at all, or it is simply not enforced by ABS.

57. The judgment in the First Litigation does not set an ongoing royalty for GSS sexed semen IVF doses sold to or used by an ABS affiliate to generate revenues and profits from the rendition of in vitro fertilization services to unaffiliated third parties or the sale of the resulting sexed embryos.

58. On information and belief, since entry of the final judgment in the First Litigation, ABS has not paid or attempted to pay ST any royalties for IVF doses of GSS sexed semen which are used in the rendition of IVF services and/or the production and sale of sexed embryos.

59. Alternatively, even if ABS has accrued or paid, or attempted to pay, ST a \$1.25 royalty per IVF dose, that royalty rate is legally insufficient. Under 35 U.S.C. § 284, ST is entitled to no less than a reasonable royalty for ABS's infringement. In these circumstances, a reasonable royalty would necessarily reflect the materially different economics of in vitro fertilization with sexed semen.

60. For example, sexed semen is typically sold with a "single use AI" restriction that limits the use of that sexed semen to the production of a single calf through an artificial insemination procedure.

61. When ST sorted semen for ABS Global, it did so on the contractual condition that each straw of sexed semen processed by ST would only be used by ABS Global or its customers for the single artificial insemination of one female bovine, with the intent to produce a single offspring. ABS Global was further contractually obligated to inform its customers that sexed semen shall only be used in this manner. When ST sells straws of sexed semen (as opposed to providing a sex-selection service), its terms and conditions include a similar "single use AI" restriction.

62. ABS itself also imposes a “single use AI” restriction on its customers.

Specifically, ABS’s terms and conditions for the purchase of Sexcel specify that “[s]exed semen may be used solely for single artificial insemination of a single bovine, with the intent to produce a single offspring.” Under these “single use AI” restrictions, a straw of sexed semen cannot be used for IVF.

63. One purpose of the “single use AI” restriction is to ensure that the economic benefit of the straw is commensurate with the price charged. A single straw of sexed semen used in “single use artificial insemination” results in, at most, a single offspring. A dose of sexed semen used in IVF, however, typically results in multiple embryos, each of which benefits from the gender skew of the sexed semen.

64. Thus, the value of a dose of sexed semen produced using the invention of the ’987 patent is realized many times over when used in IVF, and a reasonable royalty for an IVF dose should be correspondingly higher than a reasonable royalty for a single AI straw of sexed semen.

65. Moreover, if Defendants and their affiliates (such as IVB) are not enjoined from using the GSS to create sexed IVF doses and creating multiple IVF embryos or pregnancies, ST will be irreparably harmed. For example, ABS is using the GSS to create sexed IVF doses that are used within ABS’s own herd to produce bulls (and in turn, AI straws containing semen harvested from those bulls) with improved genetics. In other words, ABS is using the patented invention to improve its own genetic lineup, thereby giving ABS a competitive advantage in both the sexed and conventional AI straw market.

66. Further, dairy farmers (among others) will begin buying sexed embryos and IVF services from ABS and IVB instead of purchasing sexed AI straws from ST. These customers, given their preference for one-stop shopping, will likely turn to ABS for their conventional

semen needs as well. ABS's infringement will therefore cause ST to lose customers and sales of both sexed and conventional semen.

### **VIII. ATTORNEYS' FEES**

67. The above paragraphs 1 through 66 are incorporated by reference as if fully restated herein.

68. Defendants' conduct, including their willful patent infringement and their knowing and deliberate decision to engage in new infringing conduct not permitted by license or court order, makes this case exceptional. Plaintiff, therefore, is entitled to collect reasonable attorneys' fees pursuant to 35 U.S.C. § 285.

### **IX. PRAYER FOR RELIEF**

ST prays for judgment based on claims 1, 2, and 7 of the '987 Patent and seeks relief against Defendants as follows:

- (a) a preliminary and permanent injunction prohibiting ABS Global and Genus from selling, licensing, leasing, or otherwise transferring GSS machines (or any other machines not colorably different from the GSS machine) in the United States to third parties, as well as any offers to make such sales, licenses, leases or transfers;
- (b) a preliminary and permanent injunction prohibiting ABS Global and Genus from importing or selling sexed semen made outside the United States using GSS machines (or any other machines not colorably different from the GSS machine);
- (c) a preliminary and permanent injunction prohibiting ABS Global and Genus from selling, transferring, or otherwise conveying GSS-sexed semen to IVB or other entities for use in *in vitro* fertilization, regardless of how such sexed semen is packaged;

- (d) an accounting of all damages sustained by ST as the result of the acts of infringement by ABS Global and Genus as described herein, but no less than a reasonable royalty under 35 U.S.C. § 284;
- (e) in the alternative to a permanent injunction, an award of ongoing royalties for acts of future infringement of the '987 Patent;
- (f) increased damages pursuant to 35 U.S.C. § 284;
- (g) an award of attorneys' fees and costs pursuant to 35 U.S.C. § 285;
- (h) all actual damages together with prejudgment interest and post-judgment interest;
- (i) all other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a jury trial on all issues so triable.

Dated: January 29, 2020

Respectfully submitted,

/s/ Sarah A. Zylstra

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