

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

EASTMAN CHEMICAL COMPANY,)
GRUPO PETROTEMEX, S.A. DE C.V. and)
DAK AMERICAS LLC)

Plaintiffs,)

v.)

ALPHAPET INC., INDORAMA HOLDINGS)
ROTTERDAM B.V., INDORAMA)
POLYMERS ROTTERDAM B.V.,)
INDORAMA POLYMERS WORKINGTON)
LTD., and INDORAMA POLYMERS PCL,)

Defendants.)

C.A. No. 09-971-LPS-CJB

JURY TRIAL DEMANDED

SUPPLEMENTAL AND SECOND AMENDED COMPLAINT

Plaintiffs Eastman Chemical Company (“Eastman”), Grupo Petrotemex, S.A. de C.V. (“Petrotemex”), and DAK Americas LLC (“DAK”) (collectively, “Plaintiffs”) bring the following complaint against Defendants:

NATURE OF THE ACTION

1. This is an action for patent infringement under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, for breach of contract under the common law of the State of Delaware, and for trade secret misappropriation under Delaware statute 6 Del.C. § 2001 *et seq.*

PARTIES

2. Eastman is a corporation organized and existing under the laws of Delaware, with a principal place of business located at 200 South Wilcox Drive, Kingsport, Tennessee 37662.

3. Petrotemex is a corporation organized and existing under the laws of Mexico, with a principal place of business located at Ricardo Margain No. 444, Equus Torre sur, Piso 16, Col. Valle del Campestre, 66265 San Pedro Garza Garcia, Nuevo León, Mexico.

4. DAK is a limited liability company organized and existing under the laws of Delaware, with a principal place of business located at 5925 Carnegie Boulevard, Suite 500, Charlotte, North Carolina 28209.

5. Defendant AlphaPet, Inc. (“AlphaPet”) is a corporation organized and existing under the laws of Delaware, with a principal place of business located at 1301 Finley Island Road, Decatur, Alabama 35601.

6. Defendant Indorama Holdings Rotterdam B.V. (“Indorama Holdings Rotterdam”) is a corporation organized and existing under the laws of the Netherlands, with a principal place of business at Markweg 201, 3198 NB Europoort, Rotterdam, the Netherlands.

7. Defendant Indorama Polymers Rotterdam B.V. (“Indorama Polymers Rotterdam”) is a corporation organized and existing under the laws of the Netherlands, with a principal place of business at Markweg 201, 3198 NB Europoort, Rotterdam, the Netherlands.

8. Defendant Indorama Polymers Workington Ltd. (“Indorama Polymers Workington”) is a corporation organized and existing under the laws of the United Kingdom, with a principal place of business at Lowca Lane, Siddick, Workington, Cumbria CA 14 1LG, England.

9. Upon information and belief, Defendant Indorama Polymers Public Company Limited (“IRP”) is a corporation organized and existing under the laws of Thailand, with a principal place of business at 75/102 Ocean Tower 2, Soi Sukhumvit 19, (Wattana), Bangkok 10110, Thailand.

JURISDICTION/VENUE AND STANDING

10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 1367(a), and the doctrine of pendant jurisdiction.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

12. This Court has personal jurisdiction over Defendant AlphaPet because it is a citizen of the State of Delaware.

13. This Court has personal jurisdiction over Defendants Indorama Holdings Rotterdam, Indorama Polymers Rotterdam, and Indorama Polymers Workington by virtue of these Defendants having accepted the exclusive jurisdiction of the Delaware courts for disputes under a Technology Licensing Agreement (“TLA”) entered into between these Defendants and Eastman concerning certain non-patent claims complained of herein.

14. This Court has personal jurisdiction over Defendant IRP by virtue of this entity’s management and control of the entire Polyethylene Terephthalate (“PET”) autonomous divisional business unit of parent company Indorama Ventures Ltd. (“Indorama Ventures”),¹ including IRP’s ownership and control of agent AlphaPet against whom Plaintiffs have asserted patent infringement claims, and including, upon information and belief, IRP’s offer for sale or sale of AlphaPet’s infringing products. This Court also has personal jurisdiction over Defendant IRP by virtue of IRP’s ownership and control of agents Indorama Polymers Rotterdam and Indorama Polymers Workington against whom Plaintiffs have asserted non-patent claims. This Court further has personal jurisdiction over Defendant IRP by virtue of IRP’s status as an

¹ Upon information and belief, Indorama Ventures Ltd. is also known as Indorama Ventures Public Company Limited.

affiliate under, third party beneficiary of, or party related to the TLA with regard to the trade secret and contract claims arising from that agreement.²

15. Eastman filed this action against Defendants on December 18, 2009 and filed its Amended Complaint on March 31, 2010 (D.I. 15).

16. At the time of filing the Complaint (and Amended Complaint) and as alleged in those pleadings, Eastman was the lawful owner of all right, title and interest in and to United States Letters Patent Nos. 6,906,164 (“the ‘164 patent”), 7,358,322 (“the ‘322 patent”), and 7,459,113 (“the ‘113 patent”).³ Eastman also (1) owned proprietary rights in the trade secrets which, as alleged in the pleadings, the defendants have misappropriated, and (2) had contracted with certain of the defendants in connection with Eastman’s PET technology, a contract which, as alleged in the pleadings, those defendants have breached. Eastman retained these rights and interests until the acquisition of its PET business by Petrotemex in January 2011. In connection with that acquisition, Petrotemex has now acquired the patents and stepped into Eastman’s shoes with respect to all the claims brought by Eastman in this action. Eastman has only retained a contractually-based monetary right of recovery. In particular, effective as of January 31, 2011, Eastman has transferred to Petrotemex (a) all rights and interests in the patents-in-suit and Eastman’s proprietary rights to the trade secret technology involved in this case, and (b) all rights with respect to Eastman’s claims and all rights to any recovery in this

² Plaintiffs acknowledge the Court’s ruling on Eastman’s Motion Seeking Jurisdictional Discovery (D.I. 73) and further note that Defendant IRP’s Motion to Dismiss for Lack of Personal Jurisdiction under Fed. R. Civ. P. 12(b)(2) (D.I. 19) remains pending.

³ As previously indicated to Defendants and the Court, Plaintiffs are hereby withdrawing allegations based on United States Letters Patent Nos. 7,358,322 (“the ‘322 patent”) and 7,459,113 (“the ‘113 patent”) from the suit. (D.I. 55 at 3).

action. (D.I. 63 at 3 (citing D.I. 55 ex B)). Also effective as of January 31, 2011, Petrotemex has licensed rights in the patents-in-suit to DAK. (D.I. 55 at 2).

17. Based on the transfer of these rights to DAK and Petrotemex, DAK and Petrotemex are appropriately substituted for Eastman as plaintiffs in this action. Accordingly, on February 18, 2011, Eastman moved to substitute DAK and Petrotemex as plaintiffs in this action. On December 9, 2011, for reasons set forth in a Memorandum Order (D.I. 92), the Court denied Eastman's motion for substitution, ordered that DAK and Petrotemex be joined as parties in this action, and ordered that plaintiffs "file an amended complaint reflecting this change by no later than December 16, 2011." Accordingly, Plaintiffs are filing this Supplemental and Second Amended Complaint. This pleading is made subject to renewing their motion to substitute at a time when the record is more fully developed on the extent of the transfer of rights to DAK and Petrotemex and subject to their rights of appeal.

FACTS

The Eastman/Indorama Technology License Agreement

18. On or about March 31, 2008, Indorama Holdings Rotterdam, Indorama Polymers Rotterdam, and Indorama Polymers Workington (collectively "Indorama") entered into the TLA with Eastman. The TLA involved the license of certain intellectual property rights to Indorama in connection with Eastman's divestment of its North-West European PET and Purified Terephthalic Acid Business assets under a Master Business Sale Agreement ("MBSA"). The intellectual property rights licensed to Indorama do not include Eastman's IntegRex™ technology for the production of PET.

19. The TLA also granted a license to certain of Eastman's intellectual property rights for use by Purchasers at "its Lithuania Plant." Upon information and belief, the Lithuanian PET plant is indirectly owned by IRP, and is not owned by the Indorama Defendants.

20. Pursuant to the TLA and the related MBSA, certain Eastman employees became Indorama employees (referred to herein as “transferred employees”). These employees, through their employment by Eastman, were in possession of Eastman confidential, proprietary, and trade secret information relating to the manufacture of PET and the formulation of Eastman PET products, including without limitation information related to Eastman’s IntegRex™ PET technology, which includes Eastman’s polyester melt phase technology.

21. Under the TLA, Indorama received a license to use Licensed Trade Secrets to make certain Commercial Products only at the Workington Plant, the Rotterdam PET Plant, and the Rotterdam EPTA (Eastman purified terephthalic acid) Plant.

22. Under the TLA, Indorama also received a license to use Licensed Trade Secrets to make certain PET Polymers and PET Compositions within a specified Field of Use. With a few exceptions, this Field of Use restricted the use of the Licensed Trade Secrets to specifically identified European Plants.

23. The TLA does not include a license under Licensed Trade Secrets to make PET Compositions or PET Polymers or terephthalic acid compositions by any process other than the Licensed Trade Secrets.

24. The TLA does not permit Indorama to use, transfer, disclose, make any product with, or use or modify any process with, Trade Secrets that are not Licensed Trade Secrets.

25. The know-how and processes for practicing any feature of Eastman’s IntegRex™ PET technology, including its polyester melt phase technology, are not Licensed Trade Secrets under the terms of the TLA.

26. The TLA includes terms concerning the protection of Eastman's Confidential Information, its Licensed Trade Secrets, and its non-licensed Trade Secrets.

27. The TLA requires Indorama to inform certain employees at the Workington Plant, the Rotterdam PET Plant, and the Rotterdam EPTA Plant of the status and ownership by Eastman of the Trade Secrets and Licensed Trade Secrets, to inform those employees of their confidentiality obligations under the TLA, and to provide those employees with copies of the relevant provisions of the agreement concerning confidentiality.

28. The TLA prohibits Indorama from using or transferring Trade Secrets that are not Licensed Trade Secrets, from making any product with Trade Secrets that are not Licensed Trade Secrets, and from using or modifying any process with Trade Secrets that are not Licensed Trade Secrets.

29. The TLA prohibits Indorama from soliciting Trade Secrets which are not Licensed Trade Secrets from transferred Eastman employees. It also prohibits transferred employees from disclosing to the Indorama entities or their Affiliates any Trade Secrets which are not Licensed Trade Secrets. IRP and AlphaPet are Indorama Affiliates, as defined in the TLA.

30. The TLA provides that the agreement shall be governed and construed under the laws of the State of Delaware; that all suits, actions or proceedings arising out of or in connection with the TLA shall be brought in the courts of Delaware; and that the parties accept the exclusive jurisdiction of the Delaware courts for all such suits, actions or proceedings.

IRP Control Over Indorama Ventures' Entire PET Business

31. In its 2008 Annual Report, IRP explained that AlphaPet, Indorama Polymers Rotterdam, and Indorama Polymers Workington are IRP subsidiaries, and that they are "controlled" by IRP, which "has the power, directly or indirectly, to govern the[ir] financial and

operating policies . . . so as to obtain benefits from [their] activities.” Exhibit A (“2008 Annual Report”) attached hereto, at 82, 84. IRP has indicated that it “owns and operates plants in Asia, Europe and North America to produce PET polymers.” *Id.* at 32. IRP refers to AlphaPet, Indorama Polymers Rotterdam, and Indorama Polymers Workington as IRP operating units, plants, and projects. *See id.* at 7, 32, 48, 51. IRP has also indicated that “IRP and its subsidiaries have a marketing team in Thailand, USA and Europe which is focused on sales in respective regions.” *Id.* at 32.

32. Following “the acquisition of PET plants in Rotterdam (Netherlands) and Workington (U.K.)” from Eastman, IRP “integrated the corporate team of executives with the unit teams in Thailand, Europe and USA.” *Id.* at 4. In its 2007 Annual Report, IRP stated that it “work[ed] on integration of human resources and operations” of the Indorama Polymers Rotterdam and Indorama Polymers Workington “plants.” Exhibit B (“2007 Annual Report”), attached hereto, at 29. Upon information and belief, all of the directors of Indorama Polymers Workington are also directors (or both officers and directors) of IRP. Upon information and belief, three of the four directors of Indorama Polymers Rotterdam are also directors (or both officers and directors) of IRP.

33. IRP has stated that it established the AlphaPet plant “[t]o service growth in demand from customers,” i.e., IRP customers, and that the “plant installation [wa]s supervised by our management team.” 2008 Annual Report at 35.

34. Upon information and belief, there is significant overlap between the officers and directors of IRP and those of AlphaPet. Upon information and belief, AlphaPet may bind IRP because certain of the directors and officers of AlphaPet are authorized signatories for IRP.

Start Up of the AlphaPet/IRP Facility in Decatur, Alabama

35. During 2009, AlphaPet completed fabrication of a melt-to-resin PET manufacturing plant (i.e., a plant using polyester melt phase process technology) at its Decatur, Alabama production facility. In the spring and summer of 2009, AlphaPet started production at this facility and ramped it up to commercial scale.

36. IRP has indicated that the “marketing plan” for the AlphaPet “project” was “well in place” as of the close of 2008, prior to commencement of commercial production, at which time “[t]his plant . . . ha[d] secured customers for [the] majority of its volume.” 2008 Annual Report at 7, 29. Upon information and belief, the marketing plan targeted customers throughout the United States.

37. On April 30, 2009, pursuant to the Notice provisions of the TLA, Eastman sent correspondence to Indorama Holdings Rotterdam and Indorama Polymers Rotterdam. In this correspondence, Eastman identified the March 31, 2008, TLA agreement and discussed Eastman’s concerns about any use of unlicensed Eastman trade secret information in connection with the operation of AlphaPet’s PET manufacturing plant in Decatur.

38. In this correspondence, Eastman noted the limited rights that Indorama had received under the TLA. That agreement precluded Indorama from using or accessing Eastman’s IntegRex™ PET technology, and it prevented Indorama from accessing the knowledge of former Eastman employees regarding IntegRex™ PET technology. Eastman also noted that the TLA restricted the use or transfer of defined Trade Secrets, restricted the modification of any processes using the Trade Secrets, and prohibited the solicitation of Trade Secrets from transferred employees.

39. In this correspondence, Eastman requested written confirmation by May 13, 2009, that: (1) Indorama Holdings Rotterdam and Indorama Polymers Rotterdam had

investigated this matter; (2) Indorama Holdings Rotterdam and Indorama Polymers Rotterdam had determined that they were in full compliance with all terms of the TLA, including all terms concerning the protection of Eastman's Confidential Information and Trade Secrets; and (3) any individual having knowledge of Eastman's PET IntegRex™ technology had not and would not participate in, or be consulted regarding, the start-up or operation of the AlphaPet plant in Decatur.

40. Indorama Holdings Rotterdam and Indorama Polymers Rotterdam failed to provide the requested confirmations.

41. Upon information and belief, IRP employees traveled to Alabama to assist in starting up production at the AlphaPet facility. IRP has stated that the AlphaPet "plant installation [wa]s supervised by our management team." 2008 Annual Report at 35.

42. Upon information and belief, former Eastman employees working for one or more of Indorama Holdings Rotterdam, Indorama Polymers Rotterdam, and Indorama Polymers Workington, at the direction of one or more of the Defendants, traveled from Europe to Alabama in mid-2009 to assist in starting up production at the AlphaPet facility. These same individuals had assisted during the mid-2006 to early-2007 start-up of Eastman's advanced polyester melt phase processes at its IntegRex™ PET manufacturing plant in Gaston, South Carolina.

43. These and other former Eastman employees were in possession of Eastman confidential, proprietary, and trade secret information relating to the manufacture of PET and the formulation of Eastman PET products, including information related to Eastman's IntegRex™ PET technology.

44. Upon information and belief, these former Eastman employees or other former Eastman employees, at the direction of one or more of the Defendants, improperly disclosed Eastman's confidential, proprietary, and trade secret information relating to the manufacture of PET, including information related to Eastman's IntegRex™ PET technology, to Defendants AlphaPet and IRP during the design, start-up or operation of AlphaPet's melt-to-resin PET manufacturing process, in contravention of the TLA terms concerning the protection of Eastman's Confidential Information and Trade Secrets.

45. Upon information and belief, Defendant AlphaPet improperly obtained Eastman's confidential, proprietary, and trade secret information relating to the manufacture of PET, including information related to Eastman's IntegRex™ PET technology from Defendants IRP, Indorama Holdings Rotterdam, Indorama Polymers Rotterdam, or Indorama Polymers Workington during the design, start-up or operation of AlphaPet's melt-to-resin PET manufacturing process.

46. Upon information and belief, one or more of the Defendants, improperly used Eastman's confidential, proprietary, and trade secret information relating to the manufacture of PET, including at least information concerning Eastman's IntegRex™ PET technology improperly obtained from these former Eastman employees or other former Eastman employees, during the design, start-up or operation of AlphaPet's melt-to-resin PET manufacturing process, in contravention of the TLA terms concerning the protection of Eastman's Confidential Information and Trade Secrets.

47. In a press release dated September 28, 2009, IRP stated that "Indorama Polymers PCL, Thailand (IRP) and its US subsidiary AlphaPet Inc. are pleased to announce the startup of its first production line of the 432 KMT PET manufacturing facility in Decatur, AL on

September 22nd, 2009. The plant is currently producing prime quality PET resin since the 25th of September.” Exhibit C (press release) attached hereto.

48. The September 28 press release quotes D.K. Agarwal, the Chief Executive Officer of IRP, as stating that “[i]nvestment in AlphaPet reiterates our strong commitment to the growth of PET packaging for beverages and our confidence in the North American market. AlphaPet has commissioned the latest and the “state of the art” technology of melt to resin MTR[®] and it is a proud moment for all of us at Indorama to demonstrate the group’s technical skill over and above our managerial strength which we are better known for.” *Id.*

49. The September 28 press release also states that “[t]he second production line is scheduled to start before the end of 2009 and at that time, IRP group will reach a worldwide capacity close to 1.5 million tpa of PET resin, making them the second largest producer in the world.” *Id.*

The Patent-in-Suit

50. United States Letters Patent No. 6,906,164 (“the ’164 patent”) entitled “Polyester Process Using a Pipe Reactor” was duly and legally issued by the United States Patent and Trademark Office (“USPTO”) on June 14, 2005. A copy of the ’164 patent is attached as Exhibit D.

51. At the time of the original complaint and the first amended complaint, Eastman was the lawful owner of all right, title and interest in the ’164 patent. DAK and Petrotemex are, since the time of the transfer of rights as described above, the lawful owners of all right, title and interest in the ’164 patent.

FIRST COUNT -- PATENT INFRINGEMENT
ASSERTED AGAINST DEFENDANTS ALPHAPET AND IRP

52. DAK and Petrotemex (on their own behalf and stepping into the shoes of Eastman), and Eastman (as, and to the extent that it remains, the original plaintiff), pursuant to the Court's Memorandum Order, repeat and reallege Paragraphs 1-51 of the Complaint as if fully set forth herein."

53. Upon information and belief, IRP and AlphaPet have directly infringed, induced infringement of and/or contributed to infringement of one or more claims of the '164 patent, by making, using, selling, and/or offering for sale polyester monomer within the United States.

54. Upon information and belief, the infringement by IRP and/or AlphaPet of the '164 patent has been and/or continues to be willful.

55. Plaintiffs DAK and Petrotemex should be awarded damages against IRP and AlphaPet for infringement of the '164 patent in an amount to be determined at trial, but in no event less than a reasonable royalty.

SECOND COUNT -- BREACH OF CONTRACT
ASSERTED AGAINST DEFENDANTS INDORAMA HOLDINGS ROTTERDAM,
INDORAMA POLYMERS ROTTERDAM, AND INDORAMA POLYMERS WORKINGTON

56. DAK and Petrotemex (on their own behalf and stepping into the shoes of Eastman), and Eastman (as, and to the extent that it remains, the original plaintiff), pursuant to the Court's Memorandum Order, repeat and reallege Paragraphs 1-49 of this Complaint as if fully set forth herein.

57. The actions of Defendants Indorama Holdings Rotterdam, Indorama Polymers Rotterdam, and Indorama Polymers Workington described above constitute breach of the terms of the TLA concerning the protection of Plaintiffs' Confidential Information and Trade

Secrets, licensed or otherwise, under Delaware law. These contractual provisions include at least the confidentiality and non-use obligations described in paragraphs 22-24 above.⁴

58. The actions of Defendants Indorama Holdings Rotterdam, Indorama Polymers Rotterdam, and Indorama Polymers Workington described above have at all times relevant to this action been willful and/or knowing.

59. As a result of the actions of Defendants Indorama Holdings Rotterdam, Indorama Polymers Rotterdam, and Indorama Polymers Workington described above, Plaintiffs have been irreparably injured, have no adequate legal remedy, and have suffered monetary damages in an amount yet to be determined.

THIRD COUNT -- TRADE SECRET MISAPPROPRIATION
ASSERTED AGAINST ALL DEFENDANTS

60. DAK and Petrotemex (on their own behalf and stepping into the shoes of Eastman), and Eastman (as, and to the extent that it remains, the original plaintiff), pursuant to the Court's Memorandum Order, repeat and reallege Paragraphs 1-49 and 57-59 of this Complaint as if fully set forth herein.

61. Plaintiffs' confidential and proprietary trade secret information, including the Trade Secrets and Licensed Trade Secrets, has been the subject of efforts by Plaintiffs that are reasonable under the circumstances to maintain their secrecy, including the incorporation of confidentiality provisions into the TLA and the request for written confirmation that Indorama Holdings Rotterdam and Indorama Polymers Rotterdam would abide by those confidentiality provisions.

⁴ Plaintiffs have not realleged paragraph 56 from the first Amended Complaint, and have modified the allegations of paragraphs 55-58 from the first Amended Complaint with respect to IRP and in view of the Court's Order of November 4, 2011. In doing so, Plaintiffs reserve all their rights of appeal and to reassert those allegations.

62. Plaintiffs' confidential and proprietary trade secret information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable with proper means by, other persons who can obtain economic value from their disclosure or use, including its independent economic value under the terms of the TLA.

63. Defendants Indorama Holdings Rotterdam, Indorama Polymers Rotterdam and Indorama Polymers Workington obtained Plaintiffs' confidential and proprietary trade secret information pursuant to the TLA and through Eastman's former employees. These Defendants have disclosed Eastman's confidential and proprietary trade secret information to AlphaPet or IRP during the design, start-up or operation of AlphaPet's melt-to-resin manufacturing process, including information related to Plaintiffs' IntegRex™ PET technology, without express or implied consent from Plaintiffs and in contravention of the TLA terms concerning the protection of Plaintiffs' Confidential Information and Trade Secrets, including the TLA prohibition against soliciting Trade Secrets which are not Licensed Trade Secrets from transferred employees and the TLA requirement that Indorama prohibit transferred employees from disclosing Trade Secrets that are not Licensed Trade Secrets to Indorama and its Affiliates.

64. Defendant IRP obtained Plaintiffs' confidential and proprietary trade secret information as an affiliate under, third party beneficiary of, or party related to the TLA or, in the alternative, from the Indorama Defendants and former Eastman employees. Defendant IRP, during the design, start-up or operation of AlphaPet's melt-to-resin manufacturing process, has disclosed Plaintiffs' confidential and proprietary trade secret information to AlphaPet without express or implied consent from Plaintiffs and/or has used Plaintiffs' confidential and proprietary trade secret information without express or implied consent from Plaintiffs.

65. Defendant AlphaPet improperly obtained Plaintiffs' confidential and proprietary trade secret information from Defendants Indorama Holdings Rotterdam, Indorama Polymers Rotterdam, Indorama Polymers Workington, and IRP, as described above. Defendant AlphaPet has improperly used Plaintiffs' confidential and proprietary trade secret information, including information related to Plaintiffs' IntegRex™ PET technology, during the design, start-up and/or operation of its melt-to-resin manufacturing process without express or implied consent from Plaintiffs.

66. Defendants Indorama Holdings Rotterdam, Indorama Polymers Rotterdam, Indorama Polymers Workington, and IRP have been under a duty to maintain the secrecy of confidential and proprietary trade secret information acquired pursuant to the TLA, including information related to Plaintiffs' IntegRex™ PET technology, and not to disclose it or use it in contravention of the parties' agreements, including as described above, in connection with the start up of the Decatur facility.

67. On information and belief, Defendants' actions described above have at all times relevant to this action been knowing, willful and malicious.

68. Plaintiffs have been injured by Defendants' misappropriation of trade secrets, among other reasons, due to Defendants' improper head start in producing competing products at the AlphaPet facility, unjustified marketplace competition by these products, and unfair and uncompensated use of Plaintiffs' technology.

69. Defendants' actions constitute misappropriation of Plaintiffs' confidential and proprietary trade secret information under 6 Del.C. § 2001 *et seq.*

70. As a direct and proximate result of Defendants' actions described above, Plaintiffs have been irreparably injured, have no adequate legal remedy, and have suffered monetary damages in an amount yet to be determined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request a judgment from this Court:

- A. declaring that the claims of the '164 patent are valid and enforceable;
- B. declaring that Defendants IRP and AlphaPet have infringed one or more claims of the '164 patent;
- C. enjoining Defendants IRP and AlphaPet from further infringement of the '164 patent;
- D. awarding Plaintiffs DAK and Petrotemex damages adequate to compensate for infringement of the '164 patent by Defendants IRP and AlphaPet;
- E. increased and treble damages for willful infringement as provided in 35 U.S.C. § 284;
- F. finding this case to be exceptional and awarding Plaintiffs their reasonable attorney fees as provided in 35 U.S.C. § 285;
- G. declaring that IRP, Indorama Holdings Rotterdam, Indorama Polymers Rotterdam, and/or Indorama Polymers Workington have breached their contract with Eastman by improperly using and/or disclosing Plaintiffs' Trade Secret or Licensed Trade Secret information, and/or by allowing, enabling, authorizing, causing or inducing third parties to do so, including other named Defendants, and awarding Plaintiffs their damages sustained as a result of this wrongful conduct;

H. declaring that Defendants have misappropriated Plaintiffs' confidential and proprietary trade secret information by improperly using and/or disclosing this information and/or by allowing, enabling, authorizing, causing or inducing third parties to do so;

I. awarding Plaintiffs their damages sustained as a result of Defendants' wrongful conduct, including without limitation for both actual loss and unjust enrichment and for exemplary damages under 6 Del.C. § 2003, but in no event less than a reasonable royalty;

J. preliminarily and permanently enjoining the Defendants and their employees, agents, partners, officers, directors, owners, shareholders, principals, subsidiaries, related companies, affiliates, and all persons in active concert or participation with them from unauthorized use of Plaintiffs' confidential and proprietary trade secret information, and all other appropriate injunctive relief;

K. awarding Plaintiffs punitive and/or exemplary damages as a result of Defendants' willful and deliberate conduct;

L. granting Plaintiffs pre- and post-judgment interest, and costs and attorney's fees; and

M. awarding Plaintiffs such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs request a jury trial on all issues so triable.

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Dated: December 16, 2011
1039682/36492

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on December 16, 2011, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on December 16, 2011, the attached document was Electronically

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