

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TRISTRATA TECHNOLOGY, INC. :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 02-1290 JJF
 :
 CARDINAL HEALTH, INC., PLAN B, :
 INC., NALKCO INC., SKIN BIOLOGY, :
 INC., BEAUTICONTROL, INC., GUTHER- :
 REKER CORP., and AP PHARMA, INC. :
 :
 Defendants. :

Arthur G. Connolly, III, Esquire and Francis DiGiovanni, Esquire
of CONNOLLY, BOVE, LODGE & HUTZ, LLP, Wilmington, Delaware.
Of Counsel: Michael O. Warnecke, Esquire, Donald W. Rupert,
Esquire, David R. Melton, Esquire, and Douglas L. Sawyer, Esquire
of MAYER, BROWN, ROWE & MAW LLP, Chicago, Illinois.
Counsel for Plaintiff Tristrata Technology, Inc.

MEMORANDUM OPINION

September 30, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is Tristrata Technology, Inc.'s Motion For Permanent Injunction (D.I. 116). For the reasons discussed, the Motion will be granted.

BACKGROUND

On July 12, 2002, Tristrata Technology, Inc. ("Tristrata") filed a Complaint against Plan B, Inc. ("Plan B") that alleged infringement of various patents. Plan B did not file an Answer to the Complaint, and Tristrata moved for default judgment against Plan B (D.I. 60). On June 11, 2003, the Clerk of the Court entered default against Plan B, and on June 19, 2003, the Court entered a default judgment against Plan B on all counts of the Complaint. (D.I. 71). In its order, the Court also scheduled a hearing for damages. Shortly before the hearing was to occur, Tristrata notified the Court that it was having difficulty obtaining information regarding infringing sales and requested that the hearing on damages be postponed. (D.I. 105). Tristrata also stated that it would be requesting a permanent injunction that might obviate the need for a hearing on damages. Tristrata then filed the instant Motion For Permanent Injunction. To date, Plan B has not entered an appearance in this action, or otherwise responded to the Complaint or the pending Motion.

DISCUSSION

By its Motion, Tristrata requests the Court to enter a permanent injunction against Plan B. Tristrata also reserves its right to file a motion at a later date, if and when Tristrata is able to determine specific figures regarding infringing sales by Plan B.

Once a default judgment is entered, the facts alleged in a complaint, except those relating to the amount of damages, are deemed admitted. Comdyne I, Inc. v. Corbin, 908 F.2d 1142, 1148 (3d Cir. 1990). Accordingly, the Court concludes that Tristrata has proven that Plan B has infringed its patents and has "been contributing, and continues to contribute and/or to induce the infringement of" the asserted patents, as alleged in Tristrata's Complaint. (D.I. 1).

Although the Court has discretion to grant injunctive relief, 35 U.S.C. § 283, once infringing activity has been proven, an injunction should issue, unless there is a sufficient reason for denying it. W.L. Gore & Associates, Inc. v. Garlock, Inc., 842 F.2d 1275, 1281 (Fed. Cir. 1988). Plan B has not entered an appearance in this case and has not responded to Tristrata's Motion. Accordingly, the Court concludes that injunctive relief is appropriate in this case, and therefore, the Court will grant Tristrata's Motion For Permanent Injunction.

CONCLUSION

For the reasons discussed, Tristrata Technology, Inc.'s Motion For Permanent Injunction (D.I. 116) will be granted.

An appropriate Order will be entered.

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 :
 Defendants. :

INJUNCTION ORDER

At Wilmington, this 30th day of September 2004, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED THAT:

- 1) Tristrata Technology, Inc.'s ("Tristrata") Motion For Permanent Injunction (D.I. 116) is **GRANTED**.
- 2) Plan B, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, shall be permanently enjoined from infringing, either directly, contributorily, or by inducement, U.S. Patent Nos. 5,091,171, 5,547,988, 5,385,938, 5,389,677, and 5,422,370.
- 3) Plan B shall take immediate steps to comply with

this Order, and, in any event, shall fully comply within seven (7) days of entry of this Order.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE