

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez

Civil Action No. 13-cv-0876-WJM-NYW

XY, LLC,

Plaintiff / Counterclaim Defendant,

v.

TRANS OVA GENETICS, LC,

Defendant / Counterclaim Plaintiff.

VERDICT FORM

We, the jury, present our Answers to Questions submitted by the Court, to which we have all agreed:

PART I: BREACH OF CONTRACT

XY's CLAIM: BREACH OF CONTRACT

1. Has XY proven, by a preponderance of the evidence, that it had the right to terminate the license agreement with Trans Ova in November 2007?

YES _____

NO _____

If you answered "YES" to Question 1, then the license agreement terminated in November 2007. Please skip Questions 2 through 6, and proceed to Question 7 in the next section.

If you answered "NO" to Question 1, please answer Question 2.

2. Has XY proven, by a preponderance of the evidence, that Trans Ova materially breached the license agreement at any time before April 16, 2009, and failed to cure the breach by that date?

YES _____

NO _____

If you answered "YES" to Question 2, then the license agreement terminated in April 2009. Please skip Question 3 and proceed to Question 4.

If you answered "NO" to Question 2, please answer Question 3.

3. Has XY proven, by a preponderance of the evidence, that Trans Ova materially breached the license agreement at any time before April 16, 2014, and failed to cure the breach by that date?

YES _____ NO _____

If you answered "YES" to Question 3, then the license agreement terminated in April 2014. Please proceed to Question 4.

If you answered "NO" to Question 3, please skip Question 4 and proceed to Question 5 in the following section.

4. What amount of damages, if any, has XY proved by a preponderance of the evidence that it is entitled to receive from Trans Ova for Trans Ova's breach of contract?

\$ 1,481,000.00

Please proceed to Question 5.

TRANS OVA'S CLAIM: BREACH OF CONTRACT

5. Has Trans Ova proven, by a preponderance of the evidence, that XY breached the license agreement and its duty of good faith and fair dealing by attempting to terminate the license agreement in November 2007?

YES _____ NO _____

If you answered "YES" to Question 5, please proceed to Question 6.

If you answered "NO" to Question 5, please skip Question 6 and proceed to Question 7 in the next section.

6. What amount of damages, if any, has Trans Ova proved by a preponderance of the evidence that it is entitled to receive from XY for XY's breach of contract and breach of its duty of good faith and fair dealing?

\$ 528,000.00

Please proceed to Question 7.

PART II: PATENT ISSUES

Before you consider the patent issues in this case, the Court reminds you of Trans Ova's stipulation in the jury instruction on Direct Infringement. Trans Ova has stipulated that, if it was not operating under a valid license and if XY's patents are valid and enforceable, Trans Ova has infringed all ten patents-in-suit until June 2012, and all but two of the patents-in-suit after June 2012.

XY'S CLAIM: PATENT INFRINGEMENT

You should only answer Question 7 if you answered "YES" to any one of Questions 1, 2, or 3.

If you answered "NO" to all of Questions 1, 2, and 3, please skip Questions 7 and 8 and proceed to Question 9.

7. Has XY proven, by a preponderance of the evidence, that Trans Ova infringed the following patent claims after June 2012?

U.S. Patent No. 7,713,687 (Reverse Sorting)

Claim 1	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Claim 2	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Claim 13	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

U.S. Patent No. 7,771,921 (Reverse Sorting)

Claim 1	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Claim 2	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Claim 5	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
Claim 18	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

Please proceed to Question 8.

XY'S CLAIM: WILLFUL PATENT INFRINGEMENT

8. Do you find that XY has proven by clear and convincing evidence that Trans Ova's infringement was willful?

YES NO

Please proceed to Question 9.

TRANS OVA'S DEFENSE: PATENT INVALIDITY—ANTICIPATION

9. Has Trans Ova proven, by clear and convincing evidence, that any of the following asserted patent claims are invalid because they are anticipated?

U.S. Patent No. 7,820,425 (Freezing Sexed Semen)

Claim 1	YES _____	NO <input checked="" type="checkbox"/>
Claim 6	YES _____	NO <input checked="" type="checkbox"/>
Claim 31	YES _____	NO <input checked="" type="checkbox"/>

U.S. Patent No. 8,569,053 (IVF with Reverse-Sorted Semen)

Claim 9	YES _____	NO <input checked="" type="checkbox"/>
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U.S. Patent No. 6,149,867 (Chemically Coordinated Sheath Fluid)

Claim 12	YES _____	NO <input checked="" type="checkbox"/>
Claim 13	YES _____	NO <input checked="" type="checkbox"/>

U.S. Patent No. 6,524,860 (Chemically Coordinated Sheath Fluid)

Claim 1	YES _____	NO <input checked="" type="checkbox"/>
Claim 32	YES _____	NO <input checked="" type="checkbox"/>

Please proceed to Question 10.

TRANS OVA'S DEFENSE: PATENT INVALIDITY—OBVIOUSNESS

10. Has Trans Ova proven, by clear and convincing evidence, that any of the following asserted patent claims are invalid because they are obvious?

U.S. Patent No. 7,820,425 (Freezing Sexed Semen)

Claim 1	YES _____	NO <input checked="" type="checkbox"/>
Claim 6	YES _____	NO <input checked="" type="checkbox"/>
Claim 31	YES _____	NO <input checked="" type="checkbox"/>

U.S. Patent No. 8,569,053 (IVF with Reverse-Sorted Semen)

Claim 9	YES _____	NO <input checked="" type="checkbox"/>
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U.S. Patent No. 6,149,867 (Chemically Coordinated Sheath Fluid)

Claim 12	YES _____	NO <input checked="" type="checkbox"/>
Claim 13	YES _____	NO <input checked="" type="checkbox"/>

U.S. Patent No. 6,524,860 (Chemically Coordinated Sheath Fluid)

Claim 1	YES _____	NO <input checked="" type="checkbox"/>
Claim 32	YES _____	NO <input checked="" type="checkbox"/>

U.S. Patent No. 7,713,687 (Reverse-Sorting)

Claim 1	YES _____	NO <input checked="" type="checkbox"/>
Claim 2	YES _____	NO <input checked="" type="checkbox"/>
Claim 13	YES _____	NO <input checked="" type="checkbox"/>

Please continue to the next page.

U.S. Patent No. 7,771,921 (Reverse-Sorting)

Claim 1	YES _____	NO <input checked="" type="checkbox"/>
Claim 2	YES _____	NO <input checked="" type="checkbox"/>
Claim 5	YES _____	NO <input checked="" type="checkbox"/>
Claim 18	YES _____	NO <input checked="" type="checkbox"/>

U.S. Patent No. 6,357,307 (Flow Cytometer with Specialized Nozzle)

Claim 1	YES _____	NO <input checked="" type="checkbox"/>
Claim 2	YES _____	NO <input checked="" type="checkbox"/>
Claim 3	YES _____	NO <input checked="" type="checkbox"/>
Claim 5	YES _____	NO <input checked="" type="checkbox"/>
Claim 11	YES _____	NO <input checked="" type="checkbox"/>
Claim 15	YES _____	NO <input checked="" type="checkbox"/>
Claim 57	YES _____	NO <input checked="" type="checkbox"/>
Claim 58	YES _____	NO <input checked="" type="checkbox"/>

U.S. Patent No. 6,604,435 (Flow Cytometer with Specialized Nozzle)

Claim 1	YES _____	NO <input checked="" type="checkbox"/>
Claim 10	YES _____	NO <input checked="" type="checkbox"/>
Claim 11	YES _____	NO <input checked="" type="checkbox"/>
Claim 12	YES _____	NO <input checked="" type="checkbox"/>
Claim 13	YES _____	NO <input checked="" type="checkbox"/>

Please continue to the next page.

U.S. Patent No. 6,782,768 (Flow Cytometer with Specialized Nozzle)

Claim 1	YES _____	NO <input checked="" type="checkbox"/>
Claim 10	YES _____	NO <input checked="" type="checkbox"/>
Claim 11	YES _____	NO <input checked="" type="checkbox"/>
Claim 12	YES _____	NO <input checked="" type="checkbox"/>
Claim 13	YES _____	NO <input checked="" type="checkbox"/>
Claim 14	YES _____	NO <input checked="" type="checkbox"/>
Claim 15	YES _____	NO <input checked="" type="checkbox"/>
Claim 16	YES _____	NO <input checked="" type="checkbox"/>
Claim 17	YES _____	NO <input checked="" type="checkbox"/>
Claim 18	YES _____	NO <input checked="" type="checkbox"/>

U.S. Patent No. 6,263,745 (Flow Cytometer with Specialized Nozzle)

Claim 1	YES _____	NO <input checked="" type="checkbox"/>
Claim 4	YES _____	NO <input checked="" type="checkbox"/>
Claim 9	YES _____	NO <input checked="" type="checkbox"/>
Claim 11	YES _____	NO <input checked="" type="checkbox"/>
Claim 13	YES _____	NO <input checked="" type="checkbox"/>
Claim 14	YES _____	NO <input checked="" type="checkbox"/>
Claim 15	YES _____	NO <input checked="" type="checkbox"/>
Claim 19	YES _____	NO <input checked="" type="checkbox"/>
Claim 53	YES _____	NO <input checked="" type="checkbox"/>
Claim 54	YES _____	NO <input checked="" type="checkbox"/>

Please proceed to Question 11.

TRANS OVA'S DEFENSE: UNENFORCEABILITY DUE TO PATENT MISUSE

11. Has Trans Ova proven, by a preponderance of the evidence, that the market for technology involving the sorting of non-human mammalian semen by sex is a relevant market?

YES _____ NO

If you answered "NO" to Question 11, please skip Questions 12 and 13, and proceed to Question 14 in the next section.

If you answered "YES" to Question 11, please answer Question 12.

12. Has Trans Ova proven, by a preponderance of the evidence, that XY has market power in the relevant market?

YES _____ NO _____

If you answered "NO" to Question 12, please skip Question 13, and proceed to Question 14 in the next section.

If you answered "YES" to Question 12, please answer Question 13.

13. Has Trans Ova proven, by a preponderance of the evidence, that XY has engaged in anticompetitive or exclusionary conduct that constitutes patent misuse?

YES _____ NO _____

Please proceed to Question 14.

TRANS OVA'S DEFENSE: INEQUITABLE CONDUCT

14. Has Trans Ova proven, by clear and convincing evidence, that XY obtained any of the claims of U.S. Patent No. 7,820,425 (Freezing Sexed Semen) by inequitable conduct?

YES _____ NO

15. Has Trans Ova proven, by clear and convincing evidence, that XY obtained any of the claims of U.S. Patent No. 8,569,053 (IVF with Reverse Sorted Semen) by inequitable conduct?

YES _____ NO

Please proceed to Question 16.

16. Has Trans Ova proven, by clear and convincing evidence, that XY obtained any of the claims of U.S. Patent No. 7,713,687 (Reverse-Sorting) by inequitable conduct?

YES _____

NO

17. Has Trans Ova proven, by clear and convincing evidence, that XY obtained any of the claims of U.S. Patent No. 7,771,921 (Reverse-Sorting) by inequitable conduct?

YES _____

NO

Please proceed to Question 18.

TRANS OVA'S DEFENSE: UNCLEAN HANDS

18. Has Trans Ova proven, by a preponderance of the evidence, that XY's claims for unjust enrichment and injunctive relief are barred by XY's unclean hands?

YES

NO _____

If you answered "NO" to each of Questions 1, 2, and 3, the license did not terminate and you must skip Question 19. If you answered "YES" for every claim of each of the ten patents at issue in this case in either (or both) of Questions 9 or 10, the patents are invalid and you must skip Question 19. If you answered "NO" for any claim in both Questions 9 or 10 in regards to the '425, '053, '687, and/or '921 patents, but as to those patent(s) you found they were obtained by inequitable conduct by answering "YES" to the corresponding Questions 14 through 17, then these patents are invalid and you must skip Question 19. Finally, if you answered "YES" to all of Questions 11 through 13, the patents are unenforceable and you must skip Question 19.

Otherwise, please answer Question 19.

XY'S CLAIM: PATENT INFRINGEMENT DAMAGES

19. What amount, if any, has XY proved by a preponderance of the evidence that it is entitled to receive as damages for Trans Ova's patent infringement during the time period after the license agreement terminated?

\$ 4,585,000.00

Please continue to the next page.

If you awarded XY damages in either Question 4 or Question 19, or both, please proceed to Question 20. Otherwise, please skip the remaining questions and sign and date the end of the form.

PART III: RECOUPMENT—ANTITRUST

TRANS OVA'S CLAIM: MONOPOLIZATION

20. Has Trans Ova proven, by a preponderance of the evidence, that the market for technology involving the sorting of non-human mammalian semen by sex is a relevant market?

Your answer to Question 20 must be the same as your answer to Question 11.

YES _____ NO _____

If you answered "NO" to Question 20, please skip Questions 21 through 24 and proceed to Question 25.

If you answered "YES" to Question 20, please answer Question 21.

21. Has Trans Ova proven, by a preponderance of the evidence, that XY has market power in the relevant market?

Your answer to Question 21 must be the same as your answer to Question 12.

YES _____ NO _____

If you answered "NO" to Question 21, please skip Questions 22, 23, and 24 and proceed to Question 25.

If you answered "YES" to Question 21, please answer Question 22.

22. Has Trans Ova proven, by a preponderance of the evidence, that XY willfully acquired or maintained its monopoly power through anticompetitive or exclusionary conduct?

YES _____ NO _____

If you answered "NO" to Question 22, please skip Questions 23 and 24, and proceed to Question 25.

If you answered "YES" to Question 22, please answer Question 23.

23. Has Trans Ova proven, by a preponderance of the evidence, that Trans Ova was injured in its business or property as a result of XY's anticompetitive or exclusionary conduct?

YES _____ NO _____

If you answered "NO" to Question 23, please skip Question 24 and proceed to Question 25.

If you answered "YES" to Question 23, please answer Question 24.

24. Has Trans Ova proven, by a preponderance of the evidence, that competition in the relevant market was injured as a result of XY's actions?

YES _____ NO _____

Please proceed to Question 25.

TRANS OVA'S CLAIM: ATTEMPT TO MONOPOLIZE

25. Has Trans Ova proven, by a preponderance of the evidence, that XY had a specific intent to achieve a monopoly in the market for technology involving the sorting of non-human mammalian semen by sex?

YES _____ NO _____

If you answered "NO" to Question 25, please skip Questions 26, 27, and 28, and proceed to Question 29.

If you answered "YES" to Question 25, please answer Question 26.

26. Has Trans Ova proven, by a preponderance of the evidence, that XY engaged in anticompetitive or exclusionary conduct to accomplish its intended goal of achieving a monopoly?

YES _____ NO _____

If you answered "NO" to Question 26, please skip Questions 27 and 28, and proceed to Question 29.

If you answered "YES" to Question 26, please answer Question 27.

27. Has Trans Ova proven, by a preponderance of the evidence, that there was a dangerous probability that XY would achieve its goal of a monopoly?

YES _____ NO _____

If you answered "NO" to Question 27, please skip Question 28 and proceed to Question 29.

If you answered "YES" to Question 27, please answer Question 28.

28. Has Trans Ova proven, by a preponderance of the evidence, that Trans Ova was injured in its business or property by XY's attempt to monopolize the relevant market?

YES _____

NO _____

TRANS OVA'S CLAIM: RECOUPMENT AMOUNT

If you answered "NO" to any of Questions 20 through 24, and you also answered "NO" to any of Questions 25 through 28, skip Question 29 and sign and date the end of the form.

If you answered "YES" to all of Questions 20 through 24, or you answered "YES" to all of Questions 25 through 28, please answer Question 29. Your answer to Question 29 can be no larger than the total amount of damages you awarded XY in Questions 4 and 19 combined.

29. In what amount, if any, has Trans Ova proved by a preponderance of the evidence that it may reduce XY's damages award in light of injuries to Trans Ova resulting from XY's monopolization or attempted monopolization?

\$ _____

The Foreperson should sign and date this Verdict Form, and notify the Bailiff that you have reached a verdict.

2/12/2016
Date