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12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION
16

17 FACET TECHNOLOGIES, LLC,
18 Plaintiff,
19 vs.
20 LIFESCAN, INC.,
21 Defendant.

Case No. 2:22-cv-01717-MCS (MARx)

Honorable Mark C. Scarsi

ANSWER TO COMPLAINT

LifeScan, Inc. (“LifeScan”) hereby answers and responds to the allegations of Plaintiff Facet Technologies, LLC (“Facet”) contained in the Complaint filed on March 15, 2022. Any allegation not explicitly admitted is denied. Moreover, headings and subheadings contained in the Complaint are not substantive allegations to which an answer is required. To the extent those headings and subheadings are substantive allegations to which an answer is required, LifeScan denies the allegations.

NATURE OF THE ACTION / INTRODUCTION

1. Denies the allegations contained in paragraph 1, except admits that Facet purports to bring an action for patent infringement under federal law.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.

3. Denies the allegations contained in paragraph 3, except admits that it is a private equity-backed company and that it is in the blood glucose monitoring business.

4. Denies the allegations contained in paragraph 4.

5. Denies the allegations contained in paragraph 5.

6. Denies the allegations contained in paragraph 6, except admits that it advanced monies to Facet pursuant to a Third Amendment To Amended And Restated Supply Agreement dated December 5, 2016 (“Third Amendment”) and respectfully refers the Court to the Third Amendment and the contents therein.

7. Denies the allegations contained in paragraph 7.

8. Denies the allegations contained in paragraph 8, except admits that Facet has repaid to LifeScan the monies advanced to Facet under the Third Amendment.

PARTIES

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10.

11. Admits the allegations contained in paragraph 11.

JURISDICTION AND VENUE

12. Denies the allegations contained in paragraph 12, except admits that Facet purports to bring an action for patent infringement under federal law.

13. Paragraph 13 contains legal conclusions to which no answer is required. To the extent an answer is required, admits the allegations contained in paragraph 13, and does not contest subject matter jurisdiction in this judicial district for the limited purposes of this action only.

14. Paragraph 14 contains legal conclusions to which no answer is required. To the extent an answer is required, denies the allegations contained in paragraph 14, but does not contest personal jurisdiction in this judicial district for the limited purposes of this action only.

15. Denies the allegations contained in paragraph 15.

16. Paragraph 16 contains legal conclusions to which no answer is required. To the extent an answer is required, denies the allegations contained in Paragraph 16, but does not contest venue in this judicial district for the limited purposes of this action only.

BACKGROUND

17. Admits diabetes is a dangerous and life-threatening medical condition and that the Center for Disease Control and Prevention (“CDC”) maintains a web page regarding monitoring blood sugar to manage diabetes, which is referenced in paragraph 17, and respectfully refers the Court to the CDC’s web page and the contents therein.

18. Admits the number of patients with diabetes is growing in the United States and that the CDC maintains a web page regarding national diabetes statistics, which is referenced in paragraph 18, and respectfully refers the Court to the CDC’s web page and the contents therein.

19. Denies the allegations contained in paragraph 19 and respectfully refers the Court to the ‘635 Patent, which is attached as Exhibit A to the Complaint, and the contents therein.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20.

21. Denies the allegations contained in paragraph 21.

22. Denies the allegations contained in paragraph 22.

1 23. Denies the allegations contained in paragraph 23.

2 24. Denies the allegations contained in paragraph 24 and respectfully refers the Court
3 to the '635 Patent, which is attached as Exhibit A to the Complaint, and the contents therein.

4 25. Denies the allegations contained in paragraph 25 and respectfully refers the Court
5 to the '635 Patent, which is attached as Exhibit A to the Complaint, and the contents therein.

6 26. Paragraph 26 contains legal conclusions to which no answer is required. To the
7 extent an answer is required, denies the allegations contained in Paragraph 26 and respectfully
8 refers the Court to the '635 Patent, which is attached as Exhibit A to the Complaint, and the contents
9 therein.

10 27. Denies the allegations contained in paragraph 27.

11 28. Denies the allegations contained in paragraph 28.

12 29. Denies the allegations contained in paragraph 29, except admits that it entered into
13 supply agreements with Facet for lancets and lancing devices and respectfully refers the Court to
14 the supply agreements and the contents therein.

15 30. Denies the allegations contained in paragraph 30, except admits that it entered into
16 supply agreements with Facet for lancets and lancing, and respectfully refers the Court to the
17 parties' supply agreements and the contents therein.

18 31. Denies the allegations contained in paragraph 31, except admits that Facet received
19 the Supplier Achievement Award in 2009.

20 32. Denies the allegations contained in paragraph 32.

21 33. Admits that it advanced monies to Facet pursuant to the Third Amendment and
22 respectfully refers the Court to the Third Amendment and the contents therein.

23 34. Denies the allegations contained in paragraph 34, except admits that it entered into
24 an Amended And Restated Supply Agreement and a Patent Security Agreement with Facet, which
25 are both dated January 9, 2018, and respectfully refers the Court to those agreements and the
26 contents therein.

27 35. Denies the allegations contained in paragraph 35.

28 36. Denies the allegations contained in paragraph 36.

1 37. Denies the allegations contained in paragraph 37.

2 38. Denies the allegations contained in paragraph 38, except admits that Platinum equity
3 agreed to buy LifeScan in March of 2018.

4 39. Denies the allegations contained in paragraph 39.

5 40. Denies the allegations contained in paragraph 40.

6 41. Denies the allegations contained in paragraph 41.

7 42. Denies the allegations contained in paragraph 42.

8 43. Denies the allegations contained in paragraph 43.

9 44. Denies the allegations contained in paragraph 44.

10 45. Denies the allegations contained in paragraph 45.

11 46. Denies knowledge or information sufficient to form a belief as to the truth of the
12 allegations contained in paragraph 46.

13 47. Denies the allegations contained in paragraph 47, except admits that Facet has repaid
14 to LifeScan the monies advanced to Facet under the Third Amendment.

15 48. Denies knowledge or information sufficient to form a belief as to the truth of the
16 allegations contained in paragraph 48.

17 49. Admits the allegations contained in paragraph 49.

18 50. Denies knowledge or information sufficient to form a belief as to the truth of the
19 allegations contained in paragraph 50.

20 51. Denies the allegations contained in paragraph 51, except admits that it maintains a
21 web page regarding “One Touch Delica Plus”, which is referenced in paragraph 51, and respectfully
22 refers the Court to the web page and the contents therein.

23 52. Admits the allegations contained in paragraph 52 and refers the court to the website
24 cited therein.

25 53. Denies the allegations contained in paragraph 53.

26 **COUNT I**

27 54. LifeScan repeats and incorporates the responses to each of the preceding paragraphs
28 as if fully set forth herein.

- 1 55. Denies the allegations contained in paragraph 55.
- 2 56. Denies the allegations contained in paragraph 56.
- 3 57. Denies the allegations contained in paragraph 57.
- 4 58. Denies the allegations contained in paragraph 58.
- 5 59. Denies the allegations contained in paragraph 59.
- 6 60. Denies the allegations contained in paragraph 60.
- 7 61. Denies the allegations contained in paragraph 61.
- 8 62. Denies the allegations contained in paragraph 62.
- 9 63. Denies the allegations contained in paragraph 63.
- 10 64. Denies the allegations contained in paragraph 64.
- 11 65. Denies the allegations contained in paragraph 65.
- 12 66. Denies the allegations contained in paragraph 66.
- 13 67. Denies the allegations contained in paragraph 67.
- 14 68. Denies the allegations contained in paragraph 68.
- 15 69. Denies the allegations contained in paragraph 69.
- 16 70. Denies the allegations contained in paragraph 70.
- 17 71. Admits the allegations contained in paragraph 71.
- 18 72. Denies the allegations contained in paragraph 72.
- 19 73. Denies the allegations contained in paragraph 73.
- 20 74. Paragraph 74 contains legal conclusions to which no answer is required. To the
- 21 extent an answer is required, denies the allegations contained in paragraph 74, except admits that
- 22 Facet maintains a web page regarding legal notices, which is referenced in paragraph 74, and
- 23 respectfully refers the Court Facet's web page and the contents therein.
- 24 75. Denies the allegations contained in paragraph 75.
- 25 76. Denies the allegations contained in paragraph 76.
- 26 77. Denies the allegations contained in paragraph 77.

1 **PRAYER FOR RELIEF**

2 The Prayer for Relief does not require a response. To the extent a response is required,
3 LifeScan denies the Prayer for Relief in its entirety.

4 **AFFIRMATIVE AND OTHER DEFENSES**

5 LifeScan asserts the following affirmative and other defenses without assuming any burden
6 of production or proof that it would not otherwise bear.

7 **First Affirmative Defense**

8 Facet's claims are barred, in whole or in part, because the Complaint fails to state a claim
9 upon which relief can be granted.

10 **Second Affirmative Defense**

11 Facet's claims are barred, in whole or in part, because LifeScan has not infringed (either
12 individually or jointly), willfully or otherwise, directly or indirectly, contributed to the infringement
13 of, or induced the infringement of any valid claim of the '635 patent, literally or under the doctrine
14 of equivalents. For example, LifeScan has not infringed the '635 patent claims identified by Facet
15 in paragraph 55 of its Complaint.

16 **Third Affirmative Defense**

17 Facet's claims are barred, in whole or in part, because the '635 patent claims are anticipated
18 and/or rendered obvious by prior art references, or otherwise fail to comply with the requirements
19 of 35 U.S.C. §§ 100 *et seq.*, including, without limitation, one or more of the following: 35 U.S.C.
20 §§ 101, 102, 103, and 112. For example, the '635 patent is invalid under at least 35 U.S.C. § 102(f)
21 for failing to accurately name the correct inventors of the claimed invention. The '635 Patent lists
22 Lauren R. Pusey, Brian M. Collins, Christopher J. Ruf, Nicholas H. Reaves, and Jonathan W.
23 Sanders as the inventors of the patent. However, on information and belief, at least one or more of
24 the engineers at Asahi Polyslider Company, Limited responsible for developing the Delica One
25 Touch lancet should have been named as inventors of the '635 patent because they made the
26 claimed invention or at least contributed to one or more essential features of the claimed invention
27 that were not insignificant in quality or well-known in the art. Therefore, the '635 patent is invalid
28 under at least 35 U.S.C. § 102(f) for failing to name the correct inventors.

1 **Fourth Affirmative Defense**

2 To the extent Facet and/or Facet's licensees have failed to properly mark any of the
3 relevant products as required by 35 U.S. C. § 287 or otherwise give proper notice that LifeScan's
4 actions allegedly infringe the '635 patent, LifeScan is not liable to Facet for the acts alleged to have
5 been performed before LifeScan received actual notice of the alleged infringement.

6 **Fifth Affirmative Defense**

7 Facet's claims are barred in whole or in part to the extent they have been exhausted and/or
8 released by licenses or releases, implied or express, granted to or received by LifeScan from Facet
9 or other parties with rights in the claimed subject matter.

10 **Sixth Affirmative Defense**

11 Facet's claims are barred, in whole or in part, by the equitable doctrines of unclean hands,
12 estoppel, waiver, acquiescence, prosecution history estoppel, disclaimer, and/or other equitable
13 doctrines.

14 **Seventh Affirmative Defense**

15 Facet's claims are barred, in whole or in part, because Facet is not entitled to injunctive
16 relief, having not suffered any irreparable injury, or to any specific performance; it has an adequate
17 remedy available at law for any alleged wrongdoing.

18 **Eighth Affirmative Defense**

19 LifeScan has engaged in all relevant activities in good faith, thereby precluding Facet from
20 recovering its reasonable attorneys' fees and/or costs under 35 U.S.C. § 285.
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Additional Defenses

LifeScan respectfully reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

Dated: May 11, 2022

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By 
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