

prior art Chromax® or are rendered obvious by the prior art Chromax® in combination with U.S. Patent No. 5,087,623 ("the '623 patent"), and (b) the asserted claims of U.S. Patent No. 6,143,301 are invalid as anticipated by the prior art Chromax® and the '623 patent. Third, defendants move for summary judgment in their favor that Counts VII, VIII, IX, X, and XI of plaintiffs' Complaint are time-barred and that plaintiffs' unjust enrichment claims are duplicative of the breach of contract claim. Fourth, defendants move for summary judgment in their favor that plaintiffs' trade secret misappropriation and patent infringement claims are barred by the defenses of equitable estoppel and laches. On January 17, 2014, after full briefing, the Court heard oral argument on these motions. At oral argument, the Court invited the parties to submit supplemental letter briefing on the admissibility, for purposes of summary judgment, of declarations by individuals who create genuine disputes of material fact by contradicting their previous deposition testimony.

Having carefully considered the parties' briefing and arguments, the Court concludes the following:

First, the Court denies in part and grants in part defendants' motion for summary judgment on noninfringement.

Regarding the '772 related patents, genuine disputes exist as to whether Centrum® Silver® Adults 50+ literally infringes the '772 related patents and whether the presence of niacinamide in the accused

products infringes the '772 related patents under the doctrine of equivalents. However, the Court narrows plaintiffs' infringement contentions as follows: First, niacinamide is not the same as nicotinic acid, and therefore the presence of niacinamide in Centrum® products cannot serve as the basis for a literal infringement contention. Second, while the study showing nicotinic acid in Centrum® Silver® Adults 50+ creates a genuine dispute as to whether that product contains nicotinic acid, plaintiffs fail to produce sufficient evidence to support an inference that the other thirteen Centrum® products, for which no test result shows the presence of nicotinic acid, contain nicotinic acid. As such, the other thirteen products do not literally infringe the '772 related patents by containing nicotinic acid. Third, the Court rejects plaintiffs' alternative theory that niacinamide provides nicotinic acid upon ingestion because this contention was not raised in plaintiffs' infringement contention interrogatories or expert reports.

As for the Re '480 patent, the Court finds that the combination of chromium picolinate and biotin in Centrum® does not produce a synergistic or greater than additive effect. Therefore, the Court grants summary judgment in defendants' favor that the accused products do not infringe any asserted claims of the Re '480 patent.

Second, the Court denies in full defendants' motion for summary judgment on invalidity.

Third, the Court grants in part and denies in part defendants' motion for summary judgment regarding dismissal of the state-law claims. There is no genuine dispute that plaintiffs' claims in Counts VII (unjust enrichment), VIII (misappropriation of trade secrets), IX (breach of contract), and XI (common law quasi-contract unjust enrichment) are time-barred under New York's statute of limitations. However, genuine disputes remain as to whether plaintiffs' Count X common law unfair competition claim is time-barred, at least to the extent that the claim, as alleged in the Complaint, is based on patent infringement.

Fourth, the Court denies in full defendants' motion for summary judgment on the defenses of laches and equitable estoppel. In addition, the Court denies defendants' request for a hearing on this issue before trial.

A written opinion providing the Court's reasons for these rulings will issue before trial in this case begins on March 10, 2014. The Clerk of the Court is directed to close documents numbered 78, 79, 80, and 81 in the docket of this case.

SO ORDERED.

Dated: New York, New York
January 31, 2014



JED S. RAKOFF, U.S.D.J.