

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

SUL4R-PLUS, LLC,

Plaintiff,

v.

PROLIME AGRICULTURE LLC,

Defendant.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Sul4r-Plus, LLC (“Plaintiff” or “Sul4r-Plus”) brings this Complaint for patent infringement under the patent laws of the United States (35 U.S.C. § 101 *et seq.*) against Defendant ProLime Agriculture LLC (“Defendant” or “ProLime”), and alleges as follows:

PARTIES

1. Sul4r-Plus develops innovative products for the agricultural market, including SUL4R-PLUS® fertilizer, a granular calcium sulfate that is engineered to provide improved crop yield for growers. Sul4r-Plus’s namesake product and the method of making it are protected by the patent laws of the United States. Sul4r-Plus prides itself on the fact that its patented SUL4R-PLUS® fertilizer gets to the root of higher yields and leaves the land better than it was. More information about the company and its patented products can be found at www.sul4r-plus.com.

2. Sul4r-Plus is a limited liability company formed under the laws of the State of Delaware and has its headquarters at 14660 Dixie Hwy, Louisville, Kentucky 40272.

3. ProLime makes, uses, sells, and offers for sale soil amendments, including synthetic gypsum fertilizers designated as “G2016 Pro Gypsum Ag Grade” (the “G2016 Product”) and “TG2016 Pro Gypsum Mini SGN 150” (the “TG2016 Product”). More information about the company and its products can be found at www.prolimeag.com.

4. ProLime is a limited liability company formed under the laws of the State of Michigan and has a regular and established place of business at 58610 Van Dyke Road, Washington, Michigan 48094.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

6. This Court has personal jurisdiction over Defendant consistent with principles underlying the U.S. Constitution and Mich. Comp. Laws § 600.701 *et seq.*

7. Defendant is incorporated under the laws of the State of Michigan and is carrying on a continuous and systematic part of its general business within the State of Michigan.

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400.

PLAINTIFF’S PATENT-IN-SUIT

9. Sul4r-Plus is the owner of all right, title and interest in and to United States Patent No. 9,873,638, which issued on January 23, 2018, for the invention titled SYNTHETIC GYPSUM FERTILIZER PRODUCT AND METHOD OF MAKING (“‘638 Patent”). A true and correct copy of the ‘638 Patent is included at Exhibit A.

10. As discussed in the ‘638 Patent, a need existed to increase the beneficial uses of synthetic gypsum. Sul4r-Plus invented and patented a new, useful and nonobvious fertilizer and method of producing a fertilizer comprising pelletized synthetic gypsum.

11. The ‘638 Patent is presumed valid pursuant to 35 U.S.C. § 282.

DEFENDANT’S ACCUSED PRODUCTS

12. ProLime competes with Sul4r-Plus for sales of synthetic gypsum fertilizers.

13. ProLime manufactures and sells synthetic gypsum fertilizers, including at least the G2016 Product and TG2016 Product (together, “Accused Products”).

14. ProLime promotes its G2016 Product using the following bullet-point language:

- Premium, high-calcium, high-sulfur, pelletized gypsum product.
- Delivers calcium and sulfate sulfur with neutral pH.
- Promotes healthy root growth and seed emergence.
- Helps loosen compacted soils quickly.

Categories: Featured, Gypsum

FEATURES AND BENEFITS

- Premium, high-calcium, high-sulfur, pelletized gypsum product.
- Delivers calcium and sulfate sulfur with neutral pH.
- Promotes healthy root growth and seed emergence.
- Helps loosen compacted soils quickly.
- Increases drainage in conventional and no-till soils.
- Low-dust application.
- Apply anytime on all soil types and pH ranges.
- Helps balance calcium:magnesium ratio; minimizes soil salinity and heavy metal toxicity.
- Blends easily with fertilizer.
- Calcium Benefits: Essential for root growth, plant cell elongation and wall structure. Maintains optimum plant growth. Builds plant stress tolerance.

- Sulfur Benefits: Improves root growth and seed production. Essential building blocks for proteins and amino acids. Promotes development and activity of enzymes and plant vitamins. Helps chlorophyll formation and nodule formation. Assists nitrogen efficiency in plant.

CHEMICAL ANALYSIS

- Calcium (Ca) ~ 20%
- Sulfur (S) ~ 16%

PRODUCT USAGE

- Application Timing: Post-harvest to pre-plant.
- Application Rate: 300-500 pounds per acre.

CROP SPECIFIC BENEFITS

- Potatoes: Helps prevent brown spot, scab.
- Corn, Wheat: Sulfur source for proper N/S ratio.
- Legumes: Increase nitrogen producing capacity.
- Tomatoes: Helps prevent blossom end rot.
- Broccoli: Supplies needed sulfur.
- Sugar Beets: Promotes higher sugar content.
- Apples, Peaches: Helps prevent cork spot and bitter pit.
- Berries: Supplies needed Ca without raising pH.
- Evergreens: Fullness of growth, rich green color.

- Flowers: Supplies Ca without raising pH.
- Peanuts: Prevents “pops”.

15. ProLime promotes its TG2016 Product using the following bullet-point language:

- Premium, high-calcium, high-sulfur, pelletized gypsum product.
- Delivers calcium and sulfate sulfur with neutral pH

Categories: Featured, Gypsum

FEATURES AND BENEFITS

- Special 150 screen-sized specifically for turf grass (golf courses, parks, etc).
- Creates a stronger, more traffic-resistant turf.
- Reduces the amount of fertilizer needed, which saves you money and is more Earth-friendly.
- Improves soil percolation which reduces water runoff and increases erosion control.
- Assists in seedling emergence.
- Delivers calcium and sulfate sulfur with neutral pH.
- Helps loosen compacted soils quickly.
- Low-dust application.
- Apply anytime on all soil types and pH ranges.

- Helps balance calcium:magnesium ratio; minimizes soil salinity and heavy metal toxicity.
- Blends easily with fertilizer.
- Calcium Benefits: Essential for root growth, plant cell elongation and wall structure. Maintains optimum plant growth. Builds plant stress tolerance.
- Sulfur Benefits: Improves root growth and seed production. Essential building blocks for proteins and amino acids. Promotes development and activity of enzymes and plant vitamins. Helps chlorophyll formation and nodule formation. Assists nitrogen efficiency in plant.

CHEMICAL ANALYSIS

- Calcium (Ca) ~ 20%
- Sulfur (S) ~ 16%

PRODUCT USAGE

- Application Timing: Post-harvest to pre-plant
- Application Rate: 300-500 pounds per acre

DEFENDANT'S INFRINGING CONDUCT

16. ProLime has infringed at least Claims 1 and 11 of the '638 Patent by making, using, offering for sale, selling, or importing the Accused Products.
17. ProLime produces fertilizer.
18. The Accused Products are fertilizers.

19. The Accused Products are synthetic gypsum fertilizers.

20. ProLime produces the Accused Products.

21. Claim 1 of the '638 Patent claims a method of producing a fertilizer comprising:

feeding synthetic gypsum to a forming device;

feeding a binder composition comprising lignosulfonate having 18% to 40% solids to the forming device; and

forming the material fed to the forming device to a mean pellet size guide number (SGN) from approximately 100 to approximately 500, wherein the resulting pelletized synthetic gypsum has a crush strength from approximately 2 lbf to approximately 12 lbf.

22. ProLime produces the Accused Products by feeding synthetic gypsum to a forming device.

23. ProLime produces the Accused Products by feeding a binder composition comprising lignosulfonate to the forming device.

24. ProLime produces the Accused Products by feeding a binder composition comprising lignosulfonate having solids to the forming device.

25. Pursuant to Federal Rule of Civil Procedure 11(b)(3), Sul4r-Plus avers that ProLime produces the Accused Products by feeding a binder composition comprising lignosulfonate having 18% to 40% solids to the forming device. Sul4r-

Plus submits that this factual contention will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

26. ProLime produces the Accused Products by forming the material fed to the forming device to pellets.

27. ProLime produces the Accused Products by forming the material fed to the forming device to a mean pellet size guide number (SGN) from approximately 100 to approximately 500.

28. ProLime produces the Accused Products by forming the material fed to the forming device to a mean pellet size guide number (SGN) from approximately 100 to approximately 500, wherein the resulting pelletized synthetic gypsum has a crush strength from approximately 2 lbf to approximately 12 lbf.

29. The resulting pelletized synthetic gypsum of the Accused Products has a crush strength from approximately 2 lbf to approximately 12 lbf.

30. Claim 11 of the '638 Patent claims a fertilizer comprising:
pellets, the pellets comprising synthetic gypsum and a binder composition comprising lignosulfonate, wherein the binder composition initially has 18% to 40% solids at the time of contact with the synthetic gypsum, the pellets further comprising mean pellet SGN from approximately 100 to approximately 500, wherein the pellets have a crush strength from approximately 2 to approximately 12 lbf.

31. The Accused Products comprise pellets.

32. The Accused Products comprise pellets comprising synthetic gypsum.

33. The Accused Products comprise pellets comprising synthetic gypsum and a binder.

34. The Accused Products comprise pellets comprising synthetic gypsum and a binder composition.

35. The Accused Products comprise pellets comprising synthetic gypsum and a binder composition comprising lignosulfonate.

36. The Accused Products comprise pellets comprising synthetic gypsum and a binder composition comprising lignosulfonate, wherein the binder composition has solids at the time of contact with the synthetic gypsum.

37. Pursuant to Federal Rule of Civil Procedure 11(b)(3), Sul4r-Plus avers that the Accused Products comprise pellets comprising synthetic gypsum and a binder composition comprising lignosulfonate, wherein the binder composition has 18% to 40% solids at the time of contact with the synthetic gypsum. Sul4r-Plus submits that this factual contention will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

38. The Accused Products comprise pellets comprising mean pellet SGN from approximately 100 to approximately 500.

39. The Accused Products comprise pellets wherein the pellets have a crush strength from approximately 2 to approximately 12 lbf.

**DEFENDANT’S KNOWLEDGE AND
INTENTIONAL INFRINGEMENT OF PLAINTIFF’S PATENT**

40. Sul4r-Plus has complied with the marking requirements of 35 U.S.C. § 287.

41. Sul4r-Plus’s website states that its commercial product, the SUL4R-PLUS® fertilizer, is patented.

42. Sul4r-Plus’s sales brochure states that its commercial product, the SUL4R-PLUS® fertilizer, is patented.

43. Sul4r-Plus, through legal counsel, sent ProLime a letter dated September 8, 2022. A true and correct copy of the letter is included at Exhibit B.

44. Sul4r-Plus’s September 8, 2022 letter enclosed a copy of the ‘638 Patent.

45. Sul4r-Plus’s September 8, 2022 letter specifically referenced the Accused Products.

46. Sul4r-Plus’s September 8, 2022 letter provided notice of infringement to ProLime concerning the Accused Products.

47. On information and belief, ProLime has had notice of the ‘638 Patent since at least as early as September 9, 2022.

48. On information and belief, ProLime has made, used, sold, offered for sale and/or imported the Accused Products since receiving Sul4r-Plus's September 8, 2022 letter.

49. On information and belief, ProLime has made, used, sold, offered for sale and/or imported the Accused Products with knowledge of the '638 Patent.

50. On information and belief, ProLime has made, used, sold, offered for sale and/or imported the Accused Products with knowledge of Sul4r-Plus's allegations concerning infringement of the '638 Patent.

51. On information and belief, ProLime has deliberately and intentionally infringed the '638 Patent.

CLAIM I
INFRINGEMENT OF U.S. PATENT NO. 9,873,638

52. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

53. ProLime has violated Sul4r-Plus's patent rights in the '638 Patent through ProLime's activities at least with respect to the Accused Products.

54. ProLime has committed the acts of infringement complained of herein without the consent or authorization of Sul4r-Plus and in derogation of 35 U.S.C. § 271.

55. ProLime is directly responsible for infringing the '638 Patent or, if not directly responsible, is indirectly responsible for contributing to and/or inducing the infringement of the '638 Patent by others.

56. On information and belief, ProLime's infringement will continue unabated unless and until enjoined by this Court.

57. ProLime has harmed Sul4r-Plus by virtue of ProLime's acts of infringement of the '638 Patent.

58. ProLime's infringement of the '638 Patent has been willful.

59. ProLime has acted despite an objectively high likelihood that its actions constituted infringement of a valid patent.

60. ProLime has acted despite a risk of infringement that was either known or so obvious that it should have been known.

61. ProLime's infringement is malicious, deliberate, consciously wrongful, and/or done in bad faith.

62. Sul4r-Plus is entitled to damages from ProLime pursuant to 35 U.S.C. § 284 and injunctive relief from this Court pursuant to 35 U.S.C. § 283.

63. Sul4r-Plus is entitled to increased damages pursuant to 35 U.S.C. § 284.

64. Sul4r-Plus is entitled to an award of its attorneys' fees pursuant to 35 U.S.C. § 285.

PRAYER FOR RELIEF

Plaintiff Sul4r-Plus prays for the entry of a judgment against Defendant ProLime as follows:

- A. Holding that Defendant has infringed the '638 Patent;
- B. Holding that Defendant's infringement of the '638 Patent has been willful;
- C. Awarding Plaintiff damages adequate to compensate for all such unauthorized acts of infringement pursuant to 35 U.S.C. § 284;
- D. Awarding Plaintiff increased damages of up to three times the amount found or assessed pursuant to 35 U.S.C. § 284;
- E. Declaring this case as exceptional pursuant to 35 U.S.C. § 285;
- F. Awarding Plaintiff its attorneys' fees pursuant to 35 U.S.C. § 285;
- G. Awarding Plaintiff all other costs and expenses to the extent permitted by law;
- H. Awarding Plaintiff pre- and post-judgment interest to the extent permitted by law;
- I. Permanently enjoining Defendant from any further acts of infringement of Plaintiff's patent rights pursuant to 35 U.S.C. § 283; and
- J. Awarding such other and further relief as this Court may deem just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Sul4r-Plus hereby demands a trial by jury on all issues so triable.

Dated: November 17, 2022

KERR, RUSSELL AND WEBER, PLC

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