

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

W. R. GRACE & CO.-CONN.,)	
)	
Plaintiff,)	
)	C.A. No. 20-1098-CFC
v.)	
)	DEMAND FOR JURY TRIAL
ELYSIUM HEALTH, INC.,)	
)	
Defendant.)	

**ELYSIUM HEALTH, INC.’S ANSWER AND COUNTERCLAIMS
TO W. R. GRACE & CO.-CONN.’S COMPLAINT FOR PATENT INFRINGEMENT**

Defendant Elysium Health, Inc. (“Elysium” or “Defendant”), by counsel, answers the Complaint by Plaintiff W. R. Grace & Co.-Conn. (“Grace” or “Plaintiff”) filed August 21, 2020, and asserts counterclaims against Grace as follows:

NATURE OF THE ACTION

1. Elysium admits that the Complaint purports to initiate an action for patent infringement. Elysium denies the remaining allegations in paragraph 1 of the Complaint.
2. Elysium admits that a copy of a document that appears to be U.S. Patent No. 10,233,207 (“the ’207 Patent”) is attached to the Complaint as Exhibit A.
3. Elysium admits that a copy of a document that appears to be U.S. Patent No. 10,323,058 (“the ’058 Patent”) is attached to the Complaint as Exhibit B.
4. Elysium admits that a copy of a document that appears to be U.S. Patent No. 10,189,872 (“the ’872 Patent”) is attached to the Complaint as Exhibit C.
5. Elysium is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 5 of the Complaint and therefore denies them.

THE PARTIES

6. Elysium is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6 of the Complaint and therefore denies them.

7. Elysium admits that it is a corporation organized under the laws of Delaware. Except as expressly admitted, Elysium denies the remaining allegations in paragraph 7 of the Complaint.

8. Elysium admits that it makes or has made, offers for sale or has offered for sale, and sells or has sold the supplement BASIS® to customers nationwide, including to residents of Delaware. The remaining language of paragraph 8 of the Complaint, which recites claim language from the asserted patents that has not been construed by the Court, contains vague legal conclusions as to which no response is required. Except as expressly admitted, Elysium denies the remaining allegations in paragraph 8 of the Complaint.

JURISDICTION AND VENUE

9. Paragraph 9 of the Complaint contains legal conclusions as to which no response is required.

10. Paragraph 10 of the Complaint contains legal conclusions as to which no response is required.

11. Paragraph 11 of the Complaint contains legal conclusions as to which no response is required.

12. Elysium admits that it is a corporation organized under the laws of the State of Delaware with a registered agent for service of process in the State of Delaware: Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware, 19808. The remaining allegations in paragraph 12 of the Complaint contain legal conclusions as to which no response is required.

13. Paragraph 13 of the Complaint contains legal conclusions as to which no response is required.

14. Paragraph 14 of the Complaint contains legal conclusions as to which no response is required.

THE PATENTS-IN-SUIT

15. Elysium admits that the '207 patent is entitled "Crystalline Form of Nicotinamide Riboside" and that the face of the patent indicates both that it was issued on March 19, 2019, and that Erik Carlson, Michael Standen, and Westin Morrill are inventors. Elysium denies that the '207 patent was duly and legally issued. Elysium is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the second sentence of paragraph 15 of the Complaint and therefore denies them. The allegations of the last sentence of paragraph 15 of the Complaint, which recite claim language from the asserted patent that has not been construed by the Court, contain legal conclusions as to which no response is required. Except as expressly admitted, Elysium denies the remaining allegations in paragraph 15 of the Complaint.

16. Elysium admits that the '058 patent is entitled "Crystalline Form of Nicotinamide Riboside" and that the face of the patent indicates both that it was issued on June 18, 2019, and that the '058 patent names Erik Carlson, Michael Standen, and Westin Morrill as inventors. Elysium denies that the '058 patent was duly and legally issued. Elysium is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the second sentence of paragraph 16 of the Complaint and therefore denies them. The allegations of the last sentence of paragraph 16 of the Complaint, which recite claim language from the asserted patent that has not been construed by the Court, contain legal conclusions as to which no response is required. Except as expressly admitted, Elysium denies the remaining allegations in paragraph 16 of the Complaint.

17. Elysium admits that the '872 patent is entitled "Crystalline Form of Nicotinamide Riboside" and that the face of the patent indicates both that it was issued on January 29, 2019, and that the '872 patent names Erik Carlson and Jose Osuna as inventors. Elysium denies that the '872 patent was duly and legally issued. Elysium is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the second sentence of paragraph 17 of the Complaint and therefore denies them. The allegations of the last sentence of paragraph 17 of the Complaint, which recite claim language from the asserted patent that has not been construed by the Court, contain legal conclusions as to which no response is required. Except as expressly admitted, Elysium denies the remaining allegations in paragraph 17 of the Complaint.

18. Elysium admits that on March 29, 2018, United States Patent Application Publication No. US 2018/0086783 ("the '783 Publication") was published and that the face of the '207 Patent identifies the '783 Publication as a prior published application. Elysium admits that a copy of a document that appears to be the '783 Publication is attached to the Complaint as Exhibit D.

19. Elysium admits that on July 27, 2017, United States Patent Application Publication No. US 2017/0210774 ("the '774 Publication") was published and that the face of the '058 Patent identifies the '774 Publication as a prior published application. Elysium admits that a copy of a document that appears to be the '774 Publication is attached to the Complaint as Exhibit E.

20. Elysium admits that on February 1, 2018, United States Patent Application Publication No. US 2018/0030079 ("the '079 Publication") was published that the face of the '872 Patent identifies the '079 Publication as a prior published application. Elysium admits that a

copy of a document that appears to be the '079 Publication is attached to the Complaint as Exhibit F.

21. Elysium denies the allegations in the first sentence of paragraph 21 of the Complaint. Elysium denies the allegations in the remainder of paragraph 21 of the Complaint because it mischaracterizes the deposition testimony of Eric Marcotulli both literally and based upon its juxtaposition with the first sentence of paragraph 21 of the Complaint.

22. Paragraph 22 of the Complaint contains legal conclusions as to which no response is required.

FACTUAL BACKGROUND

23. Elysium admits that it markets BASIS® as a dietary supplement containing nicotinamide riboside (among other contents) to promote a healthy cellular aging process. Elysium admits that a “suggested use” of BASIS® is to “take two (2) capsules every morning with or without food.” Elysium admits that it has stated that BASIS® is “clinically proven to increase NAD+ levels by an average of 40%, safely and sustainably.”

A. The '207 patent claims

24. Elysium admits the allegation in paragraph 24 of the Complaint quoting the language of claim 1 of the '207 Patent, but objects to the quotation to the extent the asserted claim language has not yet been construed by the Court.

25. Elysium admits the allegation in paragraph 25 of the Complaint quoting the language of claim 20 of the '207 Patent, but objects to the quotation to the extent the asserted claim language has not yet been construed by the Court.

26. Elysium admits the allegation in paragraph 26 of the Complaint quoting the language of claim 23 of the '207 Patent, but objects to the quotation to the extent the asserted claim language has not yet been construed by the Court.

27. Elysium admits the allegation in paragraph 27 of the Complaint quoting claim language from the '207 Patent, but objects to the quotation to the extent the asserted claim language has not yet been construed by the Court.

28. Elysium denies the allegations in paragraph 28 of the Complaint.

29. Paragraph 29 of the Complaint contains legal conclusions as to which no response is required. Elysium denies the remaining allegations in paragraph 29 of the Complaint.

30. Paragraph 30 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remaining allegations in paragraph 30 of the Complaint.

31. Elysium admits that the product label on its BASIS® product lists as a starting ingredient crystalline nicotinamide riboside among other ingredients. Except as expressly admitted, Elysium denies the remaining allegations in paragraph 31 of the Complaint.

32. Elysium admits that the product label on its BASIS® product lists Microcrystalline Cellulose, Hypromellose, Vegetable Magnesium Stearate and Silica as Other Ingredients among other ingredients. The remainder of paragraph 32 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required.

33. Paragraph 33 of the Complaint seemingly incorporates allegations made in paragraph 23, and to that extent Defendant incorporates its response to paragraph 23 as a response to this paragraph. Otherwise, Paragraph 33 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required.

34. Elysium admits that it has promoted BASIS® “activates sirtuins, supports cellular energy and metabolism, promotes healthy cellular aging process, and helps maintain healthy DNA.” Except as so admitted, Elysium denies paragraph 34.

35. Paragraph 35 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 35.

36. Paragraph 36 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 36.

37. Paragraph 37 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 37.

38. Paragraph 38 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 38.

39. Paragraph 39 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 39.

40. Paragraph 40 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 40.

41. Paragraph 41 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 41.

B. The '058 patent claims

42. Elysium admits the allegation in paragraph 42 of the Complaint quoting the language of claim 1 of the '058 Patent, but objects to the quotation to the extent the asserted claim language has not yet been construed by the Court.

43. Elysium admits the allegation in paragraph 43 of the Complaint quoting the language of claim 20 of the '058 Patent, but objects to the quotation to the extent the asserted claim language has not yet been construed by the Court.

44. Elysium admits the allegation in paragraph 44 of the Complaint quoting the language of claim 23 of the '058 Patent, but objects to the quotation to the extent the asserted claim language has not yet been construed by the Court.

45. Elysium admits the allegation in paragraph 45 of the Complaint quoting claim language from the '058 Patent, but objects to the quotation to the extent the asserted claim language has not yet been construed by the Court.

46. Elysium denies the allegations in paragraph 46 of the Complaint.

47. Paragraph 47 of the Complaint contains legal conclusions as to which no response is required. Elysium denies the remaining allegations in paragraph 47 of the Complaint.

48. Paragraph 48 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remaining allegations in paragraph 48 of the Complaint.

49. Elysium admits that the product label on its BASIS® product lists as a starting ingredient crystalline nicotinamide riboside among other ingredients. Except as expressly admitted, Elysium denies the remaining allegations in paragraph 49 of the Complaint.

50. Elysium admits that the product label on its BASIS® product lists Microcrystalline Cellulose, Hypromellose, Vegetable Magnesium Stearate and Silica as Other Ingredients among other ingredients. The remainder of paragraph 50 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required.

51. Paragraph 51 of the Complaint seemingly incorporates allegations made in paragraph 23, and to that extent Defendant incorporates its response to paragraph 23 as a response to this paragraph. Otherwise, Paragraph 51 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required.

52. Elysium admits that it has promoted BASIS® “activates sirtuins, supports cellular energy and metabolism, promotes healthy cellular aging process, and helps maintain healthy DNA.” Except as so admitted, Elysium denies paragraph 52.

53. Paragraph 53 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 53.

54. Paragraph 54 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 54.

55. Paragraph 55 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 55.

56. Paragraph 56 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 56.

57. Paragraph 57 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 57.

58. Paragraph 58 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 58.

59. Paragraph 59 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 59.

C. The '872 patent claims

60. Elysium admits the allegation in paragraph 60 of the Complaint quoting the language of claim 1 of the '872 Patent, but objects to the quotation to the extent the asserted claim language has not yet been construed by the Court.

61. Elysium admits the allegation in paragraph 61 of the Complaint quoting the language of claim 15 of the '872 Patent, but objects to the quotation to the extent the asserted claim language has not yet been construed by the Court.

62. Elysium admits the allegation in paragraph 62 of the Complaint quoting the language of claim 16 of the '872 Patent, but objects to the quotation to the extent the asserted claim language has not yet been construed by the Court.

63. Elysium admits the allegation in paragraph 63 of the Complaint quoting the language of claim 17 of the '872 Patent, but objects to the quotation to the extent the asserted claim language has not yet been construed by the Court.

64. Elysium admits the allegation in paragraph 64 of the Complaint quoting claim language from the '058 Patent, but objects to the quotation to the extent the asserted claim language has not yet been construed by the Court.

65. Elysium denies the allegations in paragraph 65 of the Complaint.

66. Paragraph 66 of the Complaint contains legal conclusions as to which no response is required. Elysium denies the remaining allegations in paragraph 66 of the Complaint.

67. Paragraph 67 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remaining allegations in paragraph 48 of the Complaint.

68. Elysium admits that the product label on its BASIS® product lists as a starting ingredient crystalline nicotinamide riboside among other ingredients. Except as expressly admitted, Elysium denies the remaining allegations in paragraph 68 of the Complaint.

69. Elysium admits that the product label on its BASIS® product lists Microcrystalline Cellulose, Hypromellose, Vegetable Magnesium Stearate and Silica as Other Ingredients among other ingredients. The remainder of paragraph 69 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required.

70. Paragraph 70 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 70.

71. Paragraph 71 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 71.

72. Paragraph 72 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 72.

73. Paragraph 73 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 73.

74. Paragraph 74 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 74.

75. Paragraph 75 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 75.

76. Paragraph 76 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 76.

77. Paragraph 77 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 77.

78. Paragraph 78 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 78.

79. Paragraph 79 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 79.

80. Paragraph 80 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 80.

81. Paragraph 81 of the Complaint, which recites claim language from the asserted patent that has not been construed by the Court, contains legal conclusions as to which no response is required. Elysium denies the remainder of paragraph 81.

Count I
(Alleging Infringement of U.S. Patent No. 10,233,207)

82. Elysium repeats and incorporates its responses to paragraphs 1-2, 5-15, 18, and 21-41 above as if fully set forth herein.

A. Direct Infringement

83. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 83.

84. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 84.

B. Induced Infringement

85. Paragraph 85 of the Complaint seemingly refers to prior sections of the Complaint and therefore Elysium incorporates its responses to those prior sections. To the extent paragraph 85 otherwise refers to undisclosed allegations, Elysium denies same.

86. Elysium denies the allegations in paragraph 86 of the Complaint.

87. Paragraph 87 of the Complaint contains legal conclusions as to which no response is required.

88. Elysium denies the allegations in paragraph 88 of the Complaint.

89. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 89.

90. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 90.

91. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 91.

92. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 92.

93. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 93.

94. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 94.

95. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 95.

96. Elysium denies the allegations in paragraph 96 of the Complaint.

C. Contributory Infringement

97. Paragraph 97 of the Complaint seemingly refers to prior sections of the Complaint and therefore Elysium incorporates its responses to those prior sections. To the extent paragraph 97 otherwise refers to undisclosed allegations, Elysium denies same.

98. Paragraph 98 of the Complaint contains legal conclusions as to which no response is required.

99. Elysium denies the allegations in paragraph 99 of the Complaint.

100. Elysium denies the allegations in paragraph 100 of the Complaint.

101. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 101.

102. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 102.

103. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 103.

104. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 104.

105. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 105.

106. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 106.

107. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 107.

108. Elysium denies the allegations in paragraph 108 of the Complaint.

D. Willful Infringement

109. Elysium denies the allegations of paragraph 109 of the Complaint, except as to the last sentence of paragraph 109 of the Complaint which contains legal conclusions as to which no response is required.

110. Elysium denies the allegations in paragraph 110 of the Complaint.

**Count II
(Alleging Infringement of Grace's Provisional Rights in the '207 Patent)**

111. Elysium repeats and incorporates its responses to paragraphs 1-2, 5-15, 18, 21-41, and 82-110 above as if fully set forth herein.

112. Paragraph 112 of the Complaint contains legal conclusions as to which no response is required.

113. Paragraph 113 of the Complaint contains legal conclusions as to which no response is required.

114. Elysium denies that its BASIS® product practices any valid claim of the '207 patent as properly construed and, on this basis denies the allegations in paragraph 114.

**Count III
(Infringement of U.S. Patent No. 10,323,058)**

115. Elysium repeats and incorporates its responses to paragraphs 1, 3, 5-14, 16, 19, 21-23, and 42-59 above as if fully set forth herein.

A. Direct Infringement

116. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegations in paragraph 116.

117. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegation in paragraph 117.

B. Induced Infringement

118. Paragraph 118 of the Complaint seemingly refers to prior sections of the Complaint and therefore Elysium incorporates its responses to those prior sections. To the extent paragraph 118 otherwise refers to undisclosed allegations, Elysium denies same.

119. Elysium denies the allegations in paragraph 119 of the Complaint.

120. Paragraph 120 of the Complaint contains legal conclusions as to which no response is required.

121. Elysium denies the allegations in paragraph 121 of the Complaint.

122. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegations in paragraph 122.

123. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegations in paragraph 123.

124. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegations in paragraph 124.

125. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegations in paragraph 125.

126. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegations in paragraph 126.

127. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegations in paragraph 127.

128. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegations in paragraph 128.

129. Elysium denies the allegations in paragraph 129 of the Complaint.

C. Contributory Infringement

130. Paragraph 130 of the Complaint seemingly refers to prior sections of the Complaint and therefore Elysium incorporates its responses to those prior sections. To the extent paragraph 130 otherwise refers to undisclosed allegations, Elysium denies same.

131. Paragraph 131 of the Complaint contains legal conclusions as to which no response is required.

132. Elysium denies the allegations in paragraph 132 of the Complaint.

133. Elysium denies the allegations in paragraph 133 of the Complaint.

134. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegations in paragraph 134.

135. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegations in paragraph 135.

136. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegations in paragraph 136.

137. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegations in paragraph 137.

138. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegations in paragraph 138.

139. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegations in paragraph 139.

140. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegations in paragraph 140.

141. Elysium denies the allegations in paragraph 141 of the Complaint.

D. Willful Infringement

142. Elysium denies the allegations of paragraph 142 of the Complaint, except as to the last sentence of paragraph 142 of the Complaint which contains legal conclusions as to which no response is required.

143. Elysium denies the allegations in paragraph 143 of the Complaint.

**Count IV
(Alleging Infringement of Grace's Provisional Rights in the '058 Patent)**

144. Elysium repeats and incorporates its responses to paragraphs 1, 3, 5-14, 16, 19, 21-23, 42-59, and 115-143 above as if fully set forth herein.

145. Paragraph 145 of the Complaint contains legal conclusions as to which no response is required.

146. Paragraph 146 of the Complaint contains legal conclusions as to which no response is required.

147. Elysium denies that its BASIS® product practices any valid claim of the '058 patent as properly construed and, on this basis denies the allegations in paragraph 147.

**Count V
(Alleging Infringement of U.S. Patent No. 10,189,872)**

148. Elysium repeats and incorporates its responses to paragraphs 1, 4-14, 17, 20-23, and 60-81 above as if fully set forth herein.

A. Direct Infringement

149. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 149.

150. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 150.

B. Induced Infringement

151. Paragraph 151 of the Complaint seemingly refers to prior sections of the Complaint and therefore Elysium incorporates its responses to those prior sections. To the extent paragraph 151 otherwise refers to undisclosed allegations, Elysium denies same.

152. Elysium denies the allegations in paragraph 152 of the Complaint.

153. Paragraph 153 of the Complaint contains legal conclusions as to which no response is required.

154. Elysium denies the allegations in paragraph 154 of the Complaint.

155. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 155.

156. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 156.

157. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 157.

158. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 158.

159. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 159.

160. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 160.

161. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 161.

162. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 162.

163. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 163.

164. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 164.

165. Elysium denies the allegations in paragraph 165 of the Complaint.

C. Contributory Infringement

166. Paragraph 166 of the Complaint seemingly refers to prior sections of the Complaint and therefore Elysium incorporates its responses to those prior sections. To the extent paragraph 166 otherwise refers to undisclosed allegations, Elysium denies same.

167. Paragraph 167 of the Complaint contains legal conclusions as to which no response is required.

168. Elysium denies the allegations in paragraph 168 of the Complaint.

169. Elysium denies the allegations in paragraph 169 of the Complaint.

170. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 170.

171. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 171.

172. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 172.

173. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 173.

174. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 174.

175. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 175.

176. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 176.

177. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 177.

178. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 178.

179. Elysium denies that its BASIS® product practices any valid claim of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 179.

180. Elysium denies the allegations in paragraph 180 of the Complaint.

D. Willful Infringement

181. Elysium denies the allegations of paragraph 181 of the Complaint, except as to the last sentence of paragraph 181 of the Complaint which contains legal conclusions as to which no response is required.

182. Elysium denies the allegations in paragraph 182 of the Complaint.

**Count IV [*sic* - VI]
(Alleging Infringement of Grace's Provisional Rights in the '872 Patent)**

183. Elysium repeats and incorporates its responses to paragraphs 1, 4-14, 17, 20-23, 60-81, and 148-182 above as if fully set forth herein.

184. Paragraph 184 of the Complaint contains legal conclusions as to which no response is required.

185. Paragraph 185 of the Complaint contains legal conclusions as to which no response is required.

186. Elysium denies that its BASIS® product practices any of the claims of the '872 patent as properly construed and, on this basis denies the allegations in paragraph 186.

GENERAL DENIAL

Elysium further denies each and every allegation in the Complaint that is not specifically admitted, denied, or otherwise responded to in this Answer.

DEFENSES

Elysium alleges and asserts the following defenses in response to the allegations in the Complaint.

FIRST DEFENSE – NON-INFRINGEMENT OF PATENT RIGHTS

Elysium's BASIS® product has not infringed and is not infringing directly, indirectly, contributorily, by inducement, or in any other manner any valid and enforceable claim of the '207, '058, or '872 patents, either literally or by the doctrine of equivalents.

SECOND DEFENSE – NON-INFRINGEMENT OF PROVISIONAL RIGHTS

Elysium's BASIS® product has not infringed and is not infringing directly, indirectly, contributorily, by inducement, or in any other manner any valid and enforceable provisional rights in the claims of the '207, '058, or '872 patents, either literally or by the doctrine of equivalents.

THIRD DEFENSE – INVALIDITY

One or more asserted claims of the '207, '058, or '872 patents are invalid for failure to satisfy one or more of the requirements of the Patent Act, 35 U.S.C. § 1, et seq., including, but not limited to, the conditions of patentability set forth in 35 U.S.C. §§ 101, 102, 103, and 112. One or more claims of the '207, '058, or '872 patents are invalid in view of the prior art, including references cited on the respective faces of the '207, '058, or '872 patents, and articles, patents, products, and processes that were publicly available or disclosed before the respective

priority dates of the '207, '058, or '872 patents. In addition, one or more claims of the '207, '058, or '872 patents are invalid because the full scope of those claims is not enabled, nor described, by the written description of the respective '207, '058, or '872 patents, and those claims are indefinite.

FOURTH DEFENSE – NO WILLFULNESS

Elysium's BASIS® product has not willfully infringed any claim of the '207, '058, or '872 patents, and Plaintiff is not entitled to enhanced damages under 35 U.S.C. § 284.

FIFTH DEFENSE – NO EXCEPTIONAL CASE

Elysium's actions and/or defense of this case do not give rise to an exceptional case finding pursuant to 35 U.S.C. § 285.

SIXTH DEFENSE – GRACE'S DEMAND FOR ATTORNEYS' FEES

Grace's prayer for attorneys' fees is barred on the ground that Grace cannot prove facts sufficient to show that Elysium's conduct was exceptional.

SEVENTH DEFENSE – NO IRREPARABLE HARM

Grace's prayer for injunctive relief is barred on the ground that Grace cannot show facts sufficient to show that it has been irreparably harmed by Elysium's conduct.

EIGHTH DEFENSE – NO EQUITABLE RELIEF

Plaintiff is not entitled to equitable relief.

NINTH DEFENSE – FAILURE TO STATE A CLAIM

The Complaint fails to state a claim for relief.

TENTH DEFENSE – IMPLIED LICENSE

Plaintiff's claim is barred, in whole or in part, because Elysium has an implied license to use the nicotinamide riboside made by Plaintiff and supplied to Elysium.

ELEVENTH DEFENSE – UNCLEAN HANDS

Plaintiff's claims are barred by the equitable doctrine of unclean hands.

RESERVATION OF ADDITIONAL DEFENSES AND CLAIMS

Elysium is currently without sufficient knowledge or information upon which to form a belief as to whether additional defenses or counterclaims are available. Therefore, Elysium reserves the right to amend this Answer to assert any such additional defenses or counterclaims based on legal theories that may become apparent through discovery or through further legal analysis of Plaintiff's positions, claims and allegations in this litigation.

COUNTERCLAIMS

Counterclaimant Elysium on personal knowledge as to its own acts, and on information and belief as to all others based on its own and its attorneys' investigation, alleges its Counterclaims against Grace as follows:

THE PARTIES

1. Counterclaimant Elysium is a Delaware corporation with its principal place of business in New York.
2. According to Grace's Complaint, Grace is a corporation existing under the laws of Connecticut, with its principal place of business at 7500 Grace Drive, Columbia, MD 21044.

JURISDICTION

3. This Court has jurisdiction over the subject matter of these Counterclaims under, without limitation, 28 U.S.C. §§ 1331, 1367, 1338(a), 2201, and 2202.
4. Grace has subjected itself to personal jurisdiction in this Court because it has sued Elysium in this Court.

VENUE

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

6. Grace has consented to venue in this Court because it has filed its claims for patent infringement in this Court, in response to which these Counterclaims are asserted.

ACTUAL CONTROVERSY

7. According to Grace's Complaint, Grace claims to be the owner of all right, title, and interest in and to the '207, '058, and '872 patents. Grace has alleged that Elysium's BASIS® product has infringed and is infringing the '207, '058, and '872 patents, which Elysium denies.

8. An actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, exists between Grace and Elysium. Elysium seeks a declaration that its BASIS® product has not infringed and does not infringe the '207, '058, and '872 patents and that the '207, '058, and '872 patents are invalid and unenforceable.

FACTUAL BACKGROUND

9. Elysium sells the dietary supplement BASIS®, which combines nicotinamide riboside, pterostilbene, and other ingredients.

10. The asserted '207, '058, and '872 patents contain claims related to two crystalline forms of nicotinamide riboside chloride that are characterized by varying "powder X-ray diffraction pattern[s]." For example, claim 3 of the '207 patent and claim 3 of the '058 patent recite a "crystalline Form I according to claim 1 that is characterized by a powder X-ray diffraction pattern having peaks substantially as show in Table 1 ± 0.2 degrees two theta;" and claim 2 of the '872 patent recites a "crystalline Form II according to claim 1 that is characterized by a powder X-ray diffraction pattern having peaks at 21.9, 22.1, and 24.7 degrees two theta ± 0.2 degrees two theta."

11. The Complaint alleges that Elysium's BASIS® product contains "crystalline Form 1 *and/or* crystalline Form II" of nicotinamide riboside, without being more specific.

COUNTERCLAIM ONE

(Declaratory Judgment of Non-Infringement of the '207 Patent)

12. Elysium re-alleges and incorporates by reference each of the preceding paragraphs of its Counterclaims as if fully set forth herein.

13. A judicial determination of the respective rights of the parties with respect to infringement of the claims of the '207 patent is now necessary and appropriate under 28 U.S.C. § 2201.

14. Elysium's BASIS® product has not infringed and does not infringe any valid claim of the '207 patent under any theory of infringement.

COUNTERCLAIM TWO

(Declaratory Judgment of Non-Infringement of the '058 Patent)

15. Elysium re-alleges and incorporates by reference each of the preceding paragraphs of its Counterclaims as if fully set forth herein.

16. A judicial determination of the respective rights of the parties with respect to infringement of the claims of the '058 patent is now necessary and appropriate under 28 U.S.C. § 2201.

17. Elysium's BASIS® product has not infringed and does not infringe any valid claim of the '058 patent under any theory of infringement.

COUNTERCLAIM THREE

(Declaratory Judgment of Non-Infringement of the '872 Patent)

18. Elysium re-alleges and incorporates by reference each of the preceding paragraphs of its Counterclaims as if fully set forth herein.

19. A judicial determination of the respective rights of the parties with respect to infringement of the claims of the '872 patent is now necessary and appropriate under 28 U.S.C. § 2201.

20. Elysium's BASIS® product has not infringed and does not infringe any valid claim of the '872 patent under any theory of infringement.

COUNTERCLAIM FOUR
**(Declaratory Judgment of Non-Infringement
of the Provisional Rights of the '207 Patent)**

21. Elysium re-alleges and incorporates by reference each of the preceding paragraphs of its Counterclaims as if fully set forth herein.

22. A judicial determination of the respective rights of the parties with respect to infringement of the provisional rights in the claims of the '207 patent is now necessary and appropriate under 28 U.S.C. § 2201.

23. Elysium's BASIS® product has not infringed and does not infringe the provisional rights of any valid claim of the '207 patent under any theory of infringement.

24. Grace is not entitled to provisional rights in the claims of the '207 patent because the claims of the '783 Publication are not substantially identical to the claims in the '207 patent.

COUNTERCLAIM FIVE
**(Declaratory Judgment of Non-Infringement
of the Provisional Rights of the '058 Patent)**

25. Elysium re-alleges and incorporates by reference each of the preceding paragraphs of its Counterclaims as if fully set forth herein.

26. A judicial determination of the respective rights of the parties with respect to infringement of the provisional rights in the claims of the '058 patent is now necessary and appropriate under 28 U.S.C. § 2201.

27. Elysium's BASIS® product has not infringed and does not infringe the provisional rights of any valid claim of the '058 patent under any theory of infringement.

28. Grace is not entitled to provisional rights in the claims of the '058 patent because the claims of the '774 Publication are not substantially identical to the claims in the '058 patent.

COUNTERCLAIM SIX
**(Declaratory Judgment of Non-Infringement
of the Provisional Rights of the '872 Patent)**

29. Elysium re-alleges and incorporates by reference each of the preceding paragraphs of its Counterclaims as if fully set forth herein.

30. A judicial determination of the respective rights of the parties with respect to infringement of the provisional rights in the claims of the '872 patent is now necessary and appropriate under 28 U.S.C. § 2201.

31. Elysium's BASIS® product has not infringed and does not infringe the provisional rights of any valid claim of the '872 patent under any theory of infringement.

COUNTERCLAIM SEVEN
(Declaratory Judgment of Invalidity of the '207 Patent)

32. Elysium re-alleges and incorporates by reference each of the preceding paragraphs of its Counterclaims as if fully set forth herein.

33. A judicial determination of the respective rights of the parties with respect to the invalidity of the claims of the '207 patent is now necessary and appropriate under 28 U.S.C. § 2201.

34. The claims of the '207 patent are invalid under 35 U.S.C. §§ 102 and/or 103 in light of prior art including the references cited on the face of the '207 patent, and articles, patents, products, and processes that were publicly available or disclosed before the priority date of the '207 patent.

35. The claims of the '207 patent are invalid under 35 U.S.C. § 112 for failing to comply with one or more of the written description requirement, the enablement requirement, and the definiteness requirement.

COUNTERCLAIM EIGHT
(Declaratory Judgment of Invalidity of the '058 Patent)

36. Elysium re-alleges and incorporates by reference each of the preceding paragraphs of its Counterclaims as if fully set forth herein.

37. A judicial determination of the respective rights of the parties with respect to the invalidity of the claims of the '058 patent is now necessary and appropriate under 28 U.S.C. § 2201.

38. The claims of the '058 patent are invalid under 35 U.S.C. §§ 102 and/or 103 in light of prior art including the references cited on the face of the '058 patent, and articles, patents, products, and processes that were publicly available or disclosed before the priority date of the '058 patent.

39. The claims of the '058 patent are invalid under 35 U.S.C. § 112 for failing to comply with one or more of the written description requirement, the enablement requirement, and the definiteness requirement.

COUNTERCLAIM NINE
(Declaratory Judgment of Invalidity of the '872 Patent)

40. Elysium re-alleges and incorporates by reference each of the preceding paragraphs of its Counterclaims as if fully set forth herein.

41. A judicial determination of the respective rights of the parties with respect to the invalidity of the claims of the '872 patent is now necessary and appropriate under 28 U.S.C. § 2201.

42. The claims of the '872 patent are invalid under 35 U.S.C. §§ 102 and/or 103 in light of prior art including the references cited on the face of the '872 patent, and articles, patents, products, and processes that were publicly available or disclosed before the priority date of the '872 Patent.

43. The claims of the '872 patent are invalid under 35 U.S.C. § 112 for failing to comply with one or more of the written description requirement, the enablement requirement, and the definiteness requirement.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Elysium respectfully requests a trial by jury on all issues so triable in this action.

REQUEST FOR RELIEF

WHEREFORE, Elysium respectfully requests the following relief:

1. That the Court enter judgment on the Complaint in favor of Elysium, and against Grace, with Grace not being awarded any relief of any kind on the Complaint;
2. That the Court enter judgment that Elysium's BASIS® product has not directly infringed, induced infringement, or contributed to infringement of any valid and enforceable claim of the '207, '058, or '872 patents, either literally or under the doctrine of equivalents, and that Elysium has not violated 35 U.S.C. § 271;
3. That the Court enter judgment declaring that the claims of the '207, '058, and '872 patents are invalid;
4. That the Court enter judgment that Elysium's BASIS® product has not directly infringed, induced infringement, or contributed to infringement of the provisional rights of any valid and enforceable claim of the '207, '058, or '872 patents, either literally or under the doctrine of equivalents, and that Elysium has not violated 35 U.S.C. § 154(d);
5. That the Court find Grace has unclean hands and is not entitled to any equitable relief;
6. That the Court determine that this case is exceptional pursuant to 35 U.S.C. § 285 and that Elysium be awarded its reasonable attorneys' fees and costs; and

7. That the Court grant to Elysium such other and further relief as may be deemed just and appropriate.

ASHBY & GEDDES

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