

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NOVOZYMES A/S and
NOVOZYMES NORTH AMERICA, INC.,

Plaintiffs,

v.

DANISCO A/S,
GENECOR INTERNATIONAL WISCONSIN, INC.,
DANISCO US INC. and DANISCO USA INC.,

Defendants.

ORDER

10-cv-251-bbc

At the final pretrial conference, I noted that the parties' proposed special verdict forms differed with respect to which claims they believed were still at issue. In particular, plaintiffs' proposed verdict was limited to claims 1-4 and 16 while defendants' proposed verdict included those claims as well as claims 5, 8-13 and 15. Plaintiffs explained that they had provided defendants a "Release and Covenant Not to Sue" with respect to claims 5, 8-13 and 15, so they believed that the court no longer had jurisdiction over those claims. In response, defendants stated that "this just came up on us" and "we're still thinking about it and maybe we can confer with them and reach some agreement." Trans., dkt. #666, at 26.

Accordingly, I deferred resolution of the matter.

It seems that the parties did not confer after the final pretrial conference as I anticipated. Instead, plaintiffs filed a motion to dismiss claims 5, 8-13 and 15 for lack of jurisdiction. In response, defendants argue that the covenant's scope is too limited. In addition, they raise a somewhat confusing argument that plaintiffs should be estopped from asserting *any* claims in this case because defendants "cannot practice the covenanted claims without also practicing the claims on which [plaintiffs] is suing for infringement." Dkt. #670, at 5.

In reply, plaintiffs say that they are withdrawing the covenant not to sue and withdrawing the motion to dismiss claims 5, 8-13 and 15. I will deny the motion as moot, but I remind the parties that they should confer on these matter before engaging in motion practice. It is a waste of the parties' and the court's time to devote attention to a motion before the parties have determined amongst themselves whether there is anything to resolve.

ORDER

IT IS ORDERED that motion to dismiss claims 5, 8-13 and 15 for lack of jurisdiction filed by Novozymes A/S and Novozymes North America, Inc., dkt. #663, is DENIED as

moot.

Entered this 14th day of October, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge