

## PureShield Says Allied Bio Coronavirus Disinfectant Infringes

By Craig Clough

*Law360 (September 29, 2020, 6:50 PM EDT)* -- Chemical company PureShield Inc. claimed in a lawsuit filed Monday in Texas federal court that Allied BioScience Inc.'s SurfaceWise 2 surface disinfectant, which advertises protection against COVID-19 for up to seven days, infringes on 10 of PureShield's patents.

PureShield claims Allied BioScience's SurfaceWise 2, which is being used by American Airlines Inc. and a Texas orthopedics business, was created when Allied BioScience copied PureShield's chemical formulas and put them in its own products. The lawsuit also says Allied BioScience's SurfaceWise and Germmax products infringe its patents.

"Instead of developing its own technology, Allied BioScience has chosen to infringe plaintiffs' licensed patent rights, unfairly compete, and engage in false advertising with its competing antimicrobial products, including without limitation SurfaceWise and SurfaceWise 2," PureShield said. "Plaintiffs, therefore, file this action to protect their investments, patent rights, and [goodwill] as well as to encourage continued innovations in antimicrobial technologies."

When the U.S. Environmental Protection Agency approved Texas' emergency request for approval of Allied's anti-COVID-19 sprays in August, Administrator Andrew Wheeler said it was the first time the agency approved a product that claims it can block the virus for so long.

Wheeler also said once SurfaceWise 2 is applied to a surface via an electrostatic sprayer, it can kill the coronavirus for up to seven days. It won't replace normal cleanings, but will supplement them, he said.

American Airlines Chief Operating Officer David Seymour said in August the company will gradually begin applying the disinfectant to its entire 1,500-aircraft fleet. He said the process could take a couple of months because right now it can only be applied in Texas and some flights don't normally go through the state, so there will have to be some rotation of the planes.

But PureShield and its co-plaintiff parent company ViaClean Technologies LLC said in its lawsuit that the products touted by the EPA chief are infringing its patents. PureShield also accuses Allied BioScience of false advertisement, tortious interference with prospective business and unfair competition under state law.

PureShield said its products are based on "intricate chemical processes that utilize" silanol quaternary

ammonium compounds, or SQACs. Since 2008, Allied BioScience has been "making, using, offering for sale, and selling in the United States, and importing into the United States, antimicrobial SQAC products that compete with plaintiffs' products and infringe the asserted patents," according to the lawsuit.

Allied BioScience received an "emergency regulatory exemption to use its products without undergoing a full EPA registration process," according to the lawsuit.

PureShield also said Allied BioScience relies on the exemption to falsely advertise that SurfaceWise 2 is "the first ever EPA-registered protectant effective against pathogens. EPA records, however, clearly state that SurfaceWise2 remains an 'unregistered product.' Moreover, PureShield's antimicrobial products have been registered with the EPA since at least 2011."

Allied BioScience did not immediately respond to a request for comment.

"PureShield and ViaClean Technologies welcome developments and progress in this industry in the fight against surface pathogens, having contributed to paving the path," Brian Paul Gearing of Crowell & Moring LLP, who represents the plaintiffs, told Law360 in an email Tuesday. "Allied BioScience has, however, chosen to unfairly compete by infringing the asserted patents, falsely advertising to have the only approved antimicrobial coating, and interfering with PureShield's and ViaClean Technologies' business prospects."

The patents-in-suit are U.S. Patent

Numbers 5,954,869, 6,113,815, 6,120,587, 6,762,172, 9,624,384, 9,744,120, 10,010,080, 10,328,020, 10,405,553 and 10,531,664.

PureShield is represented by Michael E. Jones of Potter Minton and Brian Paul Gearing, Ali H.K. Tehrani, Siri Rao and Karla I. Arias of Crowell & Moring LLP.

The case is PureShield Inc. et al. v. Allied BioScience Inc., case number 4:20-cv-00734, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Juan Carlos Rodriguez. Editing by Jay Jackson Jr.