

Read In Open Court on 8/25/23 (VRL)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

W. R. GRACE & CO.-CONN.,

Plaintiff,

v.

ELYSIUM HEALTH, INC.,

Defendant.

C.A. No. 20-1098-GBW

VERDICT FORM

INSTRUCTIONS

When answering the following questions and completing this Verdict Form, please follow the directions provided throughout the form. Your answer to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Jury Instructions. Please refer to the Jury Instructions for guidance on the law applicable to each question.

- You should answer all of questions 1 to 8.

- Whether you answer questions 9 to 11, which concern the issues of damages and willfulness, will depend on the answers you give to questions 1 to 8 as indicated by the additional instructions provided with each set of questions.

FINDINGS ON INFRINGEMENT

Directions: The questions regarding infringement should be answered regardless of your findings with respect to the validity or invalidity of the patents.

1. Direct Infringement of the Asserted Claims

Has Grace proven by a preponderance of the evidence that Elysium has directly infringed any of the asserted claims? *Check YES or NO for each claim.*

*Checking "yes" below indicates a finding for Grace
 Checking "no" below indicates a finding for Elysium*

	YES (Elysium infringes)	NO (Elysium does not infringe)
'058 Patent		
Claim 1	✓	
Claim 2	✓	
Claim 21	✓	

	YES (Elysium infringes)	NO (Elysium does not infringe)
'872 Patent		
Claim 1	✓	
Claim 6	✓	
Claim 15	✓	

2. Induced Infringement of an Asserted Claim

Has Grace proven by a preponderance of the evidence that Elysium has induced infringement of the following asserted claim?

Checking "yes" below indicates a finding for Grace

Checking "no" below indicates a finding for Elysium

	YES (Elysium infringes)	NO (Elysium does not infringe)
'058 Patent		
Claim 21	✓	

3. Contributory Infringement of an Asserted Claims

Has Grace proven by a preponderance of the evidence that Elysium has contributed to the infringement of the following asserted claim?

Checking "yes" below indicates a finding for Grace

Checking "no" below indicates a finding for Elysium

	YES (Elysium infringes)	NO (Elysium does not infringe)
'058 Patent		
Claim 21	✓	

FINDINGS ON INVALIDITY

Direction for Question 4: The questions regarding invalidity should be answered regardless of your findings with respect to the infringement or noninfringement of the patents.

4. Anticipation of the Asserted Claims (35 U.S.C. §102(a) – On-Sale)

Has Elysium proven by clear and convincing evidence that any of the asserted claims are invalid because the invention was offered for sale or sold prior to the applicable critical date? *Check YES or NO for each claim.*

Checking “yes” below indicates a finding for Elysium

Checking “no” below indicates a finding for Grace

	YES (claim is invalid for being on-sale)	NO (claim is not invalid for being on-sale)
'058 Patent (<i>critical date July 24, 2013</i>)		
Claim 1		✓
Claim 2		✓
Claim 21		✓

5. Anticipation of the Asserted Claims (35 U.S.C. §102(a) – Prior Art)

Question 5: Has Elysium proven by clear and convincing evidence that any of the asserted claims of the '058 patent are invalid because the invention was anticipated by **International Publication No. WO 2015/186068 A1 (“the GSK reference”)**? Check YES or NO for each claim.

Checking “yes” below indicates a finding for Elysium

Checking “no” below indicates a finding for Grace

	YES (claim is invalid for being anticipated)	NO (claim is not invalid for being anticipated)
'058 Patent (<i>critical date July 24, 2013</i>)		
Claim 1		✓
Claim 2		✓
Claim 21		✓

6. Written Description Requirement for the Asserted Claims (35 U.S.C. § 112(a))

Has Elysium proven by clear and convincing evidence that any of the asserted claims are invalid because the patent specification does not contain an adequate written description of the invention? *Check YES or NO for each claim.*

Checking "yes" below indicates a finding for Elysium

Checking "no" below indicates a finding for Grace

	YES (claim is invalid for lack of written description)	NO (claim is not invalid for lack of written description)
'058 Patent		
Claim 1		✓
Claim 2		✓
Claim 21		✓

	YES (claim is invalid for lack of written description)	NO (claim is not invalid for lack of written description)
'872 Patent		
Claim 1		✓
Claim 6		✓
Claim 15		✓

7. Enablement of the Asserted Claims (35 U.S.C. §112(a))

Has Elysium proven by clear and convincing evidence that any of the asserted claims are invalid because the patent specification does not enable persons of ordinary skill in the field to make or use the invention? *Check YES or NO for each claim.*

Checking "yes" below indicates a finding for Elysium

Checking "no" below indicates a finding for Grace

	YES (claim is invalid for lack of enablement)	NO (claim is not invalid for lack of enablement)
'058 Patent		
Claim 1		✓
Claim 2		✓
Claim 21		✓

	YES (claim is invalid for lack of enablement)	NO (claim is not invalid for lack of enablement)
'872 Patent		
Claim 1		✓
Claim 6		✓
Claim 15		✓

8. Indefiniteness of the Certain Asserted Claims (35 U.S.C. §112(b))

Has Elysium proven by clear and convincing evidence that any of the asserted claims are invalid for indefiniteness? *Check YES or NO for each claim.*

Checking "yes" below indicates a finding for Elysium

Checking "no" below indicates a finding for Grace

	YES (claim is invalid for lack of enablement)	NO (claim is not invalid for lack of enablement)
'058 Patent		
Claim 1		✓
Claim 2		✓
Claim 21		✓

	YES (claim is invalid for lack of enablement)	NO (claim is not invalid for lack of enablement)
'872 Patent		
Claim 1		✓
Claim 6		✓
Claim 15		✓

FINDINGS ON DAMAGES (IF APPLICABLE)

If you answered “yes” for any claims in questions 1-3 and did not answer “yes” for those claims in questions 4-8, answer the following questions.

Question 9: What is (a) the reasonable royalty rate (in percent), (b) the royalty base (in dollars), and (c) the total amount of damages (in dollars) that results from applying the reasonable royalty rate to the royalty base, that Grace has proven by a preponderance of the evidence would compensate it for Elysium’s infringement for the time period from August 21, 2020 to March 31, 2023?

- a) Royalty Rate: 4.5 %
- b) Royalty Base: \$ 49,895,450
- c) Total Damages: \$ 2,245,295

Question 10: What is (a) the reasonable royalty rate (in percent), (b) the royalty base (in dollars), and (c) the total amount of damages (in dollars) that results from applying the reasonable royalty rate to the royalty base, that Grace has proven by a preponderance of the evidence would compensate it for Elysium’s infringement for the time period from July 2017 to January 29, 2019?

- a) Royalty Rate: 3.625 %
- b) Royalty Base: \$ 37,593,201
- c) Total Damages: \$ 1,362,754

FINDINGS ON WILLFUL INFRINGEMENT (IF APPLICABLE)

Direction for Question 11(a): Only answer Question 11(a) if you answered “yes” for any claims of the ’058 patent in questions 1-3 and did not answer “yes” for those claims in questions 4-8.

Otherwise, **skip** Questions 11(a) and **proceed** to the Directions for Question 11(b).

Question 11(a): Has Grace proven by a preponderance of the evidence that Elysium willfully infringed any valid asserted claim of the ’058 patent?

*Checking “yes” below indicates a finding for Grace
Checking “no” below indicates a finding for Elysium*

Yes No

Direction for Question 11(b): Only answer Question 11(b) if you answered “yes” for any claims of the ’872 patent in question 1 and did not answer “yes” for those claims in questions 6-8.

Question 11(b): Has Grace proven by a preponderance of the evidence that Elysium willfully infringed any valid asserted claim of the ’872 patent?

*Checking “yes” below indicates a finding for Grace
Checking “no” below indicates a finding for Elysium*

Yes No

* * *

You have now reached the end of the verdict form and should review it to ensure that it accurately reflects your unanimous decisions. The Foreperson should then sign and date the verdict form in the spaces below and notify the Courtroom Deputy that you have reached a verdict. The Foreperson should retain possession of the verdict form and bring it when the jury is brought back into the courtroom.

Date: August 25, 2023

