

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

)	
MY HEALTH, INC. and)	Civil Action No. 2:13-cv-140
UNIVERSITY OF ROCHESTER,)	
)	
Plaintiffs,)	
)	(JURY TRIAL DEMANDED)
v.)	
)	
PHILIPS ELECTRONICS NORTH)	
AMERICA CORPORATION,)	
)	
Defendant.)	
)	

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs My Health, Inc. (“My Health”) and University of Rochester (collectively “Plaintiffs”) bring this action against defendant Philips Electronics North America Corporation (“Philips”), and allege as follows:

THE PARTIES

1. The University of Rochester is an educational institution chartered by the State of New York, with a principal office at 601 Elmwood Avenue, Rochester, New York.
2. My Health, Inc. is a Delaware corporation having its registered agent and principal place of business in this district.
3. Michael E. Eiffert M.D. (“Dr. Eiffert”), the CEO of MyHealth and an inventor of United States Patent No. 6,612,985 entitled “Method and system for monitoring and treating a patient” (the “985 Patent”), resides in Plano, Texas.

4. On information and belief, Philips is a corporation organized and existing under the laws of Delaware having its principal place of business at 202100 Bothell Everett Highway, Bothell, Washington 98041-3003 and an agent registered for service of process known as The Corporation Trust Company, located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, and is doing business in this judicial district. Plaintiffs' original complaint named Philips Medical Systems North America, Inc.; however, Plaintiff was informed by Philips that Philips Medical was not the proper party in this action. For this reason, Plaintiff has filed this amended complaint.

SUMMARY OF THE CASE

5. The University of Rochester, Dr. Eiffert and Lisa C. Schwartz invented a unique technology that assists healthcare providers in monitoring and treating patients. Consequently, on September 2, 2003, the University of Rochester was awarded the '985 Patent.

6. My Health is an early stage company, fostering medical technologies through the proof of concept stage for larger more established entities.

7. My Health focuses on serving as a pipeline for new technologies, assisting scientist and engineers in bringing their ideas to fruition and, ultimately, to companies with the expertise to market on a global scale.

8. On August 1, 2008, the University of Rochester granted an exclusive license under the '985 Patent to My Health.

9. Philips has not been granted a license or any other rights to the '985 Patent.

10. It is believed that Philips has generated significant sales of products incorporating the University's technology, easily exposing Philips to significant liability for its infringement of the '985

Patent.

JURISDICTION AND VENUE

11. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code. Subject-matter jurisdiction over Plaintiffs' claims is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

12. Upon information and belief, Philips transacted business, contracted to supply goods or services, and caused injury to Plaintiffs within Texas and this judicial district, and has otherwise purposefully availed itself of the privileges and benefits of the laws of Texas, and is, therefore, subject to jurisdiction of this Court.

13. Upon information and belief, Philips placed its infringing products into the stream of commerce throughout the United States with the expectation that they will be used by consumers in this judicial district, which products and services have been offered for sale, sold, and used in this judicial district.

14. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

**FIRST CLAIM FOR RELIEF
INFRINGEMENT OF U.S. PATENT NO. 6,612,985**

15. The '985 Patent, a copy of which is attached hereto as Exhibit A, was duly and legally issued by the United States Patent and Trademark Office. The University of Rochester is the owner by assignment of all right, title, and interest in and to the '985 Patent. My Health is the exclusive licensee of the '985 Patent, including the right to sue for and recover all past, present and future damages for infringement of the '985 Patent.

16. Upon information and belief, Philips, either alone or in conjunction with others, has in the past and continues to infringe, contribute to infringement, and/or induce infringement of the '985 Patent by making, using, selling and/or offering to sell, and/or causing others to use, methods and systems, including, but not limited to Philips Remote Patient Monitoring System ("Accused Product"), which infringes one or more claims of the '985 Patent, including, but not limited to claims 1, 4, and 7 of the '985 Patent. Philips is liable for infringement of one or more claims of the '985 Patent, including, but not limited to claims 1, 4 and 7, of the '985 Patent pursuant to 35 U.S.C. § 271.

17. Philips is liable for indirect infringement of the '985 Patent by inducing and/or contributing to direct infringements of the '985 Patent committed by end users of the Accused Product.

18. At least from the time Philips received this Complaint, Philips acted with intent to encourage direct infringements by its end users, and knew or should have known that its actions would induce such direct infringement.

19. At least from the time Philips received this Complaint, Philips contributed to direct infringements by its end users as described above by knowing that its Accused Product and method would be implemented by its end users; that its methods, components, system and Accused Product were designed for a combination covered by one or more claims of the '985 Patent; that there are no substantial non-infringing uses; and the Accused Product is a material part of the infringement.

20. Philip's acts of infringement have caused damage to Plaintiffs, and Plaintiffs are entitled to recover from Philips the damages sustained as a result of Philips's wrongful acts in an amount subject to proof at trial.

21. As a consequence of the infringement complained of herein, Plaintiffs have been irreparably damaged in an extent not yet determined and will continue to be irreparably damaged by such acts in the future unless Philips is enjoined from committing further acts of infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for entry of judgment that:

- A. Philips has infringed the '985 Patent;
- B. Philips account for and pay to Plaintiffs all damages caused by its infringement of the '985 patent in accordance with 35 U.S.C. § 284;
- C. Plaintiffs be granted permanent injunctive relief pursuant to 35 U.S.C. § 283 enjoining Philips, its officers, agents, servants, employees, and those persons in active concert or participation with them from further acts of patent infringement;
- D. Plaintiffs be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Philips's patent infringement complained of herein;
- E. Plaintiffs be granted their reasonable attorneys' fees;
- F. Costs be awarded to Plaintiffs; and,
- G. Plaintiffs be granted such other and further relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all claims and issues so triable.

Respectfully submitted,

Dated: August 19, 2013

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this August 19, 2013 with a copy of this document via the Court's CM/ECF System per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Elizabeth L. DeRieux

Elizabeth L. DeRieux