

FILED

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

2013 SEP -6 P 4:07

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

Daniel S. Gabbay  
4613 40<sup>th</sup> Street North  
Arlington, VA 22207

*Plaintiff,*

v.

D.T. Davis Enterprises LTD.  
T/A HoverTech International,  
513 South Clewell Street  
Bethlehem, PA 18015

*Defendant.*

Civil Action No: 3:13cv606

JURY TRIAL DEMANDED

**VERIFIED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Daniel Gabbay ("Gabbay") files this Complaint against Defendant D.T. Davis Enterprises LTD. t/a HoverTech International ("HoverTech") and alleges as follows:

**PARTIES**

1. Plaintiff Daniel S. Gabbay is a Virginia resident residing at 4613 40<sup>th</sup> Street North, Arlington, VA 22302. Gabbay owns United States Patent Nos. 7,127,758 and 7,383,599.
2. Upon information and belief, Defendant D.T. Davis Enterprises, Ltd t/a HoverTech International ("HoverTech") is a limited liability company organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business located at 513 South Clewell Street, Bethlehem, PA 18015. HoverTech does business in the Commonwealth of Virginia.

## JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, U.S.C. § 271 et seq.

2. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Upon information and belief, HoverTech is subject to this Court's general and/or specific personal jurisdiction because it (a) has committed acts of infringement in the Commonwealth of Virginia as alleged below; and/or (b) is engaged in continuous and systematic activities in the Commonwealth of Virginia. Therefore, this Court has personal jurisdiction over HoverTech under the Virginia Long-Arm Statute, VA ST § 8.01-328.1 (2003).

4. Venue is proper in this District under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, HoverTech has transacted business in this District and has committed and/or induced acts of patent infringement in this District.

## THE PATENTS-IN-SUIT

5. On October 31, 2006, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,127,758 (the "'758 Patent") entitled "Active Head/Neck Positioning Device for Endotracheal Intubation," a true copy of which is attached as Exhibit A.

6. Daniel Gabbay is the inventor and owner of the '758 Patent and possesses all rights to sue for and recover all past, present and future damages for infringement of the '758 Patent.

7. On June 10, 2008, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,383,599 (the "'599 Patent") entitled "Active Head/Neck

Positioning Device,” a true copy of which is attached as Exhibit B. Collectively the ‘758 Patent and the ‘599 Patent are referred to as the patents-in-suit.

8. Daniel Gabbay is the inventor and owner of the ‘599 Patent and possesses all rights to sue for and recover all past, present and future damages for infringement of the ‘599 Patent.

9. HoverTech is, and has been, in the business of manufacturing and selling patient handling products for use by health care providers. HoverTech has manufactured, or had manufactured for it, and has marketed its HT-Wedge Adjustable Positioning Device.

**CLAIM 1 -- INFRINGEMENT OF U.S. PATENT NOS. 7,127,758 AND 7,383,599**

10. Defendant HoverTech has been and is now directly infringing, and/or actively inducing infringement by others, and/or contributing to the infringement by others one or more claims of U.S. Patent No. 7,127,758 and U.S. Patent No. 7,383,599 in this District, and elsewhere in the United States with its HT-Wedge Adjustable Positioning Device which can be viewed at <http://www.hovermatt.com/ht-wedge.html>. The patents have been infringed literally and/or under the doctrine of equivalents.

11. As a direct and proximate consequence of the acts and practices of HoverTech infringing, directly and/or indirectly, one or more claims of the ‘758 and ‘599 Patents, Gabbay has suffered, is suffering, and will continue to suffer injury and damages for which he is entitled to relief under 35 U.S.C. § 284 in an amount to be determined at trial.

12. The limitation of damages provision of 35 U.S.C. § 287(a) is not applicable to Gabbay.

13. Upon information and belief, HoverTech's infringement of the patents-in-suit has been and continues to be willful and deliberate, making this an exceptional case entitling Gabbay to recover additional damages and reasonable attorneys' fees pursuant to 35 U.S.C. § 285.

#### **DEMAND FOR JURY TRIAL**

14. Gabbay, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, Gabbay requests entry of judgment that:

- A. HoverTech has infringed the patents-in-suit;
- B. HoverTech accounts for and pays to Plaintiff all damages caused by its infringement of the patents-in-suit under 35 U.S.C. § 284, including treble damages for willful infringement, and supplemental damages for any continuing post-verdict infringement up until entry of the final judgment with an accounting as needed;
- C. Plaintiff be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Defendants' patent infringement;
- D. The Court declare this an exceptional case and that Plaintiff be granted reasonable attorneys' fees in accordance with 35 U.S.C. § 285;
- E. Costs be awarded to Plaintiff; and

F. Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: September 6, 2013

Respectfully submitted,

**MCNEELY, HARE & WAR LLP**

By: 

Steven War VSB #45048

[steve@miplaw.com](mailto:steve@miplaw.com)

5335 Wisconsin Ave., N.W.

Suite 440

Washington, DC 20015

Telephone: (202) 536-5877

Facsimile: (202) 478-1813

*Attorneys for Plaintiff Daniel Gabbay*

**VERIFICATION**

I, Daniel Gabbay, declare under penalty of perjury that that I have read the foregoing Verified Complaint, and that the information stated therein as factual is true and correct, and those factual matters which are stated upon information and belief are believed to be true and correct.

Executed on: September 6, 2013

  
Daniel Gabbay