

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ENDOTACH LLC,

Plaintiff,

vs.

COOK MEDICAL INCORPORATED,

Defendant.

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CASE NO. 1:13-cv-1135-LJM-DKL

JURY TRIAL DEMANDED

PLAINTIFF’S SECOND AMENDED COMPLAINT

Plaintiff ENDOTACH LLC files this, its Second Amended Complaint, against Defendant COOK MEDICAL INCORPORATED, pursuant to Fed.R.Civ.P. 15(a)(2), alleging as follows:

I. THE PARTIES

1. Plaintiff ENDOTACH LLC (“Plaintiff”) is a Texas limited liability company with its principal place of business at 2400 Dallas Parkway, Suite 200, Plano, TX, 75093.

2. Upon information and belief, Defendant COOK MEDICAL INCORPORATED (“Defendant”) is an Indiana corporation with a principal place of business at 750 Daniels Way, Bloomington, IN 47404. Defendant has previously been served and is before this Court for all purposes.

II. JURISDICTION AND VENUE

3. This is an action for infringement of a United States patent. Federal question jurisdiction is conferred to this Court over such action under 28 U.S.C. §§ 1331 and 1338(a).

4. Upon information and belief, Defendant is subject to personal jurisdiction by this Court. Defendant has committed such purposeful acts and/or transactions in the State of Indiana that it reasonably knew and/or expected that it could be haled into an Indiana court as a future

consequence of such activity. Defendant makes, uses, and/or sells infringing products within the Southern District of Indiana, has a continuing presence within the Southern District of Indiana, and has the requisite minimum contacts with the Southern District of Indiana such that this venue is a fair and reasonable one. Upon information and belief, Defendant has transacted and, at the time of the filing of this Complaint, is continuing to transact business within the Southern District of Indiana.

5. For these reasons, personal jurisdiction exists and venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

III. PATENTS-IN-SUIT

6. On June 16, 1992, United States Patent No. 5,122,154 (“the ’154 Patent”) was duly and legally issued to Dr. Valentine J. Rhodes (“Dr. Rhodes”) for an “Endovascular Bypass Graft.” A true and correct copy of the ’154 Patent is attached hereto as Exhibit “A” and made a part hereof.

7. On January 14, 1997, United States Patent No. 5,593,417 (“the ’417 Patent”) was duly and legally issued to Dr. Rhodes for an “Intravascular Stent with Secure Mounting Means.” A true and correct copy of the ’417 Patent is attached hereto as Exhibit “B” and made a part hereof.

8. The ’154 Patent and the ’417 Patent are sometimes referred to herein collectively as the “Patents-in-Suit.”

9. As it pertains to this lawsuit, the Patents-in-Suit, generally speaking, relate to an endovascular graft for revascularization of aneurysms or stenosis occurring in blood vessels that includes anchoring projections to aid in securing the graft in place within the blood vessel.

10. Dr. Rhodes was an award-winning surgeon who practiced in the field of vascular medicine for over thirty years, serving as Chief of Vascular Services at Point Pleasant Hospital and Brick Hospital (now Ocean Medical Center) in Brick, New Jersey. Dr. Rhodes was prominently

involved in the field of vascular medicine, demonstrated by several patents related to vascular devices for which he is the named inventor as well as numerous medical publications regarding advances in medical procedures he developed. His innovative work was recognized by the State of New Jersey, which awarded him a certificate of Pioneer in Medicine.

11. During the late 1980s and early 1990s, Dr. Rhodes invented and developed several improvements in vascular graft technology, including those described in the Patents-in-Suit. In or around 1996, Dr. Rhodes was forced to retire due to a terminal illness. He relocated to Santa Rosa Beach, Florida where he voluntarily treated patients who were without insurance and pursued a number of civic activities, including the establishment of a library in the area. After a prolonged fight with the illness that cost him the entirety of his life savings, Dr. Rhodes passed away in 2000.

12. After Dr. Rhodes's passing, the Patents-in-Suit were devised to a trust created Dr. Rhodes. An exclusive license to the Patents-in-Suit was granted to Acacia Patent Acquisition LLC ("Acacia"), which assigned its rights to the Patents-in-Suit under the exclusive license to Plaintiff.

13. Plaintiff is the owner of all substantial rights in and to the Patents-in-Suit, including the exclusive right to make, have made, use, import, offer or sell products covered by the Patents-in-Suit, to enforce the Patents-in-Suit against all infringers, and to collect past, present and future damages and seek and obtain injunctive or any other relief for infringement of the Patents-in-Suit.

III. FIRST CLAIM FOR RELIEF

(Patent Infringement)

14. Plaintiff repeats and realleges every allegation set forth above.

15. Upon information and belief, and without authority, consent, right, or license, and in direct infringement of the Patents-in-Suit, Defendant manufactures, makes, has made, uses, markets,

sells and/or imports products that infringe one or more claims in the '154 and '417 Patents. Such conduct constitutes, at a minimum, patent infringement under 35 U.S.C. § 271(a).

16. Defendant has directly infringed at least claims 1, 14 and 15 of the '154 Patent by its manufacture, use, sale, offer for sale and/or importation of the Zenith Flex® AAA Endovascular Graft, Zenith Renu® AAA Ancillary Graft, and Zenith® TX2® TAA Endovascular Graft.

17. Defendant has directly infringed, and continues to infringe, at least claims 1, 2, and 13 of the '417 Patent by its manufacture, use, sale, offer for sale and/or importation of the Zenith Flex® AAA Endovascular Graft, Zenith® Fenestrated AAA Endovascular Graft, Zenith Renu® AAA Ancillary Graft, and Zenith® TX2® TAA Endovascular Graft.

18. Plaintiff has been damaged as a result of Defendant's infringing conduct. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates for its infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

19. Plaintiff maintains that Defendant had actual notice of the Patents-in-Suit as early as 2007. Since that time, Defendant willfully infringed the '154 Patent until the date of its expiration, and willfully infringed and continues to willfully infringe the '417 Patent. At a minimum, Plaintiff maintains that Defendant had actual notice of the '417 Patent at least as early as of the filing of the first suit in June 2012, and since that time, has been willfully infringing the same.

20. Upon information and belief, Defendant will continue its infringement of the '417 Patent unless enjoined by the Court. Defendant's infringing conduct has caused Plaintiff irreparable harm and will continue to cause such harm without the issuance of an injunction.

21. Plaintiff reserves the right to assert additional claims of the Patents-in-Suit.

V. JURY DEMAND

Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

- a. Judgment that one or more claims of United States Patent Nos. 5,122,154 and 5,593,417 have been willfully infringed, either literally and/or under the doctrine of equivalents, by Defendant;
- b. Judgment that Defendant account for and pay to Plaintiff all damages to and costs incurred by Plaintiff because of Defendant's infringing activities and other conduct complained of herein;
- c. That Defendant's infringement be found to be willful from the time Defendant became aware of the infringing nature of its services, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284.
- d. That Plaintiff be granted pre-judgment and post-judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;
- e. That the Court declare this an exceptional case and award Plaintiff its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285;
- f. That Defendant be permanently enjoined from any further activity or conduct that infringes one or more claims of United States Patent No. 5,593,417; and
- g. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: September 10, 2013.

Respectfully submitted,

/s/ Brett M. Pinkus

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of September, 2013, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Southern District of Indiana, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record.

/s/ Brett M. Pinkus

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