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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IVERA MEDICAL CORPORATION, Plaintiff, v. COVIDIEN LP and COVIDIEN SALES, LLC, Defendant.	Case No. 13-cv-2147 H (RBB) **FIRST AMENDED COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff Ivera Medical Corporation ("Ivera") for its Complaint against Defendants Covidien LP and Covidien Sales, LLC (together referred to herein as "Defendants") avers as follows:

PARTIES

1. Plaintiff Ivera is a California corporation with its principal place of business in Carlsbad, California.

2. Defendants Covidien LP and Covidien Sales, LLC are companies with their principal place of business at 15 Hampshire Street, Mansfield, Massachusetts, 02048.

JURISDICTION AND VENUE

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

4. This Court has jurisdiction over the subject matter of the Complaint pursuant to 28 U.S.C. §§ 1331 & 1338.

5. This Court has personal jurisdiction over Defendants because the companies have a continuous, systematic, and substantial presence in the State of California and within this judicial district, including on information and belief offices in Carlsbad, California.

6. Venue is proper under 28 U.S.C. §§ 1391(b)(3) and 1400.

BACKGROUND

7. Ivera manufactures, markets, and sells the Curos® Port Protector, a device that disinfects and protects the entry port on certain types of valves used with intravenous lines to help reduce bloodstream infections in hospital patients.

8. On August 24, 2010, United States Patent No. 7,780,794 B2 (the '794 patent), on an invention entitled "Medical Implement Cleaning Device," was duly and legally issued by the United States Patent and Trademark Office. A copy of the '794 patent is attached hereto as Exhibit A.

9. The '794 patent has been in force and effect since its issuance. Ivera has been at all times, and still is, the owner of the entire right, title and interest in and to the '794 patent.

10. On July 26, 2011, United States Patent No. 7,985,302 B2 (the '302 patent), on an invention entitled "Medical Implement Cleaning Device," was duly and legally issued by the United States Patent and Trademark Office. A copy of the '302 patent is attached hereto as Exhibit B.

11. The '302 patent has been in force and effect since its issuance. Ivera has been at all times, and still is, the owner of the entire right, title and interest in and to the '302 patent.

12. On June 26, 2012, United States Patent No. 8,206,514 (the '514 patent), on an invention entitled "Medical Implement Cleaning Device," was duly and legally issued by the United States Patent and Trademark Office. A copy of the '514 patent is attached hereto as Exhibit C.

13. The '514 patent has been in force and effect since its issuance. Ivera has been at all times, and still is, the owner of the entire right, title and interest in and to the '514 patent.

14. Defendants use, sell, and/or offer to sell throughout the United States disinfecting cap products they refer to as the Kendall™ Disinfectant Cap Family, including without limitation the Kendall™ Disinfectant Cap, the Kendall™ Disinfectant Cap Pouch, and the Kendall™ Flush with Removable Disinfectant Cap (collectively referred to as the "Kendall™ Disinfectant Cap Products").

15. The Kendall™ Disinfectant Cap Products infringe one or more claims in the '794 patent in the United States within the meaning of 35 U.S.C. § 271.

16. The Kendall™ Disinfectant Cap Products infringe one or more claims in the '302 patent in the United States within the meaning of 35 U.S.C. § 271.

17. The Kendall™ Disinfectant Cap Products infringe one or more claims in the '514 patent in the United States within the meaning of 35 U.S.C. § 271.

FIRST CAUSE OF ACTION

(INFRINGEMENT OF THE '794 PATENT)

18. Ivera realleges and incorporates the previous paragraphs of this Complaint as though fully set forth herein.

19. Defendants have used, offered for sale, sold, and/or imported into the United States products, including at least the Kendall™ Disinfectant Cap Products, which literally

and under the doctrine of equivalents infringe one or more claims of the '794 patent in violation of 35 U.S.C. § 271.

20. Ivera has been damaged and has suffered irreparable injury due to acts of infringement by Defendants and will continue to suffer irreparable injury unless Defendants' activities are enjoined.

21. Ivera has suffered and will continue to suffer substantial damages by reason of Defendants' acts of patent infringement alleged above, and Ivera is entitled to recover from Defendants the damages sustained as a result of Defendants' acts.

SECOND CAUSE OF ACTION

(INFRINGEMENT OF THE '302 PATENT)

22. Ivera realleges and incorporates the previous paragraphs of this Complaint as though set forth in full herein.

23. Defendants have used, offered for sale, sold, and/or imported into the United States products, including at least the Kendall™ Disinfectant Cap Products, which literally and under the doctrine of equivalents infringes one or more claims of the '302 patent in violation of 35 U.S.C. § 271.

24. Ivera has been damaged and has suffered irreparable injury due to acts of infringement by Defendants and will continue to suffer irreparable injury unless Defendants' activities are enjoined.

25. Ivera has suffered and will continue to suffer substantial damages by reason of Defendants' acts of patent infringement alleged above, and Ivera is entitled to recover from Defendants the damages sustained as a result of Defendants' acts.

THIRD CAUSE OF ACTION

(INFRINGEMENT OF THE '514 PATENT)

26. Ivera realleges and incorporates the previous paragraphs of this Complaint as though set forth in full herein.

27. Defendants have used, offered for sale, sold, and/or imported into the United States products, including at least the Kendall™ Disinfectant Cap Products, which literally and under the doctrine of equivalents infringes one or more claims of the '514 patent in violation of 35 U.S.C. § 271.

28. Ivera has been damaged and has suffered irreparable injury due to acts of infringement by Defendants and will continue to suffer irreparable injury unless Defendants' activities are enjoined.

29. Ivera has suffered and will continue to suffer substantial damages by reason of Defendants' acts of patent infringement alleged above, and Ivera is entitled to recover from Defendants the damages sustained as a result of Defendants' acts.

PRAYER FOR RELIEF

WHEREFORE, Ivera prays that judgment be entered by this Court in its favor and against Defendants as follows:

A. That Defendants have infringed the '794, '302, and '514 patents;

B. Permanently enjoining and restraining Defendants, their agents, affiliates, subsidiaries, servants, employees, officers, directors, attorneys and those persons in active concert with or controlled by Defendants from further infringing the '794, '302, and '514 patents;

C. For an award of damages adequate to compensate Ivera for the damages it has suffered as a result of Defendants' conduct, including pre-judgment interest;

D. That Defendants be directed to withdraw from distribution all infringing products, whether in the possession of Defendants or their distributors or resellers, and that all infringing products or materials be impounded or destroyed;

E. For monetary damages in an amount according to proof;

F. For interest on said damages at the legal rate from and after the date such damages were incurred;

G. That this is an exceptional case and for an award of Ivera's attorney fees and costs;

H. For such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Ivera hereby demands a jury trial as to all issues that are so triable.

Dated: October 24, 2013 X-PATENTS, APC

By: s/ Jonathan Hangartner
Jonathan Hangartner
Attorneys for Plaintiff Ivera Medical Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on October 24,2013 to all counsel who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery

s/ Jonathan Hangartner
Jonathan Hangartner