

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

INSTRUMENTATION LABORATORY COMPANY)
and INSTRUMENTATION LABORATORY S.p.A.,)
Plaintiffs,)
v.)
XTRANA, INC.)
Defendant)

Civil Action No.

01-11379 JLT

COMPLAINT

Plaintiffs Instrumentation Laboratory Company and Instrumentation Laboratory S.p.A. (hereinafter, collectively, "IL"), for their complaint against Defendant Xtrana, Inc. (hereinafter, "Xtrana") allege as follows:

Parties

1. Plaintiff Instrumentation Laboratory Co. is a corporation duly organized and existing under the laws of the State of Delaware and having an established place of business at 101 Hartwell Avenue, Lexington, Massachusetts 02421. Instrumentation Laboratory Co. is a developer and manufacturer of assays and reagents for the biomedical sciences.

2. Plaintiff Instrumentation Laboratory S.p.A. is a corporation duly organized and existing under the laws of Italy and having an established place of business at Viale Monza 338, 20128 Milano, Italy. Instrumentation Laboratory S.p.A. is a developer and manufacturer of assays and reagents for the biomedical sciences.

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3. Defendant Xtrana, Inc. ("Xtrana") is, on information and belief, a corporation organized and existing under the laws of the State of Delaware and having a regular and established place of business at 590 Burbank Street, Broomfield, CO 80020.

4. On information and belief, Defendant has been engaged in the business of making and selling kits for measuring activated protein C (APC) resistance throughout the United States and within this judicial district, i.e., the District of Massachusetts.

Jurisdiction and Venue

5. This action for infringement arises under the patent laws of the United States (Title 35, United States Code).

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331, 1338(a).

7. Venue is proper in this district pursuant to 28 U.S.C. §§1391(b), 1400.

COUNT I

Infringement Of U. S. Patent No. 5,443,960

8. Plaintiffs restate and reallege paragraphs 1-7 above as if set forth in full herein.

9. Plaintiff Instrumentation Laboratory S.p.A. is the exclusive licensee of United States Letters Patent No. 5,443,960 (hereinafter, the "'960 Patent"). A true and correct copy of the '960 Patent is annexed hereto as Exhibit A.

10. Pursuant to 35 U.S.C. §282, the '960 Patent is presumed valid.

11. On information and belief, Defendant has infringed, or has contributed to or induced the infringement of, one or more claims of the '960 Patent by manufacturing, using, selling and/or offering to sell in this judicial district, and elsewhere in the United States, certain

kits for measuring APC resistance. On information and belief, Defendant has and will continue to infringe the '960 Patent unless enjoined by this Court.

12. On information and belief, Defendant's infringement has been, and continues to be, willful and deliberate.

13. By reason of said acts by Defendant, Plaintiffs have been, and will continue to be, seriously damaged and irreparably injured unless Defendant is enjoined by this Court from the actions complained of herein, and thus Plaintiffs are without an adequate remedy at law.

COUNT II

Infringement Of U. S. Patent No. 5,705,395

14. Plaintiffs restate and reallege paragraphs 1-13 above as if set forth in full herein.

15. Plaintiff Instrumentation Laboratory Co. is the exclusive licensee of United States Letters Patent No. 5,705,395 (hereinafter, the "'395 Patent"). A true and correct copy of the '395 Patent is annexed hereto as Exhibit B.

16. Pursuant to 35 U.S.C. §282, the '395 Patent is presumed valid.

17. On information and belief, Defendant has infringed, or has contributed to or induced the infringement of, one or more claims of the '395 Patent by manufacturing, using, selling and/or offering to sell in this judicial district, and elsewhere in the United States, certain kits for measuring APC resistance. On information and belief, Defendant has and will continue to infringe the '395 Patent unless enjoined by this Court.

18. On information and belief, Defendant's infringement has been, and continues to be, willful and deliberate.

19. By reason of said acts by Defendant, Plaintiffs have been, and will continue to be, seriously damaged and irreparably injured unless Defendant is enjoined by this Court from the actions complained of herein, and thus, Plaintiffs are without an adequate remedy at law.

COUNT III

Infringement Of U. S. Patent No. 5,834,223

20. Plaintiffs restate and reallege paragraphs 1-19 above as if set forth in full herein.

21. Plaintiff Instrumentation Laboratory Co. is the exclusive licensee of United States Letters Patent No. 5,834,223 (hereinafter, the “‘223 Patent”). A true and correct copy of the ‘223 Patent is annexed hereto as Exhibit C.

22. Pursuant to 35 U.S.C. §282, the ‘223 Patent is presumed valid.

23. On information and belief, Defendant has infringed, or has contributed to or induced the infringement of, one or more claims of the ‘223 Patent by manufacturing, using, selling and/or offering to sell in this judicial district, and elsewhere in the United States, certain kits for measuring APC resistance. On information and belief, Defendant has and will continue to infringe the ‘223 Patent unless enjoined by this Court.

24. On information and belief, Defendant’s infringement has been, and continues to be, willful and deliberate.

25. By reason of said acts by Defendant, Plaintiffs have been, and will continue to be, seriously damaged and irreparably injured unless Defendant is enjoined by this Court from the actions complained of herein, and thus, Plaintiffs are without an adequate remedy at law.

COUNT IV

Infringement Of U. S. Patent No. 6,083,757

26. Plaintiffs restate and reallege paragraphs 1-25 above as if set forth in full herein.

27. Plaintiff Instrumentation Laboratory Co. is the exclusive licensee of United States Letters Patent No. 6,083,757 (hereinafter, the “‘757 Patent”). A true and correct copy of the ‘757 Patent is annexed hereto as Exhibit D.

28. Pursuant to 35 U.S.C. §282, the ‘757 Patent is presumed valid.

29. On information and belief, Defendant has infringed, or has contributed to or induced the infringement of, one or more claims of the ‘757 Patent by manufacturing, using, selling and/or offering to sell in this judicial district, and elsewhere in the United States, certain kits for measuring APC resistance. On information and belief, Defendant has and will continue to infringe the ‘757 Patent unless enjoined by this Court.

30. On information and belief, Defendant’s infringement has been, and continues to be, willful and deliberate.

31. By reason of said acts by Defendant, Plaintiffs have been, and will continue to be, seriously damaged and irreparably injured unless Defendant is enjoined by this Court from the actions complained of herein, and thus, Plaintiffs are without an adequate remedy at law.

Relief Requested

WHEREFORE, Plaintiffs pray for the entry of a judgment by this Court against Defendant, providing:

(a) That Defendant has infringed the ‘960, ‘395, ‘223, and ‘757 Patents;

(b) That Defendant, its officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with Defendant, be preliminarily and permanently enjoined and restrained from further infringing the '960, '395, '223, and '757 Patents;

(c) That Plaintiffs be awarded damages, together with interest, to compensate Plaintiffs for the past infringement by Defendant of said Letters Patent and that, in light of the nature of the infringement, such award be increased three times the amount of the damages found or assessed;

(d) That Plaintiffs be awarded reasonable attorney fees, costs and expenses in respect thereto in accordance with 35 U.S.C. §284-285; and

(e) That the Court grant Plaintiffs such other and further relief as it may deem just and proper.

Respectfully submitted,

TESTA, HURWITZ & THIBEAULT, LLP

DATED: August 9, 2001

By: 

Steven M. Bauer, BBO # 542,531
Kurt W. Lockwood, BBO # 567,440
Attorneys for Plaintiffs

TESTA, HURWITZ & THIBEAULT, LLP
High Street Tower
125 High Street
Boston, MA 02110
Telephone: (617) 248-7000

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