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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NOMOS CORPORATION,

Plaintiff,

v.

ZMED, INC.,

Defendant.

RECEIPT #

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COMPLAINT AND JURY DEMAND

Plaintiff, NOMOS CORPORATION, for its Complaint against Defendant, ZMED, INC.,
avers as follows:

**I.
PARTIES**

1. Plaintiff NOMOS CORPORATION ("NOMOS") is a Pennsylvania corporation, with its principal place of business in Sewickley, Pennsylvania.
2. On information and belief, Defendant ZMED, INC. ("ZMED") is a California corporation, with headquarters at 200 Butterfield Drive, B-1, Ashland, MA 01721.

**II.
SUBJECT MATTER JURISDICTION**

3. This civil action arises under the patent laws of the United States, 35 U.S.C. §1, *et seq.* This Court has subject matter jurisdiction of this civil action under the provisions of 28 U.S.C. §§1331 and 1338(a). Venue is proper under 28 U.S.C. §§1391 and 1400(b).



**III.
FACTS**

4. On May 2, 1995, United States Letters Patent 5,411,026 (“‘026 patent”) were duly and legally issued. A true and correct copy of the ‘026 patent, entitled “Method and Apparatus for Lesion Position Verification”, is attached hereto as Exhibit “A”. NOMOS has been the owner of the ‘026 patent at all times since its issuance.
5. ZMED has made, used, offered for sale, and, on information and belief, has sold a system called the SonArray System.
6. On April 10, 2001, ZMED filed a trademark application with the United States Patent and Trademark Office for the mark “SonArray” indicating in that application that the mark is to be used in conjunction with goods and services relating to “Diagnostic and therapeutic medical apparatus used for medical imaging and radiation therapy.” ZMED describes its SonArray System, on its website, as being a “high-precision patient positioning platform designed for radiation therapy treatment of extra-cranial lesions” which integrates “3D ultrasound scanning technology with digital patient localization” to provide “precise 3D visualization of the target position over the entire course of treatment” by “overlaying the CT contours previously acquired onto the stereotactic 3D ultrasound images.”
7. NOMOS’ commercial embodiment of the invention of the ‘026 patent is known as the BAT system.
8. NOMOS has systematically and continuously marked its BAT system with the number of the ‘026 patent.

**IV.
COUNT 1
PATENT INFRINGEMENT**

9. Defendant ZMED has infringed, and continues to infringe the '026 patent by manufacturing, using, selling and/or offering to sell its SonArray System in the United States.
10. ZMED has induced others to infringe the '026 patent, because ZMED has sold the infringing products described above, and induced the buyers to use those infringing products.
11. On information or belief, ZMED's infringement of the '026 patent has been willful and deliberate.
12. NOMOS has been damaged by ZMED's infringement of the '026 patent.
13. NOMOS will suffer irreparable harm unless the infringing activities of ZMED are enjoined by this Court pursuant to the provisions of 35 U.S.C. §283.
14. Since this is an exceptional case, NOMOS is also entitled to attorneys' fees pursuant to the provisions of 35 U.S.C. §285.

**V.
DEMAND FOR JURY TRIAL**

15. NOMOS hereby demands trial by jury of all issues that are so triable.

PRAYER

WHEREFORE, NOMOS requests that a preliminary injunction be entered in this case which, pending trial, enjoins and restrains ZMED, and its attorneys, servants, agents, associates, parent corporations, subsidiaries, employees, and all persons acting in concert or participation with it, or who receive notice of the this Court's preliminary injunction Order, from making, using, selling, or offering for sale ZMED's SonArray System or any colorable variation thereof.

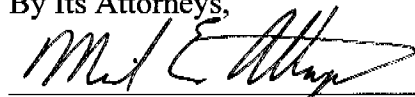
Upon final hearing, NOMOS prays for the entry of a judgment which:

- a. Permanently enjoins and restrains, for the remaining life of the '026 patent, ZMED, and its attorneys, servants, agents, associates, parent corporations, subsidiaries, employees, and all persons acting in concert or participation with it, from making, using, selling, or offering for sale ZMED's SonArray System or any colorable variation thereof;
- b. awards NOMOS its damages based on ZMED's past infringement of the '026 patent;
- c. awards NOMOS increased damages pursuant to 35 U.S.C. §284;
- d. awards NOMOS pre-judgment and post-judgment interest at the highest rate permitted by law;
- e. awards NOMOS its costs and attorneys' fees incurred in this action pursuant to 35 U.S.C. §285; and
- f. awards NOMOS such other and further relief, at law or in equity, to which NOMOS may show itself to be entitled or as this Court deems just and proper.

Respectfully submitted,

NOMOS CORPORATION

By Its Attorneys,



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