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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EXERGEN CORPORATION,

Plaintiff,

v.

SAFETY 1st, INC.,

Defendant.

Civil Action No.:

01 10524 GAO

COMPLAINT AND DEMAND FOR JURY TRIAL

For its Complaint, Plaintiff alleges as follows:

1. Plaintiff Exergen Corp. ("Exergen") is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and having a place of business at 51 Water Street, Watertown, Massachusetts, within this judicial District.
2. Defendant Safety 1st Corp. ("Safety 1st") is, upon information and belief, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, having a place of business at 45 Dan Road, Canton Commerce Center, Canton, Massachusetts, within this judicial District.
3. This is an action for patent infringement, arising under the patent laws of the United States, Title 35 of the United States Code.
4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
5. Venue is proper in this court under 28 U.S.C. §§ 1391 (b), (c) and 1400(b).

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6. Exergen Corporation is a leading innovator in the field of medical thermometry. Exergen's founder and president, Francesco Pompei, is the inventor of over forty United States patents. Exergen Corporation has developed a forehead thermometer, the Exergen TemporalScanner, which provides accurate and convenient temperature measurements via the temporal artery. The Exergen TemporalScanner has been proven to be more accurate in infants than ear thermometry and better tolerated by infants than rectal thermometry. See Greenes, David S. et al., *Accuracy of a Noninvasive Temporal Artery Thermometer for Use in Infants*, Vol. 155 Arch. Pediatr. Adolesc. Med. pages 376-381, (March 2001). The Exergen TemporalScanner is covered by numerous issued and pending U.S. patents.

7. In October 2000, Safety 1st of Canton, Massachusetts, asked Exergen for a license under Exergen's patents to sell forehead thermometers, which Exergen declined to grant. Recently, Exergen discovered that Safety 1st was nevertheless marketing a forehead thermometer that infringes Exergen's patented technology.

8. Exergen is the owner of United States Letters Patent No. 5,012,813, entitled RADIATION DETECTOR HAVING IMPROVED ACCURACY ("the '813 patent"). The '813 patent was duly and legally issued by the United States Patent Office on May 7, 1991, and is valid and subsisting and in full force and effect. A copy of the '813 patent is attached to the Complaint as Exhibit A.

9. Upon information and belief, Safety 1st has infringed the '813 patent by making, using, offering to sell, selling and/or importing devices embodying the patented invention in the United States and will continue to do so unless enjoined by this Court.

10. Upon information and belief, Safety 1st has infringed with full knowledge of the '813 patent and the infringement has been willful and intentional.

11. Exergen is the owner of United States Letters Patent No. 5,199,436, entitled RADIATION DETECTOR HAVING IMPROVED ACCURACY ("the '436 patent"). The '436 patent was duly and legally issued by the United States Patent Office on April 6, 1993, and is

valid and subsisting and in full force and effect. A copy of the '436 patent is attached to the Complaint as Exhibit B.

12. Upon information and belief, Safety 1st has infringed the '436 patent by making, using, offering to sell, selling and/or importing devices embodying the patented invention in the United States and will continue to do so unless enjoined by this Court.

13. Upon information and belief, Safety 1st has infringed with full knowledge of the '436 patent and the infringement has been willful and intentional.

14. Exergen is the owner of United States Letters Patent No. 5,653,238, entitled RADIATION DETECTOR PROBE ("the '238 patent"). The '238 patent was duly and legally issued by the United States Patent Office on August 5, 1997, and is valid and subsisting and in full force and effect. A copy of the '238 patent is attached to the Complaint as Exhibit C.

15. Upon information and belief, Safety 1st has infringed the '238 patent by making, using, offering to sell, selling and/or importing devices embodying the patented invention in the United States and will continue to do so unless enjoined by this Court.

16. Upon information and belief, Safety 1st has infringed with full knowledge of the '238 patent and the infringement has been willful and intentional.

17. Exergen is the owner of United States Letters Patent No. 6,047,205, entitled RADIATION DETECTOR PROBE ("the '205 patent"). The '205 patent was duly and legally issued by the United States Patent Office on April 4, 2000, and is valid and subsisting and in full force and effect. A copy of the '205 patent is attached to the Complaint as Exhibit D.

18. Upon information and belief, Safety 1st has infringed the '205 patent by making, using, offering to sell, selling and/or importing devices embodying the patented invention in the United States and will continue to do so unless enjoined by this Court.

19. Upon information and belief, Safety 1st has infringed with full knowledge of the '205 patent and the infringement has been willful and intentional.

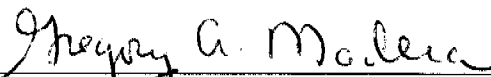
WHEREFORE, Plaintiff prays that this Court:

- A. preliminarily and permanently enjoin Safety 1st, its agents and employees, and any others acting in concert with it, from infringing U.S. Patent Nos. 5,012,813; 5,199,436; 5,653,238; and 6,047,205;
- B. award Exergen damages resulting from Safety 1st's patent infringement;
- C. award Exergen treble its damages for Safety 1st's willful infringement;
- D. award Exergen its costs and attorneys' fees associated with this actions; and
- F. award such other relief as it deems just and reasonable.

Plaintiff demands a trial by jury.

By its attorneys

Dated: March 28, 2001



Gregory A. Madera (BBO #313,020)
Heidi E. Harvey (BBO #548,114)
Christopher Centurelli (BBO #640,974)
FISH & RICHARDSON, P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

Attorneys for Plaintiff
EXERGEN CORPORATION