

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION**

POLYZEN, INC., a North Carolina Company,

Plaintiff,

v.

RADIADYNE, L.L.C., a Texas limited liability  
corporation,

Defendant.

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR PATENT INFRINGEMENT**

1. This is an action for patent infringement brought for Patent Infringement under 35 USC § 271 by Plaintiff Polyzen, Inc. (“Polyzen”) against Radiadyne, L.L.C. (“Radiadyne”).

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over issues of patent infringement brought under 35 USC § 271, pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. RadiaDyne is engaged in selling products throughout the United States and within this Judicial District of the State of North Carolina that gives rise to the cause of action under 35 USC § 271. Jurisdiction and Venue are proper in this District as to Defendant, under 28 U.S.C. §§ 1391 and 1400(b). This Court has personal jurisdiction over Defendant by virtue of, at a minimum, Defendant’s ongoing presence and conduct in this judicial District, as well as Defendant having inflicted a tortious injury against Plaintiff here.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

### **INTRADISTRICT ASSIGNMENT**

5. The Western Division is the appropriate division pursuant to Local Civil Rule 40.1(c)(2) because the acts complained of herein have occurred in this judicial District and Polyzen's principal office is in Wake County.

6. The Western Division is also the appropriate division due to the related patent infringement case styled *Polyzen, Inc., v. RadiaDyne, L.L.C.*, Case No. 5:11-cv-662-D, currently pending in before the Hon. James C. Dever III.

### **THE PARTIES**

7. Polyzen is a company organized under the laws of North Carolina, with a place of business at 1041 Classic Road, Apex, North Carolina 27539. Polyzen is in the business of developing and manufacturing disposable medical products and devices, including medical balloons, for medical industry original equipment manufacturers. Polyzen developed and patented a Multi-Layer Film Welded Articulated Balloon.

8. Upon information and belief, Defendant is a Texas limited liability corporation with a place of business at 2313 Sam Houston Pkwy K, Suite 107, Houston, Texas 77043. Defendant sells and offers for sale in the United States, certain medical balloon devices, which are multilayer film welded articulated balloons that infringe one or more claims of Polyzen's patent.

## **GENERAL ALLEGATIONS**

9. On June 3, 2014, the United States Patent and Trademark Office (“USPTO”) duly and properly issued United States Patent No. 8,740,845 (“the ‘845 patent”), entitled Multi-Layer Film Welded Articulated Balloon, a copy of which is attached hereto as Exhibit C.

10. Polyzen is the sole assignee of the ‘845 patent pursuant to an assignment noted on the face of the ‘845 Patent.

11. The ‘845 Patent grants protection to Polyzen’s claimed Multi-Layer Film Welded Articulated Balloon and includes independent claim 1, which describes the protected invention:

1. A medical balloon device, comprising a multiplicity of layers of thermoplastic film including layers sealed at peripheral edges thereof to form an inflatable interior volume enclosed by the sealed edges, and layers sealed at one or more locations in the interior volume to enable the device to articulate to a predetermined shape upon inflation of the interior volume with an inflation fluid, to accommodate a predetermined medical application, wherein the inflatable interior volume is adapted to receive an inflation fluid.

12. Defendant manufactures and/or causes others to manufacture, uses, offers for sale and sells multi-layer film welded articulated balloons, including the Immobiloc, Alatus, and Prostate Immobilization Device products (“the RadiaDyne Devices”). Upon information and belief, the RadiaDyne Devices are manufactured for Defendant by Dielectrics, Inc. of Chicopee, Massachusetts.

13. The RadiaDyne Devices include product literature which describes the device and includes instructions for use.

14. The RadiaDyne Devices are medical balloon devices comprising: (1) a multiplicity of layers of thermoplastic film; (2) layers sealed at peripheral edges thereof to form an inflatable interior volume enclosed by the sealed edges; (3) layers sealed at one or more locations in the interior volume to enable the device to articulate to a predetermined shape upon

inflation of the interior volume with an inflation fluid, to accommodate a predetermined medical application; and (4) wherein the inflatable interior volume is adapted to receive an inflation fluid.

15. The '845 Patent also includes independent claim 10, which describes another aspect of the protected invention:

10. A medical balloon device, comprising: a first thermoplastic film layer including a first edge; a second thermoplastic film layer including a second edge joined to the first edge to form a bottom inflatable compartment between the first and second layer; a third thermoplastic film layer including a third edge joined to the second edge to form a top inflatable compartment between the second and third layer, in fluid communication with the bottom inflatable compartment; and said bottom inflatable compartment being adapted to receive an inflation fluid and said top inflatable compartment being adapted to articulate to a predetermined shape to accommodate a predetermined medical application.

16. The RadiaDyne Devices are medical balloon devices, with (1) a first thermoplastic film layer including a first edge; (2) a second thermoplastic film layer including a second edge joined to the first edge to form a bottom inflatable compartment between the first and second layer; (3) a third thermoplastic film layer including a third edge joined to the second edge to form a top inflatable compartment between the second and third layer, in fluid communication with the bottom inflatable compartment; and (4) said bottom inflatable compartment being adapted to receive an inflation fluid; and (5) said top inflatable compartment being adapted to articulate to a predetermined shape to accommodate a predetermined medical application.

## **COUNT I**

### **PATENT INFRINGEMENT OF U.S. PATENT 8,740,845**

17. Polyzen realleges each and every allegation set forth above and incorporates the same by reference herein.

18. Upon information and belief, Defendant has infringed and continues to infringe claims 1 through 5 of the '845 Patent.

19. Upon information and belief, Defendant has infringed and continues to infringe the claims of the '845 Patent by manufacturing or causing to be manufactured, distributing, using, offering to sell, and/or selling, immobilizer treatment device products within the United States, including causing infringing immobilizer treatment device products to be manufactured by Dielectrics, Inc., 300 Burnett Road, Chicopee, Massachusetts 01020.

20. The RadiaDyne Devices are constructed as taught and claimed in the '845 Patent in suit and include all of the elements recited in Claims 1 through 5 of the '845 Patent.

21. Defendant's infringement is a literal infringement and/or infringement under the doctrine of equivalents, and is direct, contributory, and inducing.

22. Polyzen is entitled to recover from the Defendant the damages sustained, including a reasonable royalty and/or lost profits of Polyzen and/or profits of Defendant as a result of Defendant's infringing acts.

23. Defendant has had knowledge of Polyzen's rights in the '845 Patent and has continued infringement with full knowledge of and in disregard for those rights, wherein such actions constitute willful infringement.

24. Defendant will continue to infringe the claims of Polyzen's '845 Patent unless enjoined by this Court.

25. Defendant's infringement of the '845 Patent has damaged Polyzen and will continue to cause Polyzen substantial irreparable harm unless enjoined by this Court.

#### **PRAYER FOR RELIEF**

26. WHEREFORE, Polyzen prays that this Court enter judgment that:

- A. The asserted claims of the '845 Patent are infringed by Defendant;
- B. Defendant's infringement of the '845 Patent has been willful;
- C. Defendant, and its customers, licensees, directors, officers, agents, servants, employees and all other persons in active concert or privity or in participation with it, be preliminarily and permanently enjoined from manufacturing, using, selling, offering to sell, and importing the Accused Product, and any other infringing products, in and into the United States, directly or indirectly, prior to expiration of the '845 patent;
- D. Defendant be enjoined to deliver upon oath, to be impounded during the pendency of this action, and delivered to Polyzen pursuant to judgment herein, all originals, copies, facsimiles, or duplicates of any device shown to infringe Polyzen's '845 Patent.
- E. Judgment be awarded to Polyzen under 35 U.S.C. §§ 271, 281, 284 and/or 285.
- F. Judgment be entered for Polyzen against Defendant, for Polyzen's actual damages, for reasonable royalties or for any profits attributable to infringements of Polyzen's '845 Patent.
- G. Defendant be required to account for all gains, profits, and advantages derived from its acts of infringement and for its other violations of law.
- H. Polyzen be awarded damages adequate to compensate for Defendant's infringement of the '845 Patent, and that such damages be trebled pursuant to 35 U.S.C. § 284;
- I. This case is exceptional within the meaning of 35 U.S.C. § 285, and that all costs and expenses of this action, including reasonable attorneys' fees, be awarded to Polyzen; and
- J. Polyzen be awarded such further relief as this Court deems necessary, just and/or proper.

**DEMAND FOR JURY TRIAL**

Polyzen demands a trial by jury on all issues so triable, as provided by Federal Rule of Civil Procedure 38.

Dated: June 3, 2014

Respectfully submitted,

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