

**UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division**

DIABETIC CARE RX, LLC d/b/a
PATIENT CARE AMERICA,

Plaintiff,

v.

PENTEC HEALTH, INC.,

Defendant.

Case No. _____

COMPLAINT

Plaintiff, Diabetic Care RX, LLC d/b/a Patient Care America (“PCA”), by and through its undersigned counsel, Feldman Gale, P.A., hereby brings this action for Declaratory Judgment against Defendant, Pentec Health, Inc. (“Pentec”), and in support thereof, states as follows:

NATURE OF ACTION

PCA seeks a declaration that it does not infringe one or more claims of U.S. Patent No. 8,927,505 (“the ‘505 Patent”), which is assigned to Pentec.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2201, § 2202, § 1338(a) as PCA seeks, *inter alia*, a declaration of non-infringement of a United States Patent.
2. This Court has personal jurisdiction over Pentec because Pentec is registered to do business in this District, conducts business in this District, and maintains an interactive website <http://www.pentechhealth.com> that is directed to and is accessible from this District.
3. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and § 1400 in that Pentec is a corporation that is subject to personal jurisdiction in this district and therefore resides in this district. Moreover, the acts complained of herein arose in this district.

THE PARTIES

4. Plaintiff PCA is a Florida limited liability company with a principal place of business at 11555 Heron Bay Boulevard, Coral Springs, Florida 33076.

5. On information and belief, Defendant Pentec is a corporation organized and existing under the laws of Pennsylvania with a principal place of business at 4 Creek Parkway, Suite A, Boothwyn, Pennsylvania, 19061.

BACKGROUND FACTS

6. PCA is a Florida based healthcare organization comprised of dedicated professionals committed to providing high quality patient care to achieve optimal therapeutic outcomes. PCA offers a range of specialty pharmacy services, including renal nutrition therapies for patients undergoing hemodialysis who have a difficult time maintaining adequate nutrition.

7. These therapies include intradialytic parenteral nutrition, referred to as "IDPN." IDPN is a supplemental form of parenteral nutrition prescribed by physicians to malnourished hemodialysis patients. IDPN provides the patients with the protein, calories or other nutrients their bodies need for strength and energy.

8. PCA's IDPN compositions are prepared by in-house pharmacists according to physician specifications. PCA does not administer IDPN compositions to patients. Rather, the compositions are dispensed to dialysis clinics that administer and monitor the IDPN composition under the supervision of the physician. The outcome of IDPN therapy is patient dependent.

9. On information and belief, Pentec has its principal place of business in Boothwyn, Pennsylvania and provides nationwide infusion services.

10. The '505 Patent, entitled "Nutritive Compositions and Methods of Using Same," issued on January 6, 2015. A true and correct copy of the '505 Patent is attached hereto as Exhibit A. Pentec is the owner by assignment of the '505 Patent.

11. None of the claims of the '505 Patent are directed to IDPN compositions.

12. All of the claims of the '505 Patent are directed to methods of administering IDPN solutions containing specific ingredients, administered under specific conditions, to achieve specific results.

13. By email dated January 30, 2015, Pentec accused PCA of engaging in unlawful activity. A copy of the email is attached as Exhibit B.

14. Pentec has accused PCA of using an IDPN product label that is allegedly an identical formulation of Pentec's "patent-awarded" Proplete formulation of IDPN.

15. PCA is entitled to bring this action by virtue of an accusation by Pentec that PCA's activities infringe the '505 Patent.

16. PCA does not perform the methods in the claims of the '505 Patent.

17. PCA is entitled to a resolution of this matter so that it may conduct its business free of infringement threats from Pentec. For these reasons, PCA invokes the protections of the Federal Declaratory Judgment Act and requests relief under same.

18. Any condition precedent necessary to bring the instant action has been performed, waived or excused.

COUNT I

(DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '505 PATENT)

19. PCA repeats and re-alleges Paragraphs 1-18 of this Complaint as if fully set forth herein.

20. Pentec has indicated to PCA that PCA infringes one or more claims of the '505 Patent.

21. PCA believes that it does not directly or indirectly infringe one or more claims of the '505 Patent, either alone or with any other entity.

22. An actual, live and justiciable controversy exists between PCA and Pentec as to whether PCA is infringing the claims of the '505 Patent.

23. PCA is therefore entitled to a declaratory judgment of non-infringement of the claims of the '505 Patent and to all just and proper relief.

PRAYER FOR RELIEF

WHEREFORE, PCA prays for the following relief:

A. That judgment be entered declaring that neither PCA, nor any of PCA's products, have infringed, or are currently infringing, any claims of the '505 Patent;

B. That judgment be entered declaring that Pentec is prohibited from alleging infringement of any claims of the '505 Patent against PCA;

C. That judgment be entered declaring that Pentec is precluded from obtaining injunctive relief, money damages, costs, and/or attorneys' fees against PCA for the alleged infringement of the claims of the '505 Patent;

D. That judgment be entered permanently enjoining Pentec, their officers, agents, servants, employees and attorneys, and all others acting for, on behalf of, or in active concert or participation with any of them, from stating, implying or suggesting that PCA, or any of the its products infringe the claims of the '505 patent;

E. That the Court declare that PCA may operate free of any infringement claims by Pentec;

F. That judgment be entered declaring that this case is exceptional in favor of PCA under 35 U.S.C. § 285 and that PCA be awarded its reasonable attorneys' fees and expenses; and

G. That PCA be awarded any other relief the Court may deem just and proper.

FELDMAN GALE, P.A.

s/ Christina DeAngelis

James A. Gale, Fla. Bar No. 371726
JGale@FeldmanGale.com
Gregory L. Hillyer, Fla. Bar No. 682489
GHillyer@FeldmanGale.com
Christina D. DeAngelis, Fla. Bar No. 664456
CDeAngelis@FeldmanGale.com

One Biscayne Tower, 30th Floor
2 South Biscayne Blvd.
Miami, FL 33131
Tel.: (305) 358-5001
Fax: (305) 358-3309

Attorneys for Patient Care America