

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Civil Action No.:

EDWARD L. BLENDERMANN,

Plaintiff,

JURY TRIAL DEMANDED

v.

LIFEWAVE, INC.,

Defendant.

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ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Edward L. Blendermann (“Plaintiff”), for his complaint against Defendant LifeWave, Inc. (“LifeWave”), alleges as follows:

INTRODUCTION

1. Plaintiff brings this action against LifeWave to seek remedies for LifeWave’s willful infringement of United States Patent No. 8,617,590 (“the ‘590 Patent”). The ‘590 Patent claims a method for increasing muscle strength and endurance during physical activity by wearing a nutrient holding device.

2. LifeWave makes, uses, sells, and offers for sales multiple products that infringe upon the ‘590 Patent. Specifically, LifeWave sells multiple lines of non-transdermal patches that it markets to consumers as increasing muscle strength and endurance during physical activity

THE PARTIES

3. Plaintiff is an individual residing in Palm City, Florida. He is the named inventor and sole owner of the ‘590 Patent.

4. LifeWave is a corporation organized under Georgia law with its principle place of business at 9444 Balboa Avenue, Suite 150, San Diego, CA 92123.

JURISDICTION AND VENUE

5. This case arises under the Patent Act, 35 U.S.C. § 271 *et seq.*

6. This Court has jurisdiction in this matter pursuant to 28 U.S.C. § 1338(a) as it is an action relating to patents.

7. Venue lies in this court under 28 U.S.C. § 1391(c) and 28 U.S.C. § 1400(b) as part of the infringement complained of herein has taken place in this judicial district.

THE '590 PATENT

8. On December 31, 2013, the United States Patent and Trademark Office issued the '590 Patent, entitled Method for Increasing Muscle Strength to Plaintiff. A copy of that patent is attached hereto as Exhibit A.

9. Plaintiff is the named inventor of the '590 Patent and is the sole owner of all rights, title, and interest in the '590 Patent.

10. The '590 Patent claims a method for increasing muscle strength and endurance during physical activity by wearing nutrient holding devices.

11. The '590 Patent summarizes the invention as follows:

The invention relates to a method, which comprises a nutrient holding device, which contains a compartment, which houses nutrients. These active agents (nutrients, metabolites) can stimulate reflex zones located on the surface of the body (head, neck, back, foot, pelvis, umbilicus, chest, feet solar plexus etc.). It is believed that these agents deliver frequencies and radiations, which affect these reflex zones. Therefore, by placement of said device on the surface at various locations on the body the utility of the invention can be realized. The nutrient holding device secures the active agents on the body surface during athletic endeavors.

12. The '590 Patent stemmed from Application Number 10/302,527 (“the ‘527 Application”), filed by Mr. Blendermann on November 25, 2002.

13. The '527 Application was published June 26, 2003, as US 2003-0118615 A1 (“the 615 Publication”), and included Claim 2, which provided: “A method of improving muscle strength and endurance during physical activity by wearing a nutrient holding device containing at least one nutritional supplement whereby this nutrient material is only separated from the surface of the body by the thin covering of said holding device.”

14. Claim 2 ultimately issued in substantially identical form with only minor, non-substantive alterations. The issued claim provides: “A method of improving muscle strength and endurance during physical activity by wearing a nutrient holding device containing at least one nutrient whereby the nutrient material is only separated from the body by the covering of said holding device; the thickness of said holding device may be up to 3 mm.”

LIFEWAVE’S INFRINGEMENT

15. LifeWave sells a series of non-transdermal patches that contain nutrients and that LifeWave contends work by stimulating reflex zones on the body: “When placed on the body like a band-aid, the patches stimulate nerves and points on the skin to produce health benefits not obtainable with any other product on the market today.”

16. LifeWave markets many of its products as a means to increase muscle strength and endurance, including at least the following patch types: Energy Enhancer®, Y-Age Carnosine®, and IceWave®. LifeWave has marketed its Y-Age Aeon® patch as enhancing the effects of all other patches, including those that are directed towards increased muscle strength and endurance.

17. Individuals who purchase and use Energy Enhancer®, Y-Age Carnosine®, and IceWave®, and/or Y-Age Aeon® patch (“the Accused Patches”) infringe Claims 1, 2, 9, 16, and 18 of the ‘590 Patent by using the Accused Patches in the manner claimed by the ‘590 Patent.

18. LifeWave knows that the end users of the Accused Patches are directly infringing the ‘590 Patent, knows that the Accused Patches do not have any substantial non-infringing uses, and actively encourages the use of the Accused Patches in an infringing manner.

19. LifeWave employees demonstrate the use of these patches in a manner that directly infringes the claims of the ‘590 Patent.

20. Upon information and belief, LifeWave employees directly infringe the ‘590 Patent through the ongoing testing of its products.

LIFEWAVE’S KNOWLEDGE OF THE ‘590 PATENT

21. LifeWave has been on actual notice of the ‘527 Application and the ‘615 Application since at least 2007, when Mr. Blendermann sent disclosure letters to top LifeWave executives, including its current CEO, David Schmidt.

22. In fact, when David Schmidt filed a patent application to cover LifeWave’s patches, he specifically listed the ‘615 Application as relevant prior art in an Information Disclosure Statement.

23. The United States Patent and Trademark Office rejected Mr. Schmidt’s patent application as being obvious in light of Mr. Blendermann’s invention on multiple occasions.

24. Upon issuance of the ‘590 Patent, Mr. Blendermann notified the United States Patent Office and LifeWave’s patent counsel of the issuance.

25. Based on this factual history, LifeWave has actual notice of the ‘527 Application, the ‘615 Publication, and the ‘590 Patent and has had such actual notice at all relevant times.

26. In spite of this knowledge, LifeWave has made, used, sold, and offered for sale the Accused Products and has encouraged others to use these products in an infringing manner.

27. LifeWave does not have a good-faith belief of non-infringement and has infringed, directly and indirectly, in spite of an objectively high likelihood that its actions constituted infringement of the '590 Patent.

COUNT I
Infringement of U.S. Patent No. 8,617,590

28. Paragraphs 1 through 27 are reincorporated by reference as if fully set forth herein.

29. LifeWave directly infringes Claims 1, 2, 9, 16, and 18 of the '590 Patent through its testing and demonstration of its products, including the following LifeWave Patches: Energy Enhancer®, Y-Age Carnosine®, IceWave®, and Y-Age Aeon®.

30. LifeWave indirectly infringes Claims 1, 2, 9, 16, and 18 of the '590 Patent by inducing others to use its products, including the Energy Enhancer®, Y-Age Carnosine®, IceWave®, and Y-Age Aeon® Patches, in a manner that infringes the '590 Patent. The use of these patches by end users to increase muscle strength and endurance constitutes direct infringement. LifeWave encourages purchasers to use these patches in an infringing manner at least through its sales, marketing material, and demonstrations. LifeWave has induced these infringing uses with full knowledge of the '590 Patent and with full knowledge that the use of its patches in the manner it instructed constitutes infringement of the '590 Patent.

31. LifeWave indirectly infringes Claims 1, 2, 9, 16, and 18 of the '590 Patent by contributorily infringing the patent through the sale of the Energy Enhancer®, Y-Age Carnosine®, IceWave®, and Y-Age Aeon® Patches. Individuals who purchase and use these patches directly infringe the patent. LifeWave sells these patches and offers them for sale for use

in performing the patented method. The accused patches are not capable of substantial non-infringing use, and LifeWave has known that the use of these articles would directly infringe the patented method.

32. LifeWave has willfully infringed Claims 1, 2, 9, 16, and 18 of the '590 Patent by directly and indirectly infringing the patent with knowledge of the patent and in spite of an objectively high likelihood that its actions constituted infringement of the '590 Patent.

COUNT II
Infringement of Provisional Rights

33. Paragraphs 1 through 32 are reincorporated by reference as if fully set forth herein.

34. Between the time of the '615 Publication and the issuance of the '590 Patent, LifeWave made, used, sold, offered for sale products that infringed the invention as claimed in the '615 Application.

35. LifeWave was on actual notice of the '615 Publication from at least the year 2007 forward.

36. Claim 2 of the '590 Patent issued in substantially identical form to Claim 2 of the '615 Publication.

37. LifeWave is liable for infringement of the Provisional Patent rights pursuant to 35 U.S.C. § 154(d).

RELIEF REQUESTED

Wherefore, Mr. Blendermann respectfully requests that this Court grant relief against LifeWave and in favor of Mr. Blendermann as follows:

- (a) Judgment that LifeWave infringes one or more claims of the '590 Patent;

- (b) Judgment that LifeWave's infringement is willful and deliberate, and, therefore, that Mr. Blendermann is entitled to recover treble damages as provided by 35 U.S.C. § 284.
- (c) Judgment that LifeWave's infringement is willful and deliberate, and, therefore, that this is an exceptional case entitling Mr. Blendermann to an award of his attorneys' fees for bringing and prosecuting this action, together with interest, and costs of the action, pursuant to 35 U.S.C. § 285;
- (d) Judgment that Mr. Blendermann is entitled to provisional patent rights pursuant to 35 U.S.C. § 154(d), and that LifeWave is therefore subject to a damages award for six years prior to the filing of this action;
- (e) Judgment awarding Mr. Blendermann damages adequate to compensate him for LifeWave's infringement of the '590 Patent, including all pre-judgment and post-judgment interest; and
- (f) Judgement be entered awarding Mr. Blendermann such other and further relief as the Court may deem just and proper.

Dated: July 29, 2015

Respectfully submitted,

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