

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NOX MEDICAL EHF,)	
)	
Plaintiff,)	
)	C.A. No. _____
v.)	
)	JURY TRIAL DEMANDED
NATUS NEUROLOGY INC.,)	
)	
Defendant.)	

COMPLAINT FOR PATENT INFRINGEMENT

THE PARTIES

1. Nox Medical Ehf (“Nox Medical”) is a corporation organized and existing under the laws of Iceland with a principal place of business located in Reykjavik, Iceland.

2. On information and belief, Defendant Natus Neurology Inc. (“Natus”) is a Delaware corporation with a principal place of business located at 3150 Pleasant View Road, Middleton, Wisconsin 53562.

JURISDICTION

3. This is a civil action (“Action”) for patent infringement arising under the Patent Act of the United States, 35 U.S.C. §§ 1 *et seq.*

4. Subject matter jurisdiction of this Court over this Action is founded upon 28 U.S.C. §§ 1331, 1332 and 1338(a) and (b).

5. Defendant Natus is subject to personal jurisdiction in this Court because it is a Delaware corporation.

VENUE

6. In light of the matters set forth in paragraph nos. 1 through 5, inclusive, above, venue of this Action is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

BACKGROUND AND FACTUAL ALLEGATIONS

7. Nox Medical is a leading innovator and manufacturer of devices and systems to monitor sleep patterns. Nox Medical has spent considerable time and resources to protect its intellectual property rights for its innovative sleep monitoring devices and systems.

8. The fruits of Nox Medical's expenditures of resources to protect its intellectual property are a number of issued and pending United States and foreign patents. One of these patent applications Nox Medical owns by assignment is U.S. Patent App. Pub. No. 2013/0171867 (the "'867 publication") directed to biometric belt connectors for respiratory belts. A copy of the '867 publication is attached hereto as Exhibit A.

9. After the '867 publication was published, Embla Systems LLC ("Embla") and/or Natus sold and/or offered to sell biometric belt connectors for respiratory belts, including the Embla XactTrace Pre-sized Single Use Belt (the "XactTrace").

10. On October 21, 2014, Nox Medical, through its counsel, sent a letter to Embla and Natus Medical Incorporated, which on information and belief is the parent company of Embla and Natus, informing them of the '867 publication and that the belt connectors used in the XactTrace products infringed claims 1-13 of the '867 publication. A copy of that letter is attached hereto as Exhibit B.

11. On June 16, 2015, the U.S. Patent and Trademark Office duly issued the '867 publication as United States Patent No. 9,059,532 titled "Biometric Belt Connector" (the "'532 patent"), which Nox Medical also owns by assignment. A copy of the '532 patent is attached hereto as Exhibit C.

12. Claims 1-13 of the '867 publication issued in the '532 patent without substantial change.

13. On information and belief, Natus continues to manufacture, use, import, export, offer to sell and/or sell the XactTrace. A copy of Natus' website advertising the XactTrace is attached hereto as Exhibit D.

14. The connectors used in the XactTrace infringe the claims of the '532 patent. Consequently, on June 16, 2015 Nox Medical, through its counsel, sent a letter to Natus (and to its parent corporation Natus Medical Incorporated), demanding that it cease and desist its continued infringement of the claims of the '532 patent. A copy of that letter is attached hereto as Exhibit E.

15. Despite Natus' knowledge that its products, including at least the connector used on its XactTrace products, infringe the claims of the '532 patent, Natus continues to manufacture, use, import, export, offer to sell and/or sell the XactTrace with the infringing connectors.

COUNT I

(Infringement of U.S. Patent No. 9,059,532)

16. Nox Medical refers to and incorporates herein by reference each of the foregoing paragraphs of this Complaint.

17. Natus, by the acts complained herein, and by making, using, selling, offering for sale, and/or exporting from the United States products, including at least the XactTrace, that embody the invention claimed in the '532 patent, have in the past, do now, and continue to directly infringe, contributorily infringe and/or induce others to infringe the claims of the '532 patent literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

18. Natus, through its predecessor Embla that sold the XactTrace, had actual knowledge of the '867 publication and that its XactTrace product infringed the claims of the '867 publication.

19. Natus also had actual knowledge of the '532 patent and that its XactTrace product infringed the claims of the '532 patent by at least June 15, 2014 in view of the cease-and-desist letter sent Natus on that date.

20. Despite its knowledge of the '532 patent, Natus has continued to willfully infringe and, upon information and belief, will continue to willfully infringe upon the claims of the '532 patent by making, using, selling, offering for sale, and/or exporting from the United States products, including at least the XactTrace unless this Court enjoins Natus' infringing activities.

21. Natus' XactTrace products have no substantial non-infringing use because their only use is to be connected to the male portion of a snap connector electrode connected to a biometric device.

22. Natus provides its customers with biometric belts, such as the XactTrace, with connectors that are specially designed, made and adapted to be connected to the male portion of a snap connector electrode connected to a biometric device in a manner that infringes the claims of the '532 patent.

23. Natus is also aware of the claims of the '532 and that its biometric belt connectors infringe the XactTrace, yet induces its customers to infringe the '532 patent as set forth herein.

24. By reason of the acts of Natus alleged herein, Nox Medical has suffered damage in an amount to be proved at trial.

25. Further, Natus threatens to continue to infringe the claims of the '532 patent as complained herein restrained and enjoined, all to Nox Medical's irreparable injury. It would be

difficult to ascertain the amount of compensation that would afford Nox Medical adequate relief for such future and continuing infringement, and a multiplicity of judicial proceedings would be required to protect Nox Medical's rights in the '532 patent. Thus, Nox Medical does not have an adequate remedy at law to compensate it for the injuries threatened.

26. Thus, Nox Medical is entitled to monetary damages adequate to compensate it for Natus' infringement of the '532 patent under 35 U.S.C. §289, Natus' infringement of its provisional rights pursuant to 35 U.S.C. § 154(d), increased damages under 35 U.S.C. §284, together with interest, costs, and attorneys fees under 35 U.S.C. §285, and is entitled to injunctive relief against such infringement pursuant to 35 U.S.C. §283.

JURY DEMAND

27. Plaintiff demands a jury trial on all disputed issues that are so triable.

PRAYER FOR RELIEF

WHEREFORE, Nox Medical demands for a judgment in its favor and prays the Court to award the following relief:

1. A judgment that Natus has infringed the '532 patent;
2. For an order temporarily, preliminarily and permanently enjoining Natus, its officers, directors, agents, servants, affiliates, employees, subsidiaries, divisions, branches, parents, attorneys, representatives, privies, and all others acting in concert or participation with any of them, from infringing the claims of the '532 patent;
3. For an order directing Defendant to deliver to Plaintiff for destruction or other disposition all products and systems in its possession that infringe the claims of the '532 patent;

4. For an order directing Natus to file with the Court, and serve upon Nox Medical's counsel, within thirty (30) days after entry of the order of injunction, a report setting forth the manner and form in which Natus has complied with the injunction;

5. For an order awarding Nox Medical general and/or specific damages, including a reasonable royalty and/or lost profits, in amounts to be fixed by the Court in accordance with proof, including enhanced and/or exemplary damages, as appropriate, as well as all of Nox's profits or gains of any kind from its acts of patent infringement;

6. For an order awarding Nox Medical damages in the amount of a reasonable royalty for Natus' infringement of Nox Medical's provisional rights pursuant to 35 U.S.C. § 154(d);

7. For an order finding that Natus' infringement of the claims of the '532 patent was willful, that this is an exception case, and award Nox Medical enhanced damages and its attorneys' fees under 35 U.S.C. §§ 284 and 285;

8. For an order awarding Nox Medical all of its costs, including its attorneys' fees, incurred in prosecuting this action, including, without limitation, pursuant to 35 U.S.C. § 285 and other applicable law;

9. For an order awarding Nox Medical pre-judgment and post-judgment interest; and

10. Such other and further relief as the Court deems appropriate and just under the circumstances.

Respectfully submitted,

POTTER ANDERSON & CORROON LLP

OF COUNSEL:

Chad E. Nydegger
WORKMAN NYDEGGER
60 East South Temple, Suite 1000
Salt Lake City, UT 84111
Tel: (801) 533-9800

Dated: August 17, 2015
1198400 / 42707

By: /s/ David E. Moore
David E. Moore (#3983)
Bindu A. Palapura (#5370)
Stephanie E. O'Byrne (#4446)
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19801
Tel: (302) 984-6000
dmoore@potteranderson.com
bpalapura@potteranderson.com
sobyrne@potteranderson.com

Attorneys for Plaintiff Nox Medical Ehf