UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LIFEHEALTH, LLC 2656 Patton Road Roseville, Minnesota 55113 Plaintiff, v. EPOCAL, INC. 2060 Walkley Road Ottawa, Ontario K1G3P5 Canada Defendant	Civil Action No.: 15-cv-521

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Lifehealth, LLC, brings this Complaint for patent infringement against Defendant Epocal, Inc. as follows.

JURISDICTION AND VENUE

1. This is an action for patent infringement under Title 35 of the United States Code §§281 and 271 (a) (b) and/or (c) for infringement of US Patent 5,781,024 (the '024 patent) and US Patent 5,770,158 (the '158 patent).

2. This Court has jurisdiction over patent claims under 35 U.S.C. §281 and 28 U.S.C. §§1331, 1338(a) providing for federal question jurisdiction of actions relating to patents and trademarks.

3. Defendant is currently engaged in making, using, offering for sale and selling, products which infringe claims of the '024 patent throughout the United States, including sales within this judicial district. Defendant is also inducing others to sell and use and is contributing

to the sale of infringing products. Defendant is also practicing methods and inducing others to practice methods which infringe claims of the '024 patent.

4. Defendant is currently engaged in making, using, offering for sale and selling, products which infringe claims of the '158 patent throughout the United States, including sales within this judicial district. Defendant is also inducing others to sell and use and is contributing to the sale of infringing products. Defendant is also practicing methods and inducing others to practice methods which infringe claims of the '158 patent.

5. Jurisdiction and Venue is proper in this District pursuant to 28 U.S.C. §1391(b) and (c)(3) and §1400(a) and (b). Defendants is a foreign corporation resident in Canada and sells accused products into this Judicial District.

THE PARTIES AND GENERAL ALLEGATIONS

6. Plaintiff, LIFEHEALTH, LLC is a corporation incorporated in Minnesota and is the owner of the entire interest in and to United States Letters Patent Numbers 5,781,024, filed July 26, 1996 and issued on July 14, 1998, naming Mr. Blomberg, Mr. Kurkowski and Mr. DeRoode as the inventors. LifeHealth is a practicing entity which manufactures and sells point of care products, including the IRMA True Point Blood Analysis System, which practices one or more of the claims of the '024 patent.

7. Plaintiff, LIFEHEALTH is the owner of the entire interest in and to United States Letters Patent Numbers 5,770,158, filed July 13, 1996 and issued on June 13, 1998, naming Ms. Eischen and Mr. Kenney as the inventors. LifeHealth is a practicing entity which manufactures and sells capillary tubes which practice one or more of the claims of the '158 patent.

8. Defendant, Epocal, upon information and belief, is a foreign corporation existing

under the laws of CANADA.

9. Epocal manufactures, imports into the United States and/or sells and/or offers for sale and/or distributes nationwide, medical products generally known as EPOC point of care blood analysis systems and imports and/or sells and/or offers for sale and/or distributes capillary tubes generally known as Care-Fill Capillary Tubes.

THE PATENTS IN SUIT

10. U. S. Patent 5,781,024 is entitled "Instrument Performance Verification System" and protects: "A device and method for testing and monitoring, either manually or automatically, the performance of various components electrically linked to the electronic circuitry of a diagnostic instrument."

11. U.S. Patent 5,781,024 includes exemplary independent apparatus claim 1:

> 1. A portable analytical instrument having a verification system for verifying the performance of the instrument, said instrument comprising:
>
> (a) a housing;
>
> (b) a multi-channel connector for receiving and electrically connecting to a disposable sensor device attached to said housing;
>
> (c) electronic circuit means for operating said instrument, wherein said electronic circuit means is electrically coupled to said multi-channel connector and a power supply, said electronic circuit means being contained within said housing;
>
> (d) instrument performance verification system contained within said housing including signal generating means for producing internally generated test signals and means for processing performance output signals corresponding to said internally generated test signals, said performance output signals being indicative of the performance of at least one of the group consisting of said multi-channel connector and components of said electronic circuit means, said instrument performance verification system being coupled to said electronic circuit means; and
>
> (e) output means in said housing connected to transmit test result signals related to said performance output signals and indicative of results obtained from

tests using said instrument performance verification system.

and exemplary method claim 12:

> 12. A method of testing the integrity of various components which are electrically coupled to diagnostic equipment using one or more test cycles, wherein the diagnostic equipment includes a multi-channel connector for electrical connection to a disposable sensor device, an electronic circuit electrically coupled to said multi-channel connector, a power supply linked to said electronic circuit, and testing means internally connected to said electronic circuit for processing output signals corresponding to internally generated test signals from at least one of the group consisting of said multi-channel connector and components of said electronic circuit, said method comprising the steps of:
>
> (a) activating a test cycle of the diagnostic equipment;
>
> (b) measuring electrical leakage within the electronic circuit;
>
> (c) measuring a pin to pin leakage within the electronic circuit;
>
> (d) measuring a pin to ground leakage within the electronic circuit;
>
> (e) analyzing measurements corresponding to the electrical leakage within the electronic circuit, pin to pin leakage and pin to ground leakage; and
>
> (f) indicating results obtained from analyzing measurements corresponding to the electrical leakage within the electronic circuit, pin to pin leakage and pin to ground leakage.

12. U. S. Patent 5,770,158 is entitled "Capillary Syringe" and protects a capillary draw device capable of use for dispensing liquid.

13. U.S. Patent 5,770,158 includes exemplary independent apparatus claim 1:

> 1. A disposable capillary syringe device comprising:
>
> (a) capillary tube having a tube wall and a hollow interior for withdrawing liquid by capillary draw;
>
> (b) generally cylindrical plunger means reciprocally operable in said capillary tube for operating with a resilient pressurizable sealing means and discharging said liquid from said capillary tube under pressure;
>
> (c) handle means connected to said plunger means for operating said plunger means in said capillary tube means; and
>
> (d) resilient pressurizable sealing means in said capillary tube sealable against said tube wall and having a central opening for enabling said capillary tube means to fill by capillary draw, said central opening in said resilient sealing means being resiliently sealed by advancing said plunger means into said opening in said sealing means.

and exemplary method claim 17:

> 17. A method of providing a liquid sample for testing, comprising the steps of:
> (a) preventing a capillary syringe means having (i) a tube wall and a hollow interior for withdrawing liquid by capillary action; (ii) generally cylindrical plunger means reciprocally operable in said capillary tube for operating with a resilient pressurizable sealing means and discharging said liquid from said capillary tube under pressure; (iii) handle means connected to said plunger means for operating said plunger means in said capillary tube means; and (iv) resilient pressurizable sealing means in said capillary tube sealable against said tube wall and having a central opening for enabling said capillary tube means to fill by capillary action, said central opening in said resilient sealing means being sealed by advancing said plunger means into said opening in said resilient sealing means;
> (b) drawing a volume of liquid to be tested into said capillary tube by capillary action with said opening open;
> (c) closing the opening by operation of said plunger;
> (d) transferring said sample to a desired point of discharge; and
> (e) discharging the liquid from said capillary syringe by operation of said plunger with said opening sealed.

THE ACCUSED PRODUCTS

14. Epocal manufactures, sells and distributes nationwide, medical devices known as Point of Care Blood Analysis Systems. The devices manufactured by Epocal are referred to as the EPOC® Blood Analysis System. The Epoc (Enterprise Point of Care) Blood Analysis System is comprised of the Epoc BGEM Test Card, Epoc Reader and Epoc Host Mobile Computer.

15. The Epoc Blood Analysis System is "A portable analytical instrument"

The epoc™ point of care blood analysis system is the first and only wireless bedside testing solution to use Smart Card technology.

having a verification system for verifying the performance of the instrument, said instrument comprising:

"Incorporates automated, integrated calibration and quality checks and fully portable; AC/rechargeable battery" Upon insertion of a test card, the epoc Reader scans the card's bar code, initiates sensor calibration and provides thermal control of the assay. It reads electrochemical signals and quality control signals from the test card and converts them to a secure wireless transmission format. Card insertion will be confirmed, and a 165- second calibration phase begins.

(a) a housing;

the EPOC Reader:

(b) a multi-channel connector for receiving and electrically connecting to a disposable sensor device attached to said housing;

epoc test cards are single-use bar code identified units containing a biosensor array, calibration solution and fluidics. Test cards generate electrochemical assay signals and quality control signals which are read by detectors in the epoc Reader.

(c) electronic circuit means for operating said instrument, wherein said electronic circuit means is electrically coupled to said multi-channel connector and a power supply, said electronic circuit means being contained within said housing;

(d) instrument performance verification system contained within said housing including signal

generating means for producing internally generated test signals and means for processing performance output signals corresponding to said internally generated test signals, said performance output signals being indicative of the performance of at least one of the group consisting of said multi-channel connector and components of said electronic circuit means, said instrument performance verification system being coupled to said electronic circuit means; and

> when a resistive load is placed between any 2 active pins on the disposable connector, EQC fails. This indicates that a leakage test is being performed during EQC.

(e) output means in said housing connected to transmit test result signals related to said performance output signals and indicative of results obtained from tests using said instrument performance verification system.

> The Epoc Reader transmits signals wirelessly: It reads electrochemical signals and quality control signals from the test card and converts them to a secure wireless transmission format.

16. Epocal has infringed and continues to infringe at least one or more apparatus claims of the '024 patent through making, using, importing, selling and/or offering for sale, products which infringe the apparatus claims of the '024 Patent, including the products described above.

17. Epocal has contributorily infringed and continues to contributorily infringe one or more of the apparatus claims of the '024 patent through sales of components which when combined with other components infringe one or more of the apparatus claims of the '024 patent. The sale of components includes the sale of Epoc Test Cards and/or Epoc BGEM Test Cards which do not have substantial non-infringing commercial applications.

18. Epocal has induced and continues to induce others to infringe one or more of the claims of the '024 patent, through sales of infringing products which are resold and through the sale of infringing products which are used in an infringing manner to infringe one or more of the method claims of the '024 patent, and/or which are used and/or can be used in a method which

infringes the method claims of the '024 patent.

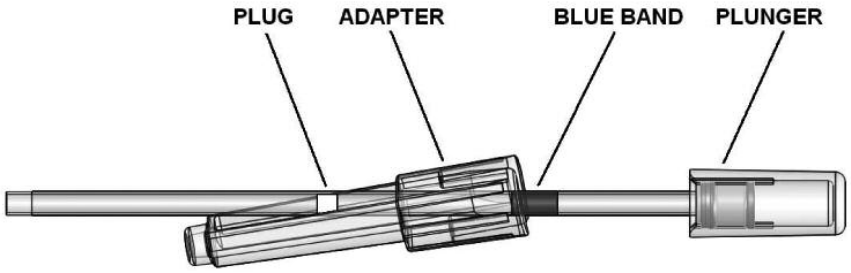
19. Epocal has infringed and continues to infringe the method claims of the '024 patent and has practiced and continues to practice methods, which infringe the method claims of the '024 Patent, and sells products which induce others to practice methods which infringe the claims of the '024 patent.

20. Epocal infringes one or more of the claims of the '024 Patent.

21. Epocal manufactures, sells and/or distributes nationwide, capillary syringes known as Care-Full Capillary Tubes.

22. The Care-Full Capillary Tubes are disposable capillary syringe device comprising:

> (a) capillary tube having a tube wall and a hollow interior for withdrawing liquid by capillary draw;



> (b) generally cylindrical plunger means reciprocally operable in said capillary tube for operating with a resilient pressurizable sealing means and discharging said liquid from said capillary tube under pressure;
>
> (c) handle means connected to said plunger means for operating said plunger means in said capillary tube means; and
>
> (d) resilient pressurizable sealing means in said capillary tube sealable against said tube wall and having a central opening for enabling said capillary tube means to fill by capillary draw, said central opening in said resilient sealing means being resiliently sealed by advancing said plunger means into said opening in said sealing means.

23. Epocal has infringed and continues to infringe at least one or more apparatus claims of the '158 patent through making, using, importing, selling and/or offering for sale,

products which infringe the apparatus claims of the '158 Patent, including the products described above.

24. Epocal has contributorily infringed and continues to contributorily infringe one or more of the apparatus claims of the '158 patent through sales of components which when combined with other components infringe one or more of the apparatus claims of the '158 patent.

25. Epocal has induced and continues to induce others to infringe one or more of the claims of the '158 patent, through sales of infringing products which are resold and through the sale of infringing products which are used in an infringing manner to infringe one or more of the method claims of the '158 patent, and/or which are used and/or can be used in a method which infringes the method claims of the '158 patent.

26. Epocal has infringed and continues to infringe the method claims of the '158 patent and has practiced and continues to practice methods, which infringe the method claims of the '158 Patent, and sells products which induce others to practice methods which infringe the claims of the '158 patent.

27. Epocal infringes one or more of the claims of the '158 Patent.

COUNT I
PATENT INFRINGEMENT OF 5,781,024

28. Plaintiff re-alleges each and every allegation set forth above and incorporates them herein by reference.

29. Plaintiff is the owner by assignment of all right title and interest to and has had standing to sue for infringement of United States Letters Patent 5,781,024 which was duly and legally issued on July 14, 1998.

30. The ‘024 Patent properly names Scott E. Blomberg, James D. Kurkowski and

David J. DeRoode as co-inventors, and is entitled "Instrument Performance Verification System."

31. Upon information and belief, Defendant Epocal currently infringes and has infringed one or more of the apparatus and one or more of the method claims of the '024 Patent under 35 U.S.C. §271 by making, using, importing, selling and/or offering for sale, products as described above.

32. The infringement by Epocal is direct and indirect, contributory and by inducement.

33. Plaintiff is entitled to recover damages from Epocal including reasonable royalties and lost profits, sustained as a result of Epocal's infringing acts under 35 U.S.C. §271 and §284.

34. Defendant has been aware of Plaintiff's rights in the patents in suit and of Plaintiffs' intent to enforce those rights. Defendant has, with full knowledge of those rights, willfully proceeded to infringe, in disregard of Plaintiff's rights. Plaintiff is entitled to enhanced damages under 35 U.S.C. §284.

COUNT II
PATENT INFRINGEMENT OF 5,770,158

35. Plaintiff re-alleges each and every allegation set forth above and incorporates them herein by reference.

36. Plaintiff is the owner by assignment of all right title and interest to and has had standing to sue for infringement of United States Letters Patent 5,770,158 which was duly and legally issued on June 13, 1998.

37. The '158 Patent properly names Kathleen A. Eischen and James W. Kenney as

co-inventors, and is entitled "Capillary Syringe."

38. Upon information and belief, Defendant Epocal currently infringes and has infringed one or more of the apparatus and one or more of the method claims of the '158 Patent under 35 U.S.C. §271 by making, using, importing, selling and/or offering for sale, products as described above.

39. The infringement by Epocal is direct and indirect, contributory and by inducement.

40. Plaintiff is entitled to recover damages from Epocal including reasonable royalties and lost profits, sustained as a result of Epocal's infringing acts under 35 U.S.C. §271 and §284.

41. Defendant has been aware of Plaintiff's rights in the patents in suit and of Plaintiffs' intent to enforce those rights. Defendant has, with full knowledge of those rights, willfully proceeded to infringe, in disregard of Plaintiff's rights. Plaintiff is entitled to enhanced damages under 35 U.S.C. §284.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

42. That Defendant be held to have infringed U.S. Patent No. 5,781,024 under 35 U.S.C. §271.

43. That Defendant acted with knowledge of the patent in suit.

44. That judgment be entered for Plaintiff against Defendant, for Plaintiff's actual damages according to proof, and for any additional profits attributable to infringements of Plaintiffs' patent rights, in accordance with proof and for enhanced damages under 35 U.S.C. §284 and §285.

45. That judgment be entered for Plaintiff against Defendant, adequate to compensate Plaintiff, for reasonable royalties and/or other statutory damages based upon Defendant's acts of patent infringement and for its other violations of law under 35 U.S.C. §284 and §285.

46. That Defendant be required to account for all gains, profits, and advantages derived from its acts of infringement and for its other violations of law and that Plaintiff be awarded damages in the amount of such profits under 35 U.S.C. §284 and §285.

47. That the actions of Defendant be found willful.

48. That judgment be entered for Plaintiff and against Defendant, for enhancement of the damages awarded for patent infringement under 35 U.S.C. §284 and §285.

49. That Defendant be held to have infringed U.S. Patent No. 5,770,158 under 35 U.S.C. §271.

50. That Defendant acted with knowledge of the patent in suit.

51. That judgment be entered for Plaintiff against Defendant, for Plaintiff’s actual damages according to proof, and for any additional profits attributable to infringements of Plaintiffs’ patent rights, in accordance with proof and for enhanced damages under 35 U.S.C. §284 and §285.

52. That judgment be entered for Plaintiff against Defendant, adequate to compensate Plaintiff, for reasonable royalties and/or other statutory damages based upon Defendant's acts of patent infringement and for its other violations of law under 35 U.S.C. §284 and §285.

53. That Defendant be required to account for all gains, profits, and advantages derived from its acts of infringement and for its other violations of law and that Plaintiff be awarded damages in the amount of such profits under 35 U.S.C. §284 and §285.

54. That the actions of Defendant be found willful.

55. That judgment be entered for Plaintiff and against Defendant, for enhancement of the damages awarded for patent infringement under 35 U.S.C. §284 and §285.

56. That the actions of Defendant be found exceptional under 35 U.S.C. §285.

57. That Plaintiff be granted judgment against the Defendant for Plaintiff's costs and attorney's fees under 35 U.S.C. §285 and or the inherent powers of the Court.

58. Judgment be awarded to Polyzen under 35 U.S.C. §§ 271, 281, 284 and/or 285;

59. That the Court grant such other, further, and different relief as the Court deems proper under the circumstances.

DEMAND FOR JURY TRIAL

60. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury on all issues raised by the complaint which are properly triable to a jury.

DATED: April 19, 2015

Respectfully submitted,
DNL ZITO

By /s/ Joseph J. Zito

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