

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

3M INNOVATIVE PROPERTIES
COMPANY

Civil No. 05-837 MJD/SRN

and

3M COMPANY,

Plaintiffs,

**FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

vs.

CARDINAL HEALTH 200, INC.,
CYPRESS MEDICAL PRODUCTS LP,
CYPRESS MEDICAL PRODUCTS, LLC,
and CYPRESS MEDICAL PRODUCTS,
INC.

Defendants.

Plaintiffs 3M Innovative Properties Company (“3M IPC”) and 3M Company (“3M”), for their First Amended Complaint against Defendant Cardinal Health 200, Inc. (“Cardinal”)¹ and Defendants Cypress Medical Products LP, Cypress Medical Products, LLC and Cypress Medical Products, Inc. (collectively, “Cypress”), state and allege as follows:

¹ Cardinal Health, Inc., defendant in the initial Complaint, is not a defendant in this First Amended Complaint and is therefore no longer a defendant in this action.

PARTIES

1. Plaintiff 3M IPC is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 3M Center, St. Paul, Minnesota 55133-3427.

2. Plaintiff 3M is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 3M Center, St. Paul, Minnesota 55133-3427.

3. Defendant Cardinal, upon information and belief, is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 7000 Cardinal Place, Dublin, Ohio 43017.

4. Defendants Cypress Medical Products LP, Cypress Medical Products LLC, and Cypress Medical Products, Inc., upon information and belief, are business entities organized and existing under the laws of the state of Illinois, with their principal place of business at 1202 South Route 31, McHenry, Illinois 60050.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1, *et. seq.*, and including 35 U.S.C. § 271.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendants Cardinal and Cypress and because, *inter alia*: (1) Cardinal and Cypress, on information and belief, are doing business throughout the United States, including in this judicial district; and (2) under the Minnesota Long Arm Statute, Minn. Stat. § 543.19, Cardinal and Cypress, on information

and belief, transact business in Minnesota and/or have committed acts of patent infringement within and/or outside Minnesota that have caused injury in Minnesota.

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

THE PATENT-IN-SUIT

8. On March 5, 1996, United States Patent No. 5,496,605 (“the ‘605 patent”), entitled “Perforated Roll of Nonwoven Surgical Tape,” was duly and legally issued by the United States Patent and Trademark Office. 3M IPC owns the ‘605 patent by assignment. 3M is the exclusive licensee of the ‘605 patent. A true and correct copy of the ‘605 patent is attached as Exhibit A to this Complaint.

9. 3M has commercialized perforated nonwoven surgical tape embodying the invention of the ‘605 patent. 3M has sold such surgical tape since at least 1995 under the trademarks MediporeTM and Medipore HTM.

DEFENDANTS’ PERFORATED NONWOVEN TAPES

10. Cypress is engaged in the business of, *inter alia*, making, importing, offering for sale and selling perforated nonwoven surgical tapes throughout the United States, including in this judicial district.

11. Cardinal is engaged in the business of, *inter alia*, offering for sale and selling perforated nonwoven surgical tapes throughout the United States, including in this judicial district.

12. Cardinal’s website, accessible at <http://www.cardinal.com>, has depicted Cardinal’s Allegiance^R Soft Cloth Surgical Tape:



13. Cardinal and Cypress have offered to sell and sold Allegiance^R Soft Cloth Surgical Tape throughout the United States, including in this judicial district.

COUNT I

DEFENDANTS' INFRINGEMENT OF THE '605 PATENT

14. Plaintiffs reallege and incorporate by reference paragraphs 1 through 13 of this Complaint.

15. Defendants Cardinal and Cypress have infringed, actively induced others to infringe and/or contributed to the infringement of the '605 patent by making, using, importing, offering for sale and/or selling nonwoven surgical tape, including but not limited to, Allegiance^R Soft Cloth Surgical Tape, in violation of 35 U.S.C. § 271.

16. By committing acts of infringement with knowledge of the '605 patent, Cardinal and Cypress will fail to meet the required standard of due care to avoid willful

infringement of the '605 patent. On information and belief, Cypress and Cardinal's continuing infringement of the '605 patent after notice of the patent and/or this action constitute willful infringement.

17. As a result of Cypress and Cardinal's infringing activities, Plaintiffs have been damaged and will be irreparably injured unless and until such infringing activities are enjoined by this Court.

18. Plaintiffs have marked the '605 patent in accordance with the provisions of 35 U.S.C. § 287(a).

PRAYER FOR RELIEF

WHEREFORE, 3M IPC and 3M respectfully request this Court:

- A. To enter judgment that Cardinal and Cypress have infringed the '605 patent;
- B. To enter orders preliminarily and permanently enjoining Cardinal and Cypress, and their respective officers, agents, servants, and employees, and all persons in active concert or participation with any of them, from infringing, whether directly or indirectly, the '605 patent;
- C. To award 3M IPC and 3M their respective damages in amounts sufficient to compensate them for Cardinal and Cypress' infringement of the '605 patent, together with pre-judgment and post-judgment interest and costs, pursuant to 35 U.S.C. § 284;
- D. To treble the damages awarded to 3M IPC and 3M by reason of Cardinal and Cypress' willful infringement of the '605 patent;
- E. To declare this case to be "exceptional" under 35 U.S.C. § 285 and to award 3M IPC and 3M their attorneys' fees, expenses, and costs incurred in this action; and

F. To award 3M IPC and 3M such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs respectfully request a trial by jury of any and all issues on which a trial by jury is available under applicable law.

Dated: October 17, 2005

s/ David J. F. Gross

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