

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

**WELCH ALLYN, INC.,**

*Plaintiff,*

**-vs-**

**OBP CORPORATION and  
OBP MEDICAL INC.,**

*Defendants.*

Civil Action No. 5:16-CV-538 [GTS/ATB]

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Welch Allyn, Inc. (“Welch Allyn”), by its attorneys, Barclay Damon, LLP, as and for its Complaint against the defendants, OBP Corporation and OBP Medical Inc. (collectively, “OBP”), alleges as follows:

**Nature of Action**

1. This action, brought under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, seeks relief arising out of OBP’s infringement of U.S. Patent No. 9,332,898 (the “Patent-in-Suit” or “898 Patent”), of which Welch Allyn is the owner by assignment.

**Parties**

2. Welch Allyn is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 4341 State Street Road, Skaneateles Falls, New York, 13153.

3. Upon information and belief, OBP Corporation and OBP Medical Inc. are corporations and/or other business entities organized and existing under the laws of the Commonwealth of Massachusetts, with a principal place of business at 360 Merrimack St. Building 9, Lawrence, Massachusetts 01843.

**Jurisdiction and Venue**

4. This Court has subject matter jurisdiction over the asserted claims pursuant to 28 U.S.C. §§ 1331 and 1338, and 35 U.S.C. § 281.

5. This Court has personal jurisdiction over OBP, which regularly engages in extensive business transactions and solicitations in the State of New York and within this District, has contracted to supply goods and services within this District, and/or has committed acts of patent infringement in this District by making, selling and/or offering to sell, directly and/or through its agents or distributors, products that infringe one or more of the claims of the Patent-in-Suit.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and/or 1400, because, upon information and belief, a substantial part of the events or omissions giving rise to the claims occurred in this District.

**Factual Allegations**

**Welch Allyn**

7. Welch Allyn is a leading global innovator and manufacturer of medical diagnostic equipment with a wide range of digital and connected solutions for healthcare professionals. Welch Allyn is based outside Syracuse, New York and employs about 2,500 employees in 26 different countries, with a focus on helping healthcare providers overcome complex challenges in providing healthcare services with effective products that are elegantly designed.

8. Welch Allyn invests a substantial amount of capital in product development and improvement to maintain its position as a leading producer of medical diagnostic equipment.

**The Patent-in-Suit**

9. On January 31, 2014, Welch Allyn filed a patent application, U.S. Patent Application Serial No. 14/169,850 (the “’850 Application”), entitled “Vaginal Speculum Apparatus”. The named inventors are Michael T. McMahon, Allan I. Krauter, Robert L. Vivenzio, Dale C. Saddlemire, Dominick Danna, Stephen W. Burnett, Daniel C. Briggs, Scott G. Spanfelner, and Jon E. Salvati.

10. On May 10, 2016, the ’850 Application resulted in the issuance of the ’898 Patent. The ’898 Patent was assigned to Welch Allyn. Welch Allyn is the sole owner of, and has the sole right to sue upon, the ’898 Patent. A true and correct copy of the ’898 Patent is attached hereto as Exhibit A.

11. Welch Allyn has not licensed OBP to practice the Patent-in-Suit and OBP has no right or authority to license others to practice the Patent-in-Suit.

12. OBP has actual notice of its infringement of the Patent-in-Suit at least as a result of the commencement of this action.

**Count I**  
***(Infringement of the Patent-in-Suit)***

13. Welch Allyn repeats and reasserts all allegations contained in Paragraphs 1 through 12 above as if they were stated in full herein.

14. OBP has infringed at least claims 1-2, 4-10, 16-22, and 23-30 of the Patent-in-Suit, within the meaning of 35 U.S.C. § 271, by making, using, selling, offering for sale, and/or importing vaginal speculum apparatuses, including, but not necessarily limited to, OBP’s ER-SPEC model and kits including such specula.

15. OBP's acts of infringement have caused Welch Allyn irreparable harm and damages in an amount to be proven at trial, including lost sales, lost profits, lost sales opportunities, and loss of goodwill.

16. Upon information and belief, OBP's unlawful infringing activity will continue unless and until OBP is enjoined by this Court from further infringement, and such infringement will be willful, deliberate, and intentional.

17. OBP's continuing infringement will cause Welch Allyn further irreparable harm and damages, and entitle it to a preliminary and permanent injunction, and to recover, among other things, treble damages, attorney fees, and costs.

**Jury Demand**

Welch Allyn demands a trial by jury on all issues so triable.

**Request For Relief**

**WHEREFORE**, Welch Allyn urges the Court to grant the following relief:

- A. Entry of judgment that OBP has infringed the Patent-in-Suit;
- B. Entry of judgment that preliminarily and/or permanently enjoins OBP and its representatives, assigns or successors, or any subsidiaries, parents, divisions, agents, servants, employees thereof, and/or those in privity with OBP from infringing the Patent-in-Suit;
- C. Entry of judgment for compensatory damages for patent infringement with respect to the Patent-in-Suit, as provided in 35 U.S.C. § 284, the extent of which will be determined at trial, but in no event less than a reasonable royalty, together with interest and costs;
- D. A determination that OBP's acts of infringement of the Patent-in-Suit have been willful and an award of enhanced damages of up to three times the amount of actual damages pursuant to 35 U.S.C. § 284;
- E. A determination that, pursuant to 35 U.S.C. § 285, this is an exceptional case and that Welch Allyn be awarded its reasonable attorneys' fees and costs;

- F. An award of interest on any judgment rendered in this action;
- G. An award of its attorneys' fees and costs in this action; and
- H. Such other and further relief as is just and proper.

Date: May 10, 2016

**BARCLAY DAMON, LLP**

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