

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

HUMAN DESIGN MEDICAL, LLC,)	
)	
Plaintiff,)	
)	Civil Action No.
)	
v.)	
)	JURY TRIAL DEMANDED
)	
MY HEALTH, INC.,)	
)	
Defendant.)	

COMPLAINT

Plaintiff Human Design Medical, LLC (“Human Design”) hereby asserts the following claims against Defendant My Health, Inc. (“My Health”), a Delaware corporation, and alleges as follows:

NATURE OF THE ACTION

1. This is a declaratory judgment action arising under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.* and the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* Human Design seeks a declaration of non-infringement and invalidity of U.S. Patent No. 6,612,985 B2 (“the ’985 Patent”). A true and correct copy of the ’985 Patent is attached hereto as Exhibit A.

THE PARTIES

2. Plaintiff Human Design is a Delaware limited liability company with operations in Charlottesville, Virginia. Its principal place of business is located at 200 Garrett Street, Suite S, Charlottesville, Virginia 22902.

3. Upon information and belief, Defendant My Health is a Delaware corporation duly organized and existing under the laws of the State of Delaware with offices at 7001 W. Parker Road, Suite 431, Plano, Texas 75093.

JURISDICTION AND VENUE

4. Upon information and belief, Defendant My Health is a Delaware corporation and has a registered agent with the State: National Corporate Research, Ltd., located at 850 New Burton Road, Suite 201, Dover, Delaware 19904.

5. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, with a specific remedy sought based upon the laws authorizing actions for declaratory judgment in the courts of the United States, 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a) and 1367.

6. Defendant My Health is subject to personal jurisdiction in this judicial district because, upon information and belief, it is a Delaware corporation and regularly conducts business in the State of Delaware and in this District.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400 because, upon information and belief, My Health is a corporation organized and existing under the laws of the State of Delaware and resides in this judicial district pursuant to § 1391(c).

BACKGROUND

8. Human Design's Z1 products are continuous positive airway pressure systems to treat people who suffer from sleep apnea.

9. Human Design's Nitelog mobile app allows a user of a Z1 product to (i) manually control certain basic settings on the Z1 device, (ii) collect data regarding his or her use of the Z1

product, (iii) review data regarding his or her use of the Z1 product on his or her mobile devices, and (iv) compile such data into a format that can be manually e-mailed to a third party, such as a treating physician.

10. On or about April 7, 2016 (the “April 7 Correspondence”), Patent Licensing Alliance (“PLA”), acting on behalf of My Health, sent a letter to Human Design regarding the ’985 Patent that stated: “Your Z1 Auto Base with Nitelog employs the technology claimed and disclosed in United States Patent 6,612,985.”

11. The April 7 Correspondence further asserted that “[o]ur research group and legal team have thoroughly reviewed the Z1 Auto Base with Nitelog and believe that it utilizes the technology claimed and disclosed in the [’985 Patent]” and that “[t]he Patent requires a license if you intend to continue to sell these products.”

12. My Health attached a claim chart to the April 7 Correspondence that purported to outline My Health’s contentions of Human Design’s alleged infringement. The title of the claim chart was “Pre-filing Investigation Claim Chart” and referred to the “Z1 Auto Base with Nitelog” as the “Accused Product.”

13. The April 7 Correspondence further stated that “Because of . . . ever-increasing instances of improper use without a license, My Health has been enforcing its intellectual property rights.”

14. Upon information and belief, between 2012 and the present, My Health has filed complaints in litigations against no fewer than thirty other companies involved in the health care industry, alleging infringement of the ’985 Patent. These cases include: *My Health, Inc. v. CardioNet, Inc.*, C.A. No. 2:14-CV-00681 (E.D. Tex.); *My Health, Inc. v. Biotronik, Inc.*, C.A. No. 2:14-CV-00680 (E.D. Tex.); *My Health, Inc. v. Tandem Diabetes Care, Inc.*, C.A. No. 2:14-

CV-00684 (E.D. Tex.); *My Health, Inc. v. Health Dialog, Inc.*, C.A. No. 2:14-CV-00682 (E.D. Tex.); *My Health, Inc. v. LifeScan, Inc.*, C.A. No. 2:14-CV-00683 (E.D. Tex.); *My Health, Inc. v. Tunstall Healthcare USA, Inc.*, C.A. No. 2:14-CV-00685 (E.D. Tex.); *My Health, Inc. v. Pleio Health Support Systems, Inc.*, C.A. No. 2:14-CV-00661 (E.D. Tex.); *My Health, Inc. v. Sotera Wireless, Inc.*, C.A. No. 2:14-CV-00663 (E.D. Tex.); *My Health, Inc. v. Robert Bosch Healthcare Systems, Inc.*, C.A. No. 2:14-CV-00662 (E.D. Tex.); *My Health, Inc. v. Vivify Health, Inc.*, C.A. No. 2:14-CV-00664 (E.D. Tex.); *My Health, Inc. v. Nonin Medical, Inc.*, C.A. No. 2:14-CV-00660 (E.D. Tex.); *My Health, Inc. v. BodyMedia, Inc.*, C.A. No. 2:14-CV-00653 (E.D. Tex.); *My Health, Inc. v. Alere, Inc.*, C.A. No. 2:14-CV-00652 (E.D. Tex.); *My Health, Inc. v. Cardiomedix, Inc.*, C.A. No. 2:14-CV-00654 (E.D. Tex.); *My Health, Inc. v. Entra Health Systems, LLC*, C.A. No. 2:14-CV-00657 (E.D. Tex.); *My Health, Inc. v. Healthrageous, Inc.*, C.A. No. 2:14-CV-00658 (E.D. Tex.); *My Health, Inc. v. Confidant Hawaii, LLC*, C.A. No. 2:14-CV-00655 (E.D. Tex.); *My Health, Inc. v. Medisana AG*, C.A. No. 2:14-CV-00659 (E.D. Tex.); *My Health, Inc. v. Philips Medical Systems North America, Inc.*, C.A. No. 2:13-CV-00140 (E.D. Tex.); *My Health, Inc. v. GenerationOne, Inc.*, C.A. No. 2:13-CV-00138 (E.D. Tex.); *My Health, Inc. v. Click4Care, Inc.*, C.A. No. 2:13-CV-00137 (E.D. Tex.); *My Health, Inc. v. CardioCom, LLC*, C.A. No. 2:13-CV-00136 (E.D. Tex.); *My Health, Inc. v. Honeywell HomMed, LLC*, C.A. No. 2:13-CV-00139 (E.D. Tex.); *My Health, Inc. v. ZeOmega, Inc.*, C.A. No. 2:12-CV-00251 (E.D. Tex.); *My Health, Inc. v. DeVilbiss Healthcare, LLC*, C.A. No. 2:16-CV-544 (E.D. Tex.); *My Health, Inc. v. ALR Techs., Inc.*, C.A. No. 2:16-CV-535 (E.D. Tex.); *My Health, Inc. v. InTouch Techs., Inc.*, C.A. No. 2:16-CV-536 (E.D. Tex.); *My Health, Inc. v. Mynetdiary, Inc.*, C.A. No. 2:16-CV-866 (E.D. Tex.); *My Health, Inc. v. McKesson Corp.*, C.A. No. 2:16-

CV-881 (E.D. Tex.); and *My Health, Inc. v. Aspire Home Healthcare*, C.A. No. 2:16-CV-877 (E.D. Tex.).

15. Additionally, upon information and belief, after receiving letters similar to PLA's April 7 Correspondence to Human Design, nine other companies involved in the health care industry filed declaratory judgment actions, seeking declarations of non-infringement and/or invalidity of the '985 Patent. These cases include: *Voxiva, Inc. v. My Health, Inc.*, C.A. No. 1:14-CV-00910-RGA (D. Del.); *Authentidate Holding Corp. v. My Health, Inc.*, C.A. No. 1:13-CV-01616-RGA (D. Del.); *Fitango, Inc. v. My Health, Inc.*, C.A. No. 1:14-CV-01085-RGA (D. Del.); *Allscripts Healthcare Solutions, Inc. v. My Health, Inc.*, C.A. No. 1:14-CV-01436-RGA (D. Del.); *HealthLoop, Inc. v. My Health, Inc.*, C.A. No. 3:15-CV-00671 (N.D. CA); *Medecision, Inc. v. My Health, Inc.*, C.A. No. 3:15-CV-00726-P (N.D. Tex.); *Dexcom, Inc. v. My Health, Inc.*, C.A. No. 3:15-CV-932 (S.D. Cal.); *Kurbo Health, Inc. v. My Health, Inc.*, C.A. No. 5:15-CV-1351 (N.D. Cal.); and *Draeger Medical Systems, Inc. v. My Health Inc.*, C.A. No. 1:15-CV-248 (D. Del.).

16. My Health's April 7 Correspondence, the numerous litigations filed, and the claims made by My Health over the past four years alleging infringement of the '985 Patent created a reasonable apprehension and substantial likelihood that, if Human Design does not pay and agree to enter into a license with My Health, My Health will sue Human Design for the alleged infringement of the '985 Patent.

THE PATENT-IN-SUIT

17. The '985 Patent, entitled "Method and System for Monitoring and Treating a Patient," issued on September 2, 2003, from U.S. Patent Application No. 09/793,191 filed February 26, 2001.

18. Upon information and belief, on or about April 23, 2001, the listed inventors Michael E. Eiffert and Lisa C. Schwartz, assigned their interests to the University of Rochester.

19. Upon information and belief, the University of Rochester licensed its interest in the '985 Patent to My Health around 2008, and subsequently assigned the '985 Patent to My Health around 2016.

CLAIM 1 - DECLARATION OF NON-INFRINGEMENT

20. Paragraphs 1 through 19 above are incorporated by reference as though fully stated herein.

21. My Health has alleged that Human Design, at least through its manufacture, use, offers to sell, or sales of the Z1 products when coupled with Nitelog, is infringing the '985 Patent without authorization.

22. Human Design has not infringed and does not directly or indirectly infringe any claim of the '985 Patent, either literally or under the doctrine of equivalents.

23. By way of example and without limiting the grounds of non-infringement that will be asserted, Human Design's Z1 products and Nitelog mobile app do not "update[e] an existing treatment plan," "review[] the updated treatment plan," "determin[e] if one or more changes are needed to the reviewed treatment plan," "chang[e] the reviewed treatment plan," or "provid[e] the patient with the reviewed treatment plan" as required by, for example, independent claim 1 of the '985 Patent.

24. By way of example and without limiting the grounds of non-infringement that will be asserted, Human Design's Z1 products and Nitelog mobile app do not "update[e] an existing treatment plan," "generate an updated treatment plan," or "modif[y] the updated treatment plan" as required by, for example, independent claim 4 of the '985 Patent.

25. By way of example and without limiting the grounds of non-infringement that will be asserted, Human Design's Z1 products and Nitelog mobile app do not "determin[e] a current assessment" at a "remote location" from the patient, "update[e] an existing treatment plan," "generate an updated treatment plan," "review[] the updated treatment plan," "determin[e] if one or more changes are needed to the reviewed treatment plan," "chang[e] the reviewed treatment plan," or "provid[e] the patient with the reviewed treatment plan" as required by, for example, independent claim 7 of the '985 Patent.

26. Human Design expressly reserves the right to assert additional grounds of non-infringement after having the ability to conduct discovery and the Court has construed the claims.

27. Particularly viewed in the light of My Health's litigious history, the allegations of infringement against Human Design have created a substantial, immediate and real controversy between the parties as to the non-infringement of the '985 Patent. A valid and justiciable controversy has arisen and exists between Human Design and My Health within the meaning of 28 U.S.C. § 2201.

28. A judicial determination of non-infringement is necessary and appropriate so that Human Design may ascertain its rights regarding the '985 Patent.

CLAIM 2 - DECLARATION OF INVALIDITY

29. Paragraphs 1 through 28 above are incorporated by reference as though fully stated herein.

30. My Health has alleged that Human Design is infringing the '985 Patent without authorization.

31. By way of example and without limiting the grounds of invalidity that will be asserted in this action, one or more claims of the '985 patent are invalid because they fail to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and 112. In particular, the '985 Patent is invalid under 35 U.S.C. § 102 as anticipated by at least U.S. Patent No. 6,126,596 to Freedman and invalid under 35 U.S.C. § 103 as obvious over at least U.S. Patent No. 6,126,596 to Freedman in view of U.S. Patent No. 6,024,699 to Surwit, World Intellectual Property Organization Publication No. WO 99/04043 to Caple, and World Intellectual Property Organization Publication No. WO 98/58338 to Graham.

32. By way of further example and without limiting the grounds of invalidity that will be asserted in this action, one or more claims of the '985 patent are invalid because they claim only abstract principles and therefore fail to constitute patentable subject matter under the Supreme Court's decision in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014), and its progeny in lower courts.

33. By way of further example and without limiting the grounds of invalidity that will be asserted in this action, each claim of the '985 Patent is invalid for failure to satisfy the written description requirement of 35 U.S.C. § 112. The claims of the '985 Patent are directed generally to “[a] method for monitoring and treating a patient with one or more diagnosed conditions

includes a few steps,” which is confusing and vague, and overall the ’985 patent fails to convey to a person of skill in the art that the inventors were in possession of the full scope of the claimed subject matter. By way of another non-limiting example, the ’985 Patent also fails to provide sufficient teachings that would enable a person of ordinary skill in the art to make and use the full scope of the claims without undue experimentation.

34. Human Design expressly reserves the right to assert additional grounds of invalidity after having the ability to conduct discovery and the Court has construed the claims.

35. Particularly viewed in the light of My Health’s litigious history, the allegations of infringement against Human Design have created a substantial, immediate and real controversy between the parties as to the invalidity of the ’985 Patent. A valid and justiciable controversy has arisen and exists between Human Design and My Health within the meaning of 28 U.S.C. § 2201.

36. A judicial determination of invalidity is necessary and appropriate so that Human Design may ascertain its rights regarding the ’985 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Human Design prays for a declaration from this Court and judgment as follows:

- A. That Human Design does not infringe any claims of the ’985 Patent;
- B. That the ’985 Patent is invalid and unenforceable;
- C. That this is an exceptional case within the meaning of 35 U.S.C. § 285;

and

D. Such other and further relief as this Court deems just, reasonable and proper.

JURY DEMAND

Human Design demands a trial by jury on all issues presented in this Complaint.

Dated: September 1, 2016

Respectfully submitted,

/s/ Kristen Healey Cramer
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