

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DROGO IP LLC,

Plaintiff,

v.

OLYMPUS AMERICA INC.,

Defendant.

Case No.

COMPLAINT FOR PATENT
INFRINGEMENT

DEMAND FOR JURY TRIAL

Plaintiff Drogo IP LLC (“Drogo”) demands a jury trial and complains against Defendant Olympus America Inc. (“Olympus”), and states as follows:

THE PARTIES

1. Drogo is a limited liability company organized and existing under the laws of the State of Texas, conducting business in this judicial district.

2. On information and belief, Olympus is a Pennsylvania corporation with its headquarters located at 3500 Corporate Parkway, Center Valley, Pennsylvania 18034, and conducts business in this judicial district.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States of America, Title 35 of the United States Code. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a).

4. Drogo is informed and believes, and based thereon alleges, that Olympus is doing business and committing acts of infringement of the patent identified below in this judicial district,

and is subject to personal jurisdiction in this judicial district.

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

THE PATENT

6. On July 21, 1998, U.S. Patent No. 5,782,765 (“the ’765 Patent”) was duly and legally issued to Medtronic, Inc. naming Kenneth R. Jonkman as the inventor. The ’765 Patent claims an invention entitled “Medical positioning System”. On September 19, 2016, Sybernav Development LLC assigned all right, title and interest in and to the ’765 Patent to Drogo. A copy of the ’765 Patent is attached to this Complaint as Exhibit 1.

7. The ’765 Patent is directed to a novel medical positioning system for positioning a diagnostic probe inside a patient. The system includes a probe for insertion inside a patient, a plurality of transmitter/receiver nodes arranged around the patient for communicating with the probe and generating navigation signals, means for generating one or more positional signals in response to the navigational signals, and means for collecting and analyzing those positional signals to determine the location of the probe inside the patient's body.

8. Claim 1 of the ’765 patent is directed to a medical positioning system comprising: a probe adapted for insertion into a patient, the probe having one of a transmitter and a receiver, the transmitter being adapted for generating a signal and the receiver being adapted to detect the signal; a plurality of nodes provided and arranged to substantially surround a portion of the patient, the nodes having the other of the transmitter and receiver provided thereon; , and a controller electronically connected to the receiver and adapted to interpret the signals received by the receiver, whereby the position of the probe with respect to the plurality of nodes can be determined by interpreting the signals controller.

OLYMPUS’S INFRINGING SYSTEM AND METHOD

9. Without authority from Drogo, Olympus makes, uses (including by having its employees test), markets and sells or otherwise provides a medical positioning system that uses a diagnostic probe and nodes, both able to transmit and receive signals to medically examine and treat a patient, i.e., Olympus’s Endocapsule (“The Accused Instrumentality”), see <http://medical.olympusamerica.com/products/endocapsule>.

10. Olympus advertises the Endocapsule as “minimally invasive therapeutic and diagnostic technologies to improve the quality of patient care” See <http://medical.olympusamerica.com/about/medical-business>.

11. On its website, e.g., <http://medical.olympusamerica.com/products/endocapsule>, Olympus describes using The Accused Instrumentality in a way that infringes at least Claim 1 of the ‘765 Patent.

**COUNT I
DIRECT INFRINGEMENT**

12. Drogo repeats and incorporates herein the entirety of the allegations contained in paragraphs 1 through 11 above.

13. As a result of making, using (including having its employees internally test and use The Accused Instrumentality as alleged below), marketing, and providing The Accused Instrumentality, Olympus has directly infringed at least Claim 1 of the ‘765 Patent literally and/or under the doctrine of equivalents. As set forth *supra*, The Accused Instrumentality is specifically designed to include each and every element set forth in at least Claim 1 of the ‘765 Patent and each use of The Accused Instrumentality will result in infringement of at least one claim of the ‘765 Patent.

14. Upon information and belief, Olympus directly infringed at least Claim 1 of the '765 Patent when it internally tested and used The Accused Instrumentality. Upon information and belief, Olympus employees and/or individuals under Olympus's control use The Accused Instrumentality to test the operation of The Accused Instrumentality and its various functions, in the manner set forth in the '765 Patent and described in detail in paragraphs 7 through 11 above. Drogo therefore alleges that Olympus directly infringed the '765 Patent by using The Accused Instrumentality to provide the system claimed by the '765 Patent.

15. Since at least the date that this Complaint was filed, Olympus has willfully infringed at least Claim 1 of the '765 Patent by directly infringing the patent with knowledge of the patent and in spite of an objectively high likelihood that its actions constituted infringement of the '765 Patent.

16. Drogo has suffered damages as a result of Olympus's direct infringement of the '765 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Drogo prays for judgment against Defendant Olympus on all the counts and for the following relief:

- A. Declaration that Drogo is the owner of the right to sue and to recover for infringement of the '765 Patent being asserted in this action;
- B. Declaration that Olympus has directly infringed, infringed the '765 Patent;
- C. Declaration that Olympus and its customers are jointly or severally responsible for the damages from infringement of the '765 Patent through the use of the Olympus Endocapsule;
- D. Declaration that Olympus is responsible jointly or severally with its customers for

the damages caused by the infringement of the '765 Patent through the use of the Olympus Bank Mobile app by Olympus's customers;

- E. An accounting for damages under 35 U.S.C. § 284 for infringement of the '765 Patent by Olympus, and the award of damages so ascertained to Drogo together with interest as provided by law;
- F. Award of Drogo's costs and expenses;
- G. Award of Drogo's attorney fees; and
- H. Such other and further relief as this Court may deem proper, just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff Drogo demands a trial by jury of all issues properly triable by jury in this action.

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