

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

MIRAGE IP LLC

Plaintiff,

v.

OSCOR INC.,

Defendant.

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CIVIL ACTION NO.

JURY TRIAL DEMANDED

COMPLAINT FOR INFRINGEMENT OF PATENT

COMES NOW, Plaintiff Mirage IP LLC (“Mirage IP” or Plaintiff), through the undersigned attorneys, and respectfully alleges, states, and prays as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 United States Code (“U.S.C.”) to prevent and enjoin defendant Oscor Inc., (hereinafter “Defendant”) from infringing and profiting, in an illegal and unauthorized manner and without authorization and/or of the consent from Mirage IP, from U.S. Patent No. 6,958,059 (the “‘059 patent”, attached hereto as Exhibit “A”) pursuant to 35 U.S.C. § 271, and to recover damages, attorney’s fees, and costs.

THE PARTIES

2. Plaintiff Mirage IP is a Texas entity with its principal place of business at 6800 Weiskopf Ave., Suite 150, McKinney, TX 75070.

3. Upon information and belief, Defendant is a company organized and existing under the laws of the State of Florida, with a principal place of business at 3816 De Soto Blvd., Palm Harbor, FL 34683. Upon information and belief, Defendant can be served with process at the same address.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*

5. Defendant is subject to this Court's personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business and purposeful availment of this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this judicial district.

6. Upon information and belief, Defendant, directly and/or through its employees or agents, and/or its customers, uses or causes others to use medical devices with the knowledge and/or understanding that such devices are used or will be used in the United States, including this District. Upon information and belief, Defendant has engaged in substantial and not isolated activity within this District. Therefore, exercise of jurisdiction over Defendant will not offend traditional notions of fair play and substantial justice. Such an exercise is consistent with the Texas long-arm statute.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b) because Defendant is subject to personal jurisdiction in this district, has regularly conducted

business in this judicial district and certain of the acts complained of herein occurred in this judicial district.

FACTUAL ALLEGATIONS

The '059 patent

8. On October 25, 2005, the United States Patent and Trademark Office (“USPTO”) duly and legally issued the ‘059 patent, entitled “Methods and Apparatuses for Drug Delivery to an Intravascular Occlusion” after a full and fair examination. (Exhibit A).

9. Mirage IP is presently the owner of the patent, having received all right, title and interest in and to the ‘059 patent from the previous assignee of record. Mirage IP possesses all rights of recovery under the ‘059 patent, including the exclusive right to recover for past infringement.

10. The ‘059 patent contains two (2) independent claims and four (4) dependent claims.

11. The ‘059 patent claims, *inter alia*, a method for treating an intravascular occlusion.

DEFENDANT’S PRODUCTS

The '059 patent

12. Defendant commercializes catheters, such as the “VENOS” occlusion balloon catheter (“Accused Instrumentality”), that when used, result in the performance of each step of at least claim 1 of the ‘059 patent.¹ At least during internal testing, Defendant uses a method for treating an intravascular occlusion with the Accused Instrumentality.

¹ http://www.oscor.com/wp-content/uploads/2015/10/Venos_Brochure_OCT1615.pdf

13. At least during internal testing, Defendant practices delivering a catheter having a proximal end, a distal end, a lumen and an occlusion device (e.g., balloon of the Accused Instrumentality) on the distal end.²

14. At least during internal testing, Defendant practices actuating an occlusive device (e.g., inflating the balloon of the Accused Instrumentality) at a location distal to the intravascular occlusion to at least partially occlude blood flow through a vessel.³

15. At least during internal testing, Defendant practices delivering a drug-containing fluid through the lumen of the Accused Instrumentality and out at least one hole in a proximal face of the occlusive device (i.e., tip of the Accused Instrumentality), such that the drug-containing fluid is delivered in a distal to proximal direction of the Accused Instrumentality.⁴

16. The elements described in paragraphs 12-15 covered by at least claim 1 of the '059 patent

INFRINGEMENT OF THE '059 PATENT

17. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 to 16.

18. In violation of 35 U.S.C. § 271, Defendant is now, and has been directly and indirectly infringing the '059 patent.

19. Defendant has had knowledge of infringement of the '059 patent at least as of the service of the present complaint.

20. Defendant has directly infringed at least claim 1 of the '059 patent by using the Accused Instrumentality without authority in the United States, during the period in which the '059 patent was unexpired, causing damages to Plaintiff for that period of time. For example, and

² *Id.*

³ *Id.*

⁴ *Id.*

upon information and belief, Defendant performed each step recited in claim 1 of the '059 patent during internal testing in order to ensure compliance with the Food and Drug Administration's regulations of medical devices.⁵

21. By engaging in the conduct described herein, Defendant has injured Mirage IP and is thus liable for infringement of the '059 patent, pursuant to 35 U.S.C. § 271.

22. Defendant has committed these acts of infringement without license or authorization.

23. As a result of Defendant's infringement of the '059 patent, Mirage IP has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendant's past infringement, together with interests and costs.

DEMAND FOR JURY TRIAL

24. Mirage IP demands a trial by jury of any and all causes of action.

PRAYER FOR RELIEF

WHEREFORE, Mirage IP prays for the following relief:

1. That Defendant be adjudged to have infringed the '059 patent directly, literally and/or under the doctrine of equivalents;

2. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate Mirage IP for the Defendant's past infringement, including compensatory damages;

3. An assessment of pre-judgment and post-judgment interest and costs against Defendant, together with an award of such interest and costs, in accordance with 35 U.S.C. §284;

4. That Defendant be directed to pay enhanced damages, including Mirage IP's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. §285; and

⁵ <http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Overview/#qs>

5. That Mirage IP have such other and further relief as this Court may deem just and proper.

Dated: May 2, 2017

Respectfully Submitted,

By: /s/Eugenio J. Torres-Oyola

Eugenio J. Torres-Oyola

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**ATTORNEYS FOR PLAINTIFF
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