

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

BLEPHEX, LLC)	
)	
Plaintiff,)	Civil Action No.3:16-CV-0410-N
)	
vs.)	Judge: David C. Godbey
)	
PAIN POINT MEDICAL SYSTEMS, INC.)	
d/b/a MIBO MEDICAL GROUP, INC.)	JURY TRIAL DEMANDED
)	
Defendant.)	

[PROPOSED] FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Blephex, LLC (“Plaintiff” or “Blephex”) files this First Amended Complaint for patent infringement against Defendant Pain Point Medical Systems, Inc., doing business as MiBo Medical Group (“Defendant” or “MiBo”) as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement and arises under the Patent Laws of the United States, codified in Title 35 of the United States Code.
2. On information and belief, MiBo has infringed Blephex’s United States Patent No. 9,039,718 (“the ‘718 Patent” or “the Asserted Patent”) in violation of 35 U.S.C. § 271(a)-(c).

THE PARTIES

3. Blephex is a Limited Liability Company organized and existing under the laws of the State of Florida, and having its principal place of business at 119 S.E. Parkway Court, Suite 250, Franklin, Tennessee.

4. Upon information and belief, Pain Point Medical Systems, Inc., doing business as MiBo Medical Group, Inc. is a corporation organized and existing under the laws of the State of Texas, and having its principal place of business at 8204 Elmbrook Drive, Suite 200, Dallas, Texas 75247.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

6. This Court has personal jurisdiction over MiBo because, on information and belief: (i) as a corporation organized under the laws of the State of Texas with its principal place of business in Dallas, Texas, MiBo resides in the forum state, and specifically, within this judicial district; and (ii) MiBo has committed acts constituting patent infringement within the State of Texas, and specifically, within this judicial district.

7. Venue is proper in this judicial district based on 28 U.S.C. § 1400(b). MiBo resides in this district. Also, MiBo has a regular and established place of business in this District and has committed acts of infringement in this District.

FACTUAL BACKGROUND

8. Eye disorders relating to the eyelid margin are particularly common pathological conditions, especially among the elderly. Examples of such disorders include blepharitis, meibomitis, and dry eye syndrome. Dry Eye/Blepharitis Syndrome (“DEBS”) is a chronic, inflammatory disease of the eyelids caused by the presence of an overgrowth of normal bacteria along the lid and the base of the eyelashes. This overgrowth of bacteria produces a “biofilm” that builds up over the years and allows the bacteria to greatly increase in density. Once the bacteria reach a certain density, genes activate to allow the bacteria to produce toxins that

penetrate the eyelid tissue causing low-grade chronic inflammation which adversely affects the quality and quantity of tears being produced. Because eyelids are difficult to clean, this overgrowth of bacteria, biofilm, and toxins can worsen over time and eventually cause significant damage to the eyelid and tear glands.

9. Despite advances in ophthalmology and other medical treatments in general, the recommended treatments for disorders such as DEBS has remained essentially unchanged for decades. Historically, treatment begins and ends with the patient, who first begins to notice symptoms including eyelid redness, flaking of skin on the eyelids, crusting and/or cysts at the eyelid margins, and a gritty sensation of the eye culminating in irritation, burning, and reduced vision. Patients are generally prescribed a hygienic home treatment procedure involving antibiotics and/or topical steroid application. The goal of the home treatment procedure is to remove debris from the eyelid margin, which is critical to healing the eye and preventing reoccurrence of the disorder. To that end, the patient may also be required to attempt to remove debris from the eyelid using a cotton swab, a fingertip, or a scrub pad placed over the fingertip. Unfortunately for many patients, such hygienic home treatment generally achieves limited success due to the practical difficulties of cleaning one's own eye with an imprecise instrument such as a fingertip or cotton swab.

10. Through the efforts of Dr. James M. Rynerson, MD, Plaintiff Blephex LLC has developed a unique treatment for disorders such as DEBS, which involves a protocol that uses an electromechanical device to move a swab in contact with the eyelid margin to remove debris, encourage healing, and prevent reoccurrence of disorders involving the eyelid. More specifically, the BlephEx[®] device is comprised of a hand piece that very precisely and carefully spins a medical-grade swab along the edge of the eyelids and lashes to remove debris and to

exfoliate the eyelid. Dr. Rynerson's treatment protocol has revolutionized the treatment of eye disorders such as DEBS, and his innovations in the field have been recognized by the United States Patent and Trademark Office ("USPTO").

11. On May 26, 2015, the USPTO duly and legally issued the '718 Patent, entitled "Method and Device for Treating an Ocular Disorder," to Dr. Rynerson. A copy of the '718 Patent is attached to this First Amended Complaint as Exhibit A.

12. Blephex is, and has at all times relevant to this complaint been, the owner by assignment of all right, title, and interest in the '718 Patent.

13. The '718 Patent discloses "[a] method and apparatus for treating ocular disorders such as blepharitis, meibomitis, and dry eye syndrome." '718 Pat, Abst. "The method includes using an electromechanical device to move a swab relative to the eye to create cyclical movement that impacts debris present at the eyelid margin and effectively removes the debris from the eye to encourage healing and prevent further digression of the health of the eye." *Id.*

14. The '718 Patent contains 17 claims, with Claims 1 and 17 being the only independent claims.

15. Claim 1 recites:

A method of treating an eye for an ocular disorder with a swab operably connected to an electromechanical device, wherein the eye has an eyelid margin and includes a removable debris, the method comprising:

effecting movement of the swab relative to the electromechanical device, the swab having at least a portion thereof configured to access an inner edge portion the eyelid margin;

while the swab is being moved by the electromechanical device, contacting a portion of the eye between the eyelashes and the inner edge of the eyelid margin that includes the removable debris with the swab thereby impacting the debris with the swab to remove debris from the eye.

'718 Pat., col. 7, *ii.* 30-43.

16. Claims 2-16 of the '718 Patent depend either directly or indirectly from Claim 1, and recite method steps to be followed in addition to those recited in Claim 1.

17. Claim 17 recites:

A method of treating an eye for an ocular disorder with a swab operably connected to an electromechanical device, wherein the eye has an eyelid margin and includes a removable debris, the method comprising;
effecting movement of the swab relative to the electromechanical device;
while the swab is being moved by the electromechanical device, contacting at least an inner edge portion of the eyelid margin that includes the removable debris with the swab thereby impacting the debris with the swab to remove debris from the eye.

'718 Patent, col. 8, *ii.* 47-57.

18. Blephex manufactures and sells a device, under the trademark BlephEx[®], that is used to practice the methods of treating eye disorders claimed in the '718 Patent.

19. Blephex sold its first BlephEx[®] device on July 3, 2013.

20. Blephex filed the Original Complaint in this action on February 12, 2016.

Additionally, Blephex's counsel delivered a letter to MiBo on or around the same day (February 12, 2016), which letter informed MiBo it infringed the '718 Patent. Thus, MiBo gained knowledge of the '718 Patent no later than the filing of this Complaint and/or the receipt of Blephex's February 12, 2016, letter. The filing of the original complaint in this lawsuit provides actual notice of Blephex's rights in the '718 Patent, under 35 U.S.C. § 287.

21. On information and belief, MiBo was aware of the '718 Patent prior to the start of this lawsuit. In November 2015, Blephex's founder, Dr. Rynerson, had a conversation with Dr. James Lewis who, on information and belief, has an ongoing relationship with MiBo. During this conversation, Dr. Lewis disclosed that he was aware of the '718 Patent. Moreover, Dr.

Rynerson understood Dr. Lewis to have stated that MiBo itself also was aware of the '718 Patent. Thus, on information and belief MiBo was aware of the '718 Patent no later than November 2015, but in any event certainly from the onset of this action.

22. On or about November 23, 2015, Blephex became aware that Defendant MiBo was manufacturing and offering to sell a device known as the LidPro®.

23. Use of the LidPro® device to treat ocular conditions such as blepharitis infringes at least Claims 1, 2, 4, 6, 7, and 14-17 of the '718 Patent (hereafter, the "Asserted Claims") at least for the reasons discussed below and in Blephex's Miscellaneous Order 62 ¶¶3-1 disclosures served upon MiBo in this Action on May 4, 2016 (and any subsequent amendments or revisions thereto), which Blephex incorporates here by reference.

24. The LidPro® device contains a swab that is operably connected to an electromechanical device and at least a portion of the swab is configured to access an inner edge portion of an eyelid margin. When in use, the swab of the LidPro® device is moved by the electromechanical device to contact a portion of the eye between the eyelashes and the inner edge of the eyelid margin or, at least, an inner edge portion of the eyelid margin. When the swab of the LidPro® device is moved in this manner, it impacts and removes debris from the eye.

25. According to public statements made by MiBo, the LidPro® device is used, and has been used, to treat patients with eye disorders such as blepharitis. Specifically, a December 2, 2015, Facebook post by MiBo states:

Did you know that Mibo Medical Produces two innovative products for the treatment of Meibomian Gland Dysfunction?

The first is the Mibo Thermoflo a revolutionary heat treatment that is safe, effective, and has no consumables.

The second is the Lid Pro. The Lid Pro is shown in the pictures below being done on a patient with severe anterior and posterior blepharitis. The patient was treated with the Lid Pro in office with great success and then had a Mibo treatment on

both eyes. Prior to this the patient was unable to watch his favorite TV shows without severe pain and redness. Now the patient has all day comfort and best of all — clear vision.

If you have questions about the Mibo Thermoflo of [sic: or] Lid Pro for your office or if you are a patient suffering with dry eye disease or Meibomian gland Dysfunction contact us today through the message function on our site or through our website.

The Facebook post referenced in this paragraph is attached to this complaint at Exhibit C.

26. Moreover, according to MiBo representatives, the LidPro[®] works to remove debris from the eyelid margin to treat eye disorders such as DEBS (or blepharitis) in the same way as the BlephEx[®] device does.

27. Furthermore, according to public statements made by MiBo representatives, MiBo had taken over 100 orders for its LidPro[®] device as of August 2015. Specifically, an August 27, 2015 Facebook post by MiBo representative Mike Whitehurst declares that:

It is unreal what the MiBo is doing. World wide sales. Next month we are introducing another device. It's called the LidPro. Already have taken 100 orders.

The Facebook post referenced in this paragraph is attached to this complaint as Exhibit D.

28. On information and belief, MiBo purports to be selling its LidPro[®] device for approximately \$700, which is significantly lower than the cost of the BlephEx[®] device.

29. Further still, on information and belief, MiBo has provided exemplars of its LidPro[®] device to at least four eye care professionals. Those professionals include:

- (i) Glenn Corbin, 50 Berkshire Ct, Wyomissing, Pennsylvania 19610
- (ii) James Lewis, 8380 Old York Rd #110a, Elkins Park, PA 19027
- (iii) Walt Whitley, 241 Corporate Blvd # 210, Norfolk, Virginia 23502; and
- (iv) Tom Kislam, 29 PA-611, Stroudsburg, Pennsylvania 18360

30. On information and belief, the four individuals named above (in addition to other customers and end-users of the LidPro[®] device) have used, and are using, the LidPro[®] device in

a manner that performs all the steps recited in the Asserted Claims. Accordingly, at least the four individuals named above are directly infringing the Asserted Claims of the '718 Patent by performing each and every step of the method claimed in the Asserted Claims.

Count I — ACTIVE INDUCEMENT OF PATENT INFRINGEMENT
(Indirect Infringement of '718 Patent under 35 U.S.C. § 271(b))

31. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.

32. 35 U.S.C. § 271(a) provides that “[w]hoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefore, infringes the patent.”

33. 35 U.S.C. § 271(b) provides that “[w]hoever actively induces infringement of a patent shall be liable as an infringer.”

34. MiBo has actively induced its customers and end-users of the LidPro® to directly infringe the Asserted Claims of the '718 Patent.

35. On information and belief, MiBo knew of the '718 Patent by November 2015, or at least no later than February 12, 2016, as alleged above.

36. MiBo provides and sells the LidPro® device to its end-users and customers.

37. MiBo encourages and instructs the recipients, customers, and end-users of the LidPro® device to use the LidPro® device in a manner that performs each and every step of the Asserted Claims. Such actions include, but are not limited to: advertising the LidPro® device; making marketing and training videos depicting the use of the LidPro® device in an infringing manner; and providing training and other information instructing customers and end-users on how to use the LidPro® device in an infringing manner.

38. On information and belief, MiBo took these actions with full knowledge of the ‘718 Patent, and acted with specific intent to induce one or more of these customers or end-users to infringe the ‘718 Patent.

39. These customers and end-users have, in turn, directly infringed the ‘718 Patent by at least by using the LidPro® device in a manner that performs each and every step of the Asserted Claims.

40. On information and belief, MiBo’s active inducement of infringement has been willful.

41. As a result of MiBo’s wrongful conduct, Blephex has suffered, and will continue to suffer, substantial irreparable harm, including, but not limited to, lost market share and price erosion, for which it has no adequate remedy at law. Accordingly, Blephex is entitled to preliminary and thereafter permanent injunctive relief as set forth below. Further, Blephex has suffered, and will continue to suffer, damages in an amount to be determined at trial, due to MiBo’s infringing conduct.

Count II — DIRECT PATENT INFRINGEMENT
(Infringement of ‘718 Patent under 35 U.S.C. § 271(a))

42. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.

43. 35 U.S.C. § 271(a) provides that “[w]hoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefore, infringes the patent.”

44. MiBo directly infringes the Asserted Claims of the ‘718 Patent by using the LidPro® device in a manner that performs the steps of the Asserted Claims.

45. On information and belief, MiBo—or individuals whose actions can be attributed to MiBo—uses the LidPro® device and its disposable textured cleaning discs in a manner that performs each and every step of the Asserted Claims. For example, on information and belief, Exhibit B depicts MiBo using the LidPro device on an individual in a way that practices the above-referenced claims of the ‘718 Patent.

46. Also on information and belief, MiBo—or individuals whose actions can be attributed to MiBo—use the LidPro® device in an infringing manner to perform tests and to demonstrate the device.

47. On information and belief, MiBo’s direct infringement has been willful.

48. As a result of MiBo’s wrongful conduct, Blephex has suffered, and will continue to suffer, substantial irreparable harm, including, but not limited to, lost market share and price erosion, for which it has no adequate remedy at law. Accordingly, Blephex is entitled to preliminary and, ultimately, permanent injunctive relief as set forth below. Further, Blephex has suffered, and will continue to suffer, damages in an amount to be determined at trial, due to MiBo’s infringing conduct.

Count III – CONTRIBUTORY PATENT INFRINGEMENT
(Indirect Infringement of ‘718 Patent under 35 U.S.C. § 271(c))

49. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.

50. 35 U.S.C. § 271(a) provides that “[w]hoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefore, infringes the patent.”

51. 35 U.S.C. § 271(c) provides that “[w]hoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture,

combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.”

52. MiBo has contributed to the infringement of the Asserted Claims of the ‘718 Patent by selling, offering to sell, or importing into the United States the LidPro® device. MiBo supplies, provides, or sells the LidPro® device to end-users and customers. These end-users and customers then use the LidPro® device in a manner that practices each and every step of the Asserted Claims. Thus, the LidPro® device forms a material part of the ‘718 Patent. Moreover, the end-users’ and customers’ actions constitute direct infringement.

53. MiBo has also contributed to the infringement of the Asserted Claims of the ‘718 Patent by selling, offering to sell, or importing into the United States the LidPro®’s disposable textured cleaning discs. MiBo supplies, provides, or sells these textured cleaning discs to end-users and customers. These end-users and customers then attach the textured cleanings discs to a LidPro® device, which the end-users and customers then use in a manner that practices each and every step of the Asserted Claims. The LidPro® device cannot be safely used without a textured cleaning disc attached to it, so the textured cleaning disc forms a material part of the ‘718 Patent. Moreover, the end-users’ and customers’ actions constitute direct infringement.

54. On information and belief, MiBo knew of the ’718 Patent by November 2015, or at least no later than February 12, 2016, as alleged above.

55. Accordingly, on information and belief, MiBo knows that the LidPro® device and the textured cleaning discs are especially made or especially adapted for use in an infringement

of the methods claimed in the '718 Patent. The LidPro® device and the textured cleaning discs are not a staple article or commodity of commerce suitable for substantial noninfringing use, at least because they have no use apart from being used in a manner that infringes the Asserted Claims of the '718 Patent. The LidPro® device and the textured cleaning discs are used only in conjunction with the treatment of ocular disorders and are used only in a manner that performs each and every step of the Asserted Claims.

56. On information and belief, MiBo's contributory infringement has been willful.

57. As a result of MiBo's wrongful conduct, Blephex has suffered, and will continue to suffer, substantial irreparable harm, including, but not limited to, lost market share and price erosion, for which it has no adequate remedy at law. Accordingly, Blephex is entitled to preliminary and, ultimately, permanent injunctive relief as set forth below. Further, Blephex has suffered, and will continue to suffer, damages in an amount to be determined at trial, due to MiBo's infringing conduct.

PRAYER FOR RELIEF

WHEREFORE, Blephex prays that the Court grant Blephex the following relief against MiBo:

A. That judgment be entered against MiBo, that MiBo has directly infringed, contributed the infringement, and induced others to infringe the '718 Patent;

B. That MiBo, its agents, sales representatives, servants and employees, associates, attorneys, parents, successors and assigns, and any and all persons or entities acting at, through, under, or in active concert or participation with any or all of them, be preliminarily and permanently enjoined and restrained from further infringement of infringement, of the '718 Patent;

C. That judgment be entered requiring MiBo to pay to Blephex damages adequate to compensate Blephex for harm caused by MiBo's acts of infringement, under 35 U.S.C. § 284;

D. That judgment be entered trebling such damages owed by MiBo due to its willful infringement of the '718 Patent, under 35 U.S.C. § 284;

E. That this case be declared exceptional under 35 U.S.C. § 285, and that Blephex be awarded its reasonable attorney fees;

F. That Blephex be awarded its costs and interest on all damages; and

G. That Blephex be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Blephex hereby demands trial by jury of all issues raised that are triable by jury.

Respectfully submitted,

**SHACKELFORD, BOWEN, MCKINLEY &
NORTON, LLP**

Dated: September 12, 2018

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CERTIFICATE OF SERVICE

I certify that on September 12, 2018, all counsel of record, who are deemed registered users of the Court's ECF system and who have thereby consented to electronic service, are being served with a copy of the foregoing document via the Court's ECF system.

Dated: September 12, 2018

Respectfully,

/s/ Shyam Palaiyanur
Shyam Palaiyanur

EXHIBIT A

(12) **United States Patent**
Rynerson

(10) **Patent No.:** **US 9,039,718 B2**
 (45) **Date of Patent:** **May 26, 2015**

(54) **METHOD AND DEVICE FOR TREATING AN OCULAR DISORDER**

2007/0231353 A1 10/2007 Gilbard et al.
 2010/0256552 A1* 10/2010 Korb et al. 604/20
 2014/0221908 A1* 8/2014 Sonsino et al. 604/28

(75) Inventor: **James M. Rynerson**, Alvaton, KY (US)

FOREIGN PATENT DOCUMENTS

(73) Assignee: **Blephex, LLC**, Lakeworth, FL (US)

CN 201692153 U 1/2011
 JP 10108801 A 4/1998
 WO 9633676 A1 10/1996
 WO 2009066077 A1 5/2009
 WO 2012092320 A2 7/2012
 WO 2012092320 A3 7/2012

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 311 days.

OTHER PUBLICATIONS

(21) Appl. No.: **13/556,729**

(22) Filed: **Jul. 24, 2012**

International Searching Authority, International Search Report and Written Opinion, International Application No. PCT/US2013/051850, mailed Oct. 14, 2013, 11 pp.
 The Alger Company, Inc. "AlgerBrush II," available at <http://www.algercompany.com/download/ab_web/Algerbrush3_8.pdf>, accessed on Mar. 30, 2012, 1 page.

(65) **Prior Publication Data**

US 2014/0031845 A1 Jan. 30, 2014

(Continued)

(51) **Int. Cl.**
A61F 9/007 (2006.01)

Primary Examiner — Todd Manahan
Assistant Examiner — Casey B Lewis

(52) **U.S. Cl.**
 CPC **A61F 9/00709** (2013.01)

(74) *Attorney, Agent, or Firm* — Wood, Herron & Evans, LLP

(58) **Field of Classification Search**
 CPC A61F 9/00; A61F 9/00709
 USPC 606/107, 162; 15/97.1; 128/898;
 604/298–316; 601/72, 80, 139, 141,
 601/142; 132/73.6, 75.8, 218

(57) **ABSTRACT**

See application file for complete search history.

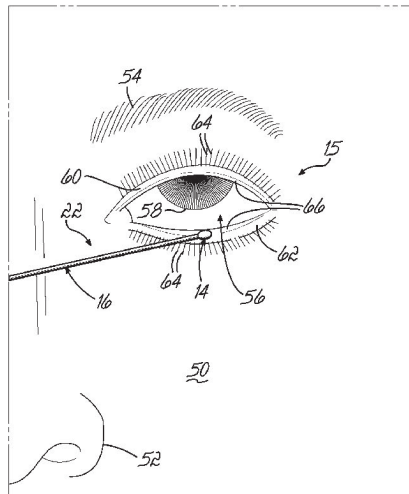
A method and apparatus for treating ocular disorders such as blepharitis, meibomitis, and dry eye syndrome. The method includes using an electromechanical device to move a swab relative to the eye to create cyclical movement that impacts debris present at the eyelid margin and effectively removes the debris from the eye to encourage healing and prevent further digression of the health of the eye. The apparatus is an electromechanical device that includes a mechanical drive unit operatively connected to a swab to create a precise relative movement of the swab to the eye to remove debris present therein.

(56) **References Cited**

U.S. PATENT DOCUMENTS

4,778,457 A 10/1988 York
 4,838,851 A 6/1989 Shabo
 4,955,896 A 9/1990 Freeman
 5,176,694 A * 1/1993 Price 606/162
 2006/0116355 A1 6/2006 Van Breen
 2007/0016255 A1* 1/2007 Korb et al. 607/1
 2007/0060988 A1* 3/2007 Grenon et al. 607/96

17 Claims, 2 Drawing Sheets



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(56)

References Cited

OTHER PUBLICATIONS

1FORTHMONEY, et al. "Blepharitis," available at <<http://en.wikipedia.org/w/index.php?oldid=474399644>>, accessed on Mar. 12, 2012, 6 pp.

The Alger Co., Inc. [online retrieved on Dec. 22, 2014]. Retrieved from the internet at <<http://www.algercompany.com/brush/pdf-file/>>, click on "Operating/Sterilization Procedures" then click on Algerbrush II Operating Instruction Rev. 32012 to retrieve pdf submitted herewith as "Algerbrush-II-Operating_instruct. 2012".

The Alger Co., Inc. [online retrieved on Dec. 22, 2014]. Retrieved from the internet at <<http://www.algrecompany.com/brush/2013/01/>

02/the-algerbrush-ii-2/> Screen capture of page submitted herewith as "Algerbrush II Product Page."

Rhein Medical, Inc. [online retrieved on Jan. 8, 2015]. Retrieved from the internet at <<http://www.rheinmedical.com/products-page/algerbrushes/08-13154-algerbrush-ii-chuch-2-5mm-round-fine-gruit-diamond-ball/>>

Screen capture of page submitted herewith as Algerbrush II chuck and round burr.

Ocusoft [online retrieved on Jan. 8, 2015]. Retrieved from the internet at

<<http://www.ocusoft.com/Foreign-body-Removal-AKGERBRUSH-II-CHUCK-P4666.aspx>> Screen capture of page submitted herewith as Algerbrush II Chuck with bilobal fitting.

* cited by examiner

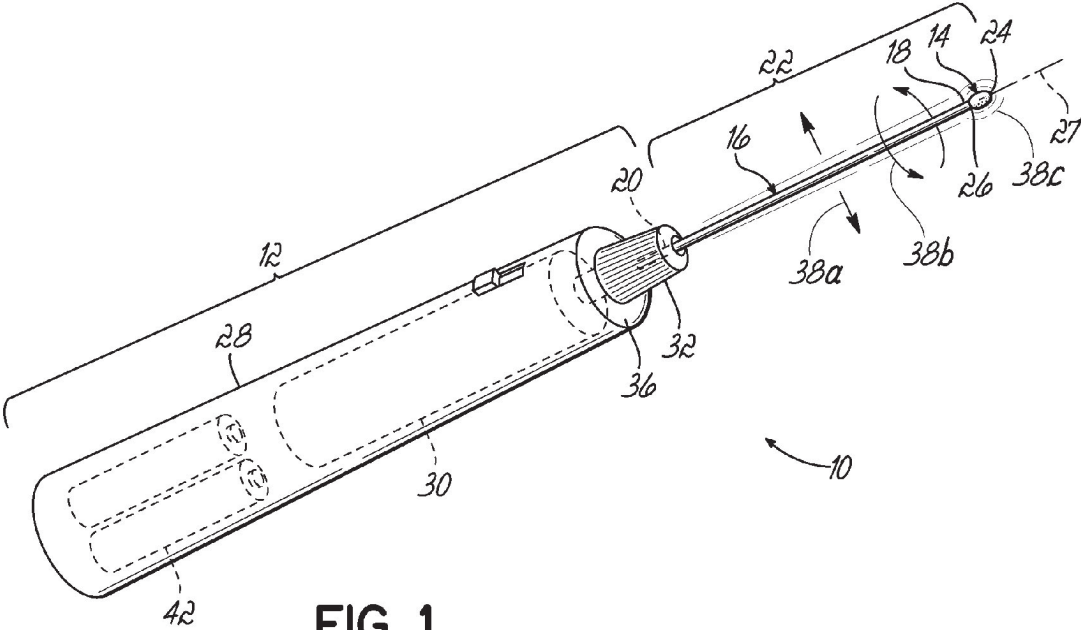


FIG. 1

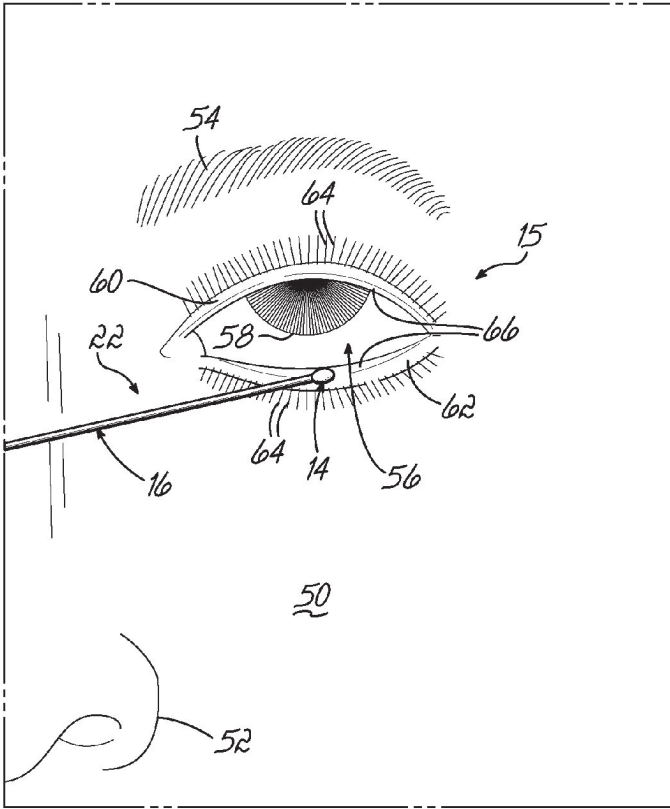


FIG. 2A

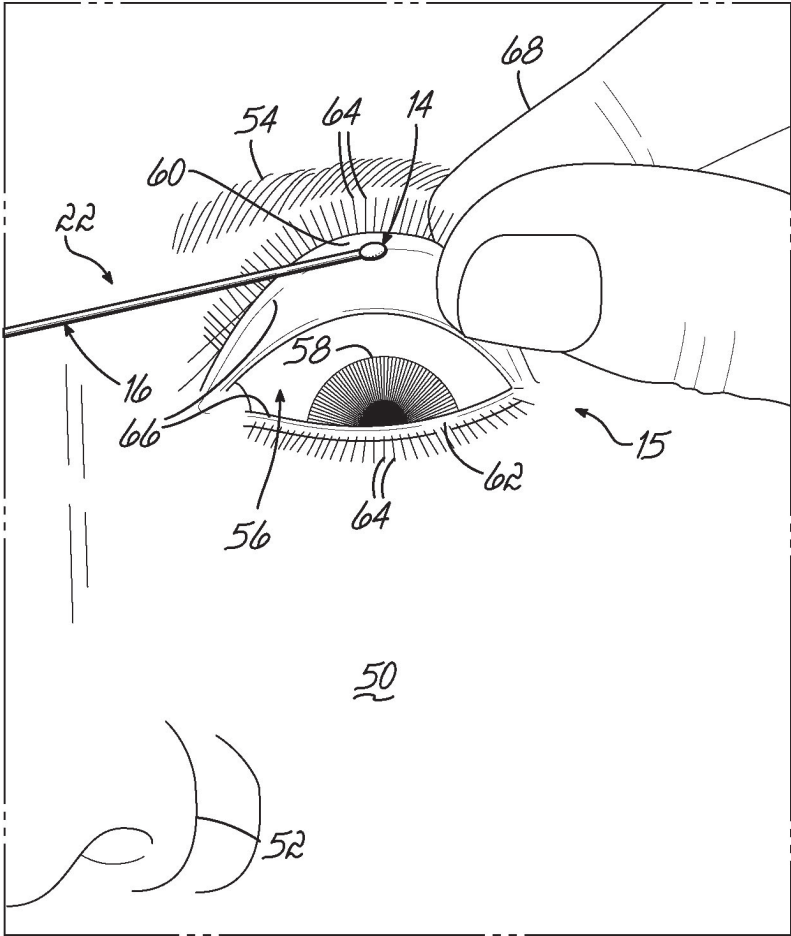


FIG. 2B

US 9,039,718 B2

1

METHOD AND DEVICE FOR TREATING AN OCULAR DISORDER

TECHNICAL FIELD

The present invention relates generally to a method and apparatus for treating an ocular disorder, and more particularly, to treating eyelid margin disease.

BACKGROUND

Ocular disorders such as those relating to eyelid margin disease are particularly common pathological conditions of the ocular adenexa. By way of example, these disorders include blepharitis, meibomitis, and dry eye syndrome. Despite advances in ophthalmology and medical treatments in general, the recommended treatments for these exemplary common ocular disorders has remained essentially unchanged for decades.

Historically, treatment of eyelid margin disease begins and ends with the patient. The patient first begins to notice symptoms including eyelid redness, flaking of skin on the eyelids, crusting and/or cysts at the eyelid margins, and a gritty sensation of the eye culminating in irritation, burning, and reduced vision. Should these symptoms remain unchanged or worsen, the patient routinely seeks the advice of an eye specialist, such as an ophthalmologist. After carefully considering the patients' medical history and investigating various possible causes, the specialist may prescribe a hygienic home treatment procedure for the patient to perform regularly in conjunction with antibiotics and/or topical steroids until the disease subsides.

The goal of the hygienic home treatment procedure is to remove debris, oil, and scurf that have collected along the eyelid margin during progression of the disorder. Removal of this debris is critical to both healing the eye and preventing a resurgence of the disorder. Without proper, regular removal of accumulated debris, such ocular disorders regularly worsen despite periodic treatments.

Hygienic home treatment of such ocular disorders is generally a two-step process. First, the patient softens the debris and scurf by applying a warm compress, diluted baby shampoo, or a specialized liquid solution to the eyelid margin. This first step is intended to prepare the debris for removal while preventing further irritation to the eye. Second, the patient attempts to remove the debris by physically scrubbing the eyelid margin, the base of the eyelashes, and the pores of the meibomian glands. This scrubbing is routinely attempted with either a generic cotton swab, a fingertip, or a scrub pad placed over the fingertip and applied against the eye. By cleaning debris and scurf free from the base of the eyelashes and unclogging the pores of the meibomian glands, the patient may improve the overall health of the eyelid margin; thereby reducing irritation, burning, and other symptoms related to the disorder.

Unfortunately for many patients, such hygienic home treatment is met with limited success due to the practical difficulties of cleaning one's own eye with an imprecise instrument such as a fingertip or cotton swab. For instance, many patients do not have the necessary dexterity to manipulate their fingertip or a cotton swab along the eyelid margin. Moreover, a shake, tremor, or poor near vision further complicate such self-treatment. Even for those capable of incorporating hygienic home treatment into their daily routine, many, if not most people, are wary of placing objects near their eyes to actively scrub along the eyelid margin. Given this anxiety, discomfort, and the inability to specifically target debris

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deposits, patients routinely fail to totally cleanse the margin of the eyelid, the base of the eyelashes, and the meibomian glands. While the attempted treatment may temporarily abate the patient's symptoms, subtle continuation of the disease often persists; thus permitting a low-grade inflammation to develop and, ultimately lead to chronic dry eye syndrome. Further, this treatment is typically required to be performed for the rest of the patient's life; thereby, creating a substantial hurdle to regular and effective compliance during hygienic home treatment.

Evidence suggests that medical costs associated with dry eye syndrome, often induced by ocular diseases such as blepharitis, are currently over 68 billion dollars each year. Many of these expenses are needlessly incurred due to the patients' failure to perform regular and effective treatments resulting in increased doctor visits, medications, and artificial tears. These expenses create a significant financial burden for insurance carriers, especially Medicare, which provides primary medical coverage for many individuals particularly prone to dry eye disease, such as the elderly.

There is a need for a method and apparatus for use in treating ocular disorders, such eyelid margin diseases, that addresses present challenges and characteristics such as those discussed above.

SUMMARY

One exemplary embodiment of the method according to this invention comprises using a swab operably connected to an electromechanical device to treat an ocular disorder. The disorders to be treated via this method result in a build-up of a removable debris on the eye. The swab, which moves relative to the electromechanical device, contacts the portion of the eye that includes the removable debris. Thereby, the swab impacts the debris to remove the debris from the eye. Removing the debris further includes at least one of breaking the debris free of the eyelid margin, scrubbing the eyelid margin, exfoliating the eyelid margin, buffing the eyelid margin, or un-roofing the meibomian gland.

In one aspect, the swab is positioned near the eyeball along the eyelid margin to target the debris with the swab. The eyelid margin is accessed with the swab without the aid of a magnification device and without lifting the eyelid margin.

In another aspect, effecting movement of the swab relative to the electromechanical device includes at least one of rotating, vibrating, or reciprocating the swab. Furthermore, the movement of the swab may be set to a desirable speed.

Treating the eye for the ocular disorder may include repeating the effecting movement, the contacting the portion of the eye, and impacting the debris with the swab to remove the debris after periodic intervals until the ocular disorder is sufficiently remedied.

In another exemplary embodiment, a device for the removal of debris from the eye during the treatment of the ocular disorder comprises a swab having a tip portion and a base portion. The tip portion is of a sufficient size to access debris on the eye. The device also includes a rigid member and a mechanical drive unit. As such, the rigid member and the swab extend from an instrument. The rigid member has a distal end portion and a proximal end portion such that the distal end portion is affixed to the base portion of the swab and the proximal end portion is secured to the mechanical drive unit, which also includes a body. The mechanical drive unit operably moves the swab relative to the body facilitating removal of the debris from on the eye.

In one aspect, the swab is a generally egg-shaped sponge having an approximate length of two millimeters and a width

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of one millimeter. Affixed to the sponge, the rigid member is a plastic material that is formed onto the distal end portion of the rigid member.

In yet another aspect, the mechanical drive unit includes an electric motor, a chuck, and a control switch. The chuck projects from the body of the mechanical drive unit and is operably connected to the electric motor. Also, the control switch is operably coupled to the electric motor. With respect to the rigid member, the proximal end portion of the rigid member is removably secured to the chuck. In addition, the device is handheld and includes an electric power source operably coupled to the mechanical drive unit, the electric power source being a battery.

Various additional objectives, advantages, and features of the invention will be appreciated from a review of the following detailed description of the illustrative embodiments taken in conjunction with the accompanying drawings.

BRIEF DESCRIPTION OF THE DRAWINGS

The accompanying drawings, which are incorporated in and constitute a part of this specification, illustrate embodiments of the invention and, together with a general description of the invention given above, and the detailed description given below serve to explain the invention.

FIG. 1 is a perspective drawing of one embodiment of the device.

FIG. 2A is a drawing of the device of FIG. 1 treating a lower eyelid margin of an eye.

FIG. 2B is a drawing of the device of FIG. 1 treating an upper eyelid margin of an eye.

DETAILED DESCRIPTION

With reference to FIG. 1, an embodiment of the device 10 for treating an ocular disorder, particularly with respect to eyelid margin diseases, includes a mechanical drive unit 12 which operably moves a swab 14 to facilitate removal of debris from an eye 15 (see FIGS. 2A-2B). The swab 14 is connected to a rigid member 16 having both a distal end portion 18 and a proximal end portion 20. The swab 14 is affixed to the distal end portion 18 of the rigid member 16 to create an instrument 22, which may be secured to the mechanical drive unit 12. As shown in FIG. 1, the proximal end portion 20 is removably secured to the mechanical drive unit 12 in order to transmit motion from the mechanical drive unit 12, through the rigid member 16, and to the swab 14. It will be appreciated that any known method may be used to removably secure the instrument 22 to the mechanical drive unit 12. Moreover, it will also be appreciated that device 10 is not intended to be limited to the instrument 22 being removably secured to the mechanical drive unit 12. For instance, in another embodiment, the rigid member 16 may be either permanently secured or removably secured to either one of the swab 14 and/or the mechanical drive unit 12.

In one aspect of the instrument 22, the swab 14 includes a tip portion 24 and a base portion 26. While the swab 14 may be of a size sufficient to access debris on the eye 15 as shown in FIGS. 1-2B, at least the tip portion 24 is of a size sufficient to access debris on the eye 15. For instance, the swab 14 has an approximate length between 1.0-3.0 millimeters and an approximate width of between 0.5-1.5 millimeters. More particularly, the swab 14 has an approximate length of 2 millimeters and an approximate width of 1 millimeter. It will be appreciated that the swab 14 may be manufactured of any material suitable for contacting the eye 15 without harming the eye 15. However, as shown in the embodiment of FIG. 1,

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the swab 14 is a sponge. As described herein, "sponge" broadly refers to any material that is soft, porous, and resilient. Particularly, the swab 14 is a medical grade sponge or a surgical grade sponge capable of removing debris from on the eye 15 without harming the eye 15. As shown in the exemplary embodiment of FIGS. 1-2B, the swab 14 is a methyl cellulose sponge. It will be appreciated; however, that similar materials capable of removing debris from on the eye 15 without harming the eye 15 are readily apparent and may also be used.

In another aspect of the instrument 22, the rigid member 16 is a plastic, cylindrical shaft including a central axis 27. The shaft extends along the central axis 27 between the mechanical drive unit 12 and the swab 14. The rigid member 16 is sufficiently rigid to effectively transmit motion from the mechanical drive unit 12 to the swab 14. As shown in FIG. 1, the swab 14 is permanently affixed to the distal end portion 18 by forming the base portion 26 to the rigid member 16 during manufacturing. However, it will be appreciated that any known method of affixing the swab 14 to the rigid member 16 may be used. In an exemplary embodiment, any material or shaft shape may be used so long as the rigid member 16 is rigid enough to transmit sufficient motion from the mechanical drive unit 12 to the swab 14 in order to remove debris from on the eye 15.

Furthermore, the mechanical drive unit 12 includes a body 28, an electric motor 30, a chuck 32, and a control switch 34. As such, the device 10 is electromechanical in nature. In an exemplary embodiment, the electric motor 30, the chuck 32, and the control switch 34 are integrated into the body 28 so that the electromechanical device 10 is configured to be handheld as shown in FIG. 1. However, the electromechanical device 10 is not intended to be limited to a handheld configuration, and it will be appreciated that other configurations of the device 10 are readily apparent.

According to the present embodiment, the electric motor 30 is positioned within the body 28. The chuck 32 is operably connected to the electric motor 30 at a forward end portion 36 of the body 28. The proximal end portion 20 of the rigid member 16 is removably secured to the chuck 32. As described herein, the chuck 32 is generally any element capable of removably securing the rigid member 16 to the mechanical drive unit 12. As such, the chuck 32 may be tightened or loosened to respectively secure or remove the instrument 22 to the chuck 32. Thereby, the operable connection of the electric motor 30 transmits a movement 38 through the chuck 32 to the instrument 22. The movement 38 is any motion relative to the mechanical drive unit 12 or, more particularly, to the body 28, that creates relative motion to the debris on the eye 15 such that upon contacting the debris with the swab 14, the debris is removed. As shown, the movement 38 may include, but is not limited to, a reciprocating movement 38a, a rotating movement 38b, or a vibrating movement 38c. The reciprocating movement 38a may be either along the central axis 27 of the rigid member 16 or orthogonal to the central axis 27 of the rigid member 16. In addition, the speed of the movement 38 of the swab 14 is any speed sufficient to remove debris from on the eye 15. It will be appreciated that the speed discussed herein collectively refers to both relative speed of the swab 14 and the frequency of the movement 38 of the swab 14. For instance, the frequency may range from sonic frequencies to ultrasonic frequencies. Furthermore, the speed of the swab 14 may be variable or otherwise selectable such that an operator of the device 10 may select a desirable speed or a forward or reverse direction via the control switch 34.

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Moreover, the control switch 34 is operably connected to the electric motor 30 and an electric power source 42 to power the device 10 on and off. In an exemplary embodiment, the electric power source 42 is a battery power source 42 contained within the body 28. The battery power source 42 may be either disposable or rechargeable. The electric power source 42 operably provides electrical power to the electric motor 30, which the operator controls via the control switch 34. It will be appreciated that any known control switch 34 or plurality of control switches 34 may be configured to power the device 10 on and off.

Furthermore, it will be appreciated that the device 10 may be manufactured from various materials suited to specific environments of use. For instance, operators within the professional clinic setting may desire a durable, reusable mechanical drive unit 12 and single-use instruments 22. Some examples of such a professional mechanical drive unit 12 is an Algerbrush I, an Algerbrush II, or similar medical device. However, operators within the home treatment setting may desire the device 10 to be generally disposable and single-use.

With respect to FIGS. 2A and 2B, the device 10 is used in a method for treating ocular disorders of the eye 15. For purposes of describing the environment in which this method occurs, FIGS. 2A and 2B generally show a portion of a face 50 having a nose 52, an eyebrow 54, and the eye 15. The eye 15 described herein generally includes, but is not limited to, an eyeball 56 including a cornea 58, an upper eyelid margin 60, a lower eyelid margin 62, and a plurality of eyelashes 64. In the exemplary embodiment, the device 10 is the swab 14 operably connected to the mechanical drive unit 12 thereby creating the electromechanical device 10 for use in removing debris deposited on at least one of either the upper eyelid margin 60 or the lower eyelid margin 62.

As shown in FIG. 1, the electromechanical device 10 is powered on and may be set to a desirable speed by the operator; thereby, the operator effects movement of the swab 14 relative to the electromechanical device 10. Such movement may include, but is not limited to, reciprocating the swab 14 as shown by arrows 38a, rotating the swab 14 as shown by arrow 38b, and/or vibrating the swab 14 as shown by lines 38c. The swab 14 is positioned near the eyeball 56 and along either one of the upper or lower eyelid margins 60, 62 for treatment. In the exemplary embodiment as shown in FIGS. 2A and 2B, the swab 14 moves with constant movement relative to the electromechanical device 10 while near the eyeball 56. Alternatively, it may be desirable to vary the movement of the swab 14 relative to the electromechanical device 10 such that the operator has greater control of treating the ocular disorder.

In an exemplary embodiment, the operator preferably targets the debris present on the eye 15 with the swab 14 of the electromechanical device 10. The debris may be targeted by visually inspecting the eye 15 with or without the aid of a magnification device. Once the debris is targeted, the swab 14 contacts the portion of the eye 15 that includes the debris. For purposes of treating the ocular disorder, the debris may be removably attached on either the upper and lower eyelid margins 60, 62 the plurality of eyelashes 64, or between the eyelashes 64 and the inner edge of the eyelid margins, 60, 62. Thereby, upon contacting the portion of the eye 15 with the debris, the swab 14 impacts the debris to remove the debris from the eye 15. Furthermore, a liquid solution configured to loosen the debris may be absorbed within the swab 14 to further aid in removing the debris from the eye 15 and/or minimizing irritation to the eye 15. It will be appreciated that

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any liquid solution sufficiently capable of loosening the debris to further aid in removing the debris may be so used.

The electromechanical device 10 operably drives the swab 14 to break the debris free from either of the upper or lower eyelid margins 60, 62. Further treatment may be performed to enhance the effects of the debris removal by helping to improve healing and reducing further infection of the eye 15. Such treatment may include scrubbing, exfoliating, or buffing the eyelid margin or un-roofing a meibomian gland 66 with the swab 14.

In another aspect, the cornea 58 of the eye 15 is directed away from the position of the swab 14 to minimize contacting the swab 14 to the cornea 58 during treatment. As shown in FIG. 2A, while treating the lower eyelid margin 62, the eyeball 56 directs the cornea 58 upward, thereby bringing the cornea 58 closer to the upper eyelid margin 60 than the lower eyelid margin 62. However, as shown in FIG. 2B, while treating the upper eyelid margin 60, the eyeball 56 directs the cornea 58 downward, thereby being closer to the lower eyelid margin 62 than the upper eyelid margin 60.

As shown in FIG. 2A, accessing the portion of the eye 15 with the debris, such as the upper or lower eyelid margins 60, 62, may be accomplished without further moving or lifting other portions of the eye 15. However, as shown in FIG. 2B, if accessing the portion of the eye 15 with the debris is difficult, the operator may use a hand 68, or similar gripping device, to move or lift a portion of the eye 15, such as lifting the upper or lower eyelid margin 60, 62 from against the eyeball 56, to improve access to the debris. Such lifting may be particularly beneficial for improving access to the meibomian gland 66. It will be appreciated that, in order to improve access to the debris, any portion of the eye 15 may be moved or lifted regardless of which eyelid margins 60, 62 are being treated. FIGS. 2A and 2B are merely exemplary embodiments showing both non-assisted access and assisted access of the swab 14 to the eye 15 respectively.

Furthermore, the method of treating the ocular disorder may be repeated as directed by a physician or patient in order to sufficiently remedy the disorder. For instance, in the case of physician directed treatment, the physician may direct the patient to visit the physician in periodic intervals for treating the ocular disorder with the electromechanical device 10. More specifically, the physician directs the patient to visit the physician in periodic monthly or weekly intervals so that the physician may treat the patient. In the exemplary embodiment, periodic intervals are treatments with the electromechanical device 10 once every month. It will be appreciated that any periodic interval of repeating the method of treating the ocular disorder with the electromechanical device 10 may be so used.

Alternatively, in the case of home treatment by the patient, the patient may treat his or her own ocular disorder with the electromechanical device 10 in periodic intervals. However, according to the exemplary embodiment, the physician repeats the method of treating the ocular disorder in periodic intervals with the electromechanical device 10 and the patient also treats the ocular disorder in between physician treatments using traditional treatments. This method of treating the ocular disorder with the electromechanical device 10 in treatments occurring in periodic intervals achieves superior removal of the debris compared to traditional treatments, because the periodic intervals act as reminders to the patient. Thus, the patient is less likely to forget to treat the ocular disorders once symptoms begin to subside, which may result in a resurgence of the disorder. However, the traditional treatments, despite being less effective, may be performed regu-

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larly by the patient to further treat the ocular disorder in conjunction with physician treatments with the electromechanical device 10.

In any case, the physician or patient treats the ocular disorder until the ocular disorder is sufficiently healed and thereafter to prevent a recurrence of the disorder. It will be appreciated that sufficiently healed refers to the dissipation of inflammation and/or discomfort related to the debris within the eye 15 at which time the treatments by the physician may decrease in frequency, but may continue in periodic intervals during home treatment by the patient. In the event that the inflammation, discomfort, or debris worsens, the method of treating the ocular disorder may resume as the physician or patient desires. However, the treatment may be required in periodic intervals throughout the remainder of the patient's life.

While the present invention has been illustrated by the description of one or more embodiments thereof, and while the embodiments have been described in considerable detail, they are not intended to restrict or in any way limit the scope of the appended claims to such detail. Additional advantages and modifications will readily appear to those skilled in the art. The invention in its broader aspects is therefore not limited to the specific details, representative apparatus and method and illustrative examples shown and described. Accordingly, departures may be from such details without departing from the scope or spirit of the general inventive concept.

What is claimed is:

1. A method of treating an eye for an ocular disorder with a swab operably connected to an electromechanical device, wherein the eye has an eyelid margin and includes a removable debris, the method comprising:
 - effecting movement of the swab relative to the electromechanical device, the swab having at least a portion thereof configured to access an inner edge portion of the eyelid margin;
 - while the swab is being moved by the electromechanical device, contacting a portion of the eye between the eyelashes and the inner edge of the eyelid margin that includes the removable debris with the swab thereby impacting the debris with the swab to remove debris from the eye.
2. The method of claim 1 wherein the eye has a meibomian gland and removing debris further includes at least one of:
 - scrubbing the eyelid margin;
 - exfoliating the eyelid margin;
 - buffing the eyelid margin;
 - un-roofing the meibomian gland; or
 - breaking the debris free of the eyelid margin.
3. The method of claim 1 wherein the eye has an eyeball and further includes accessing the eyelid margin for contacting the swab to the debris without lifting the eyelid margin from the eye.
4. The method of claim 1 wherein the eye has an eyeball and further includes:
 - positioning the swab near the eyeball along the eyelid margin; and
 - targeting the debris with the swab.

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5. The method of claim 1 further including viewing the eye and the debris without the aid of a magnification device.

6. The method of claim 1 wherein the movement of the swab is at least one of rotating the swab, vibrating the swab, or reciprocating the swab.

7. The method of claim 1 wherein effecting movement of the swab further includes setting the movement of the swab to a desirable speed sufficient to remove the debris from the eye.

8. The method of claim 1 further including repeating the effecting movement, the contacting the portion of the eye, and impacting the debris with the swab to remove the debris process of claim 1 after periodic intervals until the ocular disorder is sufficiently remedied.

9. The method of claim 1 wherein the swab is connected to a rigid member having a proximal end portion, the method further comprising:

- securing the proximal end portion of the rigid member to the electromechanical device; and
- removing the proximal end portion of the rigid member from the electromechanical device.

10. The method of claim 9 further comprising:

- removing the proximal end portion of the rigid member after a single use of the swab; and
- repeating the securing and removing of another proximal end portion of another rigid member.

11. The method of claim 1 wherein the swab is a medical grade sponge for accessing the eyelid margin.

12. The method of claim 1 wherein the swab has a length and a width, the length being between 1.0 millimeter and 2.0 millimeters and the width being between 0.5 millimeters and 1.5 millimeters for accessing the inner edge portion of the eyelid margin.

13. The method of claim 1 wherein the swab is generally egg-shaped having an approximate length of 2 mm and an approximate width of 1 mm for accessing the inner edge portion of the eyelid margin.

14. The method of claim 1 further comprising:

- accessing at least an inner edge portion of the eyelid margin with swab.

15. The method of claim 14 further comprising:

- contacting the inner edge portion of the eyelid margin with the swab.

16. The method of claim 1 wherein the movement of the swab is rotating the swab.

17. A method of treating an eye for an ocular disorder with a swab operably connected to an electromechanical device, wherein the eye has an eyelid margin and includes a removable debris, the method comprising:

- effecting movement of the swab relative to the electromechanical device;
- while the swab is being moved by the electromechanical device, contacting at least an inner edge portion of the eyelid margin that includes the removable debris with the swab thereby impacting the debris with the swab to remove debris from the eye.

* * * * *

EXHIBIT B



EXHIBIT C

This is Google's cache of https://www.facebook.com/MiboMyDryEye/posts/1522377854741442. It is a snapshot of the page as it appeared on Dec 6, 2015 14:34:27 GMT.

The current page could have changed in the meantime. Learn more

Full version Text-only version View source

Tip: To quickly find your search term on this page, press Ctrl+F or ⌘-F (Mac) and use the find bar.

facebook
 Keep me logged in Forgot your password?



Mibo Thermoflo added 5 new photos.

December 2 at 3:13pm · 🌐

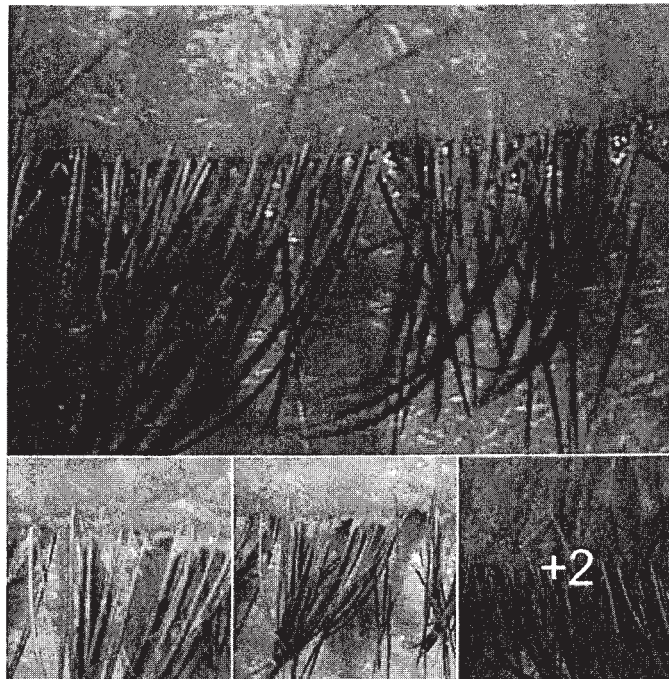
Did you know that Mibo Medical Produces two innovative products for the treatment of Meibomian Gland Dysfunction?

The first is the Mibo Thermoflo a revolutionary heat treatment that is safe, effective, and has no consumables.

The second is the Lid Pro. The Lid pro is shown in the pictures below being done on a patient with severe anterior and posterior blepharitis. The patient was treated with the Lid Pro in office with great success and then had a Mibo treatment on both eyes. Prior to this the patient was unable to watch his favorite TV shows without severe pain and redness. Now the patient has all day comfort and best of all --- clear vision.

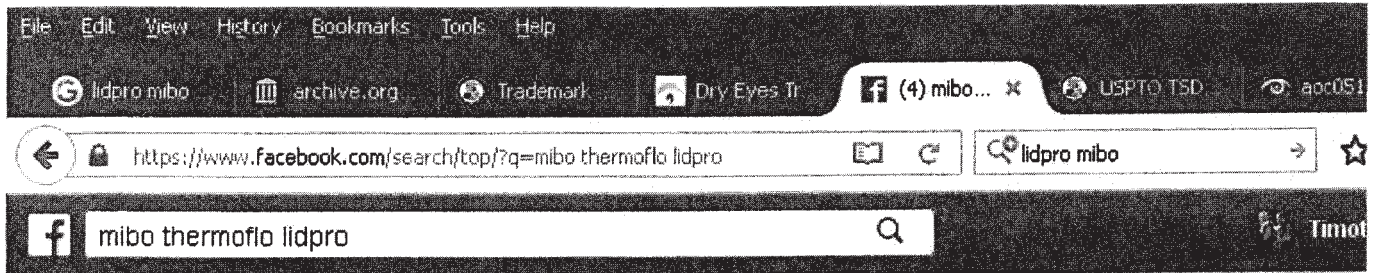
If you have questions about the Mibo Thermoflo or Lid Pro for your office or if you are a patient suffering with dry eye disease or Meibomian Gland Dysfunction contact us today through the message function on our site or through our website.

<http://mibomedicalgroup.com/how-miboflo-works/>



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EXHIBIT D



Top Latest People Photos Videos Pages Places Groups Apps

FAVORITES

- Messages 10
 - Sale Groups
 - Pokes 3
 - New Groups 4
 - Stay strong Zach~ sk... 6
 - Prayer/Update Page f... 20+
 - North Louisianians U... 20+
 - STAY STRONG ZACH 20+
 - Suggest Edits
 - Photos
- FACEBOOK
- News Feed
 - Events 1 invite
 - Groups
 - Pages
 - Games & Apps
 - Lists

Public Posts



Mike Whitehurst

August 27, 2015 · Irving, TX ·

GG and I are going on a workcation on Tuesday. Barcelona Spain. Our partner Mike Lutz is also going. It's the big Euro eye expo. Have a booth for the MiBo. A lot of interest in the MiBo. We will be gone 10 days. Yes we have a house keeper. It is unreal what the MiBo is doing. World wide sales. Next month we are introducing another device. It's called the LidPro. Already have taken over 100 orders. MiBo Medical is one of the fastest growing companies I have ever been involved with. mibomedicalgroup.com We will post photos of our workcation. Hope you all follow our trip.



EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BLEPHEX, LLC)
) Case No. 3:16-cv-00410
 Plaintiff)
) Judge: David C. Godbey
 v.)
)
 PAIN POINT MEDICAL SYSTEMS,) **JURY TRIAL DEMANDED**
 INC. *doing business as* MiBo Medical)
 Group Inc.)
)
 Defendant.

**PLAINTIFF BLEPHEX LLC’S RULE 3-1 DISCLOSURE OF ASSERTED CLAIMS
AND PRELIMINARY INFRINGEMENT CONTENTIONS AND RULE 3-2
DOCUMENT PRODUCTION ACCOMPANYING DISCLOSURE**

Pursuant to Paragraphs 3-1 and 3-2 of the Court’s Amended Miscellaneous Order No. 62, Plaintiff Blephex LLC (“Plaintiff” or “Blephex”) provides the following disclosure of Asserted Claims and Preliminary Infringement Contentions and Document Production Accompanying Disclosure to Defendant Pain Point Medical Systems, Inc., doing business as MiBo Medical Group’s (“Defendant” or “MiBo”). This disclosure is made solely for the purpose of this action.

This disclosure is based, in part, on Blephex’s present understanding of the meaning and scope of the claims of United States Patent No. 9,039,718 (“the ’718 Patent” or “the Asserted Patent”) prior to any claim construction proceedings or discovery. Blephex anticipates that events in the litigation, such as the receipt of discovery from MiBo and/or third parties and the Court’s issuance of a claim construction ruling may affect the substance

the infringement contentions that Blephex asserts against MiBo. Blephex reserves the right to right to seek leave to supplement or amend this disclosure as permitted by the provisions of Amended Miscellaneous Order No. 62 and/or the Court's discretion.

PARAGRAPH 3-1(a):

Blephex's Disclosure of Asserted Claims and Preliminary Infringement Contentions is provided to MiBo no later than 14 days after the parties' initial case management conference, which was held on April 20, 2016. In accordance with this Rule, Blephex will file notice of its service of this Disclosure of Asserted Claims and Preliminary Infringement Contentions, and accompanying document production, with the Court's clerk.

Paragraph 3-1(a)(1):

Blephex alleges that MiBo is infringing, or inducing the infringement of, claims 1, 2, 4, 6, 7, 14, 15, 16, and 17 of the '718 Patent ("the Asserted Claims"). Blephex may seek to amend its Complaint to allege direct infringement against MiBo and/or name additional parties as defendants in this lawsuit. The additional defendants may include, specifically, physicians to whom MiBo has provided the LidPro device, including, but not limited to, the four physicians specifically identified in paragraph 30 of Blephex's Complaint. Those physicians to whom MiBo has provided the LidPro device constitute direct infringers of the Asserted Claim. During the initial case management conference between counsel, Blephex's counsel asked MiBo's counsel to identify which, if any, of the four physicians identified in paragraph 30 of Blephex's Complaint were employees or agents of MiBo, rather than independent third-parties. To date, MiBo has not responded to that inquiry.

To the extent that any of the four physicians identified in paragraph 30 of Blephex's Complaint are employees or agents of MiBo, their infringement of the Asserted Claims may be attributable to MiBo, against whom Blephex may seek leave to allege claims of direct infringement through an amended complaint. However, to the extent that any of the four physicians identified in paragraph 30 of Blephex's Complaint are independent, third-parties practicing the Asserted Claims and their actions constitute direct infringement, Blephex may seek leave to join them as defendants in this case, to the extent permitted under the exceptions included in 35 U.S.C. § 287(c) and after a reasonable period of discovery directed to those exceptions.

Paragraph 3-1(a)(2):

Blephex alleges that the Asserted Claims are infringed by the use of MiBo's LidPro device—which is identified and/or depicted in Blephex's Complaint (Dkt. No. 2, ¶ 24, PAGEID 8, and Exhibit B, PAGEID 36) and further depicted in Defendant's Answer (Dkt. No. 10, PAGEID 610)—to practice the methods claimed in the '718 Patent. The use of MiBo's LidPro device as intended constitutes direct infringement of the Asserted Claims. Instructing others to use MiBo's LidPro device as intended, with knowledge of, or reason to know of, the '718 Patent, constitutes inducement of infringement of the Asserted Claims.

Paragraph 3-1(a)(3):

Attachment A to this Disclosure of Asserted Claims and Preliminary Infringement Contentions is a chart showing where each element of each Asserted Claim is found in, or practiced by, MiBo's LidPro device. Blephex contends that the Asserted Claims are directly infringed by at least the use of MiBo's LidPro device for its intended purpose. By providing

the LidPro device to others and instructing others how to use the LidPro device, along with knowledge of the '718 Patent, with knowledge of, or reason to know of, the '718 Patent, MiBo is inducing the infringement of the Asserted Claims.

Paragraph 3-1(a)(4):

Based on the information presently available, Blephex contends that each element of each Asserted Claim is literally infringed by the use of the LidPro device for its intended purpose. However, where an element of any Asserted Claim is found to not be literally present, it may be present under the Doctrine of Equivalents if the difference between the elements of the Asserted Claims and the use of the LidPro to practice those claim is insubstantial. The chart included as Attachment A to this Disclosure of Asserted Claims and Preliminary Infringement Contentions sets forth Blephex's contentions regarding the Doctrine of Equivalents. To the extent that future evidence, testimony, or expert analysis reveals that an element once disclosed only to be literally infringed, infringes instead under the Doctrine of Equivalents, Blephex reserves the right to so assert in accordance with the Court's rules and/or after obtaining the appropriate leave of Court.

Paragraph 3-1(a)(5):

The '718 Patent issued from U.S. Patent Application Serial No. 13/556,729 ("the '729 Application"), which was filed July 24, 2012. The '729 Application does not claim priority to an earlier application. Therefore, each claim of the '718 Patent is entitled to a priority date of, no later than, July 24, 2012.

Paragraph 3-1(a)(6):

Blephex preserves its right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality, namely the Blephex[®] hand piece, which is used to practice the Blephex[®] in-office procedure. The Blephex[®] hand piece and Blephex[®] in-office procedure embodies, at least, claims 1, 2, and 4-17 of the '718 Patent.

PARAGRAPH 3-2:

Blephex identifies the following documents, which are produced herewith in accordance with Paragraph 3-2(a)(1)-(3).¹

Paragraph 3-2(a)(1): None

Paragraph 3-2(a)(2): None

Paragraph 3-2(a)(3): B00001-B00313.

Dated: May 4, 2016

Respectfully submitted,

s/ Paul J. Linden

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¹ All documents in the possession of Blephex that may be subject to disclosure under Rule 3-2(a)(1)-(2) insofar as they involve discussion, disclosure, conception, reduction to practice, design, and/or development of the claimed invention before the date of application for the '718 Patent are subject to attorney-client privilege as they constitute communications between the inventor and his attorneys for the purpose of obtaining legal advice. *See In re Spalding Sports World Wide, Inc.*, 203 F.3d 800, 803-04 (Fed. Cir. 2000). Blephex has withheld production of such documents on the basis of attorney-client privilege, and has labeled them B-PRIV-000001—B-PRIV-000258.

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CERTIFICATE OF SERVICE

I hereby certify that, on the date below, I served the foregoing document via electronic mail on counsel of record who have consented to electronic service.

May 4, 2016

s/ Paul J. Linden

Paul J. Linden

Blephex LLC v. Pain Point Management Systems, Inc., (dba MiBo Medical Group, Inc.)
Case No. 3:16-cv-00410, United States District Court for the Northern District of Texas

ATTACHMENT A

Blephex LLC v. Pain Point Management Systems, Inc., (dba MiBo Medical Group, Inc.)
 Case No. 3:16-cv-00410, United States District Court for the Northern District of Texas

<u>ASSERTED CLAIM</u>	<u>BASIS</u>
<p>1. A method of treating an eye for an ocular disorder</p>	<p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder. This element is literally infringed.</p> <p>As stated in the attached document, labeled B-PIC-000001, “Mibo Medical Produces two innovative products for the treatment of Meibomian Gland Dysfunction[,]” and identifies the LidPro device as one of those products produced by MiBo used for such treatment. Meibomian Gland Dysfunction is an ocular disorder. This document also states that “[t]he Lid pro is shown in the pictures below being done on a patient with severe anterior and posterior blepharitis. The patient was treated with the Lid Pro in office with great success”</p> <p>Moreover, in paragraph 27 of its Answer, MiBo admitted that “its LidPro device is used to treat eye disorders.” Dkt. 10 at PAGEID 57. In paragraph 30 of its Answer, MiBo further admitted that “it provided exemplars of the LidPro device to the following eye care professionals: (i) Glenn Corbin, (ii) James Lewis, (iii) Walt Whitley, and (iv) Tom Kislam” <i>Id.</i> In August 2015, MiBo represented that it had already taken “over 100 orders” for the LidPro device. <i>See</i> B-PIC-000002.</p> <p>A description of a type of ocular disorder that may be treated by the claimed method is disclosed in the prosecution history at B000041-B000046.</p> <p>Furthermore, MiBo knew or should have known that instructing others to use the LidPro device as intended encourages acts that constitute patent infringement because Blephex has marked its Blephex device packaging with the ’718 Patent number at least by June 12, 2015, and/or a representative of MiBo gave a presentation on September 20, 2105 at the Ocular Surface Disease Symposium at Salus University in Elkins Park, PA, during which the Blephex device was referenced, and/or notified MiBo of its infringement claims by letter with the filed Complaint by February 15, 2016. <i>See</i> Complaint, ¶¶ 19-23, Dkt. 2 at PAGEID 7-8. As shown throughout these contentions, use of the LidPro device as intended infringes the claimed methods of the ’718 Patent.</p>

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<p>with a swab operably connected to an electromechanical device</p>	<p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder with a swab that is operably connected to an electromechanical device. This element is literally infringed.</p> <p>As shown in the attached document, labeled B-PIC-000003, the LidPro device includes a swab that is operably connected to an electromechanical device. This element is literally infringed.</p> <p>To the extent that this element is found not to be literally infringed, particularly with respect to the term “swab,” it is infringed under the Doctrine of Equivalents. More particularly, there are insubstantial differences between the “swab” of the claimed invention and the “swab” identified by Blephex in the LidPro device.</p> <p>The difference between the “swab” of the claimed invention and the “swab” that Blephex has identified in the LidPro device is insubstantial at least because the respective “swabs” perform substantially the same function, in substantially the same way, and achieves substantially the same result as the “swab” recited in claim 1.</p> <p>The specification of the ’718 Patent states that “[t]he disorders to be treated via this method result in a build-up of a removable debris on the eye. The swab, which moves relative to the electromechanical device, contacts the portion of the eye that includes the removable debris. Thereby, the swab impacts the debris to remove the debris from the eye. Removing the debris further includes at least one of breaking the debris free of the eyelid margin, scrubbing the eyelid margin, exfoliating the eyelid margin, buffing the eyelid margin, or un-roofing the meibomian gland.” col. 2, ll. 30-39.</p> <p>The specification of the ’718 Patent also states that “[t]reating the eye for the ocular disorder may include repeating the effecting movement, the contacting the portion of the eye, and impacting the debris with the swab to remove the debris after periodic intervals until the ocular disorder is sufficiently remedied.” col. 2, ll. 48-53.</p>
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<p>The specification of the '718 Patent further states that “[i]t will be appreciated that the swab 14 may be manufactured of any material suitable for contacting the eye 15 without harming the eye 15[.]” and that “[i]t will appreciated, however, that similar materials capable of removing debris from on the eye 15 without harming the eye 15 are readily apparent and may also be used.” col. 3, ll. 64-67 & col. 4, ll. 7-10.</p> <p>The specification of the '718 Patent further states that “[t]he movement 38 is any motion relative to the mechanical drive unit 12 or, more particularly, to the body 28, that creates relative motion to the debris on the eye 15 such that upon contacting the debris with the swab 14, the debris is removed.” col. 4, ll. 48-53.</p> <p>There are no substantial differences between the “swab” of the claimed invention and the “swab” of the LidPro device because the “swab” of the claimed invention and the “swab” of the LidPro device perform substantially the same function, in substantially the same way, to achieve substantially the same result. In particular, both “swabs” function to impact and remove the removable debris on the affected eye, through movement relative to both the electromechanical device to which the “swab” is operably connected and the removable debris on the affected eye, until the ocular disorder the causes the build-up of debris is sufficiently removed.</p>	
<p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder where the eye has an eyelid margin and includes a removable debris. This element is literally infringed.</p> <p>As stated in the attached document, labeled B-PIC-000001, “Mibo Medical Produces two innovative products for the treatment of Meibomian Gland Dysfunction[.]” and identifies the LidPro device as one of those products produced by MiBo used for such treatment. Meibomian Gland Dysfunction is an ocular disorder. This document also states that “[t]he Lid pro is shown in the pictures below being done on a patient with severe anterior and posterior blepharitis. The patient was treated with the Lid Pro in office with great success” The pictures in this document depict an eye that has an eyelid margin that includes a removable debris.</p>	<p>wherein the eye has an eyelid margin and includes a removable debris, the method comprising</p>

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<p>A description of a type of ocular disorder that may be treated by the claimed method is disclosed in the prosecution history at B000041-B000046.</p>	<p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder by effecting movement of the swab relative to the electromechanical device. This element is literally infringed.</p> <p>As stated in the attached document, labeled B-PIC-000001, “MiBo Medical Produces two innovative products for the treatment of Meibomian Gland Dysfunction[,]” and identifies the LidPro device as one of those products produced by MiBo used for such treatment. Meibomian Gland Dysfunction is an ocular disorder. This document also states that “[t]he Lid pro is shown in the pictures below being done on a patient with severe anterior and posterior blepharitis. The patient was treated with the Lid Pro in office with great success”</p> <p>As shown in the attached document, labeled B-PIC-000003, the LidPro device includes a swab that is operably connected to an electromechanical device. The swab moves relative to the electromechanical device when used to treat an eye disorder.</p> <p>Moreover, in paragraph 12 of its Counterclaims, MiBo affirmatively states that the “swab” identified by Blephex in the LidPro device “utilizes a textured cleaning disk that is fitted on a wheel.” Dkt. 10 at PAGEID 61. This component moves relative to the electromechanical device of the LidPro when used to treat an eye with an ocular disorder.</p> <p>To the extent this element is found not to be literally infringed, particularly with respect to the term swab, see supra for explanation of Blephex’s disclosure regarding satisfying the swab element under the Doctrine of Equivalents. That explanation is incorporated-by-reference as though fully set forth here.</p>
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<p>the swab having at least a portion thereof configured to access an inner edge portion of the eyelid margin</p> <p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder with a swab having at least a portion of the swab configured to access an inner edge portion of the eyelid margin. This element is literally infringed.</p> <p>As shown in the attached documents, labeled B-PIC-000004, a portion of the “swab” of the LidPro device is configured to access an inner edge portion of the eyelid margin.</p> <p>As stated in the attached document, labeled B-PIC-000001, “MiBo Medical Produces two innovative products for the treatment of Meibomian Gland Dysfunction[,]” and identifies the LidPro device as one of those products produced by MiBo used for such treatment. Meibomian Gland Dysfunction is an ocular disorder. This document also states that “[t]he Lid pro is shown in the pictures below being done on a patient with severe anterior and posterior blepharitis. The patient was treated with the Lid Pro in office with great success”</p> <p>Moreover, in paragraph 12 of its Counterclaims, MiBo affirmatively states that the “swab” identified by Blephex in the LidPro device “utilizes a textured cleaning disk that is fitted on a wheel.” Dkt. 10 at PAGEID 61. This component is configured to access an inner edge portion of the eyelid margin, such that it is utilized to treat an eye with an ocular disorder.</p> <p>To the extent this element is found not to be literally infringed, particularly with respect to the term swab, see supra for explanation of Blephex’s disclosure regarding satisfying the swab element under the Doctrine of Equivalents. That explanation is incorporated-by-reference as though fully set forth here.</p>	<p>while the swab is being moved by the electromechanical device, contacting a portion of the eye between the eyelashes and the inner edge of the eyelid margin that includes the removable debris with</p>
<p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder with a swab that is moved by the electromechanical device to contact the portion of the eye between the eyelashes and the inner edge of the eyelid margin that includes the removable debris with the swab thereby impacting the debris with the swab to remove debris from the eye. This</p>	<p>that includes the removable debris with</p>

the swab thereby impacting the debris with the swab to remove debris from the eye.

element is literally infringed.

As shown in the attached documents, labeled B-PIC-000004, a portion of the “swab” of the LidPro device is configured to access an inner edge portion of the eyelid margin.

As stated in the attached document, labeled B-PIC-000001, “Mibo Medical Produces two innovative products for the treatment of Meibomian Gland Dysfunction[.]” and identifies the LidPro device as one of those products produced by MiBo used for such treatment. Meibomian Gland Dysfunction is an ocular disorder. This document also states that “[t]he Lid pro is shown in the pictures below being done on a patient with severe anterior and posterior blepharitis. The patient was treated with the Lid Pro in office with great success”

Treatment of ocular disorders, such as Meibomian Gland Dysfunction, requires contacting the eye between the eyelashes and the inner edge of the eyelid margin that includes removable debris. The purpose of such treatment is to impact the debris to remove the debris from the eye. The LidPro device accomplishes this step with the “swab” identified by Blephex in the LidPro device.

Moreover, in paragraph 12 of its Counterclaims, MiBo affirmatively states that the “swab” identified by Blephex in the LidPro device “utilizes a textured cleaning disk that is fitted on a wheel.” Dkt. 10 at PAGEID 61. This component is configured to access an inner edge portion of the eyelid margin, such that it is utilized to treat an eye with an ocular disorder.

To the extent this element is found not to be literally infringed, particularly with respect to the term swab, see supra for explanation of Blephex’s disclosure regarding satisfying the swab element under the Doctrine of Equivalents. That explanation is incorporated-by-reference as though fully set forth here.

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<u>ASSERTED CLAIM</u>	<u>BASIS</u>
<p>2. The method of claim 1 wherein the eye has a meibomian gland and removing debris further includes at least one of:</p>	<p>The elements of the method of claim 1 are satisfied for the reasons stated above, which are incorporated-by-reference as though fully set forth here.</p> <p>Typically, an eye has a meibomian gland. A description of a type of ocular disorder that may be treated by the claimed method is disclosed in the prosecution history at B000041-B000046.</p> <p>MiBo uses, or instructs eye care professionals to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder, which causes build-up of debris. This element is literally infringed.</p>
<p>scrubbing the eyelid margin; exfoliating the eyelid margin; buffing the eyelid margin; un-roofing the meibomian gland, or breaking the debris free of the eyelid margin.</p>	<p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder by performing at least one of scrubbing the eyelid margin; exfoliating the eyelid margin; buffing the eyelid margin; un-roofing the meibomian gland, or breaking the debris free of the eyelid margin. This element is literally infringed.</p> <p>Moreover, in paragraph 27 of its Answer, MiBo admitted that “its LidPro device is used to treat eye disorders.” Dkt. 10 at PAGEID 57.</p> <p>Moreover, in paragraph 12 of its Counterclaims, MiBo affirmatively states that the “swab” identified by Blephex in the LidPro device “utilizes a textured cleaning disk that is fitted on a wheel.” Dkt. 10 at PAGEID 61. This component is configured to access an inner edge portion of the eyelid margin, such that it is utilized to treat an eye with an ocular disorder.</p> <p>As shown in the attached documents, labeled B-PIC-000004, a portion of the “swab” of the LidPro device is configured to access an inner edge portion of the eyelid margin.</p> <p>As stated in the attached document, labeled B-PIC-000001, “Mibo Medical Produces two innovative products for the treatment of Meibomian Gland Dysfunction[.]” and</p>

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<p>identifies the LidPro device as one of those products produced by MiBo used for such treatment. Meibomian Gland Dysfunction is an ocular disorder. This document also states that “[t]he Lid pro is shown in the pictures below being done on a patient with severe anterior and posterior blepharitis. The patient was treated with the Lid Pro in office with great success”</p> <p>The treatment described in this document necessarily involves at least one of scrubbing the eyelid margin; exfoliating the eyelid margin; buffing the eyelid margin; un-roofing the meibomian gland, or breaking the debris free of the eyelid margin.</p>	
<p><u>BASIS</u></p>	
<p>The elements of the method of claim 1 are satisfied for the reasons stated above, which are incorporated-by-reference as though fully set forth here.</p> <p>Typically, an eye has an eyeball. A description of a type of ocular disorder that may be treated by the claimed method is disclosed in the prosecution history at B000041-B000046.</p>	<p>4. The method of claim 1 wherein the eye has an eyeball and further includes</p>
<p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder by positioning the swab near the eyeball along the eyelid margin and targeting the debris with the swab. This element is literally infringed.</p> <p>As stated in the attached document, labeled B-PIC-000001, “Mibo Medical Produces two innovative products for the treatment of Meibomian Gland Dysfunction[,]” and identifies the LidPro device as one of those products produced by MiBo used for such treatment. Meibomian Gland Dysfunction is an ocular disorder. This document also states that “[t]he Lid pro is shown in the pictures below being done on a patient with severe anterior and posterior blepharitis. The patient was treated with the Lid Pro in office with great success”</p>	<p>positioning the swab near the eyeball along the eyelid margin and targeting the debris with the swab.</p>

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<p>The treatment described in this document necessarily involves positioning the swab near the eyeball along the eyelid margin and targeting the debris with the swab.</p> <p>To the extent this element is found not to be literally infringed, particularly with respect to the term swab, see supra for explanation of Blephex’s disclosure regarding satisfying the swab element under the Doctrine of Equivalents. That explanation is incorporated-by-reference as though fully set forth here.</p>	
<p><u>ASSERTED CLAIM</u></p>	<p><u>BASIS</u></p>
<p>6. The method of claim 1 wherein the movement of the swab is at least one of rotating the swab, vibrating the swab, or reciprocating the swab.</p>	<p>The elements of the method of claim 1 are satisfied for the reasons stated above, which are incorporated-by-reference as though fully set forth here.</p> <p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder through the movement of the swab in at least one of rotating the swab, vibrating the swab, or reciprocating the swab. This element is literally infringed.</p> <p>In paragraph 12 of its Counterclaims, MiBo affirmatively states that the “swab” identified by Blephex in the LidPro device “utilizes a textured cleaning disk that is fitted on a wheel.” Dkt. 10 at PAGEID 61. This component moves relative to the electromechanical device of the LidPro when used to treat an eye with an ocular disorder. The “disk that is fitted on a wheel” moves at least by rotating the swab as shown in the attached document, labeled B-PIC-000005.</p> <p>To the extent this element is found not to be literally infringed, particularly with respect to the term swab, see supra for explanation of Blephex’s disclosure regarding satisfying the swab element under the Doctrine of Equivalents. That explanation is incorporated-by-reference as though fully set forth here.</p>

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<p style="text-align: center;"><u>ASSERTED CLAIM</u></p>	<p style="text-align: center;"><u>BASIS</u></p> <p>The elements of the method of claim 1 are satisfied for the reasons stated above, which are incorporated-by-reference as though fully set forth here.</p> <p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder through the movement of the swab to a desirable speed sufficient to remove the debris from the eye. This element is literally infringed.</p> <p>As stated in the attached document, labeled B-PIC-000001, “Mibo Medical Produces two innovative products for the treatment of Meibomian Gland Dysfunction[.]” and identifies the LidPro device as one of those products produced by MiBo used for such treatment. Meibomian Gland Dysfunction is an ocular disorder. This document also states that “[t]he Lid pro is shown in the pictures below being done on a patient with severe anterior and posterior blepharitis. The patient was treated with the Lid Pro in office with great success”</p> <p>The treatment described in this document necessarily involves movement of the swab to a speed desirable to remove the debris from the eye.</p> <p>To the extent this element is found not to be literally infringed, particularly with respect to the term swab, see supra for explanation of Blephex’s disclosure regarding satisfying the swab element under the Doctrine of Equivalents. That explanation is incorporated-by-reference as though fully set forth here.</p>
<p style="text-align: center;"><u>ASSERTED CLAIM</u></p> <p>14. The method of claim 1 further comprising</p>	<p style="text-align: center;"><u>BASIS</u></p> <p>The elements of the method of claim 1 are satisfied for the reasons stated above, which are incorporated-by-reference as though fully set forth here.</p>

<p>treatment. Meibomian Gland Dysfunction is an ocular disorder. This document also states that “[t]he Lid pro is shown in the pictures below being done on a patient with severe anterior and posterior blepharitis. The patient was treated with the Lid Pro in office with great success”</p> <p>The treatment described in this document necessarily involves positioning the swab near the eyeball along the eyelid margin and targeting the debris with the swab.</p> <p>To the extent this element is found not to be literally infringed, particularly with respect to the term swab, see supra for explanation of Blephex’s disclosure regarding satisfying the swab element under the Doctrine of Equivalents. That explanation is incorporated-by-reference as though fully set forth here.</p>	
<p><u>ASSERTED CLAIM</u></p>	<p style="text-align: center;"><u>BASIS</u></p> <p>The elements of the method of claim 1 are satisfied for the reasons stated above, which are incorporated-by-reference as though fully set forth here.</p> <p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder where the movement of the swab rotating the swab. This element is literally infringed.</p> <p>In paragraph 12 of its Counterclaims, MiBo affirmatively states that the “swab” identified by Blephex in the LidPro device “utilizes a textured cleaning disk that is fitted on a wheel.” Dkt. 10 at PAGEID 61. This component moves relative to the electromechanical device of the LidPro when used to treat an eye with an ocular disorder. It is believed that the “disk that is fitted on a wheel” moves at least by rotating the swab as shown in the attached document, labeled B-PIC-000005.</p> <p>To the extent this element is found not to be literally infringed, particularly with respect to the term swab, see supra for explanation of Blephex’s disclosure regarding satisfying the swab element under the Doctrine of Equivalents. That explanation is incorporated-by-reference as though fully set forth here.</p>

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<u>ASSERTED CLAIM</u>	<u>BASIS</u>
<p>17. A method of treating an eye for an ocular disorder</p>	<p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder. This element is literally infringed.</p> <p>As stated in the attached document, labeled B-PIC-000001, “Mibo Medical Produces two innovative products for the treatment of Meibomian Gland Dysfunction[,]” and identifies the LidPro device as one of those products produced by MiBo used for such treatment. Meibomian Gland Dysfunction is an ocular disorder. This document also states that “[t]he Lid pro is shown in the pictures below being done on a patient with severe anterior and posterior blepharitis. The patient was treated with the Lid Pro in office with great success”</p> <p>Moreover, in paragraph 27 of its Answer, MiBo admitted that “its LidPro device is used to treat eye disorders.” Dkt. 10 at PAGEID 57. In paragraph 30 of its Answer, MiBo further admitted that “it provided exemplars of the LidPro device to the following eye care professionals: (i) Glenn Corbin, (ii) James Lewis, (iii) Walt Whitley, and (iv) Tom Kislam” <i>Id.</i> In August 2015, MiBo represented that it had already taken “over 100 orders” for the LidPro device. <i>See</i> B-PIC-000002.</p> <p>A description of a type of ocular disorder that may be treated by the claimed method is disclosed in the prosecution history at B000041-B000046.</p> <p>Furthermore, MiBo knew or should have known that instructing others to use the LidPro device as intended encourages acts that constitute patent infringement because Blephex has marked its Blephex device packaging with the ’718 Patent number at least by June 12, 2015, and/or a representative of MiBo gave a presentation on September 20, 2105 at the Ocular Surface Disease Symposium at Salus University in Elkins Park, PA, during which the Blephex device was referenced, and/or notified MiBo of its infringement claims by letter with the filed Complaint by February 15, 2016. <i>See</i> Complaint, ¶¶ 19-23, Dkt. 2 at PAGEID 7-8. As shown throughout these contentions, use of the LidPro device as intended infringes the claimed methods of the ’718 Patent.</p>

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<p>with a swab operably connected to an electromechanical device</p>	<p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder with a swab that is operably connected to an electromechanical device. This element is literally infringed.</p> <p>As shown in the attached document, labeled B-PIC-000003, the LidPro device includes a swab that is operably connected to an electromechanical device. This element is literally infringed.</p> <p>To the extent that this element is found not to be literally infringed, particularly with respect to the term “swab,” it is infringed under the Doctrine of Equivalents. More particularly, there are insubstantial differences between the “swab” of the claimed invention and the “swab” identified by Blephex in the LidPro device.</p> <p>The difference between the “swab” of the claimed invention and the “swab” that Blephex has identified in the LidPro device is insubstantial at least because the respective “swabs” perform substantially the same function, in substantially the same way, and achieves substantially the same result as the “swab” recited in claim 1.</p> <p>The specification of the ’718 Patent states that “[t]he disorders to be treated via this method result in a build-up of a removable debris on the eye. The swab, which moves relative to the electromechanical device, contacts the portion of the eye that includes the removable debris. Thereby, the swab impacts the debris to remove the debris from the eye. Removing the debris further includes at least one of breaking the debris free of the eyelid margin, scrubbing the eyelid margin, exfoliating the eyelid margin, buffing the eyelid margin, or un-roofing the meibomian gland.” col. 2, ll. 30-39.</p> <p>The specification of the ’718 Patent also states that “[t]reating the eye for the ocular disorder may include repeating the effecting movement, the contacting the portion of the eye, and impacting the debris with the swab to remove the debris after periodic intervals until the ocular disorder is sufficiently remedied.” col. 2, ll. 48-53.</p>
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<p>The specification of the '718 Patent further states that “[i]t will be appreciated that the swab 14 may be manufactured of any material suitable for contacting the eye 15 without harming the eye 15[.]” and that “[i]t will be appreciated, however, that similar materials capable of removing debris from the eye 15 without harming the eye 15 are readily apparent and may also be used.” col. 3, ll. 64-67 & col. 4, ll. 7-10.</p> <p>The specification of the '718 Patent further states that “[t]he movement 38 is any motion relative to the mechanical drive unit 12 or, more particularly, to the body 28, that creates relative motion to the debris on the eye 15 such that upon contacting the debris with the swab 14, the debris is removed.” col. 4, ll. 48-53.</p> <p>There are no substantial differences between the “swab” of the claimed invention and the “swab” of the LidPro device because the “swab” of the claimed invention and the “swab” of the LidPro device perform substantially the same function, in substantially the same way, to achieve substantially the same result. In particular, both “swabs” function to impact and remove the removable debris on the affected eye, through movement relative to both the electromechanical device to which the “swab” is operably connected and the removable debris on the affected eye, until the ocular disorder the causes the build-up of debris is sufficiently removed.</p>	
<p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder where the eye has an eyelid margin and includes a removable debris. This element is literally infringed.</p> <p>As stated in the attached document, labeled B-PIC-000001, “Mibo Medical Produces two innovative products for the treatment of Meibomian Gland Dysfunction[.]” and identifies the LidPro device as one of those products produced by MiBo used for such treatment. Meibomian Gland Dysfunction is an ocular disorder. This document also states that “[t]he Lid pro is shown in the pictures below being done on a patient with severe anterior and posterior blepharitis. The patient was treated with the Lid Pro in office with great success” The pictures in this document depict an eye that has an eyelid margin that includes a removable debris.</p>	<p>wherein the eye has an eyelid margin and includes a removable debris, the method comprising</p>

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<p>A description of a type of ocular disorder that may be treated by the claimed method is disclosed in the prosecution history at B000041-B000046.</p>	<p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder by effecting movement of the swab relative to the electromechanical device. This element is literally infringed.</p> <p>As stated in the attached document, labeled B-PIC-000001, “Mibo Medical Produces two innovative products for the treatment of Meibomian Gland Dysfunction[,]” and identifies the LidPro device as one of those products produced by MiBo used for such treatment. Meibomian Gland Dysfunction is an ocular disorder. This document also states that “[t]he Lid pro is shown in the pictures below being done on a patient with severe anterior and posterior blepharitis. The patient was treated with the Lid Pro in office with great success”</p> <p>As shown in the attached document, labeled B-PIC-000003, the LidPro device includes a swab that is operably connected to an electromechanical device. The swab moves relative to the electromechanical device when used to treat an eye disorder.</p> <p>Moreover, in paragraph 12 of its Counterclaims, MiBo affirmatively states that the “swab” identified by Blephex in the LidPro device “utilizes a textured cleaning disk that is fitted on a wheel.” Dkt. 10 at PAGEID 61. This component moves relative to the electromechanical device of the LidPro when used to treat an eye with an ocular disorder.</p> <p>To the extent this element is found not to be literally infringed, particularly with respect to the term swab, see supra for explanation of Blephex’s disclosure regarding satisfying the swab element under the Doctrine of Equivalents. That explanation is incorporated-by-reference as though fully set forth here.</p>
<p>effecting movement of the swab relative to the electromechanical device</p>	<p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder with a swab that is moved by the electromechanical device to contact the portion of the eye between the eyelashes and</p>
<p>while the swab is being moved by the electromechanical device, contacting at least an inner edge portion of the eyelid</p>	<p>MiBo uses, or instructs others to use, the LidPro device to perform the claimed method of treating an eye for an ocular disorder with a swab that is moved by the electromechanical device to contact the portion of the eye between the eyelashes and</p>

margin that includes the removable debris with the swab thereby impacting the debris with the swab to remove debris from the eye.

the inner edge of the eyelid margin that includes the removable debris with the swab thereby impacting the debris with the swab to remove debris from the eye. This element is literally infringed.

As shown in the attached documents, labeled B-PIC-000004, a portion of the “swab” of the LidPro device is configured to access an inner edge portion of the eyelid margin.

As stated in the attached document, labeled B-PIC-000001, “MiBo Medical Produces two innovative products for the treatment of Meibomian Gland Dysfunction[,]” and identifies the LidPro device as one of those products produced by MiBo used for such treatment. Meibomian Gland Dysfunction is an ocular disorder. This document also states that “[t]he Lid pro is shown in the pictures below being done on a patient with severe anterior and posterior blepharitis. The patient was treated with the Lid Pro in office with great success”

Treatment of ocular disorders, such as Meibomian Gland Dysfunction, requires contacting the eye between the eyelashes and the inner edge of the eyelid margin that includes removable debris. The purpose of such treatment is to impact the debris to remove the debris from the eye. The LidPro device accomplishes this step with the “swab” identified by Blephex in the LidPro device.

Moreover, in paragraph 12 of its Counterclaims, MiBo affirmatively states that the “swab” identified by Blephex in the LidPro device “utilizes a textured cleaning disk that is fitted on a wheel.” Dkt. 10 at PAGEID 61. This component is configured to access an inner edge portion of the eyelid margin, such that it is utilized to treat an eye with an ocular disorder.

To the extent this element is found not to be literally infringed, particularly with respect to the term swab, see supra for explanation of Blephex’s disclosure regarding satisfying the swab element under the Doctrine of Equivalents. That explanation is incorporated-by-reference as though fully set forth here.

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Mibo Thermoflo added 5 new photos.

December 2 at 3:13pm · 🌐

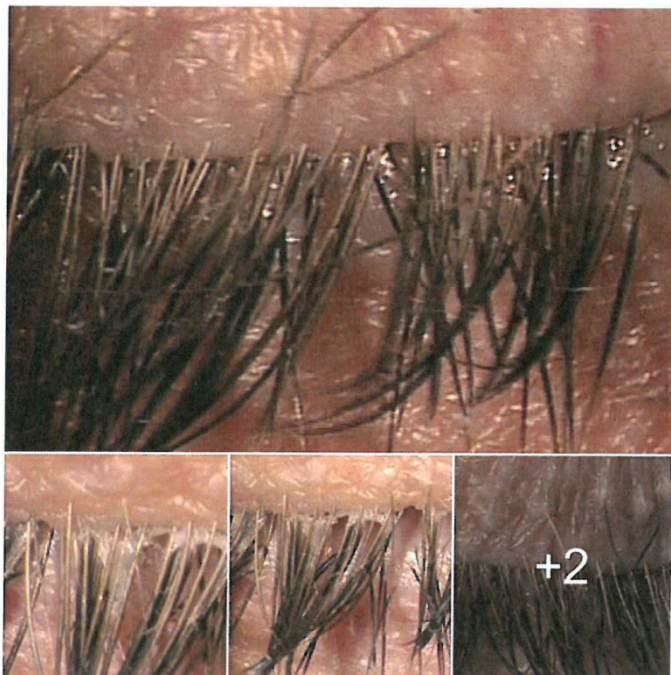
Did you know that Mibo Medical Produces two innovative products for the treatment of Meibomian Gland Dysfunction?

The first is the Mibo Thermoflo a revolutionary heat treatment that is safe, effective, and has no consumables.

The second is the Lid Pro. The Lid pro is shown in the pictures below being done on a patient with severe anterior and posterior blepharitis. The patient was treated with the Lid Pro in office with great success and then had a Mibo treatment on both eyes. Prior to this the patient was unable to watch his favorite TV shows without severe pain and redness. Now the patient has all day comfort and best of all --- clear vision.

If you have questions about the Mibo Thermoflo of Lid Pro for your office or if you are a patient suffering with dry eye disease or Meibomian Gland Dysfunction contact us today through the message function on our site or through our website.

<http://mibomedicalgroup.com/how-miboflo-works/>



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Facebook © 2015

Public Posts



Mike Whitehurst

August 27, 2015 · Irving, TX · 

GG and I are going on a workcation on Tuesday. Barcelona Spain. Our partner Mike Lutz is also going.

It's the big Euro eye expo. Have a booth for the MiBo. A lot of interest in the MiBo.

We will be gone 10 days. Yes we have a house keeper.

It is unreal what the MiBo is doing. World wide sales. Next month we are introducing another device. It's called the LidPro.

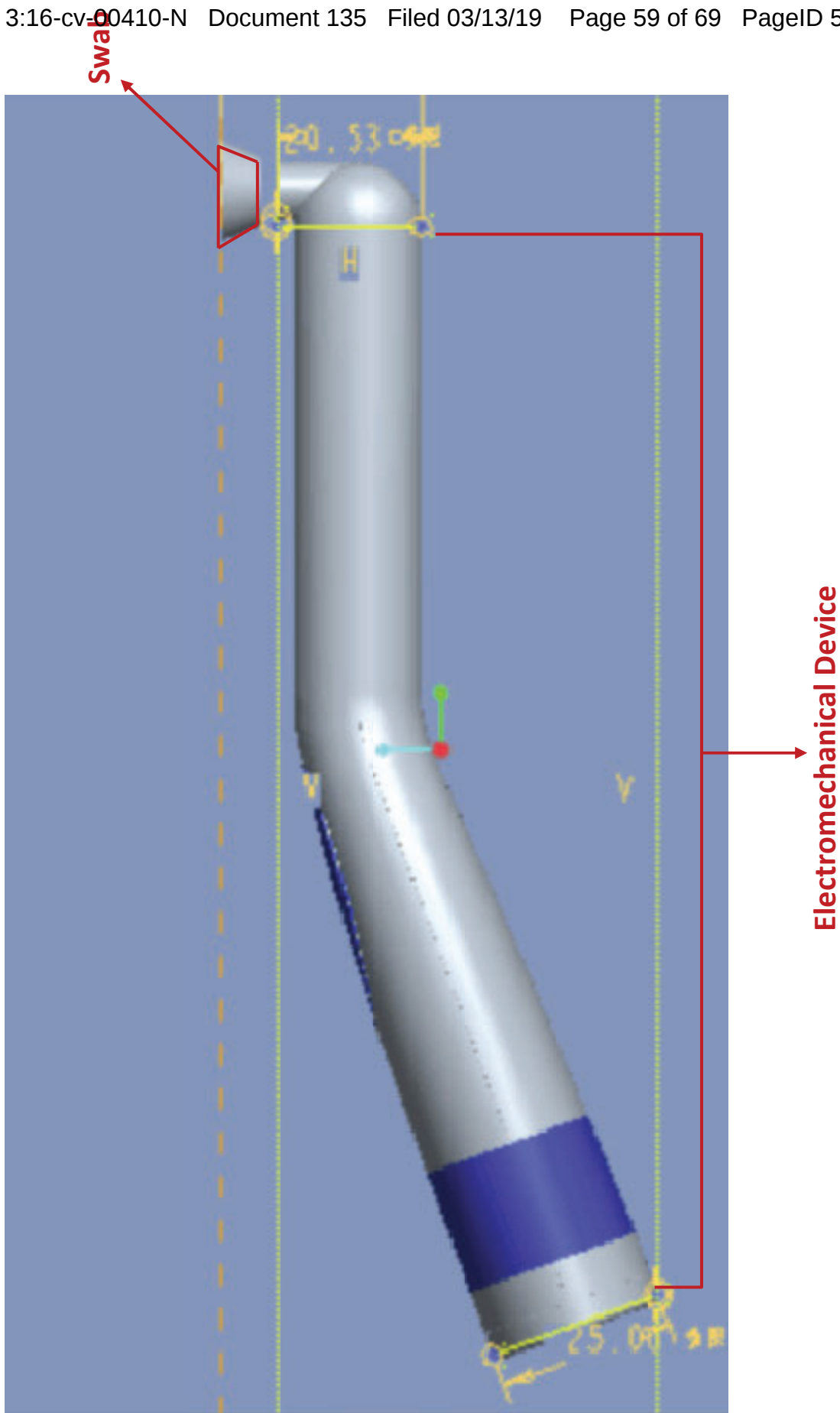
Already have taken over 100 orders.

MiBo Medical is one of the fastest growing companies I have ever been involved with.

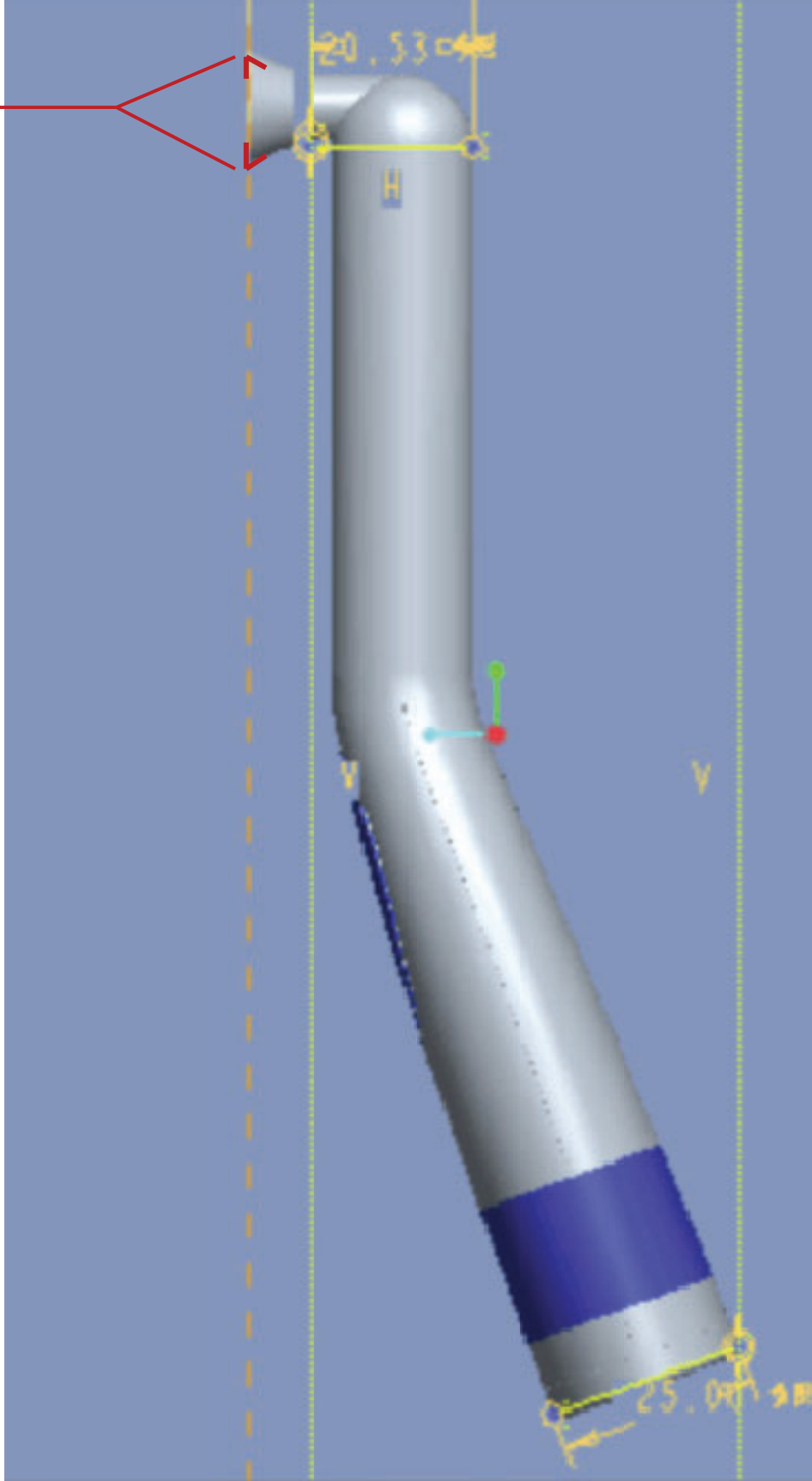
mibomedicalgroup.com

We will post photos of our workcation.

Hope you all follow our trip.



**Portion of Swab Configured to Access
an Inner Edge Portion of Eyelid
Margin**



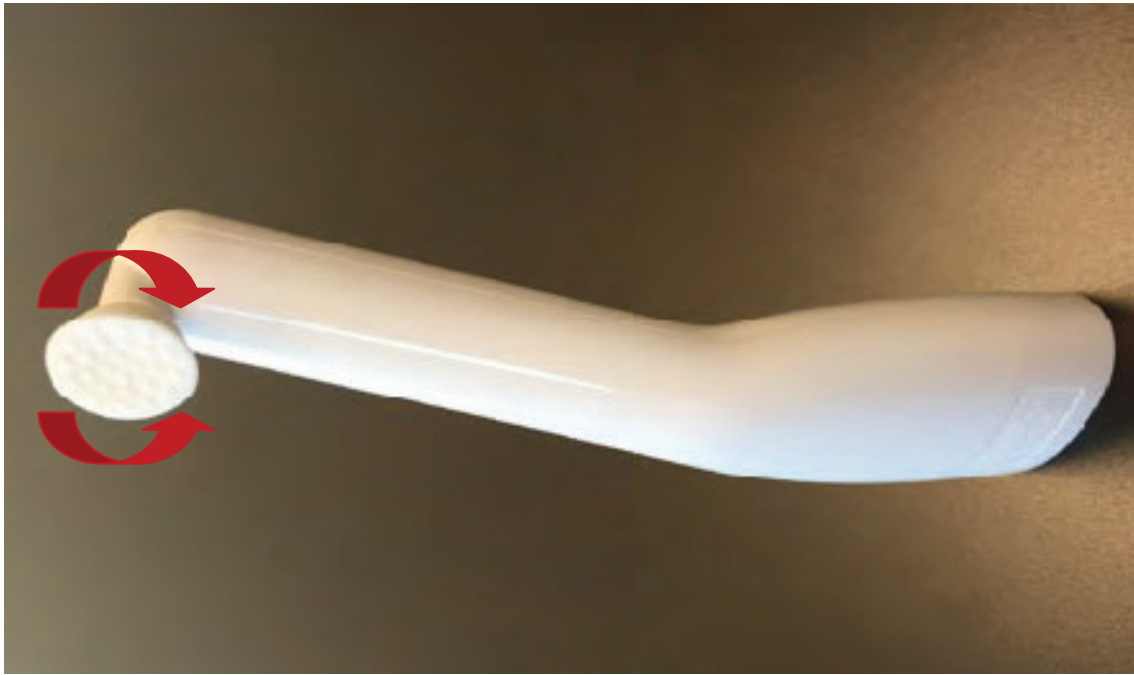


EXHIBIT 3

From: Mays, Christopher
Sent: Tuesday, August 07, 2018 8:09 PM
To: Steven E. Ross
Cc: Palaiyanur, Shyam; WSGR - Blephex; Elson, Vera; Anthony J. Magee
Subject: RE: Blephex v. MiBo - law of inducement of infringement

Dear Steve:

In the future we ask that you refrain from involving the mediator in the parties' discovery disputes. Moving forward, we will require MiBo to bear the full costs of the mediator's time spent on non-mediation matters, such as discovery, that you unilaterally involve him in.

Initially, we remind you that this issue arose in the context of MiBo's interrogatory asking **Blephex** to identify those of **MiBo's customers** that have used MiBo's LidPro product. As we stated during the teleconference, this information is undeniably already in MiBo's possession, custody, or control. Moreover, the particular discussion related to a YouTube video that we believe depicts MiBo personnel using the LidPro product in an infringing manner. This constitutes direct infringement, for which there is no knowledge or intent requirement. See *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 34 (1997) ("Application of the doctrine of equivalents, therefore, is akin to determining literal infringement, and neither requires proof of intent."); *Hilton Davis Chem. Co. v. Warner-Jenkinson Co.*, 62 F.3d 1512, 1519 (Fed.Cir.1995) ("Intent is not an element of infringement."). In any event, as you know we contend that MiBo had pre-suit knowledge of the patent-in-suit since at least June 12, 2015, and that MiBo's infringement has been willful. See D.I. 2 at ¶ 23, Prayer for Relief at ¶ D.

Contrary to your characterizations, we did not say anything about a knowledge requirement for inducing infringement. In any event, however, we note that even if MiBo somehow establishes it lacked pre-suit knowledge of the patent, this no defense against post-suit conduct. See *Rembrandt Soc. Media, LP v. Facebook, Inc.*, 950 F. Supp. 2d 876, 881 (E.D. Va. 2013) ("a majority of district courts considering this issue have held that post-suit knowledge (i.e., knowledge provided by the filing of the lawsuit) satisfies the knowledge element for indirect infringement"); *Apeldyn Corp. v. Sony Corp.*, 852 F.Supp.2d 568, 573 (D.Del.2012) (holding that "there is no legal impediment to having an indirect infringement cause of action limited to post-litigation conduct"); *Walker Digital, LLC v. Facebook, Inc.*, 852 F.Supp.2d 559, 565 (D.Del.2012) (same); *Achates Reference Pub., Inc. v. Symantec Corp.*, No. 2:11cv294, 2013 WL 693955, *2 (E.D.Tex. Jan. 10, 2013); *Intellect Wireless Inc. v. Sharp Corp.*, No. 10cv6763, 2012 WL 787051, *11 (N.D.Ill. Mar. 9, 2012) ("[d]efendants' knowledge of the patent as of the time of the suit's commencement can satisfy the knowledge requirement for conduct that post-dates the date of the complaint"); *Trading Techs. Int'l, Inc. v. BCG Partners, Inc.*, 2011 WL 3946581, 4 (N.D.Ill. Sept. 2, 2011); *Symantec Corp. v. Veeam Software Corp.*, No. C12-00700, 2012 WL 1965832, *4 (N.D.Cal. May 31, 2013); *Pacing Techs., LLC v. Garmin Int'l, Inc.*, No. 12cv1067, 2013 WL 444642, *2 (S.D.Cal. Feb. 5, 2013).

I am always happy to speak to you on the phone to clear up issues that may arise. Next time please give me a call to clarify any confusion you may have.

Best,

Chris

Christopher D. Mays | WSGR | 650.849.3088 | cmays@wsgr.com

-----Original Message-----

From: Steven E. Ross [<mailto:sross@rossipg.com>]

Sent: Tuesday, August 07, 2018 6:57 PM

To: Mays, Christopher

Cc: Palaiyanur, Shyam; WSGR - Blephex; Elson, Vera; Anthony J. Magee; Steven E. Ross;

Charles.Hosch@clarkhillstrasburger.com

Subject: Blephex v. MiBo - law of inducement of infringement

Chris:

We are sure the parties will exchange confirmatory emails and/or letters as a result of today's two and a half hour meet-and-confer, but there is one particularly significant matter that we want to bring up separately.

During today's meet-and-confer, we pointed out to you once again (as MiBo's correspondence and interrogatory responses have previously advised) that MiBo had absolutely no knowledge of the '718 Patent before it was served with Blephex's complaint in this case.

We were quite astonished when you replied that knowledge of the patent is irrelevant to a claim of inducement of patent infringement.

Your statement is very troubling on multiple levels, including but not limited to the fact that it indicates Blephex is pursuing this lawsuit based on a profound misunderstanding of the law.

Please immediately confirm that your statement was an incorrect statement of law and that your statement does not reflect Blephex's positions in this case.

We will await your written response.

Steven E. Ross
Ross IP Group PLLC
5050 Quorum Drive, Suite 700
Dallas, Texas 75254
Phone: 972-661-9400
sross@rossipg.com

EXHIBIT 4

From: Steven E. Ross <sross@rossipg.com>
Sent: Friday, August 31, 2018 7:31 PM
To: Mays, Christopher
Cc: WSGR - Blephex; Derek Rollins; Anthony J. Magee; Palaiyanur, Shyam
Subject: Re: BlephEx, LLC v. Pain Point Medical Systems, Inc.

Chris:

We aren't sure how to respond to your request because your email is not clear, and you have not sent us a further amended complaint for us to review. Are you saying that, despite your earlier email, Blephex no longer intends to assert new claims of direct and contributory infringement in its proposed amended complaint?

As we have advised you on multiple occasions, Blephex's allegations in this dispute suffer from multiple defects, including the absence of reasonable bases in fact and law. MiBo is obviously not inclined to agree to your request for leave to assert additional frivolous claims.

Nevertheless, if you will send us a draft of the amended complaint you currently wish to file, we will endeavor to provide you with a substantive response to your question. Please note, however, that I am writing this late on Friday evening of the Labor Day holiday, and I intend to spend time with my family over the weekend. Thank you.

Sincerely,

Steve

Steven E. Ross
Ross IP Group PLLC
5050 Quorum Drive, Suite 700
Dallas, Texas 75254
Phone: 972-661-9400
sross@rossipg.com

On Aug 28, 2018, at 3:54 PM, Mays, Christopher <cmays@wsgr.com> wrote:

Dear Steve:

Please advise by August 31 if MiBo's position would change if Blephex amends its complaint to plead only post-suit inducement.

Regards,

Chris

Christopher D. Mays | WSGR | 650.849.3088 | cmays@wsgr.com

From: Steven E. Ross [<mailto:sross@rossipg.com>]
Sent: Wednesday, August 22, 2018 2:27 PM
To: Mays, Christopher

Dear Chris:

MiBo will oppose Blephex's motion for leave to file an amended complaint.

Sincerely,

Steve

Steven E. Ross
Partner

<image001.jpg>

5050 Quorum Drive, Suite 700
Dallas, Texas 75254
Phone: 972-661-9400
Fax: 972-661-9401
sross@rossipg.com | www.rossipg.com

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From: Mays, Christopher [<mailto:cmays@wsgr.com>]
Sent: Wednesday, August 22, 2018 3:47 PM
To: Steven E. Ross <sross@rossipg.com>
Cc: WSGR - Blephex <blephex@wsgr.com>; Derek Rollins <DRollins@shackelfordlaw.net>; Anthony J. Magee <amagee@rossipg.com>; Palaiyanur, Shyam <spalaiyanur@wsgr.com>
Subject: RE: BlephEx, LLC v. Pain Point Medical Systems, Inc.

Dear Steve:

In light of your filing today we would appreciate a response regarding our proposed amended complaint.

Thanks,

Chris

Christopher D. Mays | WSGR | 650.849.3088 | cmays@wsgr.com

From: Palaiyanur, Shyam
Sent: Friday, August 17, 2018 3:15 PM

To: Anthony J. Magee; Steven E. Ross

Cc: WSGR - Blephex; Derek Rollins

Subject: BlephEx, LLC v. Pain Point Medical Systems, Inc.

Counsel,

Pursuant to our August 8, 2018 letter memorializing the parties' August 7 meet and confer and our July 18 letter, please see attached for BlephEx's Second Supplemental Responses to MiBos First Set of Interrogatories. We are awaiting some further information from the client on a few issues but will supplement when we are able. We will also serve verification next week.

Pursuant to the parties' Monday August 13, 2018 meet-and-confer, BlephEx also attaches its first amended complaint. Please promptly let us know whether MiBo intends to oppose the amendment.

Best Regards,

Shyam Palaiyanur

Wilson Sonsini Goodrich & Rosati
900 South Capital of Texas Highway
Las Cimas IV, Fifth Floor
Austin, Texas 78746-5546
512.338.5436 (direct)
spalaiyanur@wsgr.com

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

BLEPHEX LLC

Plaintiff

vs.

PAIN POINT MEDICAL SYSTEMS, INC. d/b/a
MiBo Medical Group Inc.,

Defendant

Civil Action No. 3:16-cv-00410-N

Judge: David C. Godbey

**ORDER DENYING DEFENDANT’S MOTION TO DISMISS, AND GRANTING
BLEPHEX’S CROSS-MOTION TO AMEND THE COMPLAINT**

Before the Court is Defendant MiBo’s Motion to Dismiss Plaintiff’s Indirect Infringement Claim, filed August 22, 2018 and Plaintiff Blephex’s opposition thereto and Plaintiff Blephex’s Cross-Motion to Amend the Complaint filed September 12, 2018.

Upon the papers submitted by the Plaintiff and Defendant, it is HEREBY ORDERED as follows:

1. The Motion to Dismiss Plaintiff’s Indirect Infringement Claim is denied; and
2. Blephex is granted leave to file the First Amended Complaint by October ____, 2018.

SIGNED THIS __ DAY OF _____, 2018

THE HONORABLE DAVID C. GODBEY
UNITED STATES DISTRICT JUDGE