

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

XODUS MEDICAL, INC., ALESSIO
PIGAZZI and GLENN KEILAR,

Plaintiffs,

v.

THE SOULE CO., d/b/a Soule
Medical,

Defendant.

Civil Action

No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Xodus Medical Inc., Alessio Pigazzi, and Glenn Keilar (collectively “Plaintiffs”), by and through their undersigned counsel, hereby allege the following for their Complaint against Defendant The Soule Co., d/b/a Soule Medical.

THE PARTIES

1. Plaintiff Xodus Medical Inc. (“Xodus”) is a Pennsylvania corporation having a principal place of business at 702 Prominence Drive, New Kensington, Pennsylvania 15068.

2. Plaintiff Alessio Pigazzi is an individual with a place of residence in Corona Del Mar, California 92625.

3. Plaintiff Glenn Keilar is an individual with a place of residence in Mission Viejo, California 92691.

4. Upon information and belief, Defendant The Soule Co., d/b/a/ Soule Medical (“Soule” or “Defendant”) is a Florida Corporation having a principal place of business in Lutz, Florida 33559.

JURISDICTION AND VENUE

5. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 271 *et seq.*

6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

7. This Court has personal jurisdiction over Soule because Soule has committed, and continues to commit, acts of infringement in this district.

8. Venue is proper under 28 U.S.C. §§ 1391 and 1400 because Soule resides in this district, and has committed acts of infringement in this district while having a regular and established place of business in this district.

FACTS

9. On June 18, 2013, the United States Patent and Trademark Office duly and lawfully issued United States Patent No. 8,464,720 (“the ‘720 patent”). The ‘720 patent relates to methods and systems for maintaining patient position on a tilted table during medical or surgical procedures. Alessio Pigazzi and Glenn Keilar are the owners of all right, title, and interest to the ‘720 patent. Xodus is the exclusive licensee of the ‘720 patent. A true and correct copy of the ‘720 patent is attached hereto as Exhibit A.

10. On October 20, 2015, the United States Patent and Trademark Office duly and lawfully issued United States Patent No. 9,161,876

(“the ‘876 patent”). The ‘876 patent relates to methods and arrangements for maintaining patient position on a tilted table during medical or surgical procedures. Alessio Pigazzi and Glenn Keilar are the owners of all right, title, and interest to the ‘876 patent. Xodus is the exclusive licensee of the ‘876 patent. A true and correct copy of the ‘876 patent is attached hereto as Exhibit B.

11. Soule manufactures, markets, and sells the following Trendelenburg positioners: TP 2000-D; TP 2001-D; TP 2002-D; TP 2003-D; TP 2000E-S-D; and TP 2001E-S-D (“Accused Devices”). The Accused Devices are marketed by Defendant to be used to maintain patient position during a medical or surgical procedure on a tilted table.

12. Upon information and belief, each of the Accused Devices meets the limits of, and thus infringes, at least one claim of the ‘720 patent and/or the ‘876 patent.

13. Soule does not possess, and never has possessed, a valid license to practice either the ‘720 or ‘876 patents

COUNT I

(INFRINGEMENT OF THE ‘720 PATENT)

14. Plaintiffs incorporate by reference herein the averments set forth in paragraphs 1–13 hereof as if set forth herein in their entirety.

15. Soule has and continues to infringe at least one of claims 1, 2, 4, 6-8, and 10-12 of the ‘720 patent under 35 U.S.C. § 271 by manufacturing, selling, and/or offering to sell the above-recited Accused Devices.

16. Soule is directly infringing, contributorily infringing, and/or inducing the infringement of the '720 patent.

17. Upon information and belief, Soule will continue to infringe the '720 patent unless enjoined by this Court.

18. Upon information and belief, Soule's activities in infringing the '720 patent are willful and wanton, constituting willful infringement of such United States Patent under 35 U.S.C. § 285.

19. Plaintiffs have been irreparably damaged and will continue to be irreparably damaged by reason of Defendant's infringement of the '720 patent unless this Court restrains the infringing acts of Defendant. Plaintiffs are without an adequate remedy at law.

COUNT II

(INFRINGEMENT OF THE '876 PATENT)

20. Plaintiffs incorporate by reference herein the averments set forth in paragraphs 1-19 hereof as if set forth herein in their entirety.

21. Soule has and continues to infringe at least one of claims 1-4, 6-8, 11-14, 17-18, and 20 of the '876 patent under 35 U.S.C. § 271 by manufacturing, selling, and/or offering to sell the above-recited Accused Devices.

22. Soule is directly infringing, contributorily infringing, and/or inducing the infringement of the '876 patent.

23. Upon information and belief, Soule will continue to infringe the '876 patent unless enjoined by this Court.

24. Upon information and belief, Soule's activities in infringing the '876 patent are willful and wanton, constituting willful infringement of such United States Patent under 35 U.S.C. § 285.

25. Plaintiffs have been irreparably damaged and will continue to be irreparably damaged by reason of Defendant's infringement of the '876 patent unless this Court restrains the infringing acts of Defendant. Plaintiffs are without an adequate remedy at law.

WHEREFORE, Plaintiffs pray:

A. that Soule, its officers, employees, agents, and those persons in active participation with them be permanently enjoined from infringing the claims of United States Patent Nos. 8,464,720 and 9,161,876 and each of them;

B. that a decree be entered adjudging that Soule has infringed the claims of United States Patent Nos. 8,464,720 and 9,161,876 and each of them, and that such infringement was willful;

C. that Soule be ordered to pay damages to Plaintiffs pursuant to 35 U.S.C. § 284, including interest from the dates of infringement, resulting from Soule's infringement of United States Patent Nos. 8,464,720 and 9,161,876 and each of them;

D. that Soule be ordered to pay to Plaintiffs treble damages pursuant to 35 U.S.C. § 284, resulting from Soule's willful infringement of United States Patent Nos. 8,464,720 and 9,161,876 and each of them;

E. that Plaintiffs be awarded their costs of this action and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285; and

F. that Plaintiffs be awarded such further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury for all issues triable by a jury.

Respectfully submitted,

Dated: April 9, 2019

/s/ Frank R. Jakes

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