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Counsel for Plaintiff DoseLogix, LLC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DoseLogix, LLC,

Plaintiff,

v.

BiosRX, Inc.,

Defendant.

Case No. 19-cv-340

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff DoseLogix, LLC (“DoseLogix”) files this Complaint against Defendant BiosRX, Inc. (“BiosRX”) and alleges the following:

NATURE OF SUIT

1. This is an action for damages and equitable relief arising under the patent laws of the United States, Title 35, United States Code, including in particular, Sections 271, 281, 283, 284, and 285, as a result of BiosRX’s acts of infringement of U.S. Patent No. 10,086,146 (the “’146 Patent”).

THE PARTIES

2. DoseLogix is a corporation organized and existing under the laws of the State of Georgia, and has a principle place of business at 300 Parkbrooke Place, Suite 140, Woodstock, GA, 30189. DoseLogix is in the business of manufacturing and selling medical dosing applicators and dispensers (and related products), including, but not limited to, the DoseLogix Topi-CLICK® Perl™ Vaginal Dosing Kit. DoseLogix is the current assignee and owner of the ’146 Patent, and

1 is entitled to enforce all rights arising therefrom, including the right to prevent infringement of the
2 patent.

3 3. On information and belief, BiosRX is a corporation organized under the laws of
4 the State of California, with its principle place of business at 1300 E Bidwell Street, Suite 105,
5 Folsom, CA 95630. On information and belief, BiosRX is registered to do business in California,
6 and has a regular and established place of business at 1300 E Bidwell Street, Suite 105, Folsom,
7 CA 95630. BiosRX may be served through its registered agent for service of process, Maryam
8 Amiri, 1028 Elsworth Way, Folsom, CA 95630. On information and belief, BiosRX makes, uses,
9 offers for sale, sells, and/or imports medical dosing applicators and dispensers in the United
10 States, including the Gentle Dose® vaginal applicator and TICKER® Unlimited.

11 JURISDICTION AND VENUE

12 4. This Court has subject matter jurisdiction over the subject matter of this action
13 under 28 U.S.C. § 1331 and 1338(a).

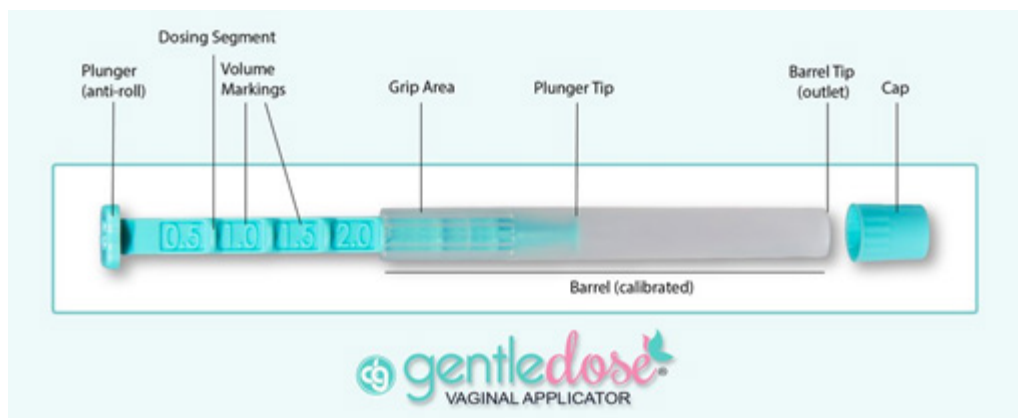
14 5. This Court has personal jurisdiction over BiosRX because the Court's exercise of
15 jurisdiction over BiosRX comports with due process. This Court has both general and specific
16 jurisdiction over BiosRX. BiosRX has continuous corporate operations within California and this
17 District in particular, that are so substantial and of such a nature as to justify suit against it on all
18 causes of action. On information and belief, BiosRX's principal place of business at 1300 E
19 Bidwell Street, Suite 105, Folsom, CA 95630. BiosRX also has certain minimum contacts with
20 California, and this District in particular, such that the maintenance of the suit does not offend
21 traditional notions of fair play and substantial justice. On information and belief, BiosRX is
22 registered to do business in California, has a regular and established place of business at 1300 E
23 Bidwell Street, Suite 105, Folsom, CA 95630, and has a registered agent for service of process in
24 California. As such, BiosRX's contacts with California, and this District in particular, are so
25 constant and pervasive as to render it essentially at home. Additionally, on information and belief,
26 BiosRX has purposefully directed activities at residents of the forum, the present patent
27 infringement claims arises out of those activities, and assertion of personal jurisdiction over
28 BiosRX by this Court is reasonable and fair.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1400(b) because BiosRX resides in this District and BiosRX has a regular and established place of business in this District, at 1300 E Bidwell Street, Suite 105, Folsom, CA 95630, and has committed acts of infringement in this District.

GENERAL ALLEGATIONS

7. On October 2, 2018, the United States Patent and Trademark Office duly and legally issued the '146 Patent. The '146 Patent is entitled "Flowable Composition Applicator." A true and correct copy of the '146 Patent is attached to this Complaint as Exhibit A.

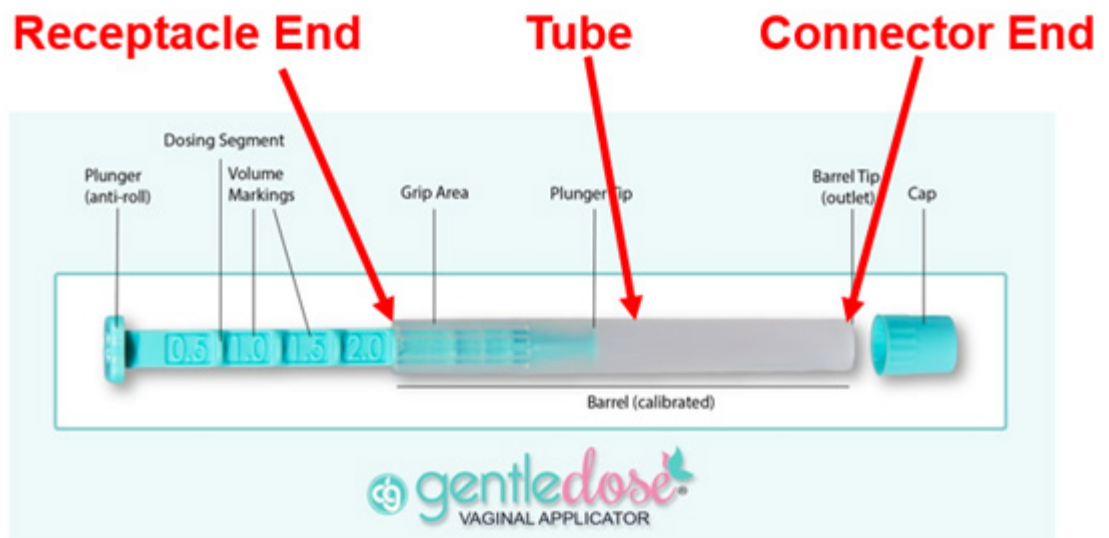
8. BiosRX makes, uses, offers to sell, and sells within the United States, and imports into the United States, medical dosing applicators and dispensers, such as the Gentle Dose® vaginal applicator and TICKER® Unlimited. *See* Exhibits B–C.



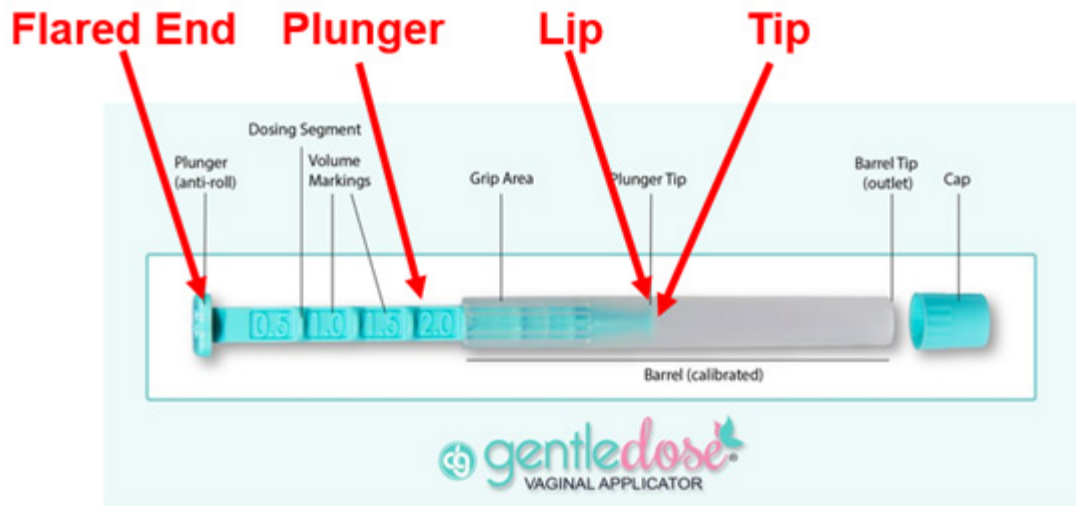
9. BiosRX's activities with respect to such medical dosing applicators and dispensers, including the Gentle Dose® vaginal applicator and TICKER® Unlimited, infringe one or more claims of the '146 Patent.

10. For example, BiosRX's Gentle Dose® vaginal applicator infringes at least claim 1 of the '146 Patent, which recites: "An applicator comprising: a tube comprising a receptacle end and a connector end opposite from the receptacle end, wherein the tube defines a hollow core having a core wall extending from the connector end to the receptacle end; and a plunger comprising a tip, a flared end opposite from the tip, and a lip extending outwards from the plunger, wherein the plunger is movable within the hollow core between a dispensed position, a loaded position, and a filled position, wherein a distance between the tip and the connector end in the loaded position is greater than a distance between the tip and the connector end in the dispensed position and less than a distance between the tip and the connector end in the filled position, wherein the plunger is in the loaded position prior to loading of a flowable composition within the hollow core, and wherein the lip forms a seal with the core wall of the tube."

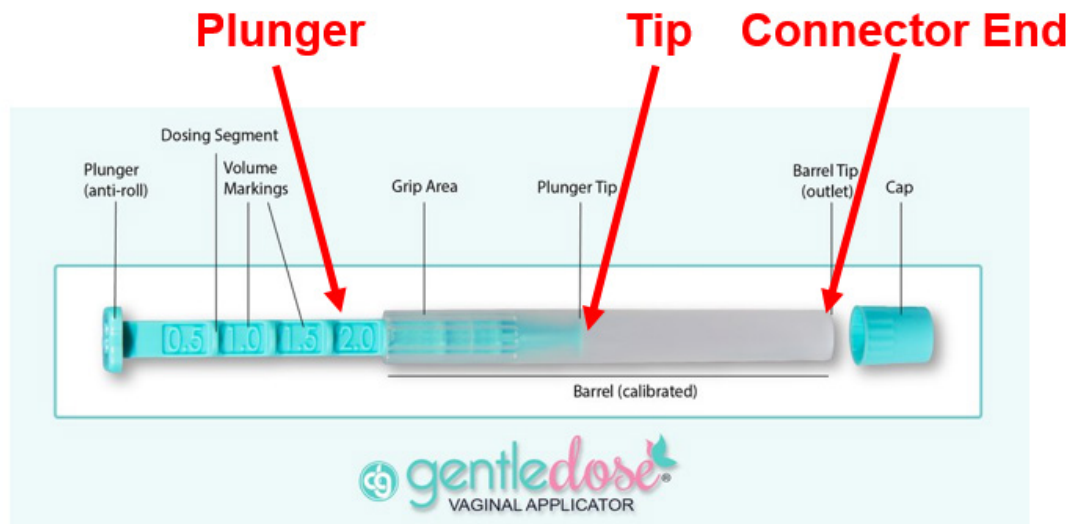
11. The BiosRX Gentle Dose® vaginal applicator comprises a tube comprising a receptacle end and a connector end opposite from the receptacle end, wherein the tube defines a hollow core having a core wall extending from the connector end to the receptacle end, as illustrated below:



12. The BiosRX Gentle Dose® vaginal applicator comprises a plunger comprising a tip, a flared end opposite from the tip, and a lip extending outwards from the plunger, wherein the lip forms a seal with the core wall of the tube, as illustrated below:



13. The plunger of the BiosRX's Gentle Dose® vaginal applicator is movable within the hollow core between a dispensed position, a loaded position, and a filled position, wherein a distance between the tip and the connector end in the loaded position is greater than a distance between the tip and the connector end in the dispensed position and less than a distance between the tip and the connector end in the filled position, as illustrated in part below:



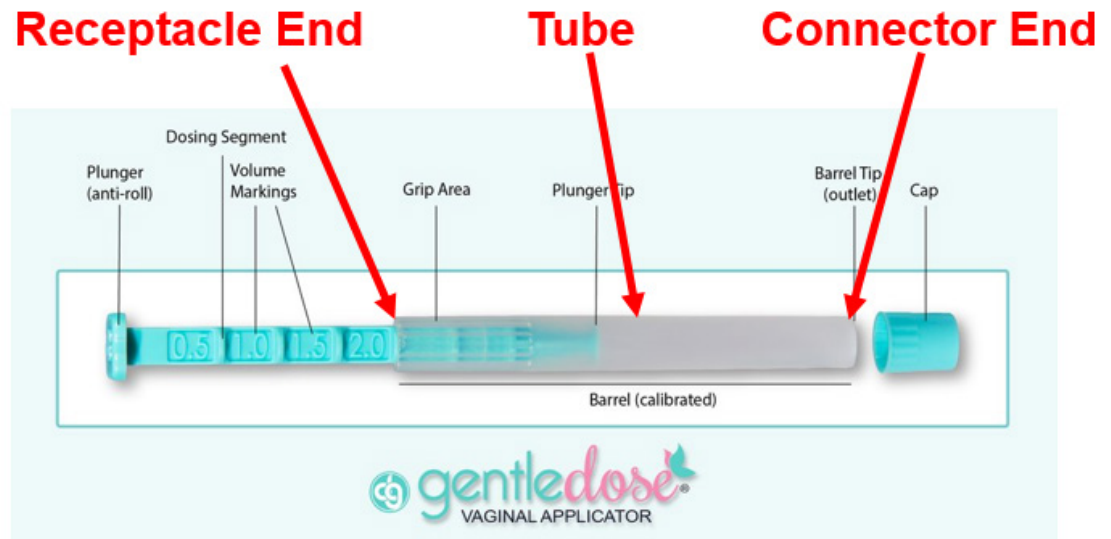
14. The plunger of the BiosRX's Gentle Dose® vaginal applicator is in the loaded position prior to loading of a flowable composition within the hollow core, as illustrated below:



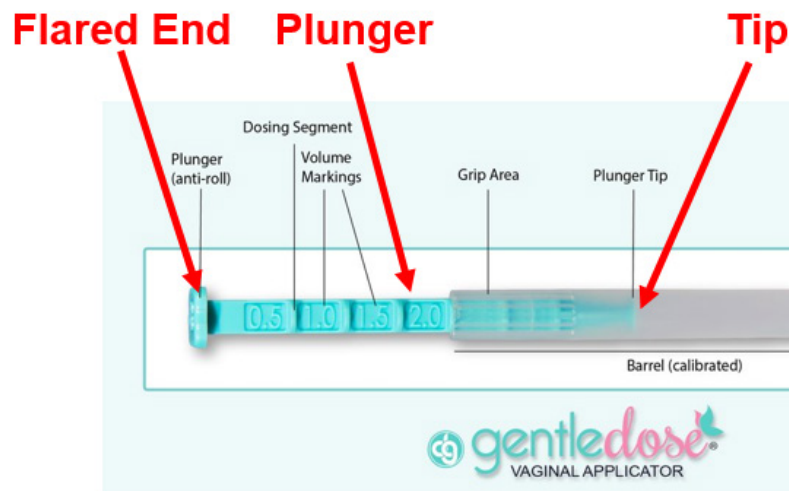
15. As another example, BiosRX's Gentle Dose® vaginal applicator infringes at least claim 10 of the '146 Patent, which recites: "An applicator comprising: a tube comprising a receptacle end and a connector end opposite the receptacle end, wherein the tube defines a hollow core having a core wall extending from the receptacle end to the connector end; and a plunger comprising a tip, a flared end opposite the tip, and an outer surface extending from the tip to the flared end, wherein the plunger is movable within the hollow core between a dispensed position and a filled position, wherein the plunger comprises at least two ribs extending outwardly from the outer surface of the plunger between tip and the flared end that are spaced apart by a predetermined distance, and wherein the tip of the plunger protrudes a predetermined distance through the connector end of the tube and away from the connector end of the tube when the plunger is in the dispensed position."

16. The BiosRX Gentle Dose® vaginal applicator comprises a tube comprising a receptacle end and a connector end opposite the receptacle end, wherein the tube defines a hollow

core having a core wall extending from the receptacle end to the connector end, as illustrated below:

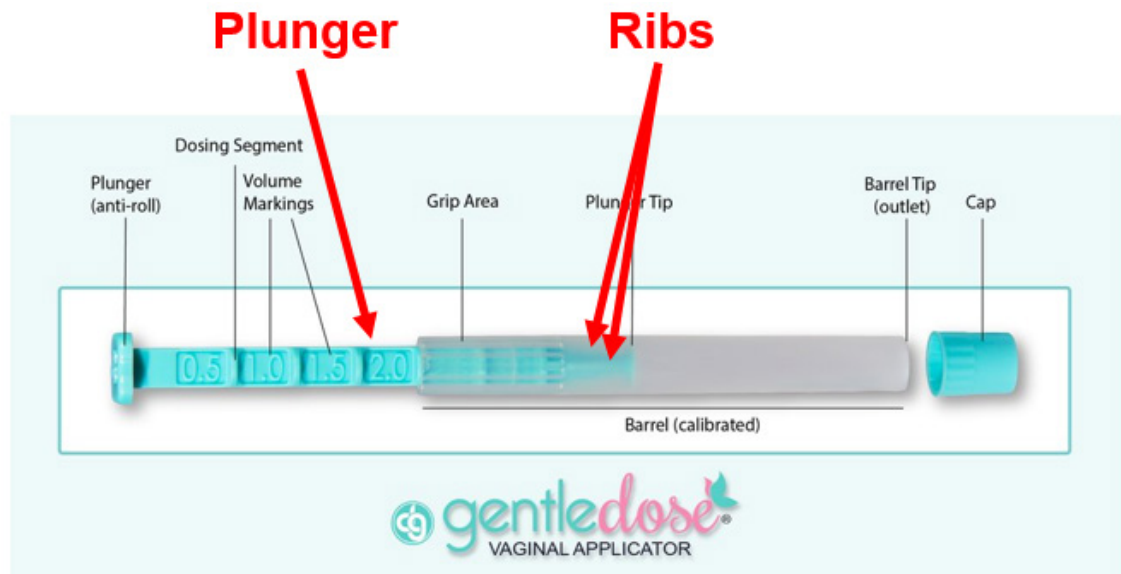


17. The BiosRX Gentle Dose® vaginal applicator comprises a plunger comprising a tip, a flared end opposite the tip, and an outer surface extending from the tip to the flared end, as illustrated below:

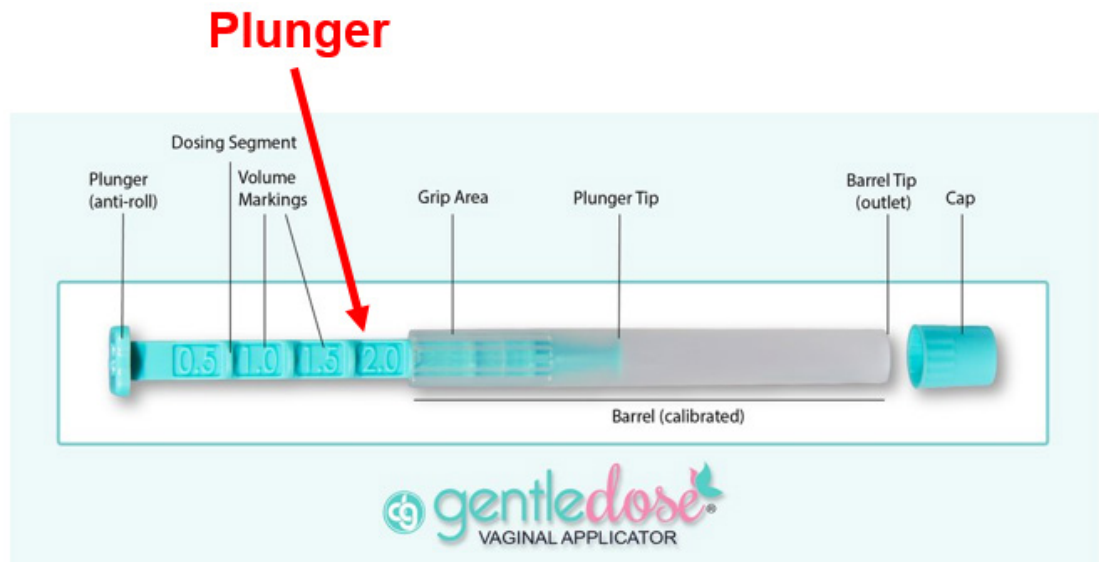


18. The plunger of the BiosRX Gentle Dose® vaginal applicator comprises at least two ribs extending outwardly from the outer surface of the plunger between tip and the flared end that are spaced apart by a predetermined distance, as illustrated below:

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19. The plunger of the BiosRX Gentle Dose® vaginal applicator is movable within the hollow core between a dispensed position and a filled position, as illustrated in part below:

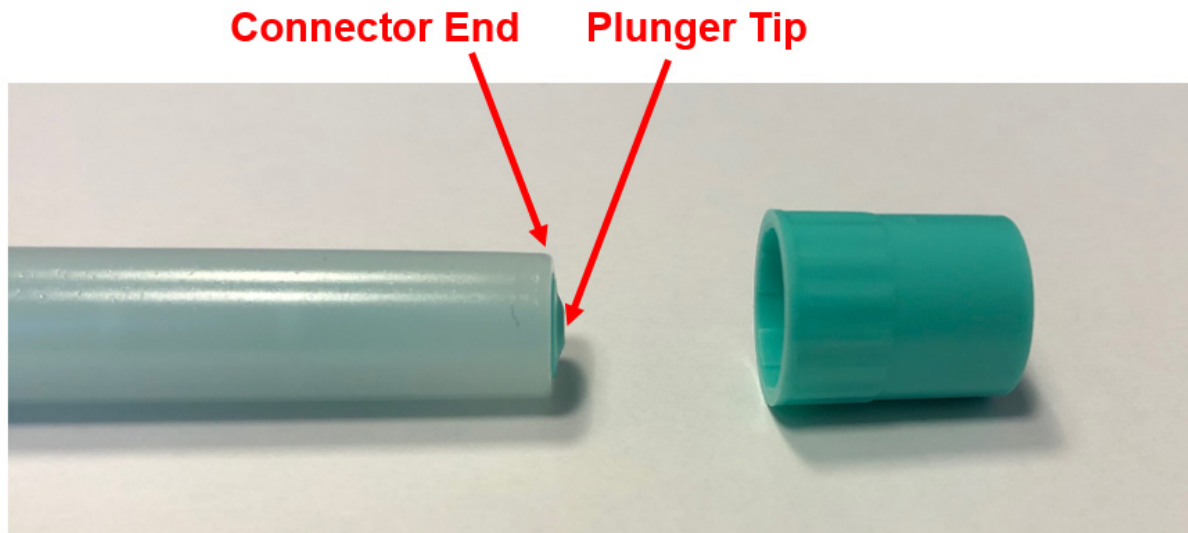


20. The tip of the plunger of the BiosRX Gentle Dose® vaginal applicator protrudes a predetermined distance through the connector end of the tube and away from the connector end of the tube when the plunger is in the dispensed position, as illustrated below:

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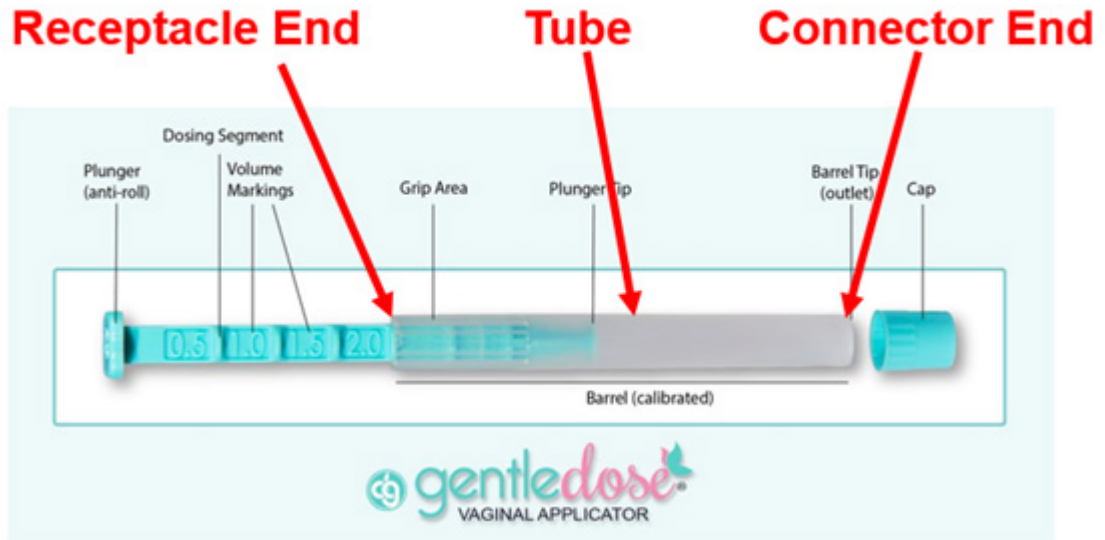


21. As another example, the system of BiosRX's Gentle Dose® vaginal applicator and BiosRX's TICKER® Unlimited infringes at least claim 7 of the '146 Patent, which recites: "An applicator system comprising: an applicator comprising: a tube comprising a receptacle end and a connector end opposite the receptacle end, wherein the tube defines a hollow core having a core wall extending from the connector end to the receptacle end; and a plunger comprising a tip and a flared end opposite the tip, wherein the plunger is movable within the hollow core between a dispensed position, a loaded position, and a filled position, wherein a distance between the tip and the connector end in the loaded position is greater than a distance between the tip and the connector end in the dispensed position and less than a distance between the tip and the connector end in the filled position; and an administering tool comprising a dispenser nozzle, wherein the dispenser nozzle comprises a tip, and wherein the tip of the nozzle is receivable within the hollow core at the connector end such that the plunger is moved from the dispensed position to the loaded position prior to loading of a flowable composition within the hollow core."

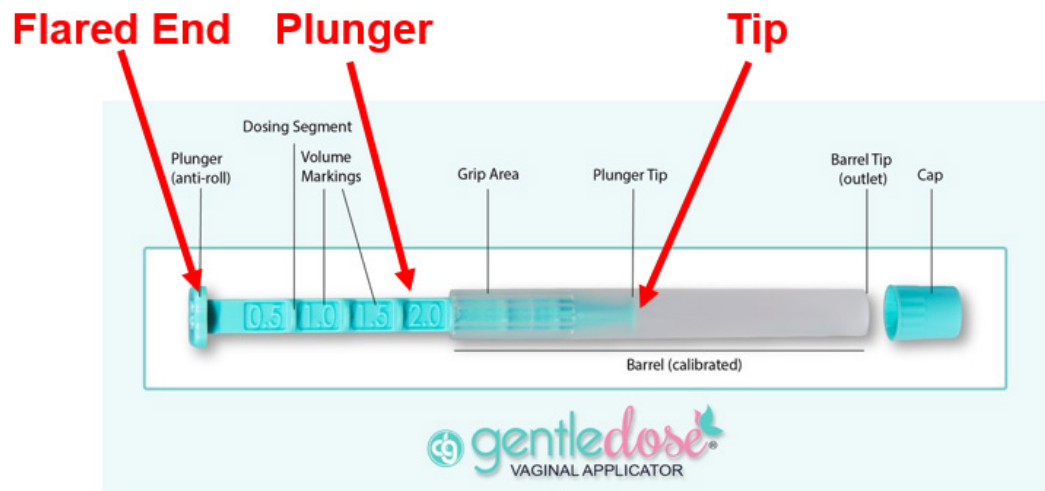
22. The BiosRX Gentle Dose® vaginal applicator comprises a tube comprising a receptacle end and a connector end opposite the receptacle end, wherein the tube defines a hollow core having a core wall extending from the connector end to the receptacle end, as illustrated below:

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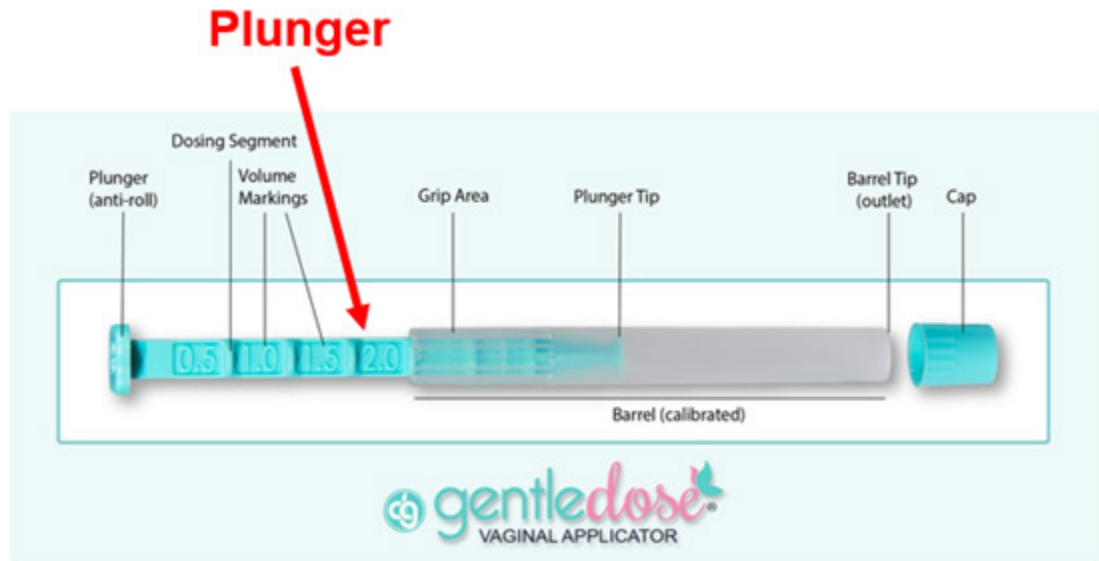
23. The BiosRX Gentle Dose® vaginal applicator comprises a plunger comprising a tip and a flared end opposite the tip, as illustrated below:



24. The plunger of the BiosRX Gentle Dose® vaginal applicator is movable within the hollow core between a dispensed position, a loaded position, and a filled position, wherein a distance between the tip and the connector end in the loaded position is greater than a distance between the tip and the connector end in the dispensed position and less than a distance between the tip and the connector end in the filled position, as illustrated in part below:

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25. The BiosRX TICKER® Unlimited comprises a dispenser nozzle, wherein the dispenser nozzle comprises a tip, as illustrated below:



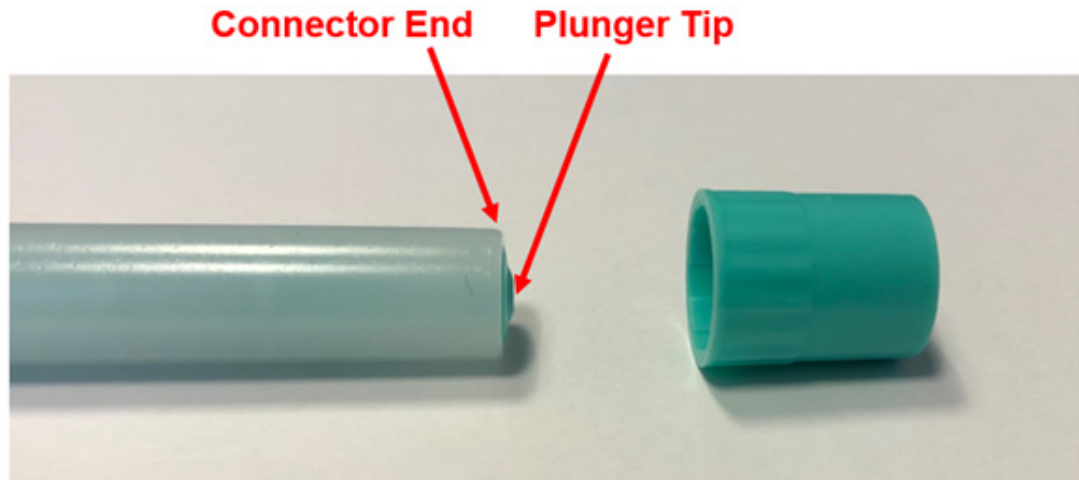
26. The tip of the dispenser nozzle of the BiosRX TICKER® Unlimited is receivable within the hollow core of the tube of the BiosRX Gentle Dose® vaginal applicator at the

connector end such that the plunger is moved from the dispensed position to the loaded position prior to loading of a flowable composition within the hollow core, as illustrated in part below:



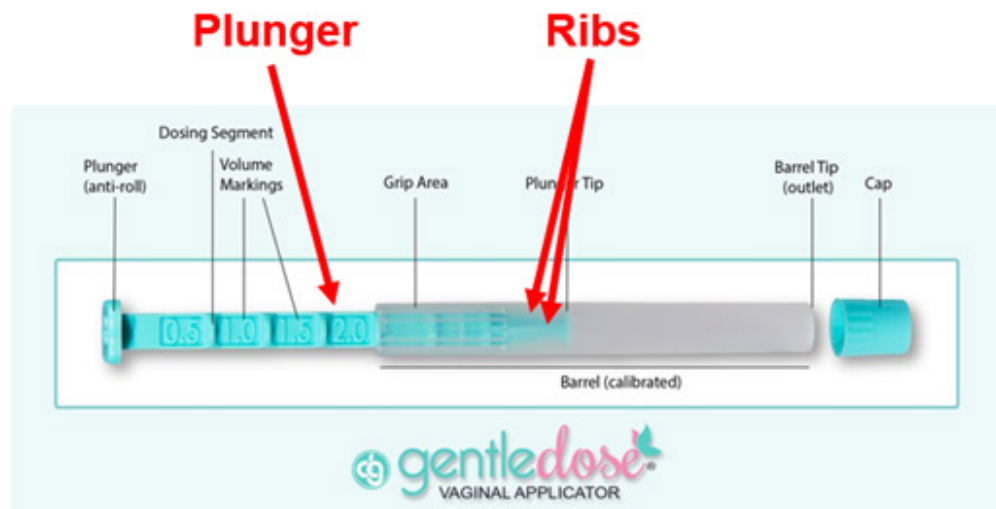
27. The system of BiosRX's Gentle Dose® vaginal applicator and BiosRX's TICKER® Unlimited infringes at least claim 8 of the '146 Patent, which recites: "The applicator system of claim 7, wherein the tip of the plunger protrudes a predetermined distance through the connector end of the tube and away from the connector end when the plunger is in the dispensed position."

28. The tip of the plunger of the BiosRX Gentle Dose® vaginal applicator protrudes a predetermined distance through the connector end of the tube and away from the connector end when the plunger is in the dispensed position, as illustrated below:



29. The system of BiosRX's Gentle Dose® vaginal applicator and BiosRX's TICKER® Unlimited infringes at least claim 9 of the '146 Patent, which recites: "The applicator system of claim 7, wherein the plunger comprises at least two ribs extending outwardly from an outer surface of the plunger between the tip of the plunger and the flared end, and wherein the at least two ribs are spaced apart by a predetermined distance."

30. The plunger of the BiosRX Gentle Dose® vaginal applicator comprises at least two ribs extending outwardly from an outer surface of the plunger between the tip of the plunger and the flared end, and wherein the at least two ribs are spaced apart by a predetermined distance, as illustrated below:



31. On information and belief, BiosRX has had knowledge of the '146 Patent prior to (and at least since) the filing of this Complaint. Despite such knowledge of the '146 Patent, BiosRX continued, and still continues today, to manufacture, use, offer for sale, sell in the United States (including in this District), and/or import into the United States, medical dosing applicators and dispensers, including the Gentle Dose® vaginal applicator and TICKER® Unlimited, that infringe one or more claims of the '146 Patent.

COUNT I

32. DoseLogix realleges, adopts, and incorporates by reference each of the foregoing allegations as if fully set forth herein.

33. BiosRX has manufactured, used, offered for sale, sold within the United States (including in this District), and/or imported into the United States, and continues to manufacture, use, offer for sale, sell in the United States (including in this District), and/or import into the United States, medical dosing applicators and dispensers, including the Gentle Dose® vaginal applicator and TICKER® Unlimited, that incorporate each and every element of one or more of the claims of the '146 Patent and therefore are covered by the '146 Patent (“the Accused Products”).

34. BiosRX has been infringing and continues to infringe the '146 Patent, either literally or under the doctrine of equivalents, by making, using, selling, offering for sale in the United States, and/or importing into the United States the Accused Products, such as the Gentle Dose® vaginal applicator and TICKER® Unlimited, that embody each element of at least one of the claims of the '146 Patent and will continue to do so unless enjoined by this Court.

35. BiosRX also indirectly infringes the '146 Patent within the United States by inducement under 35 U.S.C. § 271(b). Since learning of the '146 Patent and by failing to cease offering the Accused Products, BiosRX has knowingly and intentionally induced, and continues knowingly and intentionally to induce, others in this District and throughout the United States to directly infringe one or more claims of the '146 Patent. BiosRX does so, *inter alia*, by advertising and promoting the use of the Accused Products on BiosRX's website, including, but not limited, through one or more instructional videos, such as the video available at

1 <https://www.youtube.com/watch?v=ZcaenGCzguI&feature=youtu.be>. See Exhibit B–C.

2 36. BiosRX also indirectly infringes the '146 Patent by contributing to the direct
3 infringement of end users under 35 U.S.C. § 271(c) by providing the Accused Products, which, as
4 evidenced by BiosRX's own marketing materials and instructional videos, are specially made for
5 use in a manner infringing one or more claims of the '146 Patent, and are not staple articles of
6 commerce for substantial non-infringing uses. See Exhibits B–C.

7 37. DoseLogix has been damaged by BiosRX's infringement of the '146 Patent and
8 will suffer additional irreparable damage and impairment of the value of its patent rights unless
9 BiosRX is enjoined from continuing to infringe.

10 38. DoseLogix has suffered damages as a result of BiosRX's infringement of the '146
11 Patent, including in the form of lost profits, lost sales, and/or lost opportunities. DoseLogix is
12 entitled to recover damages to compensate it for BiosRX's infringing activities in an amount to be
13 determined at trial, but in no event less than a reasonable royalty.

14 39. BiosRX's infringement has been and continues to be egregious and willful, with
15 knowledge of the existence of the '146 Patent, such that DoseLogix is entitled to recover its
16 attorneys' fees and other expenses of litigation pursuant to 35 U.S.C. § 285.

17 **JURY DEMAND**

18 In accordance with Rule 38(b) of the Federal Rules of Civil Procedure, DoseLogix
19 requests a trial by jury on any issue in this action triable by right before a jury.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, DoseLogix respectfully requests that the Court:

22 (a) Enter judgment that BiosRX has infringed the '146 Patent, and that such
23 infringement has been willful;

24 (b) Preliminarily and permanently enjoin BiosRX from infringing the '146 Patent,
25 pursuant to 35 U.S.C. § 283, or grant such other equitable relief the Court determines is
26 warranted;

27 (c) Award DoseLogix damages in an amount to be proven at trial because of the
28 injury suffered by reason of BiosRX's infringement of the '146 Patent, including but not limited

1 to pre-issuance damages;

2 (d) Increase the damages awarded to DoseLogix up to three times the amount found to
3 be DoseLogix's actual damages, as authorized by 35 U.S.C. § 284;

4 (e) Award DoseLogix its attorney's fees and other expenses of litigation pursuant to
5 35 U.S.C. § 285;

6 (f) Award DoseLogix prejudgment interest and costs pursuant to 35 U.S.C. § 284; and

7 (g) Award DoseLogix such other and further relief as the Court deems proper.

8 DATED: May 2, 2019

Respectfully submitted,

9 KILPATRICK TOWNSEND & STOCKTON LLP

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11 By: /s/Taylor J. Pfingst
12 TAYLOR J. PFINGST

13 *Counsel for Plaintiff DoseLogix, LLC*
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