

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Case No. 3:19-cv-00174-MOC-DSC**

OSSEO IMAGING, LLC
Plaintiffs

v.

KAVO DENTAL CORPORATION and
KAVO DENTAL TECHNOLOGIES,
LLC.

Defendant.

FIRST AMENDED COMPLAINT

Jury Trial Demanded

FIRST AMENDED COMPLAINT

Plaintiff OSSEO IMAGING, LLC, (“OSSEO”), by and through its undersigned counsel, for its First Amended Complaint, pursuant to Fed. R. Civ. P. 15(a)(1)(B), hereby alleges claims against defendant KAVO DENTAL TECHNOLOGIES, LLC (“KAVO”) and KAVO DENTAL CORPORATION as follows:

THE PARTIES

1. OSSEO is a limited liability company organized and existing under the laws of Kansas and having a place of business at 24 North Shore Drive, Lake Ozark, MO 65049.

OSSEO is the owner of a family of patents relating to dental and orthopedic imaging including U.S. Patent Nos. 6,381,301, 6,944,262 and 8,498,374 (the “301 Patent,” the “262 Patent,” and “374 Patent”, respectively).

2. Upon information and belief, KAVO is an Illinois corporation, having a regular and established place of business at 11727 Fruehauf Dr, Charlotte, NC 28273. Upon information

and belief, KAVO is a provider of dental imaging systems and sells or offers to sell such imaging systems throughout the United States.

3. On information and belief, from at least February 13, 2007, to July 7, 2009, Kavo Dental Corporation operated as a foreign corporation registered with the North Carolina Secretary of State engaged in the business of selling dental imaging systems similar to the systems described in the infringement counts below. On July 7, 2009, KAVO filed an Application for Certificate of Withdrawal by Reason of Merger, Consolidation or Conversion to merge Kavo Dental Corporation into Kavo Dental Technologies, LLC.

4. To the extent the Kavo Dental Corporation continues to exist and/or continues to sell these dental imaging systems, it is liable for infringement for the same reasons set forth below with regard to KAVO. On information and belief, absent evidence that the Kavo Dental Corporation has been dissolved, ceased all operations, and that KAVO is responsible for Kavo Dental Corporation's liabilities, it should remain as a defendant.

JURISDICTION AND VENUE

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

6. This Court has personal jurisdiction over KAVO because KAVO is registered as a foreign corporation with the Secretary of State of the State of North Carolina and has an established place of business in the State of North Carolina.

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

FACTS COMMON TO ALL COUNTS

The '374 Patent

8. On April 30, 2002, the '301 Patent entitled "Dental and orthopedic densitometry modeling system and method," a copy of which is attached hereto as *Exhibit A*, was duly and legally issued by the United States Patent and Trademark Office to Ronald E. Massie ("Mr. Massie") as the sole inventor.

9. On September 13, 2005, the '262 Patent also entitled "Dental and orthopedic densitometry modeling system and method," a copy of which is attached hereto as *Exhibit B*, was duly and legally issued by the United States Patent and Trademark Office to Mr. Massie.

10. On July 30, 2013, the United States Patent and Trademark Office duly and legally issued the '374 Patent also entitled "Dental and orthopedic densitometry modeling system and method," a copy of which is attached hereto as *Exhibit C*, to Mr. Massie. The '374 Patent is a continuing application that claims the benefit of the '262 Patent and the '301 Patent.

11. The '301, '262, and '374 Patents were assigned to and are owned solely by OSSEO.

12. The '301, '262, and '374 Patents relate to methods and systems for the densitometric/tomographic modeling of dental and other orthopedic structures. (*See, e.g.*, '262 patent at 1:15-19; '374 Patent at 1:25-31.) In certain embodiments, the systems include a particular combination of hardware devices, including a controller, input/output device(s), a positioning motor responsive to commands from a microprocessor associated with the controller, and x-ray equipment, collectively configured to, *inter alia*, generate and store a patient's

tomographic models, and compare such tomographic models with previously generated models. (See, e.g., '374 Patent at 4:2-5:30; Figs. 1-2.)

THE KAVO IMAGING SYSTEMS

13. KAVO sells and offers for sale a family of 3D imaging system referred to as the OP 3D Imaging Systems, which includes the Orthopantomograph (“OP”) 3D, the OP 3D Vision, and OP 3D Pro imaging systems. KAVO further sells and offers for sale with the OP 3D Imaging Systems software, including software referred to as Invivo and/or OnDemand3D, that configure the Imaging Systems to provide therewith various modeling capabilities (the Imaging Systems provided with such software referred to herein as the “Accused Systems”).

14. The Accused Systems are operable to produce three-dimensional X-ray models of a patient’s dental structure, using cone beam computed tomography. More specifically, the Invivo and OnDemand3D software enables the imaging system to capture, process, and store such three-dimensional models acquired using the OP 3D Imaging Systems.

15. KAVO sells and offers for sale the Accused Systems throughout the United States using a network of distributors.

COUNT I

Infringement of United States Patent No. 6,381,301 by KAVO

16. OSSEO re-alleges and incorporates by reference the foregoing allegations as though fully set forth here.

17. Upon information and belief, KAVO has in the past infringed and continues to infringe the '301 Patent, directly and/or by contributory infringement and/or by inducement of infringement, by making, using, selling and/or offering to sell, in this judicial district,

throughout the United States, and elsewhere, the Accused Product, which embodies the patented inventions of the '301 Patent.

18. Pursuant to 35 U.S.C. § 271(a), KAVO is liable for direct infringement of at least one claim of the '301 Patent, including without limitation claims 1-9 (as shown at least with regard to claim 1 in *Exhibit D* hereto), by having made, used, offered for sale or sold the Accused Systems and by continuing to make, use, offer for sale or sell the Accused Systems in the United States.

19. Therefore, all of the elements of at least claim 1 of the '301 Patent are embodied in the Accused Systems, as are the elements of claims 2-9 dependent thereon.

20. Pursuant to 35 U.S.C. § 271(b), KAVO is liable for inducement of infringement by continuing to knowingly cause or intend to cause the direct infringement of the '301 Patent by users of the Accused Systems in the United States, including medical professionals that use the Accused Systems in accordance with at least claims 1-9 of the '301 Patent.

21. Pursuant to 35 U.S.C. § 271(c), KAVO is liable for contributory infringement of the '301 Patent by continuing to provide components of the Accused Systems that comprise a material component of the inventions embodied in the '301 Patent, are not suitable for any substantial non-infringing use, and are especially made or adapted for use in infringing the '301 Patent by users of the Accused Systems in accordance with claims 1-9 of the '301 Patent having knowledge that the '301 Patent is being directly infringed by such users.

22. As a result of KAVO's acts of infringement of the '301 Patent, OSSEO has suffered injury to business and property in an amount to be determined as damages and will continue to suffer damages in the future,

COUNT II

Infringement of United States Patent No. 6,944,262 by KAVO

23. OSSEO re-alleges and incorporates by reference the foregoing allegations as though fully set forth here.

24. Upon information and belief, KAVO has in the past infringed and continues to infringe the '262 Patent, directly and/or by contributory infringement and/or by inducement of infringement, by making, using, selling and/or offering to sell, in this judicial district, throughout the United States, and elsewhere, the Accused Product, which embodies the patented inventions of the '262 Patent.

25. Pursuant to 35 U.S.C. § 271(a), KAVO is liable for direct infringement of at least one claim of the '262 Patent, including without limitation claims 1-6 (as shown at least with regard to claim 1 in *Exhibit E* hereto), by having made, used, offered for sale, sold, or reconstructed the Accused Systems and by continuing to make, use, offer for sale, sell, or reconstruct the Accused Systems.

26. Therefore, all of the elements of at least claim 1 of the '262 Patent are embodied in the Accused Systems, as are the elements of claims 2-6 dependent thereon.

27. Pursuant to 35 U.S.C. § 271(b), KAVO is liable for inducement of infringement by continuing to knowingly cause or intend to cause the direct infringement of the '262 Patent by

users of the Accused Systems in the United States, including medical professionals that use the Accused Systems in accordance with at least claims 1-6 of the '262 Patent.

28. Pursuant to 35 U.S.C. § 271(c), KAVO is liable for contributory infringement of the '262 Patent by continuing to provide components of the Accused Systems that comprise a material component of the inventions embodied in the '262 Patent, are not suitable for any substantial non-infringing use, and are especially made or adapted for use in infringing the '262 Patent by users of the Accused Systems in accordance with claims 1-6 of the '262 Patent having knowledge that the '262 Patent is being directly infringed by such users.

29. As a result of KAVO's acts of infringement of the '262 Patent, OSSEO has suffered injury to business and property in an amount to be determined as damages and will continue to suffer damages in the future,

COUNT III

Infringement of United States Patent No. 8,498,374 by KAVO

30. OSSEO re-alleges and incorporates by reference the foregoing allegations as though fully set forth here.

31. Upon information and belief, KAVO has in the past infringed and continues to infringe the '374 Patent, directly and/or by contributory infringement and/or by inducement of infringement, by making, using, selling and/or offering to sell, in this judicial district, throughout the United States, and elsewhere, the Accused Product, which embodies the patented inventions of the '374 Patent.

32. Pursuant to 35 U.S.C. § 271(a), KAVO is liable for direct infringement of at least one claim of the '374 Patent, including without limitation claims 1-21 (as shown at least with

regard to claims 1, 13, and 21 in *Exhibit F* hereto), by having made, used, offered for sale, sold, or reconstructed the Accused Systems and by continuing to make, use, offer for sale, sell, or reconstruct the Accused Systems.

33. Therefore, all of the elements of at least claims 1, 13, and 21 of the '374 Patent are embodied in the Accused Systems, as are the elements of claims 2-12, 14-21 and 22-24 dependent thereon.

34. Pursuant to 35 U.S.C. § 271(b), KAVO is liable for inducement of infringement by continuing to knowingly cause or intend to cause the direct infringement of the '374 Patent by users of the Accused Systems in the United States, including by users of the Accused Systems in the United States, including medical professionals that use the Accused Systems in accordance with at least claims 1-24 of the '374 Patent.

35. Pursuant to 35 U.S.C. § 271(c), KAVO is liable for contributory infringement of the '374 Patent by continuing to provide components of the Accused Systems that comprise a material component of the inventions embodied in the '374 Patent, are not suitable for any substantial non-infringing use, and are especially made or adapted for use in infringing the '374 Patent by users of the Accused Systems in accordance with at least claims 1-24 of the '374 Patent having knowledge that the '374 Patent is being directly infringed by such users.

36. As a result of KAVO's acts of infringement of the '374 Patent, OSSEO has suffered injury to business and property in an amount to be determined as damages and will continue to suffer damages in the future.

PRAYER FOR RELIEF

WHEREFORE, OSSEO prays for judgment and relief as follows:

A. A declaration that KAVO has infringed, is infringing, has induced and is inducing, has contributed and is contributing to the infringement of the '301, '262, and '374 Patents;

B. An award of damages adequate to compensate OSSEO for the infringement of the '301, '262, and '374 Patents by KAVO;

C. A permanent injunction enjoining KAVO, its officers, agents, servants, employees, affiliates and attorneys, and all those in active concert or participation with them, from further infringing, inducing infringement, and contributing to the infringement of the '301, '262, and '374 Patents without purchasing the right to do so from OSSEO;

D. A declaration that KAVO's infringement of the '301, '262, and '374 Patents is willful, justifying a trebling of the award of damages under 35 U.S.C. § 284, or such other enhancement of the award of damages that the Court deems appropriate;

E. An award of pre-judgment and post-judgment interest on the damages caused by reason of KAVO's infringement of the '301, '262, and '374 Patents;

F. An award of attorney fees, costs, and expenses to OSSEO; and

G. A grant to OSSEO of such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

OSSEO IMAGING, LLC demands trial by jury on all claims and issues so triable.

Dated: July 17, 2019

Respectfully submitted,

/s/ Anthony T. Lathrop

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