

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

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EIDOLON OPTICAL, LLC)	
	Plaintiff)	Civil Action No. 1:19-cv-586
)	
vs.)	
)	
HAAG-STREIT USA, INC.)	<u>Jury Trial Demanded</u>
	Defendant)	
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COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Eidolon Optical, LLC (“Eidolon” or “Plaintiff”), brings this action against, Defendant, Haag-Streit USA, Inc. (“Haag-Streit” or “Defendant”), for patent infringement under 35 U.S.C § 271, *et. seq.* By this Complaint, Eidolon seeks, *inter alia*, monetary damages, and attorneys’ fees under 35 U.S.C. §§ 283, 284 and 285, and alleges as follows:

THE PARTIES

1. Plaintiff is a Delaware corporation, with its principal place of business at 3 Erie Drive, Natick, MA. Eidolon is the owner U.S. Letters Patent No. 6,547,394 (“the ‘394 Patent”), which includes claims to an ophthalmic illuminator and method of using the same.

2. Upon information and belief, Defendant is a Delaware corporation with a principal place of business located at 3535 Kings Mill Rd., Mason, Ohio 45040.

3. According to the records maintained by the Ohio Secretary of State, Defendant’s registered agent is Melvin S. Shotten, 1800 Star Bank Center, 425 Walnut St., Cincinnati, OH 45202.

4. Defendant is a company that manufactures slit lamps, surgical microscopes, and medical equipment for use by ophthalmologists, optometrists, and opticians.

JURISDICTION AND VENUE

5. This is a civil action seeking damages for patent infringement under 35 U.S.C. §§ 271, 281, 283-285.

6. This Court has original and exclusive jurisdiction over the subject matter of this Complaint pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Plaintiff is informed and believes that this Court may properly exercise *in personam* jurisdiction over the Defendant because its principal place of business is located in Mason, Ohio and regularly does business in the state.

8. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b). Defendant maintains a regular and established place of business in this District, has transacted business in this District, and committed acts of patent infringement in this District.

THE ASSERTED PATENT

9. The ‘394 Patent entitled “Hand-Held Ophthalmic Illuminator”, issued on April 15, 2003 on an application filed on January 24, 2001. A notice of allowance was issued on October 30, 2002. The ‘394 Patent issued in the name of inventor Victor J. Doherty on April 15, 2003. A true and correct copy of the ‘394 Patent is attached hereto as Exhibit A.

10. The ‘394 Patent is a continuation in part of U.S. Patent Application Serial No. 09/175,796, filed on October 20, 1998, which claims priority to provisional application Serial No. 60/063,131, filed on October 21, 1997.

11. The ‘394 Patent claims a novel and non-obvious ophthalmic illuminator and method of use.

12. On September 23, 2016, the ‘394 Patent was assigned to Eidolon Optical, LLC. All right, title and interest in the ‘394 Patent has been assigned to Eidolon Optical, LLC. A true

and correct copy of the '394 Patent assignment, along with the cover sheet showing its recordation with the United States Patent and Trademark Office, is attached hereto as Exhibit B.

BACKGROUND FACTS

13. Eidolon designs, develops and manufactures innovative medical products for ophthalmic professionals. It sells sight saving instruments to ophthalmologists, optometrists, veterinarians, emergency department physicians, military medics, and medical researchers.

14. Ophthalmic illuminators are used to examine anterior segment structures and ocular abnormalities in the eye. It is well known to use ophthalmic illuminators with a fluorescein dye that is administered to the patient's eye, which allows the physician to detect corneal abrasions and epithelial defects in the patient's eye.

15. Eidolon's BLUMINATOR® Ophthalmic Illuminator provides a unique LED-based design that permits a more detailed view of the eye than conventional incandescent illuminators, revolutionizing examinations of the cornea to facilitate detection and diagnosis of corneal injuries or irregularities.

16. The lens of Eidolon's BLUMINATOR® Ophthalmic Illuminator provides an image, while its incorporation of a light emitting diode (LED) produces an intense, spectrally beam of blue energy that causes foreign bodies, abrasions and other epithelial defects to fluoresce vividly during examinations with fluorescein.

17. The '394 Patent claims an ophthalmic illuminator and a method of using the same.

18. Eidolon has been offering the BLUMINATOR® for sale throughout the United States and marking such product with patent pending since at least June of 2002 and with the '394 Patent since at least April 2003.

19. Haag-Streit offers for sale, makes, uses and sells a series of LED ophthalmic illuminators, marketed as BQ 900, BP 900, BI 900, BM 900, and BX 900 (the “Accused Devices”), a brochure of which is attached hereto as Exhibit C.

20. The Accused Devices infringe at least Claims 1, 2, 3, 8, and 9 of the ‘394 Patent.

21. To the extent that any aspect of the Accused Devices does not meet an element of the infringed claims, including at least Claims 1, 2, 3, 8, and 9 of the ‘394 Patent, Eidolon infringes under the Doctrine of Equivalents as it performs substantially the same function in substantially the same way to get substantially the same results.

22. Eidolon provided written notice to Haag-Streit by letter dated March 2, 2017, alleging infringement of the ‘394 Patent by the Accused Device. A true and correct copy of the March 2, 2017 letter to Haag-Streit is attached hereto as Exhibit D.

23. On June 25, 2018, Haag-Streit filed two inter partes petitions (IPR 2018-01311 and IPR 2008-01309) before the United States Patent Trial and Appeal Board seeking to cancel some of the claims of the ‘394 Patent.

24. On January 11, 2019, the Board denied institution of IPR 2008-01309 because the petition filed by Haag-Streit did not show a reasonable likelihood that Haag-Streit would prevail with respect to any of the challenged claims.

25. On January 11, 2019, the Board instituted IPR 2018-01311 because the petition filed by Haag-Streit showed a reasonable likelihood that Haag-Streit would prevail with respect to at least one of the challenged claims 1, 5, 6, 8-10, 14-16, and 19. No final determination as to the patentability of the challenged claims was made by the Board. Additionally, the Board did not believe that Haag-Streit had shown a reasonable likelihood that it would prevail

with respect to claims 8 and 9, but it was required to institute the proceeding as to all challenged claims because of *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1354, 1359–60 (2018).

26. Defendant has been and is now infringing, and will continue to infringe the ‘394 Patent in this District and elsewhere in the United States by making, using, importing, selling and/or offering for sale the Accused Devices.

27. In addition to directly infringing the ‘394 Patent pursuant to 35 U.S.C. §271(a), Defendant has induced infringement of at least Claims 1 and 15 of the ‘394 Patent by others pursuant to 35 U.S.C. §271(b), and has contributed to the infringement at least Claims 1 and 15 of the ‘394 Patent by others pursuant to 35 U.S.C §271(c).

28. As a direct and proximate result of Defendant’s acts of infringement, the Plaintiff has suffered damages.

29. As a direct and proximate result of Defendant’s acts of infringement, inducement to infringe, and contributory infringement, the Plaintiff has suffered and continues to suffer irreparable harm for which there is no adequate remedy at law.

COUNT ONE

(Infringement of the ‘394 Patent - 35 U.S.C. §271(a))

30. The Plaintiff incorporates the previous paragraphs *supra*, by reference and realleges them as originally and fully set forth herein.

31. The Accused Devices are made, used, sold, offered for sale or imported within the United States and infringe at least Claims 1, 2, 3, 8, and 9 of the ‘394 Patent, either literally or under the doctrine of equivalents.

32. Defendant knowingly and intentionally infringed, and continues to infringe, at least Claims 1, 2, 3, 8, and 9 of the ‘394 Patent by making, using, offering for sale, or selling, in

Ohio and throughout the United States its Accused Devices, which are covered by claims of the ‘394 Patent, and will continue to do so unless enjoined by this Court.

33. As a direct and proximate consequence of the Defendant’s infringing acts, the Plaintiff has suffered and will continue to suffer injury and damages, and unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and will suffer and continue to suffer injury and damages which are causing them irreparable harm and for which Plaintiff is entitled to relief under 35 U.S.C. §§ 283, 284 and 285.

34. Defendant has had at least constructive knowledge and notice of the ‘394 Patent since at least as early as April 2003 and actual knowledge of the ‘394 Patent since at least March 2, 2017, and Defendant has performed and continues to perform these acts with knowledge of the ‘394 Patent and with the intent, or willful blindness, that the induced acts directly infringe the ‘394 Patent.

COUNT TWO

(Induced Infringement of the ‘394 Patent – 35 U.S.C. §271(b))

35. The Plaintiff incorporates the previous paragraphs *supra*, by reference and realleges them as originally and fully set forth herein.

36. Defendant knowingly and intentionally actively induces users of the Accused Device to directly infringe at least Claims 1, 2, 3, 8, and 9 and 15 of the ‘394 Patent by encouraging, instructing, and aiding one or more persons in the United States to perform acts that infringes at least Claim 15 of the ‘394 Patent knowing that such acts constituted patent infringement. Defendant has had at least constructive knowledge and notice of the ‘394 Patent since at least as early as April 2003 and actual knowledge of the ‘394 Patent since at least March 2, 2017, and Defendant has performed and continues to perform these acts with knowledge of the

‘394 Patent and with the intent, or willful blindness, that the induced acts directly infringe the ‘394 Patent.

37. Defendant is liable for induced infringement of at least Claims 1 and 15 of the ‘394 Patent under 35 U.S.C. §271(b).

COUNT THREE

(Contributory Infringement of the ‘394 Patent – 35 U.S.C. §271(c))

38. The Plaintiff incorporates the previous paragraphs supra, by reference and realleges them as originally and fully set forth herein.

39. Defendant also contributes to the infringement of one or more claims of the ‘394 Patent by selling the Accused Devices which it knows are used to practice a patented process, constituting a material part of the invention in the United States, knowing the same to be especially made or especially adapted for use in the infringement. Defendant has had at least constructive knowledge and notice of the ‘394 Patent since at least as early as April 2003 and actual knowledge of the ‘394 Patent since at least March 2, 2017, and Defendant has performed and continues to perform these acts with knowledge of the ‘394 Patent and with the intent, or willful blindness, that it contributes to the direct infringement of at least Claims 1 and 15 of the ‘394 Patent.

40. Defendant contributes to the infringement by another of at least Claim 15 of the ‘394 Patent under 35 U.S.C. §271(c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Eidolon Optical, LLC, respectfully requests that this Court enter judgment in its favor and against Defendant, Haag-Streit USA, Inc., and requests relief as follows:

- A. Judgment entered in its favor and against Defendant on each count of the Complaint;
- B. Declaring that Defendant has infringed one or more valid or enforceable claim of the '394 Patent under 35 U.S.C. §271(a) either literally or under the Doctrine of Equivalents;
- C. Declaring that Defendant induces infringement of at least one valid and enforceable claim of the '394 Patent under 35 U.S.C. §271(b) either literally or under the Doctrine of Equivalents;
- D. Declaring that Defendant contributes to the infringement of at least one valid and enforceable claim of the '394 Patent under 35 U.S.C. §271(c) either literally or under the Doctrine of Equivalents;
- E. Declaring that the foregoing infringement was willful and knowing;
- F. Declaring this to be an “exceptional” case within the meaning of 35 U.S.C. §285, entitling Plaintiff to an award of its reasonable attorney’s fees in this action;
- J. Award Plaintiff its damages in accordance with 35 U.S.C. § 284, including actual damages, compensatory damages in an amount no less than a reasonable royalty of Defendant’s gross sales of all Accused Device, and treble damages;
- K. Award Plaintiff prejudgment interest;
- L. Award Plaintiff an accounting of any post-verdict infringement;
- M. Award Plaintiff its costs, attorney’s fees and expenses arising from this suit under 35 U.S.C. § 285;
- O. Grant Plaintiff such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all counts of their Complaint so triable.

Respectfully submitted,

Date: July 19, 2019

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