

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

BAYER HEALTHCARE LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C. A. No. _____
	)	
ECOMED SOLUTIONS LLC,	)	<b>DEMAND FOR JURY TRIAL</b>
	)	
Defendant.	)	

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Bayer HealthCare LLC, by its attorneys, for its Complaint, alleges as follows:

**I. THE PARTIES**

1. Bayer HealthCare LLC (“Bayer”) is a limited liability company organized under the laws of the State of Delaware, with a principal place of business at 100 Bayer Boulevard, Whippany, New Jersey 07981.

2. On information and belief, Ecomed Solutions LLC (“Ecomed”) is a limited liability company organized and existing under the laws of the State of Delaware, with a principal place of business at 214 Terrace Drive, Mundelein, Illinois 60060. On information and belief, Ecomed develops and manufactures medical devices and accessories, and imports, markets, distributes, offers to sell, and/or sells those products in the State of Delaware and throughout the United States.

**II. NATURE OF THE ACTION**

3. In this action, Bayer seeks relief under 35 U.S.C. §§ 271, 284, and 285 for patent infringement against Ecomed in connection with its manufacture, use, offer for sale, sale, and/or importation of syringes for use with Bayer’s MEDRAD® Stellant® CT Injection Systems. On information and belief, that activity directly infringes, induces others to infringe, and/or contributes to the infringement of claims of two Bayer patents.

### **III. JURISDICTION AND VENUE**

4. This action for patent infringement arises under the patent laws of the United States, Title 35 of the United States Code and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202. Accordingly, the Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

5. This Court has personal jurisdiction over Ecomed. Ecomed is organized in the State of Delaware and it has purposefully availed itself of the benefits and protections of Delaware’s laws such that it should reasonably anticipate being haled into court here.

6. On information and belief, Ecomed makes or has made, uses, induces others to use, offers for sale, sells within the United States, and/or imports into the United States, including in Delaware, its infringing products, deriving substantial revenue therefrom.

7. Venue is proper in this District pursuant to 28 U.S.C. §1400(b) because, *inter alia*, Ecomed is a company organized and existing under the laws of the State of Delaware, has appointed a registered agent in Delaware, and is subject to personal jurisdiction in this judicial district.

### **IV. BACKGROUND**

#### **A. Bayer’s Innovative Technology**

8. Bayer’s Radiology Division provides diagnostic imaging solutions, including products and services for computed tomography (“CT”) scanning.

9. Contrast agents may be used in connection with a CT scan to enhance image quality, reveal more information, identify small lesions, or characterize and differentiate certain tissue structures, thereby allowing radiologists to report more accurately on any abnormality or disease present.

10. Contrast agents may be injected into veins using devices called injectors. Injectors can help to manage when, how much, and the rate at which a contrast agent is administered through the vein. These factors can impact the quality of the resulting image.

11. Bayer has marketed and sold the MEDRAD® Stellant® CT Injection System (pictured below), a contrast media injection system for use during CT examinations.



12. Bayer has invented specialized disposable syringes that are engineered specifically for use with the MEDRAD® Stellant® CT Injection System.

13. Bayer's syringes intended for use with the MEDRAD® Stellant® CT Injection System include sensing rings that enable the MEDRAD® Stellant® CT Injection System to detect the presence and details of a syringe when it is inserted into the system.

14. United States Patent No. 7,018,363 ("the '363 patent"), titled "Encoding and Sensing of Syringe Information," was duly and validly issued on March 28, 2006. The '363 patent is attached hereto as Exhibit A.

15. Bayer is the assignee of the '363 patent, and has the right to enforce it, including by seeking and recovering damages for infringement.

16. As set forth in detail in the '363 patent, the '363 patent claims, among other things, a syringe for use with a powered injector to inject a fluid into a patient.

17. United States Patent No. 10,060,758 (“the '758 patent”), titled “Encoding and Sensing of Syringe Information,” was duly and validly issued on August 28, 2018. The '758 patent is attached hereto as Exhibit B.

18. Bayer is the assignee of the '758 patent, and holds the right to enforce it, including by seeking and recovering damages for infringement.

19. As set forth in detail in the '758 patent, the '758 patent claims, among other things, a syringe for use with a powered injector to inject a fluid into a patient.

20. Bayer products offered for sale or sold within the United States practicing any claim of the '363 or the '758 patent (together “the Asserted Patents”) have been marked in compliance with 35 U.S.C. § 287.

21. The label affixed to packages containing Bayer’s syringes as sold in the United States for use with the MEDRAD® Stellant® CT Injection System includes the word “Patents” together with the address of an Internet website ([www.radpatents.bayer.com](http://www.radpatents.bayer.com)) as shown in the annotated picture below. That website is accessible to the public without charge and contains information identifying the syringes as being covered by the Asserted Patents.



# MEDRAD® Stellant

Sterile Disposable Syringe 2-Syringes, 1-Connector Tube, 1-Prime Tube, 2-Spikes

≤ 400 psi (2750 kPa)
 






 STERILE R Rx Only
 CE 2797 067

Bayer Medical Care Inc.  
 1 Bayer Drive  
 Indianola, PA 15051-0780  
 U.S.A.
 Bayer Medical Care B.V.  
 Horsterweg 24  
 6199 AC Maastricht Airport  
 The Netherlands
 Bayer  
 バイエル  
 Байер

Assembled in USA Patents: [www.radpatents.bayer.com](http://www.radpatents.bayer.com) P86698188 Rev. A

REF	SDS-CTP-SPK
BG	2-Спринцовки 1-Събираща тръба 1-Тръба за запълване 2-Игли
CS	2-Strikačky 1-Spojovací hadička 1-Narouštěcí hadička 2-Hrotý DE 2-
Spritzen	1-Verbindungsschlauch 1-Entlüftungsschlauch 2-Spikes ES
	seringa desechable estéril 2-erlingas 1-Tubo conector 1-Tubo de cebado
2-	Parozones Ensamblado en EE.UU. ET 2>Süstlad 1-Uhendustora 1-
	Eeltätitoru 2-Teravikud FR Seringue jetable stérile 2-Seringues 1-
	Tubulure de raccord 1-Tubulure de purge 2-Perforateurs Assemblé aux
	États-Unis HR 2-Štrcaljke 1-Priključna cijev 1-Cjevčica za punjenje 2-
	Šiljasti priključak HU 2-Fecskendő 1-Összekötő cső 1-Feltöltő cső 2-
	Kiszűrőtű IT 2-Siringhe 1-Tubo connettore 1-Tubo di riempimento 2-
	Perforator KK 2-Шприцер 1-Коннектор түйні 1-Толтыру түйні 2-
	Инегез LT 2>Svirksiai 1-Jungiamasis vamzdelis / Sujungiamoji žarnelė 1-
	Pripildymo vamzdelis 2-Smailagaliai (širpalis ruošime) (aisai) /
	Smailgal NL 2-Spuiten 1-Verbindingslang 1-Voorvulslang 2-Vulnaalden
NO	2-Sprayter 1-Koplingslange 1-Påfyllingslange 2-Kanyler RO 2-
	Serinki 1-Tub conector 1-Tub de amorare 2-Ace de perforare RU 2-
	Шприцы 1-Соединительная трубка 1-Трубка для прокачки 2-Иглы
	SK 2-Injekčné striekačky 1-Hadička konektora 1-Prepřipovačiaci hadička
	2-Hrotý SV 2-Sprutor 1-Anslutningslang 1-Prepareringslang 2-
	Spretsar UK 2-Шприци 2-З'єднувальна трубка 2-Основна трубка 2-
	Пристрій розування рідини AR Importado y distribuido por Bayer SA,
	Ricardo Gutiérrez 3652 - B1605EHD - Munro - Buenos Aires - Argentina.
	Director Técnico: José Luis Role, Farmacéutico, Autorizado por la ANMAT
	Nº PM-58-181 Estéril BO Bayer Boliviana Ltda, Av. Las Ramblas, Edificio
	Tacuaral II Piso 2 - Centro Empresarial (Equipetrol Norte) - Santa Cruz -
	Bolivia BR Seringa Stellant SDS-CTP-SPK, CONTÉM: 2Seringas
	200mL + 1Conector de baixa pressão com conector 1+ 2Spikes+ 1Tubo de
	escova. Importado por: Bayer S.A., Rua Domingos Jorge, 1100, CEP:
	04779-900 - Socorro - São Paulo - SP. CNPJ: 18.459.628/0001-15, SAC:
	0800-702-1241 - sac@bayer.com, Resp. Téc.: Erika F. Maellaro R- CRP-
	SP: 47.983, Registro ANVISA nº: 80384380049, Montado nos EUA,
	"ESTÉRIL" "PROIBIDO REPROCESSAR"

EC Ecuador Reg.San. Nº DM-2510-11-12 MX Distribuido en México por: Juama  
 S.A. DE CV - Corregidora No. 380 Col. Miguel Hidalgo, Tlalpan, C.P. 34430,  
 CDMX, México R.S. Nº: 0171098 SSA MY GC21483511717 TH B'S Medical  
 Systems (Thailand), Co., Ltd, Laxalle Tower, Floor G/2, 1st & 2nd, Floor, 10/11  
 Moo 16 Srinakarin Road, 10540 BANGKAEW, BANGPU THAILAND

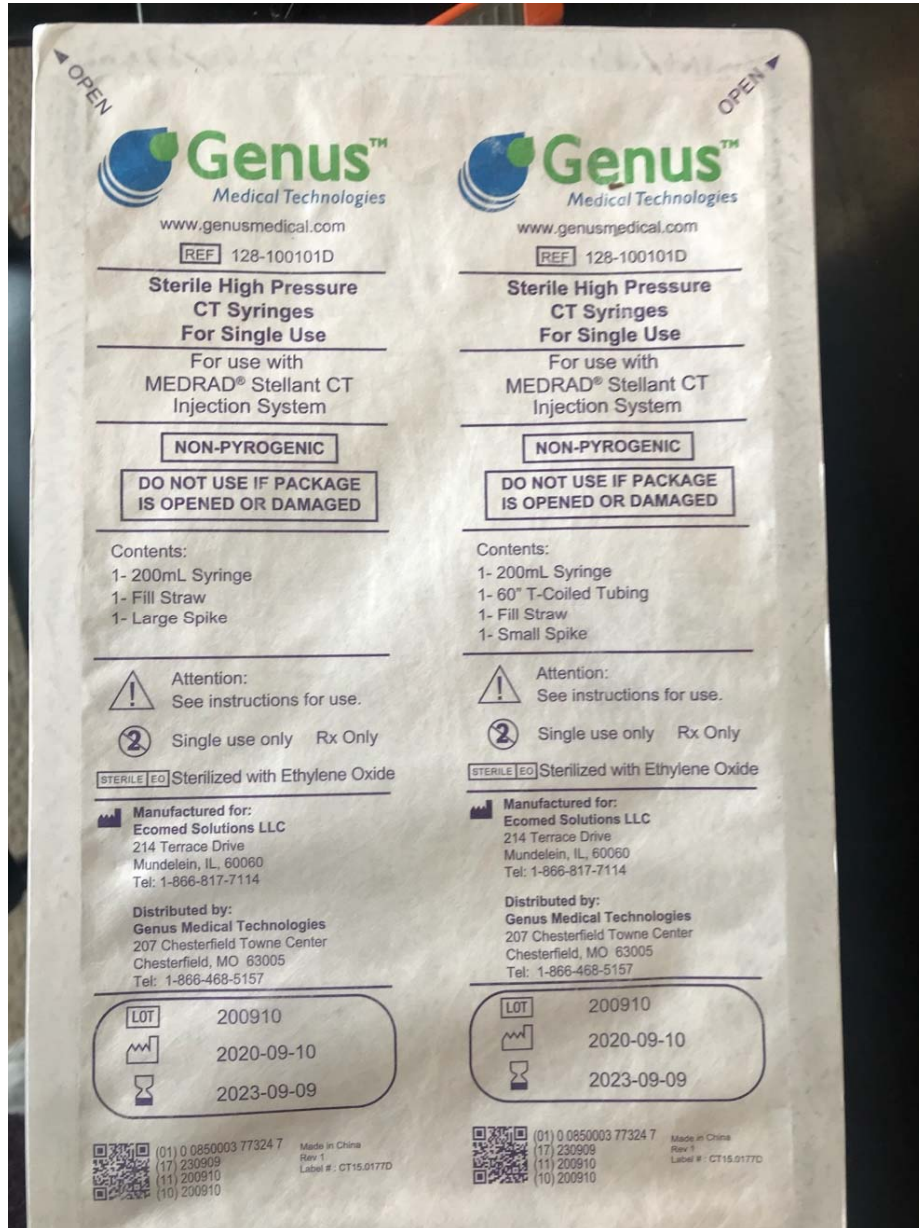
JP 一般的名称 : 造形刺用輸液セット  
 販売名 : メドラッド・PETシリンジ  
 認証番号 : 21400BZY00051000  
 製造販売業者 : バイエル薬品株式会社  
 大阪市北区梅田2-4-9  
 医療機器の分類 : 管理医療機器  
 一回限りの使用



## B. Ecomed’s Infringing Products and Activities

22. On information and belief, Ecomed makes uses, offers for sale, and/or sells in the United States, and/or imports into the United States, syringes infringing the Asserted Patents.
23. On information and belief, Ecomed makes, has made, sells, offers for sale in the United States, and/or imports into the United States, syringes designed for use with Bayer’s MEDRAD® Stellant® CT Injection Systems (the “Accused Products”).
24. On information and belief, Ecomed sells and/or offers to sell the Accused Products in the United States to or through a distribution partner named Genus Medical Technologies (“Genus”).

25. On information and belief, Ecomed has imported into the United States, sold and/or offered to sell in the United States, and continues to import into the United States, sell and/or offer to sell in the United States, CT syringes in the packaging pictured below.



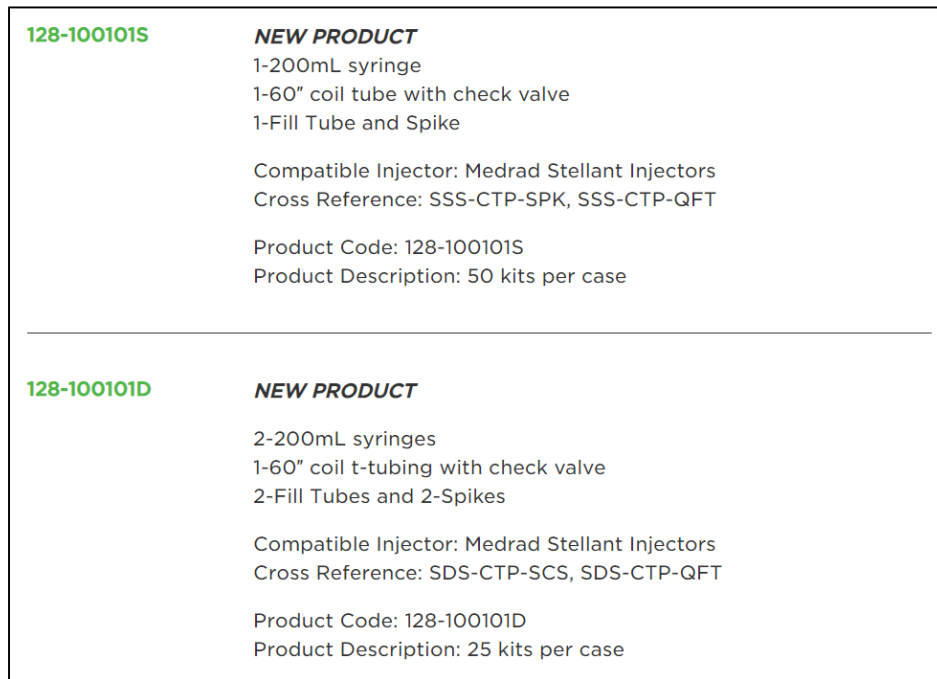
26. The packaging pictured in Paragraph 25 indicates that the syringes therein are “[f]or use with MEDRAD® Stellant CT Injection System.”

27. “MEDRAD® Stellant CT Injection System” as used on the packaging pictured in Paragraph 25 refers to Bayer’s MEDRAD® Stellant® CT Injection System.

28. The packaging pictured in Paragraph 25 states that the syringes therein were “Manufactured for” Ecomed in China, and distributed by Genus.

29. The packaging pictured in Paragraph 25 includes an item number, labeled “REF,” of “128-100101D.”

30. Genus advertises on its website, <https://genusmedical.com/category/syringes/ct-syringes/>, single and two-pack syringes that are “[c]ompatible” with “Medrad Stellant Injectors” [sic], as shown below, for sale in the United States.



31. The item numbers on Genus’ website are listed as “128-100101S” (single) and “128-100101D” (two-pack). The “128-100101D” item number corresponds to the item number of the Ecomed-manufactured product pictured in Paragraph 25 above.

32. For the “128-100101S” product, Genus lists as “Cross Reference[s]” the “SSS-CTP-SPK” and “SSS-CTP-QFT” products, which correspond to Bayer model numbers for MEDRAD® Stellant® CT Injection System single syringe kits, as shown below.

33. For the “128-100101D” product, Genus lists as “Cross Reference[s]” the “SDS-CTP-SCS” and “SDS-CTP-QFT” products, which correspond to Bayer model numbers for MEDRAD® Stellant® CT Injection System dual syringe kits.

34. Genus’ website also includes or has included the below picture of “Power Injector Syringes & Supplies,” which showed syringes that Genus sold in the United States.



35. On information and belief, the two syringes at the right of the picture are syringes for use with Bayer’s MEDRAD® Stellant® CT Injection System.

36. On information and belief, these syringes were manufactured by or for Ecomed.

37. On information and belief, the Accused Products have been sold, offered for sale, and/or marketed in the United States, including in this District, at least by means of the Internet, including the websites discussed above.



38. On information and belief, Ecomed has infringed and continues to infringe (literally and/or under the doctrine of equivalents), one or more claims of the Asserted Patents, including at least claim 1 of each of the Asserted Patents, by making, using, offering for sale, and/or selling in the United States, and/or importing into the United States, the Accused Products.

39. On information and belief, Ecomed infringes indirectly (literally and/or under the doctrine of equivalents), one or more claims of the Asserted Patents, including at least claim 1 of each of the Asserted Patents, by making, using, offering for sale, and/or selling in the United States, and/or importing into the United States, the Accused Products.

40. On information and belief, Ecomed has engaged and is engaging in the accused activities without a license or permission to practice the inventions claimed therein.

41. Ecomed's infringement has caused, is causing, and will continue to cause Bayer to suffer damage and Bayer is entitled to recover damages in an amount proven at trial, but no less than a reasonable royalty as provided by 35 U.S.C. § 284.

**COUNT 1: INFRINGEMENT OF THE '363 PATENT**

42. The above paragraphs are incorporated by reference as if fully set forth herein.

43. On information and belief, Ecomed has been and is now directly infringing the '363 patent in violation of 35 U.S.C. § 271(a) by making, using, offering for sale, and/or selling in the United States, and/or importing into the United States, products that infringe the claims of the '363 patent during the term thereof, including but not limited to the Accused Products.

44. Claim 1 of the '363 patent recites, *inter alia*, a syringe comprising: a longitudinal body of the syringe comprising a wall; an attachment mechanism to attach the syringe to the injector; and a length of material comprising at least two indicators that provide information about the syringe configuration "in the form of a binary code on the basis of presence or absence of one of the indicators at a predetermined longitudinal position on the length of material."

45. Claim 1 of the '363 patent further recites how the elements are positioned relative to one another. The length of material is disposed along at least a portion of a wall that comprises the body, and each of the indicators are located at a different predetermined longitudinal position along the length of the material.

46. On information and belief, by way of example, the Accused Products infringe at least Claim 1 of the '363 patent.

47. The picture below was downloaded from Genus' website. On information and belief, the picture depicts at least one of Ecomed's Accused Products.



48. On information and belief, the syringes comprising the Accused Products are intended for use with Bayer's MEDRAD® Stellant® CT Injection System. The MEDRAD® Stellant® CT Injection System contains a plurality of sensors located at different predetermined longitudinal positions in the injector.

49. As required by claim 1 of the '363 patent, as shown in the picture above, the Accused Products comprise syringes each having a body comprising a wall and defining a longitudinal syringe axis.

50. As required by claim 1 of the '363 patent, as shown in the picture above, the Accused Products comprise syringes each having an attachment mechanism to attach the syringe to the injector. An attachment mechanism for attaching the syringe to the injector is required for compatibility of syringes with the MEDRAD® Stellant® CT Injection System.

51. As required by claim 1 of the '363 patent, as shown in the picture above, the Accused Products comprise syringes each having a length of material disposed along at least a portion of the wall, the length of material adapted to propagate electromagnetic energy there through in a direction substantially parallel to the longitudinal syringe axis. The sidewall of the Accused Products is composed of a clear plastic-type material that is adapted to propagate through it light or other electromagnetic energy in a longitudinal direction.

52. As required by claim 1 of the '363 patent, as shown in the picture above, the Accused Products comprise syringes each having at least two indicators, comprising rings or notches, each of the indicators being located at a different predetermined longitudinal position along the length of material.

53. On information and belief, the indicators are positioned to longitudinally align with a sensor when the syringe is attached to the MEDRAD® Stellant® CT Injection System, and adapted to interact concurrently with at least a portion of the energy being propagated through the sidewall that is readily detectable by a sensor in longitudinal alignment with the indicator.

54. On information and belief, the indicators provide information about the syringe configuration in the form of a binary code on the basis of presence or absence of one of the indicators at a predetermined longitudinal position on sidewall.

55. The MEDRAD® Stellant® CT Injection System will register an error and fail to work with any syringe that does not provide information to the sensors located on the injector at positions corresponding to the indicators on MEDRAD® Stellant® CT Injection System-compatible syringes.

56. By making, using, offering for sale, and/or selling in the United States, and/or importing into the United States, any products, including the Accused Products, that include the invention as recited in claim 1 of the '363 patent, Ecomed has infringed and infringes at least claim 1 of the '363 patent.

57. On information and belief, when used to administer the contrast agent via the injector during a patient's CT scan as directed by Ecomed, the use of the Accused Products infringes at least claim 1 of the '363 patent.

58. On information and belief, through its sales and marketing activities, including advertising and product labeling, Ecomed directs, encourages, and induces its distributors, retailers, and customers, including Genus, to purchase, use, offer for sale, and/or sell the Accused Products in the United States, and/or import the Accused Products into the United States.

59. By the date of receipt of this complaint at the latest, Ecomed knows of the '363 patent and knows that making, using, offering for sale, and/or selling in the United States the Accused Products, and/or importing the Accused Products into the United States, constitutes infringement of the '363 patent.

60. On information and belief, Ecomed is indirectly infringing the '363 patent in violation of 35 U.S.C. § 271(b) by actively inducing the direct infringement of the '363 patent by its distributors, retailers, and customers, including Genus, including at least by making, using, offering for sale, and/or selling in the United States the Accused Products, and/or importing the Accused Products into the United States, with specific intent that its distributors, retailers, and customers directly infringe the '363 patent.

61. On information and belief, the Accused Products have no substantial use outside of their use in connection with Bayer's MEDRAD® Stellant® CT Injection System.

62. On information and belief, the Accused Products have no substantial non-infringing use and are not a staple article of commerce.

63. On information and belief, Ecomed is indirectly infringing the '363 patent in violation of 35 U.S.C. § 271(c) by offering to sell and/or selling within the United States the Accused Products, and/or importing the Accused Products into the United States, thereby contributing to the direct infringement of the '363 patent by its distributors, retailers, and customers.

64. As a consequence of Ecomed's infringement of the '363 patent, Bayer has suffered, is suffering, and will continue to suffer damages in an amount not yet determined, but no less than a reasonable royalty.

#### **COUNT 2: INFRINGEMENT OF THE '758 PATENT**

65. The above paragraphs are incorporated by reference as if fully set forth herein.

66. On information and belief, Ecomed has been and is now directly infringing the '758 patent in violation of 35 U.S.C. § 271(a) by making, using, offering for sale, and/or selling in the United States, and/or by importing into the United States, products that infringe the claims of the '758 patent, including but not limited to the Accused Products.

67. Claim 1 of the '758 patent recites, *inter alia*, a syringe comprising: a syringe body; the body comprising a sidewall defining a longitudinal axis configured to propagate electromagnetic energy emitted from an electromagnetic source incident on the sidewall by internal reflection in a direction substantially parallel to the longitudinal axis; and at least one indicator recessed radially into an outer surface of the sidewall.

68. On information and belief, by way of example, the Accused Products infringe at least Claim 1 of the '758 patent.

69. The picture below was downloaded from Genus' website. On information and belief, the picture depicts at least one of Ecomed's Accused Products.



70. On information and belief, the syringes comprising the Accused Products are intended for use with Bayer's MEDRAD® Stellant® CT Injection System.

71. As required by claim 1 of the '758 patent, as shown in the picture above, the Accused Products comprise syringes each having a syringe body comprising a sidewall defining a longitudinal axis, wherein at least a portion of the sidewall is configured to propagate electromagnetic energy emitted from an electromagnetic source incident on the sidewall by internal reflection in a direction substantially parallel to the longitudinal axis. The sidewall of the Accused Products is composed of a clear plastic-type material that is adapted to propagate through it incident light or other electromagnetic energy by internal reflection in a longitudinal direction.

72. As required by claim 1 of the '758 patent, as shown in the picture above, the Accused Products comprise syringes each having at least one indicator notch/ring recessed radially into an outer surface of the sidewall.

73. On information and belief, the at least one indicator is adapted to reflect at least a portion of the electromagnetic energy radially from the sidewall such that the reflected energy is detectable by a sensor of the MEDRAD® Stellant® CT Injection System to provide information about one or more parameters.

74. The MEDRAD® Stellant® CT Injection System will register an error and fail to work with any syringe that does not provide information to the sensor located on the injector at positions corresponding to the indicators on MEDRAD® Stellant® CT Injection System-compatible syringes.

75. By making, using, offering for sale, and/or selling in the United States, and/or importing into the United States, any products, including the Accused Products, that include the invention as recited in claim 1 of the '758 patent, Ecomed infringes at least claim 1 of the '758 patent.

76. On information and belief, when used to administer the contrast agent via the injector during a patient's CT scan as directed by Ecomed, the use of the Accused Products infringes at least claim 1 of the '758 patent.

77. On information and belief, through its sales and marketing activities, including advertising and product labeling, Ecomed directs, encourages, and induces its distributors, retailers, and customers, including Genus, to purchase, use, offer for sale, and/or sell the Accused Products in the United States, and/or import the Accused Products into the United States.

78. By the date of receipt of this complaint at the latest, Ecomed knows of the '758 patent and knows that making, using, offering for sale, and/or selling in the United States the Accused Products, and/or importing the Accused Products into the United States, constitutes infringement of the '758 patent.

79. On information and belief, Ecomed is indirectly infringing the '758 patent in violation of 35 U.S.C. § 271(b) by actively inducing the direct infringement of the '758 patent by its distributors, retailers, and customers, including Genus, including at least by making, using, offering for sale, and/or selling in the United States the Accused Products, and/or importing the Accused Products into the United States, with specific intent that its distributors, retailers, and customers directly infringe the '758 patent.

80. On information and belief, the Accused Products have no substantial use outside of their use in connection with Bayer's MEDRAD® Stellant® CT Injection System.

81. On information and belief, the Accused Products have no substantial non-infringing use and are not a staple article of commerce.

82. On information and belief, Ecomed is indirectly infringing the '758 patent in violation of 35 U.S.C. § 271(c) by offering to sell and/or selling within the United States the



Accused Products, and/or importing the Accused Products into the United States, thereby contributing to the direct infringement of the '758 patent by its distributors, retailers, and customers.

83. As a consequence of Ecomed's infringement of the '758 patent, Bayer has suffered, is suffering, and will continue to suffer damages in an amount not yet determined, but no less than a reasonable royalty.

**PRAYER FOR RELIEF**

WHEREFORE, Bayer respectfully requests that this Court enter judgment in its favor against Ecomed and grant the following relief:

- A. A judgment that Ecomed has infringed the '363 patent;
- B. A judgment that Ecomed has infringed the '758 patent;
- C. Damages in the form of lost profits but in no event less than a reasonable royalty on past and future infringing sales;
- D. A declaration that this is an exceptional case and an award of attorneys' fees pursuant to 35 U.S.C. § 285;
- E. An award of Bayer's costs and expenses in this action; and
- F. Such further relief as this Court may deem just and proper.

**JURY DEMAND**

Bayer, by and through its undersigned counsel, hereby demands, pursuant to Fed. R. Civ. P. 38, a trial by jury on all claims so triable in this action.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Jack B. Blumenfeld*

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