

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BAYER HEALTHCARE LLC,)	
)	
Plaintiff,)	
)	
v.)	C. A. No. 21-231 (LPS)
)	
ECOMED SOLUTIONS LLC,)	DEMAND FOR JURY TRIAL
)	
Defendant.)	

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Bayer HealthCare LLC, by its attorneys, for its First Amended 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, 283, 284, and/or 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 three Bayer patents, and directly infringed, induced others to infringe, and/or contributed to the infringement of claims of two additional Bayer patents, now expired, during the term thereof.

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 and/or has made, uses, induces and/or has induced others to use, offers and/or has offered for sale, sells and/or has sold within the United States, and/or imports and/or has imported 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 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, and plungers that are able to interface with the MEDRAD® Stellant® CT Injection System during operation thereof.

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, and remained in force until its expiration on February 25, 2021. 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, specifically by seeking and recovering damages for past infringement that occurred during the period when it was in force.

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. 7,666,169 ("the '169 patent"), titled "Syringe and Syringe Plungers for Use with Medical Injectors," was duly and validly issued on February 23, 2010. The '169 patent is attached hereto as Exhibit B.

18. Bayer is the assignee of the '169 patent, and has the right to enforce it, including by seeking and recovering damages for infringement.

19. As set forth in detail in the '169 patent, the '169 patent claims, among other things, a syringe and a syringe plunger for use with a medical injector.

20. 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, and remained in force until its expiration on February 25, 2021. The ’758 patent is attached hereto as Exhibit C.

21. Bayer is the assignee of the ’758 patent, and holds the right to enforce it, specifically by seeking and recovering damages for past infringement that occurred during the period when it was in force.

22. 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.

23. United States Patent No. 10,434,249 (“the ’249 patent”), titled “Medical Injector System,” was duly and validly issued on October 8, 2019. The ’249 patent is attached hereto as Exhibit D.

24. Bayer is the assignee of the ’249 patent, and holds the right to enforce it, including by seeking and recovering damages for infringement.

25. As set forth in detail in the ’249 patent, the ’249 patent claims, among other things, a syringe including a body and a plunger that may be used with an injector.

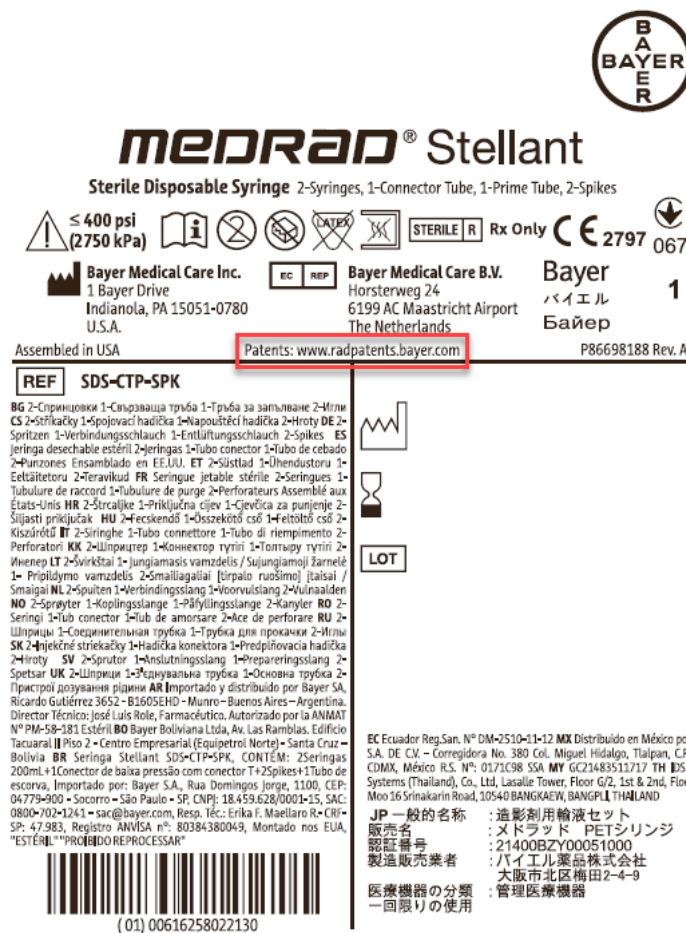
26. United States Patent No. 10,894,124 (“the ’124 patent”), titled “Medical Injector System,” was duly and validly issued on January 19, 2021. The ’124 patent is attached hereto as Exhibit E.

27. Bayer is the assignee of the ’124 patent, and holds the right to enforce it, including by seeking and recovering damages for infringement.

28. As set forth in detail in the ’124 patent, the ’124 patent claims, among other things, a syringe including a body and a plunger that may be used with an injector.

29. Bayer products offered for sale or sold within the United States practicing any claim of the '363 patent, the '169 patent, the '758 patent, the '249 patent, and the '124 patent (together "the Asserted Patents") have been marked in compliance with 35 U.S.C. § 287.

30. 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) as shown in the annotated picture below. At all relevant times, that website has been accessible to the public without charge and has contained information identifying patents covering the syringes, including the '169, '124 and '249 patents, and prior to their expiry, the '363 and '758 patents.



B. Ecomed's Infringing Products and Activities

31. 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 '169, '124, and '249 patents. On information and belief, Ecomed made, used, offered for sale, and/or sold in the United States, and/or imported into the United States, syringes that, prior to their expiry, infringed the '363 and '758 patents.

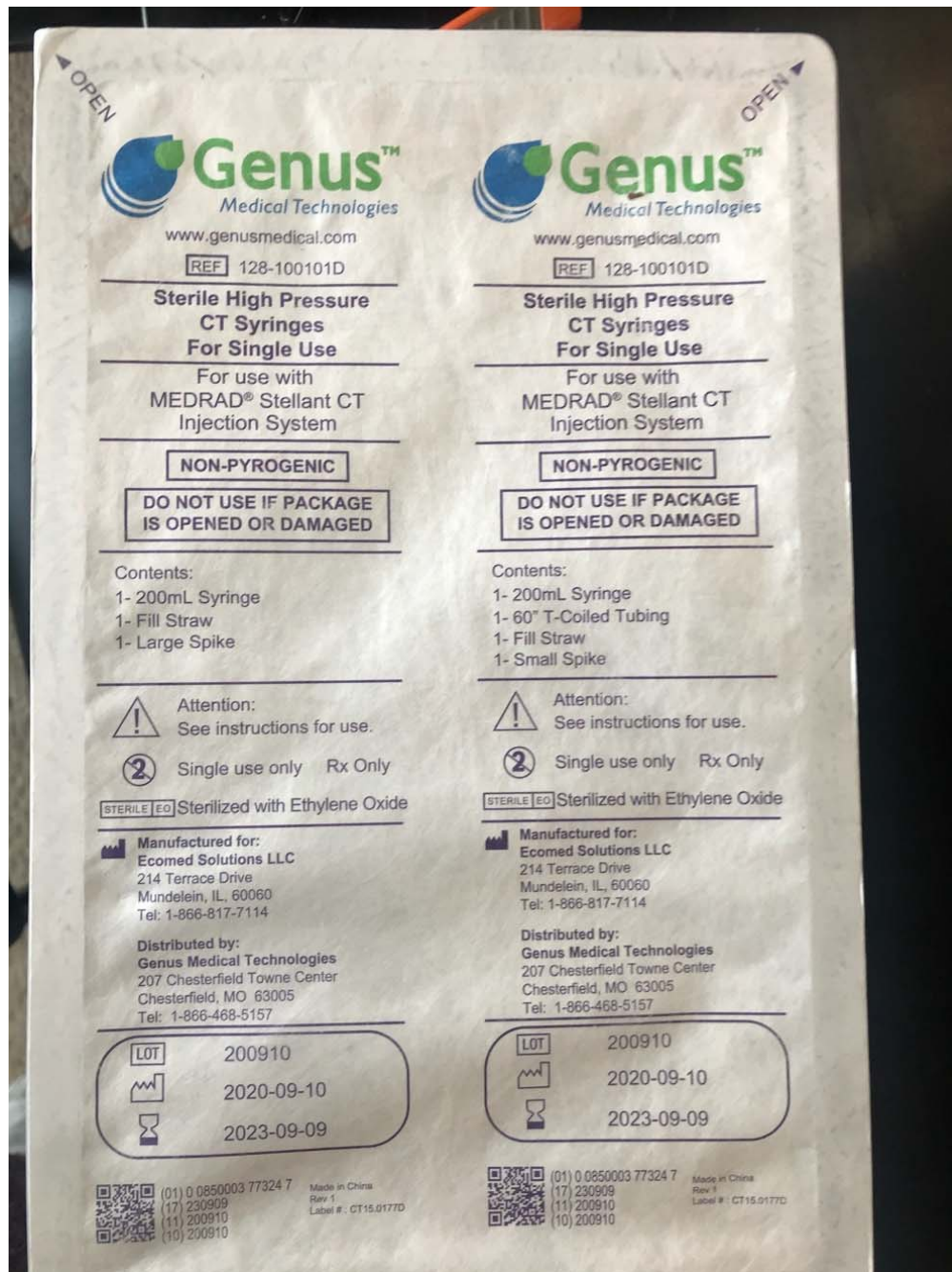
32. On information and belief, Ecomed makes, has made, sells, has sold, offers for sale in the United States, offered for sale in the United States, imports into the United States, and/or imported into the United States syringes designed for use with Bayer's MEDRAD® Stellant® CT Injection Systems (the "Accused Products").

33. On information and belief, Ecomed sells, has sold, offers to sell, and/or has offered to sell the Accused Products in the United States to or through distribution partners.

34. On information and belief, regardless of distributor, the Accused Products comprising syringes designed for use with Bayer's MEDRAD® Stellant® CT Injection Systems are physically the same regardless of distribution partner.

35. Ecomed has sold and/or offered to sell the Accused Products in the United States to or through a distribution partner named Genus Medical Technologies ("Genus").

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



37. The packaging pictured in Paragraph 36 indicates that the syringes therein are “[f]or use with MEDRAD® Stellant CT Injection System.”

38. “MEDRAD® Stellant CT Injection System” as used on the packaging pictured in Paragraph 36 refers to Bayer’s MEDRAD® Stellant® CT Injection System.

39. The packaging pictured in Paragraph 36 states that the syringes therein were “Manufactured for” Ecomed in China, and distributed by Genus.

40. The packaging pictured in Paragraph 36 includes an item number, labeled “REF,” of “128-100101D.”

41. At least at some point during the period when the ’363 and ’758 patents were in force, Genus advertised 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.

128-100101S	<p>NEW PRODUCT</p> <p>1-200mL syringe 1-60" coil tube with check valve 1-Fill Tube and Spike</p> <p>Compatible Injector: Medrad Stellant Injectors Cross Reference: SSS-CTP-SPK, SSS-CTP-QFT</p> <p>Product Code: 128-100101S Product Description: 50 kits per case</p>
128-100101D	<p>NEW PRODUCT</p> <p>2-200mL syringes 1-60" coil t-tubing with check valve 2-Fill Tubes and 2-Spikes</p> <p>Compatible Injector: Medrad Stellant Injectors Cross Reference: SDS-CTP-SCS, SDS-CTP-QFT</p> <p>Product Code: 128-100101D Product Description: 25 kits per case</p>

42. The item numbers on Genus’ website were 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 36 above.

43. For the “128-100101S” product, Genus listed 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.

44. For the “128-100101D” product, Genus listed 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.

45. At least at some point during the period when the ’363 and ’758 patents were in force, Genus’ website also included the below picture of “Power Injector Syringes & Supplies,” which showed syringes that Genus sold in the United States.



46. 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.

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

48. 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 website discussed above.

49. On information and belief, Ecomed has infringed or infringes (literally and/or under the doctrine of equivalents), one or more claims of the Asserted Patents, including at

least claim 1 of each of '169, '124 and '249 patents, by making, using, offering for sale, and/or selling in the United States, and/or importing into the United States, the Accused Products, and including at least claim 1 of the '363 and '758 patents, by, during the period when the '363 and '758 patents were in force, having made, used, offered for sale, and/or having sold in the United States and/or imported into the United States the Accused Products.

50. Ecomed has engaged and is engaging in the accused activities without a license or permission to practice the inventions claimed therein.

51. Ecomed's past infringement has caused, and Ecomed's present and future infringement 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.

C. Ecomed's Knowledge of the Asserted Patents

52. On February 19, 2021, Bayer filed a complaint in the United States District Court for the District of Delaware alleging infringement by Ecomed of the '363 and '758 patents, which were unexpired at that time (the "Original Complaint").

53. A letter dated February 19, 2021 and enclosing a copy of the Original Complaint was shipped to Ecomed via Federal Express, next business day delivery, signature required, care of David Yurek, President and CEO, Ecomed Solutions LLC, 214 Terrace Dr., Mundelein, IL 60060.

54. Federal Express's website reported that the package containing the February 19, 2021 letter and the Original Complaint was signed for on Wednesday, February 24, 2021, by "D. Yurek."

55. The February 19, 2021 letter stated, “Bayer has additional patents of relevance to the Stellant®-compatible syringes being sold by Ecomed, including U.S. Patent Nos. 7,666,169, 10,434,249, and 10,894,124.” The letter further stated, “It is incumbent upon Ecomed to cease any on-going infringement of these patents and to avoid any future infringement.”

56. On Wednesday, March 10, 2021, counsel for Bayer had a teleconference meeting with Barry Irwin and Daniel Zhang, counsel for Ecomed.

57. On the March 10, 2021 teleconference, counsel for Ecomed stated that Ecomed would not cease and desist selling its Stellant®-compatible syringes.

COUNT 1: INFRINGEMENT OF THE '363 PATENT

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

59. On information and belief, Ecomed directly infringed the '363 patent in violation of 35 U.S.C. § 271(a) by having made, having used, having offered for sale, and/or having sold in the United States, and/or having imported into the United States, products that infringe the claims of the '363 patent during the term thereof, including the Accused Products.

60. 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.”

61. 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.

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

63. The picture below was downloaded from Genus' website prior to the expiry of the '363 patent. On information and belief, the picture depicts at least one of Ecomed's Accused Products.



64. 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.

65. As required by claim 1 of the '363 patent, the Accused Products comprise syringes each having a body comprising a wall and defining a longitudinal syringe axis.

66. As required by claim 1 of the '363 patent, 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.

67. As required by claim 1 of the '363 patent, 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.

68. As required by claim 1 of the '363 patent, 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.

69. 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.

70. 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.

71. 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.

72. By having made, having used, having offered for sale, and/or having sold in the United States, and/or having imported into the United States, any products, including the Accused Products, that include the invention as recited in claim 1 of the '363 patent, during the term of the '363 patent, Ecomed infringed at least claim 1 of the '363 patent.

73. On information and belief, through its sales and marketing activities, including advertising and product labeling, Ecomed directed, encouraged, and induced its distributors, retailers, and customers, including Genus, to purchase, use, offer for sale, and/or sell the Accused Products in the United States during the term of the '363 patent.

74. During the term of the '363 patent, Ecomed knew of the '363 patent, and knew 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 during the term of the '363 patent constituted infringement of the '363 patent.

75. On information and belief, Ecomed indirectly infringed 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, during the term of the '363 patent, 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 during the term of the '363 patent.

76. 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.

77. On information and belief, with respect to the '363 patent, the Accused Products had no substantial non-infringing use and were not a staple article of commerce.

78. On information and belief, Ecomed indirectly infringed 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 during the term of the '363 patent, thereby contributing to the direct infringement of the '363 patent by its distributors, retailers, and customers during the term of the '363 patent.

79. As a consequence of Ecomed's infringement of the '363 patent during its term, Bayer has suffered damages in an amount not yet determined, but no less than a reasonable royalty.

COUNT 2: INFRINGEMENT OF THE '169 PATENT

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

81. On information and belief, Ecomed has been and is now directly infringing the '169 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 '169 patent, including but not limited to the Accused Products.

82. Claim 1 of the '169 patent recites, *inter alia*, a syringe comprising: a body; and a plunger movably disposed within the body; the plunger comprising: a cylindrical wall extending in a longitudinal direction and having a circumferentially continuous inner surface and an outer surface, the inner surface defining a retaining shoulder formed in a radial direction and extending along the circumference of the cylindrical wall; and a plurality of inwardly projecting flanges extending rearwardly from the retaining shoulder and fixedly disposed on the circumferentially continuous inner surface of the cylindrical wall, wherein the plurality of inwardly

projecting flanges extending a length in a longitudinal direction and are fixedly connected along the length to the cylindrical wall, wherein the inwardly projecting flanges are continuously supported in the longitudinal direction by the circumferentially continuous inner surface of the cylindrical wall, wherein the outer surface is defined by a wall that is planar in axial and annular directions.

83. On information and belief, by way of example, the Accused Products infringe at least Claim 1 of the '169 patent.

84. On information and belief, the Accused Products comprise a plunger.

85. On information and belief, the plunger has two separable parts that are connected together when in the syringe.

86. On information and belief, the picture below is a top view of the two parts of the plunger. On information and belief, when in place in the Accused Products as manufactured, offered for sale, sold, used, or imported, the part of the plunger shown on the below left (the roughly cone-shaped part) is placed over and around the part of the plunger shown on the below right.



87. On information and belief, the picture below is a bottom view of the two parts of the plunger found in the Accused Products.



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

89. On information and belief, as required by claim 1 of the '169 patent, the Accused Products comprise syringes each having a body.

90. On information and belief, as required by claim 1 of the '169 patent, the Accused Products each have a plunger that is able to move within the syringe body. On information and belief, the plunger has a cylindrical wall that extends in a longitudinal direction and has a circumferentially continuous inner surface and an outer surface. On information and belief, the inner surface of the wall defines a retaining shoulder formed in a radial direction and that extends along the circumference of the cylindrical wall. On information and belief, the plunger has a plurality of inwardly projecting flanges extending rearwardly from the retaining shoulder and affixed to the inner surface of the cylindrical wall along its length, wherein the plurality of inwardly projecting flanges extend in the longitudinal direction. On information and belief, the inwardly projecting flanges are continuously supported in the longitudinal direction by the circumferentially continuous inner surface of the cylindrical wall. On information and belief, the outer surface is defined by a wall that is planar in the axial and annular directions.

91. On information and belief, the plunger assembly of the Accused Products engages the piston of a fluid injector of the MEDRAD® Stellant® CT Injection System, which moves the plunger within the syringe body.

92. 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 '169 patent, Ecomed infringes at least claim 1 of the '169 patent.

93. 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 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.

94. Since at least February 24, 2021, Ecomed has known of the '169 patent and has known 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 '169 patent.

95. On information and belief, Ecomed's infringement of the '169 patent is willful. Ecomed was given notice of the '169 patent in the February 19, 2021 letter, yet refuses to cease and desist its infringement.

96. On information and belief, Ecomed is indirectly infringing the '169 patent in violation of 35 U.S.C. § 271(b) by actively inducing the direct infringement of the '169 patent by its distributors, retailers, and customers 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 '169 patent.

97. 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.

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

99. On information and belief, Ecomed is indirectly infringing the '169 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 '169 patent by its distributors, retailers, and customers.

100. As a consequence of Ecomed's infringement of the '169 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.

101. Ecomed's willful, wanton, and deliberate infringement of the '169 patent justifies an award to Bayer of increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

102. Unless Ecomed is enjoined from infringing the '169 patent, actively inducing infringement of the '169 patent, and contributing to the infringement by others of the '169 patent, Bayer will suffer irreparable injury. Bayer has no adequate remedy at law.

COUNT 3: INFRINGEMENT OF THE '758 PATENT

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

104. On information and belief, Ecomed directly infringed the '758 patent in violation of 35 U.S.C. § 271(a) by having made, having used, having offered for sale, and/or having sold in the United States, and/or having imported into the United States, products that infringe the claims of the '758 patent during the term thereof, including the Accused Products.

105. 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.

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

107. As required by claim 1 of the '758 patent, 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.

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

109. 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.

110. 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.

111. By having made, having used, having offered for sale, and/or having sold in the United States, and/or having imported into the United States, any products, including the Accused Products, that include the invention as recited in claim 1 of the '758 patent, during the term of the '758 patent, Ecomed infringed at least claim 1 of the '758 patent.

112. On information and belief, through its sales and marketing activities, including advertising and product labeling, Ecomed directed, encouraged, and induced its distributors, retailers, and customers, including Genus, to purchase, use, offer for sale, and/or sell the Accused Products in the United States during the term of the '758 patent.

113. During the term of the '758 patent, Ecomed knew of the '758 patent and knew 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 during the term of the '758 patent constituted infringement of the '758 patent.

114. On information and belief, Ecomed indirectly infringed 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, during the term of the '758 patent, 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 during the term of the '758 patent.

115. 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.

116. On information and belief, with respect to the '758 patent, the Accused Products had no substantial non-infringing use and were not a staple article of commerce.

117. On information and belief, Ecomed indirectly infringed 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 during the term

of the '758 patent, thereby contributing to the direct infringement of the '758 patent by its distributors, retailers, and customers during the term of the '758 patent.

118. As a consequence of Ecomed's infringement of the '758 patent during its term, Bayer has suffered damages in an amount not yet determined, but no less than a reasonable royalty.

COUNT 4: INFRINGEMENT OF THE '249 PATENT

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

120. On information and belief, Ecomed has been and is now directly infringing the '249 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 '249 patent, including the Accused Products.

121. Claim 1 of the '249 patent recites, *inter alia*, a syringe comprising: a syringe body; and a plunger movably disposed within the syringe body and configured to engage a piston of a fluid injector for moving the plunger within the syringe body; the plunger comprising: an annular base member comprising a cylindrical wall extending in a longitudinal direction, wherein the cylindrical wall comprises a proximal end, a distal end, and an inner surface between the proximal end and the distal end; a retaining shoulder projecting inwardly from and extending around the inner surface of the cylindrical wall; and a plurality of flanges proximal to the retaining shoulder and projecting inwardly from the inner surface of the cylindrical wall.

122. On information and belief, by way of example, the Accused Products infringe at least Claim 1 of the '249 patent.

123. On information and belief, as required by claim 1 of the '249 patent, the Accused Products comprise syringes each having a body.

124. On information and belief, as required by claim 1 of the '249 patent, the Accused Products have a plunger disposed within the syringe body. On information and belief, the plunger is configured to engage a piston of the Stellant® fluid injector, which is able to move the plunger within the syringe body. On information and belief, the plunger has a ring-shaped base member comprising a cylindrical wall extending in a longitudinal direction. On information and belief, the cylindrical wall has a proximal end, a distal end, and an inner surface between the proximal and distal ends. On information and belief, there is a retaining shoulder projecting inwardly from and extending around the inner surface of the cylindrical wall. On information and belief, the plunger also has a plurality of flanges proximal to the retaining shoulder and projecting inwardly from the inner surface of the cylindrical wall.

125. On information and belief, in use, the syringe plunger assembly of the Accused Products is engaged by a piston of the MEDRAD® Stellant® CT Injection System to move the plunger within the syringe body, thus aspirating fluid into and dispensing fluid from the assembly.

126. 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 '249 patent, Ecomed infringes at least claim 1 of the '249 patent.

127. 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 to purchase, use, offer for sale, and/or sell the Accused Products in the United States.

128. Since at least February 24, 2021, Ecomed has known of the '249 patent and has known 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 '249 patent.

129. On information and belief, Ecomed's infringement of the '249 patent is willful. Ecomed was given notice of the '249 patent in the February 19, 2021 letter, yet refuses to cease and desist its infringement.

130. On information and belief, Ecomed is indirectly infringing the '249 patent in violation of 35 U.S.C. § 271(b) by actively inducing the direct infringement of the '249 patent by its distributors, retailers, and customers 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 '249 patent.

131. 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.

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

133. On information and belief, Ecomed is indirectly infringing the '249 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 '249 patent by its distributors, retailers, and customers.

134. As a consequence of Ecomed's infringement of the '249 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.

135. Ecomed's willful, wanton, and deliberate infringement of the '249 patent justifies an award to Bayer of increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

136. Unless Ecomed is enjoined from infringing the '249 patent, actively inducing infringement of the '249 patent, and contributing to the infringement by others of the '249 patent, Bayer will suffer irreparable injury. Bayer has no adequate remedy at law.

COUNT 5: INFRINGEMENT OF THE '124 PATENT

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

138. On information and belief, Ecomed has been and is now directly infringing the '124 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 '124 patent, including the Accused Products.

139. Claim 1 of the '124 patent recites, *inter alia*, a syringe for use with an injector having a piston with at least one flange and at least one retractable pin, the syringe comprising:

a syringe body; and a plunger having a base with an inner surface; a ledge projecting inwardly from the inner surface configured to interact with the at least one retractable pin of the piston; and at least one rib proximal to the ledge and projecting inwardly from the inner surface, the at least one rib having an engagement surface, wherein, upon application of a rotational force on the syringe body, the engagement surface on the at least one rib is configured to contact an

opposing engagement surface on the at least one flange to prevent rotation of the plunger and transmit the rotational force to the piston thereby enabling removal of the syringe from the injector.

140. On information and belief, by way of example, the Accused Products infringe at least Claim 1 of the '12 patent.

141. On information and belief, the Accused Products are intended for use with Bayer's MEDRAD® Stellant® CT Injection System, which is an injector having a piston with at least one flange and at least one retractable pin.

142. On information and belief, as required by claim 1 of the '124 patent, the Accused Products comprise syringes each having a body.

143. On information and belief, as required by claim 1 of the '124 patent, the Accused Products include a plunger within the syringe bodies. On information and belief, the plunger has a base with an inner surface and a ledge projecting inwardly from the inner surface that is able to interact with at least one retractable pin of a piston that is part of the Stellant® CT Injection System. On information and belief, the plunger also has ribs next to the ledge that projects inwardly from the inner surface. On information and belief, the ribs are formed such that, when a rotational force is placed on the syringe body, a surface of at least one rib contacts at least one flange on the Stellant® CT Injection System so as to prevent rotation of the plunger and transmit the rotational force to the piston, which causes the retractable pin to retract and enables removal of the syringe from the injector.

144. 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 '124 patent, Ecomed infringes at least claim 1 of the '124 patent.

145. 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 to purchase, use, offer for sale, and/or sell the Accused Products in the United States.

146. Since at least February 24, 2021, Ecomed has known of the '124 patent and has known 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 '124 patent.

147. On information and belief, Ecomed's infringement of the '124 patent is willful. Ecomed was given notice of the '124 patent in the February 19, 2021 letter, yet refuses to cease and desist its infringement.

148. On information and belief, Ecomed is indirectly infringing the '124 patent in violation of 35 U.S.C. § 271(b) by actively inducing the direct infringement of the '124 patent by its distributors, retailers, and customers 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 '124 patent.

149. 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.

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

151. On information and belief, Ecomed is indirectly infringing the '124 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 '124 patent by its distributors, retailers, and customers.

152. As a consequence of Ecomed's infringement of the '124 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.

153. Ecomed's willful, wanton, and deliberate infringement of the '124 patent justifies an award to Bayer of increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

154. Unless Ecomed is enjoined from infringing the '124 patent, actively inducing infringement of the '124 patent, and contributing to the infringement by others of the '124 patent, Bayer will suffer irreparable injury. Bayer has no adequate remedy at law.

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 '169 patent;
- C. A judgment that Ecomed has infringed the '758 patent;
- D. A judgment that Ecomed has infringed the '249 patent;
- E. A judgment that Ecomed has infringed the '124 patent;
- F. With respect to the '363 and '758 patents, damages for past acts of infringement that occurred during the period that the patents were in force;

G. With respect to the '169, '249, and '124 patents, damages for past and future infringement;

H. A judgment that Ecomed's infringement of the '169, '249, and '124 patents is and has been willful, and an enhancement of damages;

I. Injunctive relief directing Ecomed to cease all infringement of the '169, '249, and '124 patents¹;

J. A declaration that this is an exceptional case and an award of attorneys' fees pursuant to 35 U.S.C. § 285;

K. An award of Bayer's costs and expenses in this action; and

L. 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.

¹ Bayer does not seek injunctive relief with respect to the '363 or '758 patents as they are no longer in force.

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