

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK  
ROCHESTER DIVISION

MEDGRAPH, INC.,	)	
	)	
Plaintiff,	)	CASE NO. 6:09-cv-06610-DGL
	)	
v.	)	
	)	
MEDTRONIC, INC.	)	
	)	
Defendant.	)	

**AMENDED COMPLAINT**

Plaintiff Medgraph, Inc. ("Medgraph" or "Plaintiff"), for its amended complaint against defendant Medtronic, Inc. ("Medtronic" or "Defendant"), alleges as follows:

**The Parties**

1. Medgraph is a corporation organized and existing under the laws of the State of New York, with a place of business at 53 Glenside Way, Rochester, New York 14612.
2. Medgraph is in the business of commercializing its patented inventions by offering for sale and licensing to third parties the methods and systems claimed in its patents, including the electronic, telephonic and wireless collection, transmission and storage of patient information in the form of critical diagnostic data, including, *inter alia*, that which is useful for the management of diabetes, including the conversion thereof to graphical or other useful form for access by and electronic delivery to healthcare and medical professionals.
3. Medtronic is a Minnesota corporation, with a place of business at 710 Medtronic Parkway, Minneapolis, MN 55432-5604. Defendant is in the business, *inter alia*, of manufacturing, offering for sale and selling a broad range of medical equipment and technology,

diagnostic equipment and systems for use in healthcare management, including that of diabetes care.

4. Medtronic does business within the State of New York and in this judicial district on a continuous and systematic basis, and, upon information and belief, through its subsidiaries Medtronic MiniMed, Inc. and MiniMed Distribution Corp., offers for sale or use, and or sells, distributes or promotes for use by others, a diabetes therapy and management system, also known as the "CareLink Therapy Management System for Diabetes" for blood glucose monitoring, and equipment and software for use therein, including blood glucose meters and software for uploading patient data, all of which are designed to measure, collect and store critical patient diagnostic data, and to convert the data to chart, graphical or other usable form for access by and internet delivery to healthcare and medical professionals upon their request (collectively, "CareLink System").

5. Medtronic also offers for sale and sells within this judicial district certain software and equipment for wirelessly communicating patient data to a personal computer for conversion to chart, graphical or other usable form, and/or for further transmission to a central computer where it is stored for access and delivery to healthcare and medical professionals upon their request. This software and equipment is the CareLink USB wireless upload device and system and it is used in conjunction with Medtronic's CareLink System for diabetes.

#### **Jurisdiction**

6. This is an action for patent infringement arising under the patent laws of the United States, United States Code, Title 35, §§ 1 *et seq.*

7. This Court has subject matter jurisdiction of the action under Title 28, United States Code, §§ 1331 and 1338(a).

8. Venue in this judicial district is proper under Title 28, United States Code, §§ 1391(b) and 1400(b).

**Facts**

9. United States patent No. 5,974,124 ("the '124 Patent"), entitled "Method and System Aiding Medical Diagnosis and Treatment" (**Ex. A**), was duly and legally issued by the United States Patent and trademark Office on October 26, 1999.

10. Medgraph is the owner of all right, title and interest in and to the '124 Patent, including, without limitation, the right to sue and to recover for past and future infringement thereof.

11. United States patent No. 6,122,351 ("the '351 Patent"), entitled "Method and System Aiding Medical Diagnosis and Treatment" (**Ex. B**), was duly and legally issued by the United States Patent and trademark Office on September 19, 2000.

12. Medgraph is the owner of all right, title and interest in and to the '351 Patent, including, without limitation, the right to sue and to recover for past and future infringement thereof.

13. Medtronic, through its CareLink System software and related equipment, including CareLink Personal and CareLink Pro software, and its CareLink Database, has for some time, and continuing to the present time, sold, offered for sale or use, distributed or promoted for use by others, a diabetes management system for blood glucose monitoring that is designed to measure, collect and store patient medical data, and to convert the same to graphical or other usable form for access by and internet delivery to healthcare and medical professionals upon request, without license or authorization from Medgraph.

**Count One – Infringement of U. S. Patent No. 5,974,124**

14. Plaintiff incorporates by reference herein the allegations set forth in paragraphs 1-13 herein.

15. Defendant has infringed, and is continuing to infringe, at least claims 1, 2, 3, 5, 11 and 16 of the '124 Patent by offering for sale or use, and/or selling, distributing, promoting or providing for use by others the CareLink System, including the CareLink Personal and CareLink Pro Systems and associated equipment, and the CareLink USB wireless upload device and system for blood glucose monitoring and managing, in combination with a web based server system.

16. Defendant's infringement of the '124 Patent has been deliberate, willful and with full knowledge of the '124 Patent.

17. Plaintiff has suffered damages by reason of Defendant's willful infringement of the '124 Patent, and will suffer additional damages and will be irreparably injured unless the Court enjoins Defendant from continuing such infringement.

**Count Two – Inducement of Infringement of U. S. Patent No. 5,974,124**

18. Plaintiff incorporates by reference herein the allegations set forth in paragraphs 1-17 herein.

19. Defendant has induced infringement and is continuing to induce infringement, of at least claims 1, 2, 3, 5, 11 and 16 of the '124 Patent by offering for sale or use, and/or selling, distributing, promoting or providing for use by others the CareLink System, including the CareLink Personal and CareLink Pro Systems and associated equipment, and the CareLink USB wireless upload device and system for blood glucose monitoring and managing, in combination with a web based server system.

20. Upon information and belief, Defendant's inducement of infringement of the '124 Patent has been deliberate, willful and with full knowledge of the '124 Patent.

21. Plaintiff has suffered damages by reason of Defendant's willful inducement of infringement of the '124 Patent, and will suffer additional damages and will be irreparably injured unless the Court enjoins Defendant from continuing such inducement of infringement.

**Count Three – Contributory Infringement of U. S. Patent No. 5,974,124**

22. Plaintiff incorporates by reference herein the allegations set forth in paragraphs 1-21 herein.

23. Defendant has contributed to the infringement of the '124 Patent and is continuing to contribute to the infringement of at least claims 1, 2, 3, 5, 11 and 16 of the '124 Patent by offering for sale or use, and/or selling, distributing, promoting or providing for use by others the CareLink System, including the CareLink Personal and CareLink Pro Systems and associated equipment, and the CareLink USB wireless upload device and system for blood glucose monitoring and managing, in combination with a web based server system.

24. Plaintiff has suffered damages by reason of Defendant's willful contributory infringement of the '124 Patent, and will suffer additional damages and will be irreparably injured unless the Court enjoins Defendant from continuing such contributory infringement.

**Count Four – Infringement of U. S. Patent No. 6,122,351**

25. Plaintiff incorporates by reference herein the allegations set forth in paragraphs 1-24 herein.

26. Defendant has infringed, and is continuing to infringe, claim 1 of the '351 Patent by offering for sale or use, and/or selling, distributing, promoting or providing for use by others the CareLink System, including the CareLink Personal and CareLink Pro Systems and associated

equipment, and the CareLink USB wireless upload device and system for blood glucose monitoring and managing, in combination with a web based server system.

27. Defendant's infringement of the '351 Patent has been deliberate, willful and with full knowledge of the '351 Patent.

28. Plaintiff has suffered damages by reason of Defendant's willful infringement of the '351 Patent, and will suffer additional damages and will be irreparably injured unless the Court enjoins Defendant from continuing such infringement.

**Count Five – Inducement of Infringement of U. S. Patent No. 6,122,351**

29. Plaintiff incorporates by reference herein the allegations set forth in paragraphs 1-28 herein.

30. Defendant has induced infringement and is continuing to induce infringement, of claim 1 of the '351 Patent by offering for sale or use, and/or selling, distributing, promoting or providing for use by others the CareLink System, including the CareLink Personal and CareLink Pro Systems and associated equipment, and the CareLink USB wireless upload device and system for blood glucose monitoring and managing, in combination with a web based server system.

31. Upon information and belief, Defendant's inducement of infringement of the '124 Patent has been deliberate, willful and with full knowledge of the '351 Patent.

32. Plaintiff has suffered damages by reason of Defendant's willful inducement of infringement of the '351 Patent, and will suffer additional damages and will be irreparably injured unless the Court enjoins Defendant from continuing such inducement of infringement.

**Count Six – Contributory Infringement of U. S. Patent No. 6,122,351**

33. Plaintiff incorporates by reference herein the allegations set forth in paragraphs 1-

32 herein.

34. Defendant has contributed to the infringement of the '351 Patent and is continuing to contribute to the infringement of claim 1 of the '351 Patent by offering for sale or use, and/or selling, distributing, promoting or providing for use by others the CareLink System, including the CareLink Personal and CareLink Pro Systems and associated equipment, and the CareLink USB wireless upload device and system for blood glucose monitoring and managing, in combination with a web based server system.

35. Plaintiff has suffered damages by reason of Defendant's willful contributory infringement of the '351 Patent, and will suffer additional damages and will be irreparably injured unless the Court enjoins Defendant from continuing such contributory infringement.

**Prayer for Relief**

Wherefore, Plaintiff requests a judgment as follows:

A. That Plaintiff is the owner of all right, title and interest in and to United States patent Nos. 5,974,124 and 6,122,351, together with all rights of recovery under such patents for past and future infringement thereof.

B. That United States patent Nos. 5,974,124 and 6,122,351 are valid and enforceable in law and that Defendant has infringed each of said patents.

C. Awarding to Plaintiff its damages caused by Defendant's infringement of United States patent Nos. 5,974,124 and 6,122,351, including an assessment of pre-judgment and post-judgment interest and costs.

D. That Defendant's infringement has been willful and said damages be trebled pursuant to 35 U.S.C. § 284.

E. Entering a preliminary and permanent injunction against Defendant, its officers,

employees, attorneys, all parent and subsidiary corporations and affiliates, their assigns and successors in interest, and those persons in active concert or participation with any of them who receive notice of the injunction, enjoining them from continuing acts of infringement of United States patent Nos. 5,974,124 and 6,122,351, including without limitation, from continuing to make, use, sell and/or offer for sale at least the CareLink System, including the CareLink USB wireless upload device and system, for blood glucose monitoring.

F. That this is an exceptional case and awarding to Plaintiff its costs, expenses and reasonable attorney fees pursuant to 35 U.S.C. § 285, and

G. Awarding to Plaintiff such other and further relief as the Court may deem just and proper.

**Jury Demand**

In accordance with Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury for all issues triable by jury.

Dated: October 18, 2010

Respectfully submitted,

s/Darius Keyhani  
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