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DISTRICT OF UTAH

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UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

ZEVEX, Inc., a Delaware Corporation,)
)
 Plaintiff,)
)
 vs.)
)
 ABBOTT LABORATORIES, INC.,)
 ROSS PRODUCTS DIVISION, a)
 Delaware Corporation)
 Defendant.)
 _____)

Case No. _____

Judge J. Thomas Greene
DECK TYPE: Civil
DATE STAMP: 12/31/2003 @ 13:57:29
CASE NUMBER: 2:03CV01139 JTG

(JURY DEMAND)

COMES NOW Plaintiff, ZEVEX, Inc. ("ZEVEX") and complains against Defendant Abbott Laboratories, Inc., Ross Products Division ("ROSS") as follows:

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PARTIES, JURISDICTION & VENUE

1. Plaintiff, ZEVEX, is a Delaware Corporation having a principal place of business at 4314 Zevex Park Lane, Salt Lake City, Utah 84123.

2. On information and belief, Defendant ROSS is a Delaware corporation having a principle place of business at 625 Cleveland Avenue Columbus, Ohio 43215.

3. This action arises under the patent laws of the United States, Title 35, United States Code. This Court has jurisdiction over the patent claims under 28 U.S.C. §§ 1331 and 1338(a).

4. Venue is proper in this district by virtue of Title 28 U.S.C. §§ 1391 & 1400(b) because an act of infringement took place and is taking place within this jurisdiction and because ROSS is either found in this District or is otherwise subject to personal jurisdiction in this District.

GENERAL ALLEGATIONS

5. ZEVEX is the owner, by assignment of United States Letters Patent No. 5,733,061 (“the ‘061 Patent”), which issued on March 31, 1998 for a Clamp. A copy of the ‘061 Patent is attached hereto and expressly incorporated as Exhibit A.

6. The ‘061 Patent relates to a clamp which is configured for holding an enteral feeding pump or similar device to a bed rail, pole, etc., so that the position of the pump may be changed without releasing the pump from engagement with the clamp.

7. ZEVEX’s clamp has been well received in the industry.

8. Recently ZEVEX discovered that ROSS has introduced a clamp for use with its pump.

9. The ROSS clamp is similar to that produced by ZEVEX and disclosed in the '061 Patent in that it has a first mechanism for engaging a bed rail, etc., and a second mechanism for attachment to a pump so as to allow adjustments to the position of the pump without disconnecting the pump from the clamp.

10. On information and belief, ROSS has known of the '061 Patent and continued to produce and market its clamp.

FIRST CLAIM FOR RELIEF

(Direct Infringement, 35 U.S.C. §271(a))

11. ZEVEX hereby incorporates herein each and every allegation of paragraphs 1 through 10 of this Complaint and further alleges as follows:

12. The '061 Patent has at all times subsequent to its respective issue date been fully enforceable and is now fully enforceable.

13. ZEVEX is the owner of record and holds all rights under the '061 Patent, including the right to sue for infringement.

14. ROSS has made, used, sold or offered to sell clamps that fall within the scope of one or more claims of the '061 Patent.

15. ROSS has, within this district made, used, sold or offered to sell clamps that fall within a range of equivalents of the claims of the '061 Patent .

16. The making, using or selling of infringing clamps by ROSS has been without authority or license from ZEVEX, and in violation of ZEVEX's rights, thereby infringing the '061 Patent.

17. On information and belief, the making, using, selling or offering to sell clamps that fall within the scope of the '061 Patent by ROSS has been with knowledge of the '061 Patent, and in disregard for the exclusive rights of ZEVEX.

18. The amount of money damages which ZEVEX has suffered due to ROSS's acts of infringement cannot be determined without an accounting, and is thus subject to proof at trial. Further, the harm to ZEVEX arising from ROSS's acts of infringement is not fully compensable by money damages. Rather, ZEVEX has suffered, and continues to suffer, irreparable harm which has no adequate remedy at law and which will continue unless ROSS's conduct is enjoined.

SECOND CLAIM FOR RELIEF

(Contributory Infringement/Inducement, 35 U.S.C. §271(b,c))

19. ZEVEX hereby incorporates herein each and every allegation of paragraphs 1 through 18 of this Complaint and further alleges as follows:

20. On information and belief, ROSS has actively induced, and is now inducing, infringement of the '061 Patent, and is engaged in contributory infringement of the '061 Patent.

21. On information and belief, ROSS's clamp was specifically designed to be used in the manner set forth in the '061 patent and has no substantial non-infringing use.

22. ROSS has unlawfully derived, and continues to unlawfully derive, income and profits by contributing to the infringement of the '061 patent and by inducing others to infringe the '061 Patent.

23. ZEVEX has suffered, and continues to suffer, damages because of ROSS's inducement to infringe said patents.

24. ZEVEX has suffered, and will continue to suffer irreparable damage for which there is no adequate remedy at law because of ROSS's inducing others to infringe, and will continued to be harmed unless ROSS is enjoined from further acts of inducement.

PRAYER FOR RELIEF

WHEREFORE, ZEVEX prays for judgment against ROSS as follows:

- A. That the Court adjudge United States Letters Patent No. 5,733,061 valid and infringed by ROSS;
- B. For damages in an amount to be determined at trial, said damages being not less than a reasonable royalty;
- C. For a finding that ROSS acted willfully in their infringement of the '061 Patent, and for an award of treble damages, pursuant to 35 U.S.C. §284;
- D. That ROSS, its agents, servants, employees, attorneys, directors, and those persons in active concert or participation with them, be enjoined under 35 U.S.C. §283 from further violation of ZEVEX's patent rights on such terms as the Court deems reasonable;

E. That ROSS be ordered to file with this Court and serve on ZEVEX within thirty (30) days after service on ROSS of the injunction granted herein, or such extended period as the Court may direct, a report in writing, under oath, setting forth in detail the manner and form in which the Defendants have complied with the injunction and order of the Court;

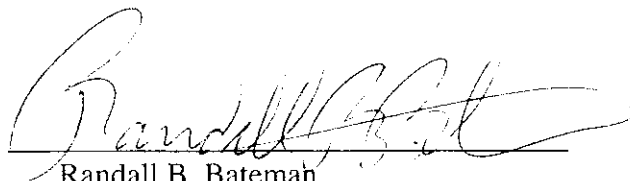
F. That Defendants be ordered to pay ZEVEX's attorney's fees and its costs and disbursements for this action under 35 U.S.C. §285;

G. That Defendants be required to pay prejudgment and post-judgment interest until such awards are paid;

H. That Plaintiffs have such other and further relief as shall seem just and proper to the Court;

Dated this 30th day of December, 2003.

BATEMAN IP LAW GROUP

By 
Randall B. Bateman
Attorneys for Plaintiff

Exhibits/
Attachments
to this document
have **not** been
scanned.

Please see the
case file.