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DISTRICT OF UTAH
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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
Northern Division

ICON HEALTH AND FITNESS., INC.,)	Civil Action No.
)	1:01CV0108 ST
Plaintiff,)	
)	
v.)	DECLARATORY JUDGMENT
)	COMPLAINT FOR PATENT
BIOSIG INSTRUMENTS, INC.,)	NONINFRINGEMENT
)	
Defendant.)	(JURY TRIAL DEMANDED)
)	
)	
)	

Declaratory Judgment Plaintiff ICON Heath and Fitness, Inc. ("ICON"), complains of Declaratory Judgment Defendant Biosig Instruments, Inc. ("Biosig") and alleges the following claim for relief:

THE PARTIES

1. Plaintiff ICON is a Delaware corporation having a principal place of business at 1500 South 1000 West, Logan, Utah, 84321-8206.



2. Upon information and belief, Defendant Biosig is a Canadian Corporation having places of business at 440-19th Ave., Suite 100, Lachine Quebec, Canada, H8S 3S2; Champlain, New York; and Eden, Vermont.

SUBJECT MATTER JURISDICTION

3. Biosig has, both directly and through legal counsel, sent multiple letters to ICON and ICON's customers, expressly charging ICON with infringement of United States Patent Number 5,337,753 ("the '753 patent"), which Biosig purports to own. These letters expressly charge ICON and its customers with infringement of the '753 patent, thereby creating a reasonable apprehension of suit on the part of ICON and an actual controversy between ICON and Biosig with respect to the '753 patent. Two such letters are respectively attached hereto as Exhibits A and B.

4. This declaratory judgment action arises under the patent laws of the United States, 35 U.S.C. § 100 *et seq.* Therefore, subject matter jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331, 1338(a) and (b), 2201, and 2202.

5. This is also an action in which the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs and is between citizens of different states. Subject matter jurisdiction is also, therefore, conferred upon this Court by 28 U.S.C. § 1332(a)(3).

PERSONAL JURISDICTION AND VENUE

6. Upon information and belief, Biosig has transacted business within the State of Utah and is otherwise subject to personal jurisdiction in Utah under the Utah Long Arm Statute, Utah Code Ann. § 78-27-24.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events which give rise to these claims occurred in this District.

ICON 'S CAUSE OF ACTION

(Declaratory Judgment of Noninfringement of the '753 Patent)

8. ICON incorporates all of the allegations contained in paragraphs 1 through 7 hererin.

9. This is a claim by ICON against Biosig seeking a declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2202, that the '753 patent is not infringed by ICON.

10. Biosig purports to be the owner of the '753 patent.

11. ICON has manufactured, sold and distributed health and fitness products incorporating heart rate measuring devices.

12. Biosig, through its own actions, agents and otherwise, has expressly asserted that the manufacture, sale, and offer for sale of products incorporating heart rate monitoring devices by ICON and its customers, including but not limited to, Sears and Sport Authority, constitutes infringement of the '753 patent, thereby giving rise to a reasonable apprehension of suit on the part of ICON and a resulting case of actual controversy between the parties relating to the '753 patent.

13. ICON, through the manufacture, sale, and/or offer for sale of its health and fitness products incorporating heart rate monitoring devises has not infringed and does not infringe the '753 patent.

WHEREFORE, ICON prays for judgment as set forth hereinafter.

PRAYER FOR RELIEF

WHEREFORE, ICON prays for judgment as follows:

A. A declaration that ICON, through the manufacture, use, sale or offer to sell of fitness products incorporating heart rate monitoring devices, does not infringe on any of the claims of the United States Patent Number 5,337,753;

B. A preliminary and permanent injunction enjoining Biosig from asserting that ICON, its products, its customers, and/or suppliers infringed or have infringed the '753 patent;

- C. An award of costs;
- D. A declaration that this case is an exceptional case pursuant to 35 U.S.C. § 285, and that ICON be awarded all of its attorneys fees; and,
- E. For such other and further relief as to the Court seems just and proper.

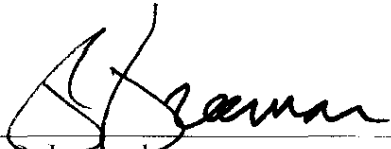
JURY DEMAND

Pursuant to Rule 38(b), Federal Rules of Civil Procedure, ICON hereby demands trial by jury of all claims and issues raised in this Complaint and in any responsive pleading or counterclaim filed by defendant.

Dated this 4th day of September, 2001.

WORKMAN, NYDEGGER & SEELEY

By


Larry R. Laycock
David R. Wright
C. J. Veverka
R. Parrish Freeman, Jr.

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Exhibits/
Attachments
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Please see the
case file.