

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JUDGE COTE

CIRREX SYSTEMS LLC,)

)
)
) Plaintiff,)

v.)

)
)
) INFRAREDX, INC.,)

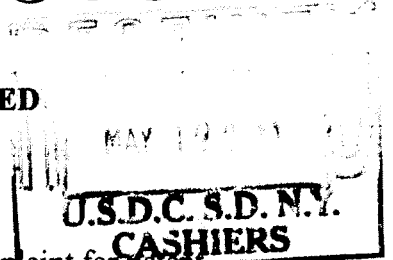
)
)
) Defendant.)

Case No.:

10 CV 3952

COMPLAINT

JURY DEMANDED



Plaintiff Cirrex Systems LLC ("Cirrex"), by its attorneys, for its Complaint for patent infringement against defendant InfraReDx, Inc. ("InfraReDx") alleges as follows:

THE PARTIES

1. Cirrex is a limited liability company organized under the laws of Georgia, having its principal place of business at 4425 Mariners Ridge, Alpharetta, Georgia 30005.

2. On information and belief, InfraReDx is a corporation organized under the laws of Delaware, having a principal place of business at 34 Third Avenue, Burlington, Massachusetts 01803.

3. Cirrex is the owner of all rights, title and interest in and to U.S. Patent Nos. 6,366,726 ("the '726 Patent", attached as Exhibit A), 5,953,477 ("the '477 Patent", attached as Exhibit B), and 6,144,791 ("the '791 Patent", attached as Exhibit C) (collectively, "the Patents"). The Patents disclose and claim, *inter alia*, fiber optic technologies including fiber optic probes for *in vivo* identification and characterization of biological tissue.

4. Upon information and belief, InfraReDx manufactures, uses, offers for sale and sells in the United States products that infringe the Patents including the LipiScan Coronary Imaging System and its associated fiber optic probes for, *inter alia*, identification and

characterization of vulnerable coronary artery plaques (hereinafter, “the LipiScan Product”).

JURISDICTION AND VENUE

5. This Complaint for patent infringement arises under the patent laws of the United States, 35 U.S.C. § 1 et seq. Subject matter jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1338(a).

6. On information and belief, InfraReDx has purposefully availed itself of the protections of New York by maintaining continuous and systematic contacts with New York including by transacting business within this judicial district, regularly doing or soliciting business in this judicial district, deriving substantial revenue from goods used or consumed or services rendered in this judicial district, committing tortuous acts within this judicial district, committing tortuous injury to Cirrex in this judicial district, and/or engaging in other persistent courses of conduct in this judicial district, including through the provision of the LipiScan Product to customers, and its use by such customers, in this judicial district including, but not limited to, Columbia University Medical Center, Mount Sinai School of Medicine, and individuals affiliated therewith including Drs. Gregg Stone and Giora Weisz.

7. InfraReDx maintains interactive commercial website(s) that are accessible to consumers, including New York-based consumers in this jurisdiction (see, e.g., <http://www.infracredx.com> and <http://www.linkedin.com/companies/infracredx>). InfraReDx’s website(s) promote and solicit business and sales including by, *inter alia*, making available to consumers located in this jurisdiction information concerning its commercially available LipiScan Product, including information and instructions relating to its purchase, use and commercial partnering opportunities. InfraReDx also advertises and promotes employment opportunities with InfraReDx to interested applicants (<http://www.infracredx.com/current->

opportunities/) through its website, including to consumers and applicants in this judicial district.

8. InfraReDx's activities in New York subject it to personal jurisdiction in this District.

9. Venue in this Court is proper under 28 U.S.C. §§ 1391 and 1400.

BACKGROUND

The '726 Patent

10. United States Patent No. 6,366,726 entitled "Fiber Optic Probes for Indwelling Investigations" was duly and legally issued on April 2, 2002 to inventors Michael L. Wach and Eric T. Marple. A true and correct copy of the '726 Patent is attached as Exhibit A.

11. The '726 Patent is currently in full force and effect. In accordance with 35 U.S.C. § 282, the '726 Patent, and each and every claim thereof, is presumed to be valid.

12. All rights, title and interest in and to the '726 Patent have been assigned to Cirrex, which is the sole owner of the '726 Patent.

The '477 Patent

13. United States Patent No. 5,953,477 entitled "Method and Apparatus for Improved Fiber Optic Light Management" was duly and legally issued on September 14, 1999 to inventors Michael L. Wach and Eric T. Marple. A true and correct copy of the '477 Patent is attached as Exhibit B.

14. The '477 Patent is currently in full force and effect. In accordance with 35 U.S.C. § 282, the '477 Patent, and each and every claim thereof, is presumed to be valid.

15. All rights, title and interest in and to the '477 Patent have been assigned to Cirrex, which is the sole owner of the '477 Patent.

The '791 Patent

16. United States Patent No. 6,144,791 entitled "Beam Steering for Optical Fibers and Other Related Devices" was duly and legally issued on November 7, 2000 to inventors Michael L. Wach and Eric T. Marple. A true and correct copy of the '791 Patent is attached as Exhibit C.

17. The '791 Patent is currently in full force and effect. In accordance with 35 U.S.C. § 282, the '791 Patent, and each and every claim thereof, is presumed to be valid.

18. All rights, title and interest in and to the '791 Patent have been assigned to Cirrex, which is the sole owner of the '791 Patent.

Pre-Suit Interactions Between the Parties

19. Upon information and belief, representatives of InfraReDx including its former and current Chief Executive Officers, Daniel McNulty and Dr. James Muller respectively, were involved in several meetings and related discussions with one or more of the inventors of the Patents during which certain salient aspects of the patented technology were discussed with InfraReDx.

20. Subsequently and more recently, on October 19, 2009, Cirrex sent a letter via email and First Class Mail to InfraReDx regarding, *inter alia*, the '726 Patent and a license for the LipiScan Product.

21. In follow-up communications Cirrex also forwarded to InfraReDx copies of file wrappers for additional Cirrex patents including the '477 Patent.

22. On April 12, 2010, counsel for Cirrex and InfraReDx, participated in a teleconference in which the '726, '477 and '791 Patents were specifically discussed. During this teleconference, counsel for InfraReDx confirmed the commercial availability of the LipiScan

Product and described and confirmed its design features. When asked, however, counsel for InfraReDx would not identify any specific claim limitations of the Patents that are not found in the LipiScan Product.

23. By follow-up email on April 16, 2010, counsel for Cirrex reiterated the previously stated requests for identification of any claim limitations of the Patents which were not met by the LipiScan Product, including specifically claims 18 and 66 of the '726 Patent, claim 7 of the '477 Patent and claim 49 of the '791 Patent. InfraReDx's response on May 3, 2010 again failed to address this specific request.

INFRINGEMENT OF THE PATENTS

24. Upon information and belief, InfraReDx has made, used, promoted, offered to sell, and sold and continues to make, use, promote, offer to sell and sell within the United States, optical fiber products and services including, but not limited to, the LipiScan Product, as well as other related products, processes and machinery for producing such products, which infringe, include and/or practice one or more of the inventions claimed in the '726, '477 and '791 Patents.

COUNT ONE FOR INFRINGEMENT OF THE '726 PATENT

25. Cirrex repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of paragraphs 1 through 24, as set forth above.

26. On information and belief, InfraReDx has infringed and continues to infringe, has actively and knowingly induced and continues to actively and knowingly induce infringement of, and/or has contributed to and continues to contribute to acts of infringement of at least claims 18, 37, 40, 43, 66, 72, 74 and 76 of the '726 Patent, in violation of one or more of 35 U.S.C. §§ 271(a), (b), (c), and/or (f).

27. InfraReDx's acts of making, using, selling, and offering for sale fiber optic products, including the LipiScan Product, that infringe, use, include, and/or practice one or more of the inventions claimed in the '726 Patent have been without the permission, consent, authorization, or license of Cirrex.

28. On information and belief, InfraReDx and/or its representatives have deliberately copied the proprietary technology and designs of the Patents and Cirrex.

29. On information and belief, InfraReDx's infringing acts are, have been, and continue to be willful and deliberate, warranting enhanced damages and rendering this case exceptional under 35 U.S.C. § 285.

30. Cirrex has been damaged and will be irreparably injured by InfraReDx's continuing infringement.

31. InfraReDx will continue to engage in such infringing activities unless enjoined by the Court.

COUNT TWO
FOR INFRINGEMENT OF THE '477 PATENT

32. Cirrex repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of paragraphs 1 through 31, as set forth above.

33. On information and belief, InfraReDx has infringed and continues to infringe, has actively and knowingly induced and continues to actively and knowingly induce infringement of, and/or has contributed to and continues to contribute to acts of infringement of at least claims 7, 8, 9 and 11 of the '477 Patent, in violation of one of more of 35 U.S.C. §§ 271(a), (b), (c), and/or (f).

34. InfraReDx's acts of making, using, selling, and offering for sale fiber optic products, including the LipiScan Product, that infringe, use, include, and/or practice one or

more of the inventions claimed in the '477 Patent have been without the permission, consent, authorization, or license of Cirrex.

35. On information and belief, InfraReDx and/or its representatives have deliberately copied the proprietary technology and designs of the Patents and Cirrex.

36. On information and belief, InfraReDx's infringing acts are, have been, and continue to be willful and deliberate, warranting enhanced damages and rendering this case exceptional under 35 U.S.C. § 285.

37. Cirrex has been damaged and will be irreparably injured by InfraReDx's continuing infringement.

38. InfraReDx will continue to engage in such infringing activities unless enjoined by the Court.

COUNT THREE
FOR INFRINGEMENT OF THE '791 PATENT

39. Cirrex repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of paragraphs 1 through 38, as set forth above.

40. On information and belief, InfraReDx has infringed and continues to infringe, has actively and knowingly induced and continues to actively and knowingly induce infringement of, and/or has contributed to and continues to contribute to acts of infringement of at least claims 1-4, 10-13 and 49-51 of the '791 Patent, in violation of one or more of 35 U.S.C. §§ 271(a), (b), (c), and/or (f).

41. InfraReDx's acts of making, using, selling, and offering for sale fiber optic products, including the LipiScan Product, that infringe, use, include, and/or practice one or more of the inventions claimed in the '791 Patent have been without the permission, consent, authorization, or license of Cirrex.

42. On information and belief, InfraReDx and/or its representatives have deliberately copied the proprietary technology and designs of the Patents and Cirrex.

43. On information and belief, InfraReDx's infringing acts are, have been, and continue to be willful and deliberate, warranting enhanced damages and rendering this case exceptional under 35 U.S.C. § 285.

44. Cirrex has been damaged and will be irreparably injured by InfraReDx's continuing infringement.

45. InfraReDx will continue to engage in such infringing activities unless enjoined by the Court.

PRAYER FOR RELIEF

WHEREFORE, Cirrex respectfully prays for entry of a judgment as follows:

A. Finding that InfraReDx, has infringed, induced infringement of, and/or contributorily infringed one or more claims of the '726 Patent, the '477 Patent, and the '791 Patent;

B. Awarding Cirrex damages for InfraReDx's infringement, inducement of infringement, and/or contributory infringement of the '726 Patent, the '477 Patent, and the '791 Patent;

C. Permanently enjoining InfraReDx, its officers, agents, servants, representatives, and employees, and all persons acting in concert with them, and each of them, from further infringing, inducing the infringement of, and/or contributorily infringing the '726 Patent, the '477 Patent, and the '791 Patent;

D. Finding that InfraReDx's infringement, inducement of infringement, and/or contributory infringement has been willful and deliberate;

- E. Increasing damages awarded to Cirrex in this case to up to three times the damages amount found by the jury or assessed by the Court pursuant to 35 U.S.C. § 284;
- F. Declaring this case to be an exceptional case and awarding Cirrex its attorneys' fees pursuant to 35 U.S.C. § 285;
- G. Awarding Cirrex costs and prejudgment interest pursuant to 35 U.S.C. § 284; and
- H. Awarding Cirrex such other and further relief as the Court deems just, proper, and equitable.

DEMAND FOR JURY TRIAL

Cirrex hereby demands a trial by jury on all issues so triable as a matter of right and law.

Respectfully submitted,

DATED: May 12 , 2010

By: 

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