

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GAYMAR INDUSTRIES, INC.,

Plaintiff

v.

Civil No. _____

CINCINNATI SUB-ZERO PRODUCTS, INC.
and INNERCOOL *therapies*, Inc.,

Defendants.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, Gaymar Industries, Inc. (“Gaymar”), by and through its attorneys, alleges for its complaint against defendants Cincinnati Sub-Zero Products, Inc. (“CSZ”) and INNERCOOL *therapies*, Inc. (“INNERCOOL”):

THE PARTIES

1. Plaintiff Gaymar is a corporation organized and existing under the laws of the State of New York, and maintains its principal place of business at 10 Centre Drive, Orchard Park, New York.

2. Gaymar is engaged in the business of, among other things, designing, marketing, and selling temperature control products.

3. Defendant CSZ is a corporation organized and existing under the laws of the State of Ohio, and maintains a place of business at 12011 Mosteller Road, Cincinnati, Ohio.

4. Defendant INNERCOOL is a corporation organized and existing

under the laws of Delaware, and maintains a place of business at 6740 Top Gun Street, San Diego, CA 92121.

5. Upon information and belief, CSZ conducts and/or has conducted business and derives substantial revenue from offering and selling products within this district, including sales of and offers to sell products known as Blanketrol[®] III and the INNERCOOL *therapies* Surface Pad System (the “INNERCOOL SPS”).

6. Upon information and belief, INNERCOOL conducts and/or has conducted business and derives substantial revenue from offering and selling products within this district, including sales of and offers to sell the INNERCOOL SPS.

Jurisdiction and Venue

7. Plaintiff brings this action for patent infringement under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, including 35 U.S.C. § 271. This Court therefore has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. Venue in this judicial district is proper pursuant to 28 U.S.C. §§ 1391 and 1400.

The Patent at Issue

9. U.S. Patent No. 6,517,510, entitled “AUTOMATIC PATIENT CONTROL DEVICE,” (“the ‘510 patent”), issued on February 11, 2003. Gaymar is the owner of all right, title and interest in, to and under the ‘510 patent. A true and correct copy of the ‘510 patent is attached as Exhibit A.

**CLAIM FOR RELIEF FOR PATENT
INFRINGEMENT BY CSZ AND INNERCOOL**

10. Plaintiff repeats and realleges allegations set forth in paragraphs 1 through 9, above, as if fully set forth herein.

11. CSZ has directly infringed and continues to directly infringe the '510 patent by one or more of the following: making, selling, offering for sale, using, and/or importing patient temperature regulation units, including but not limited to the Blanketrol[®] III, the Blanketrol III (Model 233) Hyper-Hypothermia System, and the INNERCOOL SPS, each of which incorporates one or more of the inventions claimed in the '510 patent.

12. INNERCOOL has directly infringed and continues to directly infringe the '510 patent by one or more of the following: making, selling, offering for sale, using, and/or importing patient temperature regulation units, including but not limited to the INNERCOOL SPS, that incorporate one or more of the inventions claimed in the '510 patent.

13. CSZ and INNERCOOL will continue their infringing activities unless and until they are restrained and enjoined by this Court.

14. As a result of CSZ's and INNERCOOL's infringing activities, Gaymar has sustained damages in an amount to be proven at trial. Gaymar will continue to sustain such damages in the future unless and until such infringing activities are restrained and enjoined by this Court.

15. CSZ's and INNERCOOL's infringements have caused and will

continue to cause Gaymar irreparable harm for which there is no adequate remedy at law.

WHEREFORE, Gaymar is entitled to judgment for the following relief:

- (1) Declaring that defendants have directly infringed one or more claims of the '510 patent.
- (2) Granting an injunction, pursuant to 35 U.S.C. § 283, preliminarily and permanently enjoining defendants, their officers, directors, agents, servants, employees, attorneys, subsidiaries, affiliates, and all those acting in concert with or under or through them, from making, selling, offering for sale, using, and/or importing patient temperature regulation units, including but not limited to the Blanketrol[®] III, Blanketrol III (Model 233) Hyper-Hypothermia System, and INNERCOOL SPS, that infringe the '510 patent, or otherwise directly or indirectly committing further acts of infringement of the '510 patent.
- (3) Ordering an accounting for damages arising from defendants' acts of direct infringement and/or indirect infringement, including an accounting of the profits made by defendants and/or lost by Gaymar as a result of CSZ's and INNERCOOL's infringing activities.
- (4) Awarding damages pursuant to 35 U.S.C. § 284, with interest.
- (5) Finding that defendants' infringement is willful and that this is an exceptional case, and an order awarding reasonable attorneys' fees to Gaymar pursuant to 35 U.S.C. § 285.

(6) Such further relief as this Court deems proper.

Jury Demand

Plaintiff hereby demands a trial by jury on all issues properly triable to a jury.

Dated: April 17, 2008

HODGSON RUSS LLP
Attorneys for Gaymar Industries, Inc.

By s/Robert J. Lane, Jr. _____
Robert J. Lane, Jr.
rlane@hodgsonruss.com
Jodyann Galvin
jgalvin@hodgsonruss.com
The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, New York 14202
Telephone: (716) 856-4000

001978/00410 BFLODOCS 2235227v1