

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SYNERGETICS, INC.)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
IRIDEX CORPORATION)	JURY TRIAL DEMANDED
)	
Defendant.)	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Synergetics, Inc. (“Synergetics”), for its complaint against Iridex Corporation (“Iridex”), asserts as follows:

INTRODUCTION

1. By this action, Synergetics seeks a declaratory judgment that a new laser probe connector system that it manufactures and distributes to customers does not infringe Iridex’s U.S. Patent No. 5,085,492 (“the ‘492 patent”), attached as Exhibit 1. Synergetics also seeks a declaratory judgment that the ‘492 patent is invalid.

2. In October 2005, Iridex sued Synergetics’ parent company, Synergetics USA, Inc. (“Synergetics USA”), alleging that a previously manufactured Synergetics laser probe adapter infringes the ‘492 patent. That case is currently pending in this district.

3. On information and belief, since ceasing manufacture of the adapter system that is the subject of the prior litigation and releasing its new connector, Iridex has falsely stated to investors and others that Synergetics’ new connector infringes the ‘492

patent. Synergetics seeks a declaratory judgment to resolve this new dispute between the parties.

PARTIES

4. Synergetics is a corporation with its primary place of business in Missouri.

5. Synergetics designs, manufactures, and sells ophthalmic equipment to physicians and hospitals for use in eye surgeries.

6. Iridex is a company that, on information and belief, has its principal place of business in Mountain View, California.

JURISDICTION AND VENUE

7. Synergetics' Complaint arises, *inter alia*, under the patent laws of the United States, Title 35, United States Code, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

8. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

9. Upon information and belief, Iridex does business throughout the United States and does business within this judicial district, including the sale of laser probes with connectors that are described and claimed in the '492 patent.

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

FACTUAL BACKGROUND

11. On information and belief, Iridex markets and sells lasers for use by ophthalmic surgeons. In general, to use a laser for treating patients, surgeons typically attach a laser probe, of which there are numerous varieties from numerous manufacturers, to the laser light source, using the probe to deliver laser energy to the eyes of patients.

12. The Iridex system, however, was designed so that an Iridex laser will not work if a user attempts to use a non-Iridex probe with that laser. The Iridex connector has an electrical device present in it, without which the laser will not fire. On February 4, 1992, U.S. Patent No. 5,085,492 (“the ‘492 patent”), entitled “Optical Fiber With Electrical Encoding” issued to Iris Medical Instruments, Inc. (which later became Iridex).

13. On information and belief, Iridex sold numerous laser light sources to medical facilities and has become one of the leading manufacturers of lasers.

14. In approximately 1998, Synergetics developed a unique adapter that allowed Synergetics’ laser probes to work with the Iridex laser. Synergetics applied for, and was granted, two patents from the United States Patent and Trademark Office (“USPTO”) relating to this invention.

15. Over 6 years later, on October 19, 2005, Iridex filed suit against Synergetics USA in the Eastern District of Missouri alleging that Synergetics’ adapter system infringed the ‘492 patent.

16. Synergetics USA answered and denied the allegations and filed counterclaims against Iridex. That litigation is currently pending.

17. More recently, Synergetics developed an alternative connector system that allows Synergetics’ laser probes to work with the Iridex laser, but does not utilize an adapter. This new connection system does not infringe the ‘492 patent.

18. Synergetics currently manufactures and markets the new connector system on disposable laser probe products sold to customers, and Synergetics no longer manufactures the adapter system accused of infringement in the prior litigation.

19. On July 10, 2006, Synergetics USA issued a press release in which Synergetics disclosed the new connector system.

20. On information and belief, following Synergetics USA's press release, Iridex representatives, including Iridex's president and CEO, Barry Caldwell, told investors and others that Synergetics' new connector system infringes the '492 patent.

21. In light of this dispute, and the prior actions of Iridex, this case is ripe for adjudication, and Synergetics seeks a judgment declaring that its new connector does not infringe the '492 patent.

COUNT I
DECLARATORY JUDGMENT OF NONINFRINGEMENT

22. Synergetics incorporates by reference paragraphs 1 through 21 of the Complaint as though fully set forth herein.

23. An actual controversy exists between the parties regarding the '492 patent because Iridex has sued Synergetics USA for infringing the '492 patent based on the adapter and, on information and belief, has represented to investors and others that the new connector also allegedly infringes the '492 patent.

24. Synergetics has conducted an analysis of the claims of the '492 patent and compared them to Synergetics' new connector.

25. Synergetics does not infringe, contributorily infringe, induce others to infringe, or infringe in any other manner, the '492 patent.

26. Synergetics, by means of this Complaint, seeks a declaration from the Court that it does not infringe, contributorily infringe, induce the infringement of, or otherwise infringe in any manner, the '492 patent.

COUNT II
DECLARATORY JUDGMENT OF PATENT INVALIDITY

27. Synergetics incorporates by reference paragraphs 1 through 26 of the Complaint as though fully set forth herein.

28. The '492 patent is invalid for failing to meet the requirements of Title 35 of the United States Code, including Sections 101, 102, 103, and/or 112, and other federal requirements for patentability.

29. Synergetics, by means of this Complaint, seeks a declaration from the Court that the '492 patent is invalid.

PRAYER FOR RELIEF

WHEREFORE, Synergetics respectfully requests this Court to enter a judgment:

1. Declaring that Synergetics does not infringe, contributorily infringe, induce the infringement of, or otherwise infringe in any manner, the '492 patent;
2. Declaring that the '492 patent is invalid;
3. Declaring that this case is an exceptional case and awarding reasonable attorneys' fees to Synergetics pursuant to 35 U.S.C. § 285;
4. Awarding Synergetics its costs and attorneys' fees incurred in conjunction with this suit; and
5. Awarding Synergetics any other relief that this Court deems just and proper.

Dated: July 19, 2006

HARNESS, DICKEY & PIERCE, P.L.C.

By:



Rudolph A. Telscher, Jr., #41072

Matthew L. Cutler, #46305

Kara R. Yancey, #503030

Douglas R. Wilner, #53986

7700 Bonhomme, Suite 400

St. Louis, MO 63105

(314) 726-7500

FAX: (314) 726-7501

***Attorneys for Plaintiff,
Synergetics, Inc.***