

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

_____ :
DR. MORTON COHEN and, :
DR. ELLIOTT SILVERMAN :
 : Plaintiffs, :
 : :
v. : Civil Action No.: _____ :
 : :
ORTHO TECHNOLOGY, INC. and :
JOHN DOES 1-10 :
 : Defendants. :
_____ :

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, Morton Cohen and Elliott Silverman, by and through their undersigned counsel, assert this Complaint against Ortho Technology, Inc., a Florida Corporation, and John Does 1-10, averring as follows:

PARTIES

1. Plaintiff, Dr. Morton Cohen, is an individual residing within this district, having an address at 8323 Twitchell Road, Elkins Park, Pennsylvania 19027
2. Plaintiff, Dr. Elliott Silverman, is an individual residing at One Spring Lane, Linwood, New Jersey 08221.
3. Upon information and belief, Defendant, Ortho Technology, Inc. (“Ortho Technology”), is a corporation organized and existing under the laws of the state of Florida, with a principal place of business at 17401 Commerce Park Boulevard, Tampa, Florida 33647.
4. Upon information and belief, Defendants John Does 1-10, are orthodontists who reside in the state of Pennsylvania. The identities of John Does 1-10 will be ascertained through discovery.

NATURE OF THE ACTION

5. This is an action for patent infringement.
6. This Complaint avers that Defendants Ortho Technology, Inc. and John Does 1-10 have infringed, contributed to infringement of, and/or actively induced others to infringe Plaintiffs' U.S. Patent No. 5,593,303 ("the '303 Patent").

JURISDICTION AND VENUE

7. This action arises under the Patent Laws of the United States, 35 U.S.C. §1 *et. seq.*, including 35 U.S.C. §271. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1338(a).
8. This Court has personal jurisdiction over Defendant Ortho Technology, Inc. because Ortho Technology conducts business in the state of Pennsylvania, including within this district, and because Defendant Ortho Technology has infringed or contributed to the infringement of, and/or actively induced others to infringe Plaintiffs' patent in this district as alleged in this Complaint. Moreover, Defendant Ortho Technology continues to infringe, contribute to the infringement of, and/or actively induce others to infringe, Plaintiffs' asserted patent in this district.
9. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(b), 1391(c), and/or 1400(b), in that a substantial part of the events giving rise to Plaintiffs' claims occurred in this district, and each defendant is subject to personal jurisdiction in the state of Pennsylvania and in this district (and thus the Defendant Ortho Technology, Inc. being subject to personal jurisdiction resides in this district).

FACTUAL BACKGROUND

10. Plaintiffs, Drs. Cohen and Silverman, are and have been leaders in the field of orthodontic dentistry and have invented a novel method for applying orthodontic brackets to teeth. The United States Patent and Trademark Office has given recognition to the Plaintiffs' invention by granting to Plaintiffs U.S. Patent 5,593,303.

11. On January 14, 1997, U.S. Patent 5,593,303 was duly and legally issued to Plaintiffs for an invention entitled "Attachment of Orthodontic Brackets". A true and correct copy of the '303 Patent is annexed hereto as Exhibit A, and incorporated herein by reference.

12. At all times since its original issue date, Plaintiffs have been the owner of the entire right, title, and interest in the '303 Patent and have licensed rights under the patent to Plaintiffs' licensee, G.C. America, Inc.

13. Upon information and belief, Defendants, Ortho Technology, Inc. and John Does 1-10, have infringed and continue to infringe the '303 Patent by marketing, selling and distributing one or more components for the specific purpose of practicing and/or encouraging others to practice, the processes embodying the patented inventions of the patent-in-suit, and by practicing the processes embodying the patented inventions of the patent-in-suit, and will continue to do so unless enjoined by this Court.

14. Defendant, Ortho Technology, is and has been selling light cure resin reinforced glass ionomer cement products under the brand Resilience for the purpose of wet bonding brackets to teeth.

15. Literature of Defendant, Ortho Technology, is annexed hereto as Exhibit B.

16. Print-outs from the web site of Defendant, Ortho Technology, www.orthotechnology.com showing “Resilience Light Cure Resin Reinforced Glass Ionomer Bracket Adhesive” are annexed hereto as Exhibit C.

17. The “Resilience Light Cure Resin Reinforced Glass Ionomer Bracket Adhesive” is not a staple article or commodity of commerce suitable for substantial non-infringing use.

18. Defendant, Ortho Technology, has distributed literature, including catalogs and other printed and electronically published material, to dental professionals, which include orthodontists.

19. The literature published and distributed by Defendant Ortho Technology describes the use of glass ionomer cement products as a wet bond adhesive for cementing to teeth.

20. Ortho Technology had notice of Plaintiffs' '303 Patent.

21. On information and belief, Ortho Technology has sold and is selling glass ionomer cement products to others who Defendant Ortho Technology knew and knows, and/or had reason to know, would use these products to practice the patented method covered by the '303 Patent.

22. Defendants, John Does 1-10, purchased the Resilience brand glass ionomer cement product sold by Ortho Technology and used the product to carry out the methods of the '303 patent.

23. Defendant, Ortho Technology, sells glass ionomer cement products including the Resilience product, which is a cement capable of setting in the presence of saliva.

24. Defendant, Ortho Technology, sold the Resilience brand glass ionomer cement product to others, including, without limitation John Does 1-10, knowing, and having reason to know, that the cement product would be used to attach orthodontic brackets to teeth in the presence of saliva.

25. Ortho Technology is not, and was not ever, authorized by Plaintiffs to distribute the Resilience products to others for the purpose of practicing the patented method of the '303 Patent.

26. Ortho Technology has made substantial sums of money by infringing, inducing the infringement of, and/or contributorily infringing the '303 patent.

27. Ortho Technology is required to account to Plaintiffs for all of its profits made from infringing the '303 Patent.

CLAIM FOR PATENT INFRINGEMENT

28. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1-27, as if fully set forth herein.

29. Defendants have infringed the U.S. Patent Laws, including 35 U.S.C. §271, which provides that:

(a) Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.

(b) Whoever actively induces infringement of a patent shall be liable as an infringer.

(c) Whoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.

30. Upon information and belief, Defendants' infringement is willful and deliberate.

31. Defendants' infringement has caused Plaintiffs to suffer harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows and for the following relief:

1. That Defendant, Ortho Technology, Inc., be held to have infringed, contributed to the infringement of, and/or actively induced others to infringe the '303 Patent.
2. That Defendants, John Does 1-10, be held to have infringed, contributed to the infringement of, and/or actively induced others to infringe the '303 Patent.
3. That Ortho Technology, Inc., its subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys and all persons acting in concert of participation with it, or any of them, be temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter from infringing, contributing to the infringement of, and/or inducing infringement of the patent-in-suit, and specifically from directly or indirectly making, using, selling, or offering for sale, any products or services embodying the inventions of the patent-in-suit during the life of the claims of the patent-in-suit, without the express written authority of Plaintiffs.
4. That Defendants John Does 1-10, their subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys and all persons acting in concert of participation with them, or any of them, be temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter from infringing, contributing to the infringement of, and/or inducing infringement of the patent-in-suit, and specifically from directly or indirectly making, using, selling, or offering for sale, any products or services embodying the inventions of the patent-in-suit during the life of the claims of the patent-in-suit, without the express written authority of Plaintiffs.

5. That Defendants be directed to fully compensate Plaintiffs for all damages attributable to Defendants' infringement of the patent-in-suit in an amount according to proof at trial.
6. That this case be deemed exceptional.
7. That all damages awarded be trebled.
8. That Defendants be ordered to deliver to Plaintiffs for destruction at Plaintiffs option, all products that are used to contribute to the infringement of, and/or induce the infringement of the patent-in-suit.
9. That the Court issue an injunction requiring Ortho Technology to turn over to Plaintiffs the contact information, including contact person, title, company, address, email address of each person to whom a catalog, brochure, or other marketing material, personal contact, or other communication, was sent which included reference to a glass ionomer cement product used to carry out the method of the '303 patent, including, without limitation, the Resilience brand orthodontic cement product shown and described in Exhibits B and C hereto.
10. That Plaintiffs be awarded an amount of damages in the amount of the costs for contacting each person so identified in paragraph 8.
11. That Defendants be required to account for all gains, profits, advantages, and unjust enrichment, derived from violations of law.
12. That Plaintiffs be awarded reasonable attorney's fees.
13. That Plaintiffs be awarded the costs of suit, and assessment of interest.

14. That Plaintiffs have such other, further, and different relief, as the Court deems proper under the circumstances.

Plaintiffs demand a jury trial.

Respectfully submitted,

HARDING, BARLEY, FOLLMER & FRAILEY

Dated: 11/18/05

By: [Signature]

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