

## WESTERN DIVISION

[illegible]

## **JURISDICTION and VENUE**

3. This action is brought under the patent laws of the United States, 35 U.S.C. §100 et seq.

4. This Court has subject matter jurisdiction under 28 U.S.C. §1338(a).

5. Venue is proper in this District under 28 U.S.C. §§1400(b), 1391(b) and 1391(c).

6. Personal jurisdiction over the defendant is pursuant to 28 U.S.C. §1391(c) and Missouri Revised Statutes §506.500(3) as the defendant has been offering for sale and selling the infringing device in the state of Missouri.

7. In August 2003, an employee of Medical Positioning personally inspected in Jefferson City, Missouri, an Echo Pro Echocardiography Table manufactured by Biodex. The Echo Pro Echocardiography Table had been sold by Biodex to a medical office located in Jefferson City, Missouri and was located in Jefferson City at the time of inspection.

## **COUNT I**

### **PATENT INFRINGEMENT**

8. Medical Positioning is the owner of United States Patent No. 5,184,363 ("the '363 patent") titled "Support Bed With Drop-Out Sections For Medical Analysis" (Exhibit A). The '363 patent was issued on February 9, 1993 to Michael G. Falbo, Sr. and was assigned at issue to American Echo, Inc., which has changed its name to Medical Positioning, Inc.

9. Since the issue of the '363 patent, Medical Positioning has manufactured and sold to the public echocardiography tables incorporating the patented features.

10. Medical Positioning has properly marked all of the echocardiography tables it manufactured which contain the patented features with the U.S. Patent Number “5,184,363” as permitted under 35 U.S.C. §287(a).

11. Biodex, without the authority of Medical Positioning, manufactures, uses, sells, and offers to sell echocardiography tables that infringe the '363 patent under 35 U.S.C. §271(a).

12. Biodex is manufacturing and selling echocardiography tables under the model name “Echo Pro Echocardiography Table.”

13. The “Echo Pro Echocardiography Table” manufactured by Biodex is believed to infringe the claims of the '363 patent under 35 U.S.C. §271(a).

14. Registered patent counsel for Medical Positioning has compared operation of the Echo Pro Echocardiography Table as operated in the Biodex-created marketing CD Rom labeled “Scanning Ergonomics and Your Safety” to the claims of the ‘363 patent and has found the Echo Pro Echocardiography Table manufactured and sold by Biodex to infringe, at least, claims 1 through 5 of the ‘363 patent. (Exhibit B).

15. Biodex has known of the ‘363 patent since at least March 1999.

16. Biodex employees and counsel for Biodex previously have specifically reviewed the ‘363 patent.

17. Biodex employees had knowledge of the ‘363 patent prior to designing and manufacturing the Echo Pro Echocardiography Table.

18. In December 2003, Medical Positioning brought the infringement of the ‘363 patent to the attention of Biodex. In response, Biodex agreed to redesign its Echo Pro Echocardiography Table, however, Biodex continues to market and sell the infringing Echo Pro Echocardiography Table to the damage of Medical Positioning.

19. The infringing acts of Biodex are, therefore, a willful infringement of the '363 patent.

20. By reason of the above, Medical Positioning is entitled to an injunction under 35 U.S.C. §283 and Fed. R. Civ. P. 65(d) prohibiting Biodex and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them from infringing and otherwise violating any right secured by the '363 patent.

21. Medical Positioning has been damaged as a direct result of the infringement of the '363 patent. Under 35 U.S.C. §284, Medical Positioning is thus entitled to an award of damages adequate to compensate it for Biodex's infringement of the '363 patent, and Medical Positioning is, in any event, entitled to no less than a reasonable royalty for the infringement and use made of the invention of the '363 patent by Biodex, all together with interest and costs.

22. Due to Biodex's willful infringement of the '363 patent, Medical Positioning is further entitled to have the damages awarded increased up to three times the amount found and assessed under 35 U.S.C. §284.

23. This is an exceptional case entitling Medical Positioning to an award of reasonable attorney fees.

**WHEREFORE**, Medical Positioning demands that the following judgments and orders be adjudged and entered in favor of Medical Positioning and against Biodex:

A. an injunction under 35 U.S.C. §283 and Fed. R. Civ. P. 65(d) prohibiting Biodex and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them from infringing and otherwise violating any right secured by the '363 patent;

- B. an award of damages adequate to compensate Medical Positioning for Biodex's infringement of the '363 patent;
- C. a reasonable royalty for the infringement and use made of the invention of the '363 patent by Biodex;
- D. an award of interest and costs;
- E. an award of increased damages up to three times the amount of damages found and assessed;
- F. an award of Medical Positioning's reasonable attorney fees; and
- G. such other and further relief as the court deem just and proper in this case.

s/s Russell S. Jones, Jr.

Russell S. Jones, Jr. (Mo 30814)

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