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04-CV-00361-CMP

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DIAGNOSTIC ULTRASOUND
CORPORATION,

Plaintiff,

v.

MEDIWATCH, PLC and UNDERWRITERS
LABORATORIES INCORPORATED.

Defendants.

Civil Action No.

CV04-0361

COMPLAINT FOR PATENT
INFRINGEMENT

JURY TRIAL REQUESTED

Plaintiff Diagnostic Ultrasound Corporation alleges as follows against Defendants Mediwatch, PLC and Underwriters Laboratories Incorporated.

I. PARTIES

1. Plaintiff Diagnostic Ultrasound Corporation ("Diagnostic Ultrasound") is a corporation organized and existing under the laws of the state of Washington, having its principal place of business at 21222 30th Drive SE, Suite 120, Bothell, Washington, 98021, in the Western District of Washington.

2. Upon information and belief, Defendant Underwriters Laboratories Incorporated ("UL") is in the business of evaluating product safety and seeking marketing approval from the United States Department of Health and Human Services, Food and Drug Administration

1 ("FDA"). UL has Customer Service and Laboratory & Testing Facilities in the state of
 2 Washington, and well as a Local Engineering Office at 144 Railroad Avenue, Suite 101,
 3 Edmonds, WA, 98020, all in the Western District of Washington.

4 3. Upon information and belief, Defendant Mediwatch PLC ("Mediwatch") is a
 5 business entity of the United Kingdom, having its principal place of business at Swift
 6 House, Cosford Lane, Rugby, Warwickshire CV21 1QN, in the United Kingdom.

7 II. JURISDICTION AND VENUE

8 4. This action arises under the patent laws of the United States, particularly
 9 including 35 U.S.C. § 271 and § 281. Jurisdiction is conferred upon this Court pursuant to
 10 28 U.S.C. §§ 1331, 1332, and 1338(a).

11 5. Upon information and belief, Mediwatch has designed, manufactured, imported or
 12 used bladder screening devices it intends to market and sell in the United States, including in the
 13 Western District of Washington. Mediwatch has also offered for sale bladder screening devices
 14 to or through at least one distributor with the knowledge and intent that those devices will be
 15 distributed as broadly as possible throughout the United States, including in this judicial district.
 16 In a statement reported by multiple news agents in the United States, Mediwatch announced,
 17 "[we] are in the advanced stages to conclude a distribution agreement with a large, well-
 18 established international company . . . Breaking into the U.S. market represents a significant
 19 milestone for Mediwatch." Copies of two such press releases are attached as Exhibit 1. Upon
 20 information and belief, the distributors engaged by Mediwatch have agents who continuously
 21 and systematically conduct business in this district.

22 6. Upon information and belief, Mediwatch and UL executed an agreement to seek
 23 marketing approval for its bladder screening device from the United States Department of Health
 24 and Human Services. Thereafter, they sought and received marketing approval from the United
 25 States Department of Health and Human Services. In so doing, both Mediwatch and UL knew
 26 and intended the Mediwatch Portascan Bladder Scanner would be imported, made, used, offered

BLACK LOWE & GRAHAM ^{PLLC}

COMPLAINT - 2

Civil Action No.

DXUC.0610017011

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1 for sale, or sold broadly throughout the United States, including in the Western District of
2 Washington. MediWatch has imported at least one bladder scanner into the U.S. for testing by
3 UL.

4 7. UL's contacts with the Western District of Washington are continuous and
5 systematic, based on its multiple offices and continuous transaction of business in the State.
6 Accordingly, personal jurisdiction over each of the defendants is proper in this Court.

7 8. For purposes of venue, each of the defendants resides in the Western District of
8 Washington pursuant to 28 U.S.C. § 1391(c). Venue is therefore proper pursuant to
9 28 U.S.C. § 1400.

10 III. PATENT INFRINGEMENT

11 9. Diagnostic Ultrasound holds all rights under United States Patent No. 4,926,871
12 ("the '871 patent").

13 10. Upon information and belief, Mediwatch has made, used, offered for sale, sold, or
14 imported into the U.S. bladder scanners that infringe the '871 patent. These activities constitute
15 direct infringement pursuant to 35 U.S.C. § 271.

16 11. Mediwatch has, separately or together with UL, imported at least one bladder
17 scanner and has taken substantial additional steps in preparation for further importation, offers
18 for sale, and sales of its bladder scanners in the United States. Such activities include using the
19 infringing device to evaluate compliance with government regulations for the purpose of
20 obtaining approval from the FDA, in order to market and sell the device to or through national
21 distributors.

22 12. Upon information and belief, UL and Mediwatch also induced infringement or
23 contributorily infringed by assisting one another or actively encouraging others in the
24 manufacture, use, offer for sale, sale, distribution, or importation of infringing bladder scanners.
25 Further, UL and Mediwatch have taken substantial steps in preparation for the inducement of
26

1 infringement or contributory infringement by third parties who will purchase and use the
2 infringing bladder scanners in the U.S.

3 13. As a direct result of defendants' infringement of the '871 patent, Diagnostic
4 Ultrasound has suffered and will continue to suffer damages in an amount to be established at
5 trial. In addition, Diagnostic Ultrasound has suffered and will continue to suffer irreparable
6 harm for which there is no adequate remedy at law.

7 14. None of the foregoing activities of Mediwatch and UL has been under license or
8 authority from Diagnostic Ultrasound.

9 15. Mediwatch had actual knowledge of the '871 patent prior to engaging in its
10 infringing activity and prior to the filing of this complaint. The infringement is therefore
11 deliberate and willful and will continue unless enjoined by this Court.

12 **IV. DECLARATORY JUDGMENT OF INFRINGEMENT**

13 16. Diagnostic Ultrasound realleges the allegations of each of the preceding
14 paragraphs.

15 17. Upon information and belief, UL and Mediwatch are actively engaged in
16 activities directed toward making, using, offering for sale, selling, and importing bladder
17 scanners that infringe Diagnostic Ultrasound's '871 patent. Mediwatch has already manufactured
18 bladder scanners ready for imminent distribution.

19 18. In press releases directed toward and/or available in the United States, Mediwatch
20 announced that it is "in the advanced stages to conclude a distribution agreement with a large,
21 well-established international company," and that "breaking into the U.S. market represents a
22 significant milestone for Mediwatch." UL has solicited and received approval for the marketing
23 of the device in the United States. The importation and distribution into the United States is
24 clearly imminent and either has occurred or will occur in the absence of the intervention by this
25 Court.
26

19. Diagnostic Ultrasound has informed Mediwatch of its patent rights and demanded that it cease its infringement or preparation for infringement, but Mediwatch has refused to do so. Consequently, there is an actual controversy related to the infringement of the '871 patent.

V. PRAYER FOR RELIEF

WHEREFORE, Diagnostic Ultrasound requests the following alternative and cumulative relief:

1. Preliminary and permanent injunctions against the importation, offer for sale, or sale of any devices that infringe the '871 patent;
2. A declaration that the Mediwatch bladder scanner would infringe the '871 patent if imported, offered for sale, or sold in the U.S.;
3. An award of damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use of the invention;
4. An award of treble damages pursuant to 35 U.S.C. § 284;
5. An award of reasonable attorneys' fees;
6. An assessment of prejudgment interest and costs; and
7. Such other and further relief as the Court may deem just and proper.

VI. JURY DEMAND

Diagnostic Ultrasound demands a jury trial.

DATED this 20th day of February, 2004.

By: 

BLACK LOWE & GRAHAM^{PLLC}
Lawrence D. Graham, WSBA No. 25,402
Richard T. Black, WSBA No. 20,899

Attorneys for Plaintiff Diagnostic
Ultrasound Corporation

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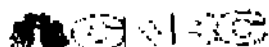
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REUTERS

Mediwatch shares jump on U.S. bladder device approval

20/01/04 12:02:43 GMT

LONDON, Jan 20 (Reuters) - Shares in Britain's Mediwatch Plc (663373) surged more than 30 percent on Tuesday after it gained marketing approval for Portoscan, a portable bladder scanner, allowing it to enter the U.S. bladder screening market.

Mediwatch, which makes diagnostic equipment for urological disorders and prostate cancer screeners, said the U.S. Food and Drug Administration marketing approval for Portoscan will allow access to the lucrative U.S. bladder screening market.

The company said it estimates the U.S. bladder disorder detection market is currently worth between \$15 million and \$20 million.

By 1158 GMT shares in Mediwatch were trading 22.2 percent higher at 5-1/2 pence, having earlier touched 6-1/2p, their best level in over a year -- on brisk volume of more than three million shares.

"Breaking into the U.S. market represents a significant milestone for Mediwatch," said Philip Stimpson, Mediwatch's chief executive officer, in a statement. "We are in advanced stages to conclude a distribution agreement with a large, well-established international company that is already selling into closely related markets."

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Mediwatch shares jump on U.S. bladder device approval

Tue January 20, 2004 07:02 AM ET

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