

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DR. SAKHARAM D. MAHURKAR,

Plaintiff,

v.

C.R. BARD, INC.,
BARD ACCESS SYSTEMS, INC.,
and BARD HEALTHCARE, INC.

Defendants.

Case No. 01 C 8452

Judge Rebecca R. Pallmeyer
Magistrate Judge Arlander Keys

DOCKETED
AUG 27 2002

NOTICE OF FILING

TO: Todd Flaming, Esq.
Schopf & Weiss
312 West Randolph Street
Chicago, Illinois 60606

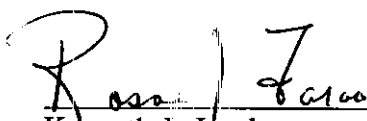
Vincent J. Belusko, Esq.
Nicole Smith, Esq.
Morrison & Foerster LLP
555 West Fifth Street, Suite 3500
Los Angeles, California 90013

PLEASE TAKE NOTICE that on Monday, August 26, 2002, the undersigned caused to be filed with the Clerk of the U.S. District Court for the Northern District of Illinois, the Second Amended Complaint, a copy of which is hereby served upon you.

Dated: August 26, 2002

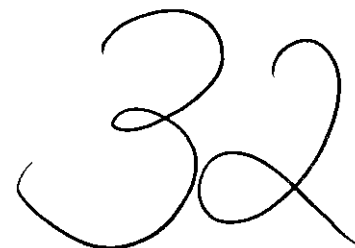
Respectfully submitted,

By:



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Attorneys For Plaintiff
Dr. Sakharam D. Mahurkar



CERTIFICATE OF SERVICE

Keith M. Stolte, an attorney, hereby certifies that he caused a copy of PLAINTIFF'S NOTICE OF FILING, SECOND AMENDED COMPLAINT, and a copy of the SUMMONS to Bard Healthcare to be served upon the following counsel for C.R. Bard, Inc. and Bard Access Systems, Inc.:

VIA FIRST CLASS MAIL

Todd Flaming, Esq.
Schopf & Weiss
312 West Randolph Street
Chicago, Illinois 60606

**VIA FACSIMILE, FEDERAL EXPRESS
AND FIRST CLASS MAIL**

Vincent J. Belusko, Esq.
Nicole Smith, Esq.
Morrison & Foerster LLP
555 West Fifth Street, Suite 3500
Los Angeles, California 90013

by causing same to be served in the manner specified above this 26th day of August, 2002.



Keith M. Stolte

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
AUG 27 2002

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 Plaintiff,)
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 C.R. BARD, INC. and)
 BARD ACCESS SYSTEMS, INC.,)
 BARD HEALTHCARE, INC.)
)
 Defendants.)

Civil Action No. 01 C 8452

Judge Rebecca R. Pallmeyer
Magistrate Judge Arlander Keys

DOCKETED
AUG 27 2002

JURY DEMANDED

SECOND AMENDED COMPLAINT

Plaintiff, Dr. Sakharam D. Mahurkar ("Dr. Mahurkar") complains of the defendants C.R. Bard, Inc., Bard Access Systems, Inc., and Bard Healthcare, Inc. as follows:

Parties and Jurisdiction

1. Dr. Mahurkar is a physician residing at 6171 North Sheridan Road, Chicago, Illinois 60660.
2. C.R. Bard, Inc. ("C.R. Bard") is a New Jersey corporation having its principal place of business at 730 Central Avenue, Murray Hill, New Jersey. Bard manufactures, distributes and sells catheters in the United States under a variety of brands.
3. Upon information and belief, Bard Access Systems, Inc. ("Bard Access Systems") is a Utah corporation having its principal place of business at 5425 W. Amelia Earhart Drive, Salt Lake City, Utah. Bard Access manufactures, distributes and sells catheters in the United States under a variety of brands.
4. Upon information and belief, Bard Healthcare, Inc. ("Bard Healthcare") is a Texas corporation having its principal place of business as 201 Anaya Road, Pharr, Texas 78577. Bard

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Healthcare imports into the United States various branded foreign-manufactured catheters and sells them to, among others, Bard Access Systems.

5. This action alleges patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This court has subject matter jurisdiction under 28 U.S.C. § 1338. Venue is proper under 28 U.S.C. § 1400(b) because plaintiff resides in this district and defendants' acts of infringement have occurred in this district.

Relevant Facts

6. Dr. Mahurkar is the inventor of the modern day catheter, the use of which has saved lives and also has saved untold patients from pain, trauma and discomfort. Dr. Mahurkar's inventions are covered by duly issued patents which Dr. Mahurkar has licensed so that his revolutionary technology has been made available for use in many medical applications.

7. On February 28, 1989, the United States Patent and Trademark Office duly and lawfully issued United States Patent No. 4,808,155 ("the '155 patent") to Dr. Mahurkar, as inventor, for "Simple Double Lumen Catheter." A copy of that patent is Exhibit A to this complaint.

8. On January 23, 1990, the United States Patent and Trademark Office duly and lawfully issued United States Patent No. 4,895,561 ("the '561 patent") to Dr. Mahurkar, as inventor, for "Dual Lumen Catheter Connecting System." A copy of that patent is Exhibit B to this complaint.

9. Upon information and belief, sometime after April 30, 1992, C. R. Bard, Inc., through its wholly-owned subsidiary Bard Canada, Inc., acquired Vas-Cath, Incorporated ("Vas-Cath").

10. Dr. Mahurkar previously sued Vas-Cath and others for infringement of various claims of his patents. That claim against Vas-Cath resulted in a Consent Judgment Order entered by Honorable Judge Frank H. Easterbrook on April 30, 1992.

11. The Consent Order enjoined Vas-Cath from infringing various Mahurkar patents, including the '155 patent and the '561 patent, with respect to various products accused of infringement in that case. The Consent Order also permitted Vas-Cath to make and sell certain other catheters that were exemplified in exhibits attached to the Consent Order, with certain limitations and restrictions.

12. The Consent Order specifically precluded changes to the permitted catheters, limiting the waiver of future claims of infringement by Dr. Mahurkar to the "disclosed structures and designs."

13. At unknown times after the entry of the Consent Order, defendant Bard Access Systems has manufactured, distributed, sold, offered for sale or used catheters known under the brands Flexxicon II Pre-curve, Niagara, Niagara Slim-Cath, Softcell, Optiflow, and HemoGlide ("the accused catheters") which are not of the "structures and designs" permitted by the Consent Order and consequently infringe Mahurkar patents.

14. At unknown times after the entry of the Consent Order, defendant C.R. Bard has distributed, sold, offered for sale or used catheters known under the brands Flexxicon II Pre-curve, Niagara, Niagara Slim-Cath, Softcell, Optiflow, and Hemoglide, which are not of the "structures and designs" permitted by the Consent Order and consequently infringe Mahurkar patents.

15. At unknown times after the entry of the Consent Order, defendant Bard Healthcare has imported, distributed, sold, offered for sale or used catheters known under the

brands Flexxicon II Pre-curve, Niagara, Niagara Slim-Cath, Softcell, Optiflow and HemoGlide, which are not of the “structures and designs” permitted by the Consent Order and consequently infringe Mahurkar patents.

16. Upon information and belief, at unknown times after the entry of the Consent Order, defendant C.R. Bard has induced and facilitated Bard Access System's infringement of the '561 and '155 patents, by advertising, promoting and otherwise generating commercial interest in the accused catheters by potential or prospective customers on C.R. Bard's website and through other advertising and promotional means; by participating in, overseeing, controlling, regulating or otherwise facilitating the design, development, manufacture, marketing, advertising and distribution of the accused catheters; by exercising quality control over the accused catheters; by distributing the accused catheters, and by other activities, with knowledge of the existence of the '561 and '155 patents, the 1992 Consent Order, and the infringing nature of the accused catheters.

17. Upon information and belief, at unknown times after the entry of the Consent Order, defendants C.R. Bard, Bard Access Systems and Bard Healthcare have induced and facilitated others, such as medical practitioners, to infringe certain claims of the '561 patent, by advertising, promoting, instructing and teaching the use of the accused catheters by such medical practitioners in a manner that would infringe the medical methods and systems claimed in certain claims of the '561 patent, with knowledge of the existence of the '561 patent, the 1992 Consent Order, and the infringing nature of such uses of the accused catheters.

Count I
(Infringement of the '561 Patent)

18. Dr. Mahurkar repeats and incorporates here by reference the allegations of paragraphs 1 through 17 as paragraph 18.

19. From a date subsequent to the Consent Order and continuing to the present time, defendants have infringed the '561 patent under 35 U.S.C. §271(a) by engaging in one or more of the following acts: making, using, importing, distributing, selling and/or offering for sale within this judicial district and elsewhere in the United States without authority or license from Dr. Mahurkar, Flexxicon II Precurve catheters, Niagara curved catheters, Softcell curved catheters, Optiflow, Hemoglide, Niagara Slim-Cath and other catheter assemblies with a performed bend in the catheter or catheter connecting system.

20. From a date subsequent to the Consent Order and continuing to the present time, defendant C.R. Bard has infringed the '561 patent under 35 U.S.C. §271(b) by knowingly inducing others, including defendants Bard Access Systems and/or Bard Healthcare, to infringe the '561 patent within this judicial district and elsewhere in the United States without authority or license from Dr. Mahurkar, by making, using, importing, selling or offering to sell Flexxicon II Precurve catheters, Niagara curved catheters, Softcell curved catheters, Optiflow, Hemoglide, Niagara Slim-Cath, and other catheter assemblies with a performed bend in the catheter or catheter connecting system.

21. From a date subsequent to the Consent Order and continuing to the present time, defendants C.R. Bard, Bard Access Systems and Bard Healthcare have infringed the '561 patent under 35 U.S.C. §271(b) & (C) by knowingly inducing and facilitating others, including medical practitioners, to infringe certain medical method and system claims of the '561 patent within this judicial district and elsewhere in the United States without authority or license from

Dr. Mahurkar by distributing and selling the accused catheters to such medical practitioners and/or advertising, promoting, instructing and teaching the use of the accused catheters in a manner that would infringe such medical method and system claims.

22. Dr. Mahurkar through his licensees has marked catheters licensed under the '561 patent in accordance with 35 U.S.C. § 287.

23. Upon information and belief, the infringement by defendants has been intentional and willful, with full knowledge of the '561 patent, and in total disregard of Dr. Mahurkar's rights under the patent. This also is an exceptional case within the meaning of 35 U.S.C. § 285.

24. Dr. Mahurkar has been and will continue to be injured and damaged by defendants' infringement unless defendants are enjoined from further infringement. Defendants have unlawfully derived profits from said infringement of the '561 patent to the financial detriment and damage of Dr. Mahurkar.

Count II
(Infringement of the '155 Patent)

25. Dr. Mahurkar repeats and incorporates here by reference the allegations of paragraphs 1 through 24 as paragraph 25.

26. From a date subsequent to the Consent Order and continuing to the present time, defendants have infringed the '155 patent under § 271(a) by making, using, importing, distributing, selling and/or offering for sale within this judicial district and elsewhere in the United States without authority or license from Dr. Mahurkar, catheters under various names and brands, including Niagara, Niagara Slim-Cath, Optiflow, Hemoglide and Softcell, that fall within the scope of the '155 patent claims.

27. From a date subsequent to the Consent Order and continuing to the present time, defendant C.R. Bard has infringed the '155 patent under 35 U.S.C. §271(b) by inducing others,

including defendants Bard Access Systems and/or Bard Healthcare, to infringe the '155 patent within this judicial district and elsewhere in the United States without authority or license from Dr. Mahurkar, Niagara, Softcell, Hemoglide, Niagara Slim-Cath, Optiflow, and other catheter assemblies with a performed bend in the catheter or catheter connecting system.

28. Dr. Mahurkar through his licensees has marked catheters licensed under the '155 patent in accordance with 35 U.S.C. § 287.

29. Upon information and belief, the infringement by defendants has been intentional and willful, with full knowledge of the '155 patent, and in total disregard of Dr. Mahurkar's rights under the patent. This also is an exceptional case within the meaning of 35 U.S.C. § 285.

30. Dr. Mahurkar has been and will continue to be injured and damaged by defendants' infringement unless defendants are enjoined from further infringement. Defendants have unlawfully derived profits from said infringement of the '155 patent to the financial detriment and damage of Dr. Mahurkar.

Wherefore, plaintiff Sakharam D. Mahurkar, M.D. prays for judgment to be entered in his favor and against defendants finding that defendants have infringed the '561 and '155 patents, and that Dr. Mahurkar be granted the following relief:

A. A permanent injunction enjoining continued infringement of the '561 and '155 patents by defendants and their officers, agents, employees, directors, parents, subsidiaries and those in active concert with them, pursuant to 35 U.S.C. § 283;

B. An award of damages sufficient to compensate Dr. Mahurkar for defendants' infringement of the '561 and '155 patents, plus pre-judgment and post-judgment interest, pursuant to 35 U.S.C. §284;

C. An award of increased damages in an amount up to three times the amount of damages found or assessed for defendants' willful acts of infringement, pursuant to 35 U.S.C. §284;

D. An award for reasonable attorneys' fees pursuant to 35 U.S.C. §285 and Dr. Mahurkar's costs of suit pursuant to 35 U.S.C. § 285; and


E. Such other and further relief as this Court deems just and proper.

Jury Demand

Plaintiff Sakharam D. Mahurkar, M.D. hereby demands trial by jury of all issues triable by jury.

Dated: August 26, 2002

DR. SAKHARAM MAHURKAR

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**SEE CASE
FILE FOR
EXHIBITS**