

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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|--------------------------------|---|------------------|
| _____ |) | |
| EXERGEN CORPORATION, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Civil Action No. |
| v. |) | |
| |) | |
| SDI DIAGNOSTICS, INCORPORATED, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

**EXERGEN CORPORATION'S
COMPLAINT FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL**

Exergen Corporation ("Exergen") for its Complaint against defendant SDI Diagnostics Incorporated ("SDI"), alleges as follows:

PARTIES

1. Plaintiff Exergen Corporation ("Exergen") is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and having its principal place of business at 400 Pleasant Street, Watertown, Massachusetts, within this judicial district.

2. Defendant SDI Diagnostics, Incorporated ("SDI") is, upon information and belief, a corporation organized under the laws of the Commonwealth of Massachusetts and having its principal place of business at 10 Hampden Drive, Easton, Massachusetts, within this judicial district.

JURISDICTION AND VENUE

3. This action is for patent infringement. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over SDI, which resides in this judicial district.

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

FACTUAL BACKGROUND

6. On August 31, 2010, United States Patent No. 7,787,938 (“the ‘938 patent”), entitled “Temporal Artery Temperature Detector,” was lawfully issued.

7. A copy of the ‘938 patent is attached as Exhibit A and incorporated herein.

8. Exergen is the sole owner of the ‘938 patent and all rights of recovery thereunder.

9. The ‘938 patent has not expired and is in full force and effect.

10. Exergen has marked its products in connection with the ‘938 patent in compliance with 35 U.S.C. § 287(a).

11. Upon information and belief, SDI has made and is making, has used and is using, has offered and is offering to sell, and/or has sold and is selling infrared thermometers which infringe the ‘938 patent in the United States, and/or has imported and is importing into the United States infrared thermometers which infringe the ‘938 patent, including but not limited to thermometers sold under the names ASTRATEMP and TRUTEMP.

12. SDI has been aware of the existence of the ‘938 patent since at least as early as about March 8, 2011.

COUNT I
INFRINGEMENT OF THE '938 PATENT

13. Exergen incorporates by reference paragraphs 1-12 above as though fully set out herein.

14. On information and belief, SDI has been and is infringing the '938 patent by making, using, importing, offering for sale, or selling infringing infrared thermometers, including but not limited to thermometers sold under the names ASTRATEMP and TRUTEMP.

15. On information and belief, SDI has been and is contributorily infringing and/or actively inducing others, including end users, to infringe the '938 patent, and sells the infringing thermometers with the knowledge and intent that they will be used by end users and that such use infringes the '938 patent, and the intent that such thermometers are especially designed to be and are used in a manner which infringes the '938 patent. Said thermometers are not staple items of commerce and have no substantial noninfringing use.

16. On information and belief, SDI is a direct competitor of Exergen with respect to the subject matter of the '938 patent.

17. On information and belief, SDI was aware of the existence of the '938 patent and its infringement of the '938 patent has been intentional, deliberate, and willful.

18. By reason of the aforesaid infringement, Exergen is damaged and is entitled to damages adequate to compensate for SDI's infringement.

19. SDI's infringement of the '938 patent has caused and is causing irreparable injury to Exergen, for which Exergen has no adequate remedy at law. SDI will continue its unauthorized use unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Exergen respectfully requests this Court to grant the following relief, and any other relief the Court may deem proper:

1. Enter judgment in favor of Exergen determining that SDI directly infringes, and has directly infringed, the '938 patent in violation of 35 U.S.C. § 271(a);
2. Enter judgment in favor of Exergen determining that SDI induces infringement of, and has induced infringement of, the '938 patent in violation of 35 U.S.C. § 271(b);
3. Enter judgment in favor of Exergen determining that SDI contributorily infringes, and has contributorily infringed, the '938 patent in violation of 35 U.S.C. § 271(c);
4. Permanently enjoin SDI and its officers, agents, divisions, affiliate, subsidiaries, successors, employees, and representatives, and all those controlled by or acting in concert or privity with them from infringing, inducing the infringement, and/or contributing to the infringement of the '938 patent;
5. Award Exergen damages in an amount to be determined at trial;
6. Award Exergen treble damages for willful infringement pursuant to 35 U.S.C. § 284;
7. Award Counterclaim Plaintiff's reasonable attorneys' fees and the costs of this action.

DEMAND FOR JURY TRIAL

Exergen hereby demands a trial by jury.

Dated: August 8, 2011

Respectfully submitted,

EXERGEN CORPORATION,

By its Attorneys

/s/ Kerry L. Timbers

Kerry L. Timbers (BBO# 552293)

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