

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

AMERICAN MEDICAL SYSTEMS, INC.)	
and AMS RESEARCH CORP.)	
)	
Plaintiffs,)	
)	Civil Action No. 06-01606-JMR-FLN
v.)	
)	Chief Judge James Rosenbaum
CELSION CORP.,)	Magistrate Judge Franklin Noel
)	
Defendant.)	
)	
)	

FIRST AMENDED COMPLAINT

Plaintiffs American Medical Systems, Inc. and AMS Research Corporation (collectively “AMS”) for their complaint against Defendant Celsion Corporation (“Celsion”) allege as follows:

1. This is a civil action arising under the Patent laws of the United States (35 U.S.C. § 1 *et seq.*), for damages and injunctive relief as provided in Title 35 U.S.C. § 281 and §§ 283-285.

THE PARTIES

2. Plaintiff American Medical Systems, Inc. is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 10700 Bren Road West, Minnetonka, Minnesota 55343.

3. Plaintiff AMS Research Corporation is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 10700 Bren Road West, Minnetonka, Minnesota 55343.

4. On information and belief, Defendant Celsion Corporation is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 10220-L Old Columbia Road, Columbia, Maryland 21046.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Celsion.

7. Venue is proper within this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

8. Celsion has used, sold, and offered for sale the Prolieve Thermodilatation System (“Prolieve”) in Minnesota, either directly or through established distribution channels.

9. Celsion actively participates in the distribution of Prolieve products in Minnesota.

10. Celsion actively induces and contributes to the use of Prolieve products in Minnesota.

11. Celsion has shipped Prolieve control units directly into Minnesota.

12. Continuously since at least 2004, Celsion has owned at least one Prolieve control unit in Minnesota.

13. Celsion has established a market for Prolieve catheter kits in Minnesota.

14. Celsion has established warranty obligations with Prolieve customers in Minnesota.

15. On at least two separate occasions, Celsion sent an employee to service a Prolieve control unit in Minnesota.

16. Celsion has selected a site in Minnesota as 1 of 12 sites for its post-marketing clinical study for Prolieve.

17. Celsion has contracted with Minnesota physicians in conjunction with its Prolieve clinical study.

18. Celsion sent an employee to Minnesota to train physicians and staff for its Prolieve clinical study.

19. Celsion actively participated in developing a nationwide Prolieve marketing and distribution campaign directed at physicians and patients in Minnesota.

20. Celsion actively participates in a nationwide Prolieve marketing and distribution campaign directed at physicians and patients in Minnesota.

21. Celsion has approved Prolieve promotional literature that has been directed to physicians and patients in Minnesota.

22. Celsion has approved internet web pages promoting Prolieve products, including web pages directing patients to physicians using Prolieve products in Minnesota.

BACKGROUND

23. United States Patent No. 5,220,927 entitled "Urethral Inserted Applicator for Prostate Hypothermia" ("the '927 patent") duly and legally issued on June 22, 1993. The '927 patent is assigned to AMS. A true and correct copy of the '927 patent is attached as Exhibit A to this Complaint.

24. AMS has the right to make, use, sell, and offer to sell the inventions of the '927 patent, and has the right to sue and to recover for past, present, and future infringement of the '927 patent. AMS has complied with the provisions of 35 U.S.C. § 287(a) with respect to the '927 patent.

25. United States Patent No. 6,216,703 entitled “Therapeutic Prostatic Thermotherapy” (“the ‘703 patent”) duly and legally issued on April 17, 2001. The ‘703 patent is assigned to AMS. A true and correct copy of the ‘703 patent is attached as Exhibit B to this Complaint.

26. AMS has the right to make, use, sell, and offer to sell the inventions of the ‘703 patent, and has the right to sue and to recover for past, present, and future infringement of the ‘703 patent. AMS has complied with the provisions of 35 U.S.C. § 287(a) with respect to the ‘703 patent.

27. United States Patent No. 7,089,064 entitled “Therapeutic Prostatic Thermotherapy” (“the ‘064 patent”) duly and legally issued on August 8, 2006. The ‘064 patent is assigned to AMS. A true and correct copy of the ‘064 patent is attached as Exhibit C to this Complaint.

28. AMS has the right to make, use, sell, and offer to sell the inventions of the ‘064 patent, and has the right to sue and to recover for past, present, and future infringement of the ‘064 patent. AMS has complied with the provisions of 35 U.S.C. § 287(a) with respect to the ‘064 patent.

29. United States Patent No. 7,093,601 entitled “Therapeutic Prostatic Thermotherapy” (“the ‘601 patent”) duly and legally issued on August 22, 2006. The ‘601 patent is assigned to AMS. A true and correct copy of the ‘601 patent is attached as Exhibit D to this Complaint.

30. AMS has the right to make, use, sell, and offer to sell the inventions of the ‘601 patent, and has the right to sue and to recover for past, present, and future infringement of the

'601 patent. AMS has complied with the provisions of 35 U.S.C. § 287(a) with respect to the '601 patent.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 5,220,927

31. The allegations of paragraphs 1-30 above are incorporated for this Count I as though fully set forth herein.

32. Celsion has manufactured, used, sold, offered for sale, and/or imported into the United States products, including the Prolieve, which infringe one or more claims of the '927 patent, either literally or under the doctrine of equivalents, either directly, contributorily, by inducement, or otherwise, in violation of 35 U.S.C. § 271.

33. Celsion's infringement of the '927 patent has been and continues to be willful, without license, and carried out with full knowledge of the '927 patent.

34. Celsion's infringement of the '927 patent is ongoing and will continue unless restrained and enjoined by this Court.

35. As a result of the aforementioned actions of Celsion, AMS has suffered and continues to suffer damages and irreparable harm. Plaintiffs have no adequate remedy at law.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 6,216,703

36. The allegations of paragraphs 1-35 above are incorporated for this Count II as though fully set forth herein.

37. Celsion has manufactured, used, sold, offered for sale, and/or imported into the United States products, including Prolieve, the use of which infringes one or more claims of the '703 patent, either literally or under the doctrine of equivalents, either directly, contributorily, by inducement, or otherwise, in violation of 35 U.S.C. § 271.

38. Celsion's infringement of the '703 patent has been and continues to be willful, without license, and carried out with full knowledge of the '703 patent.

39. Celsion's infringement of the '703 patent is ongoing and will continue unless restrained and enjoined by this Court.

40. As a result of the aforementioned actions of Celsion, AMS has suffered and continues to suffer damages and irreparable harm. Plaintiffs have no adequate remedy at law.

**COUNT III
INFRINGEMENT OF U.S. PATENT NO. 7,089,064**

41. The allegations of paragraphs 1-40 above are incorporated for this Count III as though fully set forth herein.

42. Celsion has manufactured, used, sold, offered for sale, and/or imported into the United States products, including Prolieve, the use of which infringes one or more claims of the '064 patent, either literally or under the doctrine of equivalents, either directly, contributorily, by inducement, or otherwise, in violation of 35 U.S.C. § 271, as will be established after a reasonable opportunity for investigation and discovery.

43. Celsion's infringement of the '064 patent has been and continues to be willful, without license, and carried out with full knowledge of the '064 patent, as will be established after a reasonable opportunity for investigation and discovery.

44. Celsion's infringement of the '064 patent is ongoing and will continue unless restrained and enjoined by this Court.

45. As a result of the aforementioned actions of Celsion, AMS has suffered and continues to suffer damages and irreparable harm. Plaintiffs have no adequate remedy at law.

COUNT IV
INFRINGEMENT OF U.S. PATENT NO. 7,093,601

46. The allegations of paragraphs 1-45 above are incorporated for this Count IV as though fully set forth herein.

47. Celsion has manufactured, used, sold, offered for sale, and/or imported into the United States products, including Prolieve, the use of which infringes one or more claims of the '601 patent, either literally or under the doctrine of equivalents, either directly, contributorily, by inducement, or otherwise, in violation of 35 U.S.C. § 271, as will be established after a reasonable opportunity for investigation and discovery.

48. Celsion's infringement of the '601 patent has been and continues to be willful, without license, and carried out with full knowledge of the '601 patent, as will be established after a reasonable opportunity for investigation and discovery.

49. Celsion's infringement of the '601 patent is ongoing and will continue unless restrained and enjoined by this Court.

50. As a result of the aforementioned actions of Celsion, AMS has suffered and continues to suffer damages and irreparable harm. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

- A. For judgment that Celsion has infringed the '927 patent;
- B. For judgment that Celsion has infringed the '703 patent;
- C. For judgment that Celsion has infringed the '064 patent;
- D. For judgment that Celsion has infringed the '601 patent;
- E. For judgment that Celsion's infringement of the '927 patent is willful;
- F. For judgment that Celsion's infringement of the '703 patent is willful;

G. For judgment that Celsion's infringement of the '064 patent is willful;

H. For judgment that Celsion's infringement of the '601 patent is willful;

I. For a preliminary and permanent injunction prohibiting Celsion, its subsidiaries, divisions, affiliates, officers, directors, agents, servants, employees, attorneys, and all those persons acting in privity or in concert with them from infringing, contributing to the infringement of, and inducing infringement of the '927 patent;

J. For a preliminary and permanent injunction prohibiting Celsion, its subsidiaries, divisions, affiliates, officers, directors, agents, servants, employees, attorneys, and all those persons acting in privity or in concert with them from infringing, contributing to the infringement of, and inducing infringement of the '703 patent;

K. For a preliminary and permanent injunction prohibiting Celsion, its subsidiaries, divisions, affiliates, officers, directors, agents, servants, employees, attorneys, and all those persons acting in privity or in concert with them from infringing, contributing to the infringement of, and inducing infringement of the '064 patent;

L. For a preliminary and permanent injunction prohibiting Celsion, its subsidiaries, divisions, affiliates, officers, directors, agents, servants, employees, attorneys, and all those persons acting in privity or in concert with them from infringing, contributing to the infringement of, and inducing infringement of the '601 patent;

M. For an award to Plaintiffs of damages with interest for infringement of the '927 patent, and that the damages be trebled;

N. For an award to Plaintiffs of damages with interest for infringement of the '703 patent, and that the damages be trebled;

O. For an award to Plaintiffs of damages with interest for infringement of the '064 patent, and that the damages be trebled;

P. For an aware to Plaintiffs of damages with interest for infringement of the '601 patent, and that the damages be trebled;

Q. For a declaration that this is an exceptional case 35 U.S.C. § 285, and an award to Plaintiffs of their costs, expenses, and attorneys fees; and

R. Such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable in this Complaint.

Dated: September 1, 2006

By: s/Leland G. Hansen

Leland G. Hansen

Timothy J. Malloy

Sandra A. Frantzen

Merle S. Elliott

McAndrews, Held & Malloy, Ltd.

500 West Madison Street, 34th Floor

Chicago, IL 60661

Telephone: (312) 775-8000

Facsimile: (312) 775-8100

Edward M. Laine (#59535)

David A. Prange (#329976)

Oppenheimer Wolff & Donnelly LLP

Plaza VII Building, Suite 3300

45 South Seventh Street

Minneapolis, Minnesota 55402-1609

Telephone: (612) 607-7000

Facsimile: (612) 607-7100

*Attorneys for Plaintiffs American Medical
Systems, Inc. and AMS Research Corp.*