

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

SALUS CORPORATION,	)	
d/b/a ICP MEDICAL,	)	
	)	
	)	Case No.: 4:08-cv-01527SNLJ
Plaintiff,	)	
	)	
vs.	)	JURY TRIAL DEMANDED
	)	
CARDINAL HEALTH, INC. and	)	
CARDINAL HEALTH 200, INC.,	)	
	)	
	)	
Defendants.	)	

**AMENDED COMPLAINT**

Plaintiff SALUS CORPORATION, d/b/a ICP MEDICAL (“ICP”), for its Complaint against CARDINAL HEALTH, INC. (“Cardinal Health”) and CARDINAL HEALTH 200, INC. (“Cardinal Health 200”) (collectively “Cardinal”) states and alleges as follows:

1. Starting in 1994 and continuing through the present, ICP has grown into a company that manufactures and sells to suppliers innovative products and services to, among other things, improve customer care in the medical community, nurse and patient satisfaction and to help satisfy compliance issues facing hospitals. One of ICP’s ornamental products is its disposable medical gown, protected under U.S. Patent No. D533,982 (“the ‘982 patent”).

2. Recognizing the uniqueness of ICP’s disposable medical gown and to accommodate a client BJC HealthCare, in February 2001, Cardinal entered into an agreement with ICP to be a supplier for ICP. For approximately 7 years, Cardinal acted as a supplier of ICP’s and sold, among other things, disposable medical gowns protected under the ‘982 patent to

customers including, BJC HealthCare. On information and belief, Cardinal is now making, using, offering to sell and selling its own infringing disposable medical gowns to customers, including BJC HealthCare. On information and belief, Cardinal has taken these actions even though they were aware of ICP's intellectual property rights in its disposable medical gowns.

3. ICP seeks damages for Cardinal's willful infringement of ICP's '982 patent and an injunction preventing Cardinal from continuing to infringe the '982 patent and harm and damage ICP.

### **JURISDICTION AND VENUE**

4. This action arises under the Patent Laws of the United States (Title 35, United States Code, respectively).

5. Jurisdiction is conferred upon this Court by 28 U.S.C. §1331, §1332 and §1338(a).

6. Venue is proper in this district pursuant to 28 U.S.C. §1391, §1400(b) and Missouri's Long-Arm Statute. Mo.Rev.Stat. § 506.500.

### **FACTS**

#### **The Parties**

7. Plaintiff ICP, a Missouri company, having a principal place of business in St. Louis, Missouri.

8. Upon information and belief, Defendant Cardinal Health, Inc. is an Ohio corporation, having a principal place of business in Dublin, Ohio.

9. Upon information and belief, Defendant Cardinal Health 200, Inc., is a subsidiary of Cardinal Health, Inc., and is a Delaware corporation, having a principal place of business in McGaw Park, Illinois.

### **Plaintiff's Intellectual Property**

10. ICP is a direct manufacturer and seller of innovative products and services for the medical community, including body bag systems, hand sanitizers, and disposable medical gowns.

11. The '982 patent, entitled "Disposable Medical Gown," the lawful inventor being Joseph A. Graneto III and owner by assignment being Salus Corporation, d/b/a ICP Medical, is attached hereto as Exhibit A. The '982 patent was duly and legally granted by the United States Patent Office on December 26, 2006 as the result of an application filed August 23, 2004. The '982 patent is a design patent which claims an ornamental design for a disposable medical gown.

### **Defendant's Actions and Infringement**

12. Upon information and belief, beginning sometime in 2007 and continuing through the present, Cardinal sold in the United States, including in this judicial district, ICP's disposable medical gown.

13. Upon information and belief, Cardinal is making and using in the United States and offering for sale and selling in the United States, including in this judicial district, disposable medical gowns that infringe the novel features claimed in the '982 patent.

14. Upon information and belief, Cardinal is undertaking the above-referenced acts of infringement in the state of Missouri and, more particularly, in this judicial district.

15. These actions on the part of Cardinal are without license or the authority of ICP and constitute willful and intentional infringement of the rights of ICP resulting in irreparable harm and injury to ICP.

16. Upon information and belief, all of the above-referenced actions taken by Cardinal have been, and continue to be, willful, wanton and deliberate. Cardinal Health has been notified of its infringing conduct, yet continues to make, use, sell, and offer the infringing product for sale within the United States.

**COUNT I**

**PATENT INFRINGEMENT AGAINST CARDINAL HEALTH, INC.**

17. ICP realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

18. Upon information and belief, Cardinal Health has for a time past and still is purposefully selling, making, using, and offering for sale, aiding and abetting and contributing to such activities or inducing such activities, in the United States and in this judicial district, disposable medical gowns that infringe the '982 patent. Cardinal Health has done so without a license or authority from ICP.

19. On information and belief, Cardinal Health has notice of the '982 patent and has infringed and are continuing to infringe the '982 patent by selling, making, using and/or offering for sale in the United States and in this judicial district disposable medical gowns with the novel features claimed in the '982 patent, all without license or authority from ICP. Cardinal Health's actions amount to willful and wanton patent infringement.

20. On information and belief, Cardinal Health's illegal conduct, unless enjoined, will continue to cause irreparable injury and loss to ICP, for which there is no adequate remedy at law.

21. Cardinal Health's infringement of the '982 patent has damaged and will continue to damage ICP, including but not limited to lost profits from lost sales, and lost income from competition from infringing products.

## **COUNT II**

### **PATENT INFRINGEMENT AGAINST CARDINAL HEALTH 200, INC.**

22. ICP realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

23. Upon information and belief, Cardinal Health 200 has for a time past and still is purposefully selling, making, using, and offering for sale, aiding and abetting and contributing to such activities or inducing such activities, in the United States and in this judicial district, disposable medical gowns that infringe the '982 patent. Cardinal Health 200 has done so without a license or authority from ICP.

24. On information and belief, Cardinal Health 200 has notice of the '982 patent and has infringed and are continuing to infringe the '982 patent by selling, making, using and/or offering for sale in the United States and in this judicial district disposable medical gowns with the novel features claimed in the '982 patent, all without license or authority from ICP. Cardinal Health 200's actions amount to willful and wanton patent infringement.

25. On information and belief, Cardinal Health 200's illegal conduct, unless enjoined, will continue to cause irreparable injury and loss to ICP, for which there is no adequate remedy at law.

26. Cardinal Health 200's infringement of the '982 patent has damaged and will continue to damage ICP, including but not limited to lost profits from lost sales, and lost income from competition from infringing products.

**PRAYER FOR RELIEF**

WHEREFORE, ICP respectfully requests the Court to enter a judgment:

- A. Declaring that Cardinal Health, Inc. has infringed and continues to infringe the '982 patent;
- B. Declaring that Cardinal Health 200, Inc. has infringed and continues to infringe the '982 patent;
- C. Declaring that Cardinal Health, Inc. has willfully infringed and continues to willfully infringe the '982 patent;
- D. Declaring that Cardinal Health 200, Inc. has willfully infringed and continues to willfully infringe the '982 patent;
- E. Preliminarily and permanently enjoining Cardinal Health, Inc., including any subsidiaries, agents, officers, employees, directors, licensees, servants, successors, assigns, and all others acting in privity or in concert with them, from infringing, actively inducing infringement or contributing to infringement of the '982 patent;
- F. Preliminarily and permanently enjoining Cardinal Health 200, Inc., including any subsidiaries, agents, officers, employees, directors, licensees, servants, successors, assigns, and all others acting in privity or in concert with them, from infringing, actively inducing infringement or contributing to infringement of the '982 patent;
- G. Awarding ICP damages adequate to compensate for Cardinal's infringement of the '982 patent, together with interest;
- H. Awarding ICP treble damages pursuant to 35 U.S.C. § 284, and other applicable law, by reason of the willful, wanton, and deliberate nature of Cardinal's infringement;

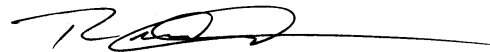
I. Awarding ICP attorneys' fees and costs of suit, pursuant to 35 U.S.C. § 285, and other applicable law; and

J. Awarding ICP other and further relief as this Court deems just and proper.

Dated: October 31, 2008

HARNESS, DICKEY & PIERCE, P.L.C.

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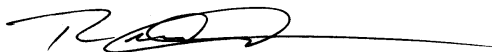
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*Attorneys for Salus Corp. d/b/a ICP Medical*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31st day of October, 2008, the foregoing was filed with the Court via the Court's electronic filing system to be formally served on defendants via process server.



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