

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

MEDICAL INSTRUMENTS DEVELOPMENT, INC.,)	
)	
Plaintiff,)	Civil Action No. 09-1409 (JFB)(ETB)
)	
v.)	
)	JURY TRIAL DEMANDED
COOK INCORPORATED AND COOK MEDICAL INCORPORATED,)	
)	
Defendants.)	

SECOND AMENDED COMPLAINT

Plaintiff Medical Instruments Development, Inc. hereby complains of defendants Cook Incorporated and Cook Medical Incorporated and alleges as follows.

Jurisdiction and Venue

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 100 et seq.
2. This Court has subject matter jurisdiction pursuant to at least 28 U.S.C. §§ 1331 and 1338(a).
3. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b) and 1400(b).

The Parties

4. Plaintiff Medical Instruments Development, Inc. (hereinafter referred to as MIDI or Plaintiff) is a Delaware corporation with a place of business at 601 Chestnut Avenue, Cedarhurst, New York, 11556.

5. Upon information and belief, defendant Cook Incorporated is a corporation organized and existing under the laws of the State of Indiana and has its principal place of business at 750 Daniels Way, Bloomington, Indiana. Upon information and belief, defendant Cook Medical Incorporated is a corporation organized and existing under the laws of the State of Indiana and has its principal place of business at 1025 Acuff Road, Bloomington, Indiana. Hereinafter, defendants Cook Incorporated and Cook Medical Incorporated are collectively referred to as “Cook” or “Defendants.”

6. MIDI is informed and believes, and thereon alleges, that Cook conducts business in this Judicial District and has committed the acts alleged herein within this Judicial District and elsewhere.

FIRST CLAIM FOR RELIEF

7. On March 14, 1995, the U.S. Patent and Trademark Office (“PTO”) duly and legally issued U.S. Patent No. 5,397,302 (the ‘302 Patent) titled “Method of Using a Dual Lumen Biliary Catheter” naming George W. Weaver, Harold Jacob, and David P. Leighton as inventors. MIDI is a co-owner of the ‘302 Patent with the exclusive right to enforce the ‘302 Patent and the exclusive right to recover all damages for infringement of that patent.

8. This is a claim for patent infringement and arises under the Patent Laws of the United States 35 U.S.C. § 100, *et seq.*

9. MIDI is informed and believes, and thereon alleges, that Cook has infringed and is infringing, and is inducing the infringement of the ‘302 Patent by making, having made, using, selling and/or offering for sale biliary catheters according to the invention claimed in the ‘302 Patent and by knowingly and actively aiding and

abetting others to directly infringe the '302 Patent through the manufacture, use, sale and offer for sale of their infringing products to persons who purchased and used said biliary catheters.

10. Each of Cook's infringing activities is without the consent of, authority of, or license from MIDI.

11. Cook's acts constitute direct, contributory, and/or induced infringement of the '302 Patent in violation of 35 U.S.C. 271(a), (b), and (c).

12. On information and belief, Cook's infringement of the '302 Patent has been, and continues to be, deliberate and willful. On information and belief, Cook's infringing acts were with actual knowledge of the '302 Patent. On information and belief, Cook acted despite an objectively high likelihood that their acts constituted infringement of the '302 Patent, which was valid, and that this high likelihood was known or should have been known to Cook.

13. MIDI is informed and believes, and thereon alleges, that Cook has derived and received, and will continue to derive and receive, gains, profits, and advantages from the aforesaid acts of infringement in an amount that is not presently known to MIDI. By reason of the aforesaid infringing acts, MIDI has been damaged and is entitled to monetary relief in an amount to be determined at trial.

14. Because of the aforesaid infringing acts, MIDI has suffered and continues to suffer great and irreparable injury, for which MIDI has no adequate remedy at law.

SECOND CLAIM FOR RELIEF

15. On February 4, 1997, the U.S. Patent and Trademark Office ("PTO") duly and legally issued U.S. Patent No. 5,599,299 (the '299 Patent) titled "Multi-Lumen

Endoscopic Catheter” naming George W. Weaver, Harold Jacob, David P. Leighton, and Damond C. Holsinger as inventors. MIDI is a co-owner of the ‘299 Patent with the exclusive right to enforce the ‘299 Patent and the exclusive right to recover all damages for infringement of that patent.

16. This is a claim for patent infringement and arises under the Patent Laws of the United States 35 U.S.C. § 100, *et seq.*

17. MIDI is informed and believes, and thereon alleges, that Cook has infringed and is infringing, and is inducing the infringement of the ‘299 Patent by making, having made, using, selling and/or offering for sale biliary catheters according to the invention claimed in the ‘299 Patent and by knowingly and actively aiding and abetting others to directly infringe the ‘299 Patent through the manufacture, use, sale and offer for sale of their infringing products to persons who purchased and used said biliary catheters.

18. Each of Cook’s infringing activities is without the consent of, authority of, or license from MIDI.

19. Cook’s acts constitute direct, contributory, and/or induced infringement of the ‘302 Patent in violation of 35 U.S.C. 271(a), (b), and (c).

20. On information and belief, Cook’s infringement of the ‘299 Patent has been, and continues to be, deliberate and willful. On information and belief, Cook’s infringing acts were with actual knowledge of the ‘299 Patent. On information and belief, Cook acted despite an objectively high likelihood that their acts constituted infringement of the ‘299 Patent, which was valid, and that this high likelihood was known or should have been known to Cook.

21. MIDI is informed and believes, and thereon alleges, that Cook has derived and received, and will continue to derive and receive, gains, profits, and advantages from the aforesaid acts of infringement in an amount that is not presently known to MIDI. By reason of the aforesaid infringing acts, MIDI has been damaged and is entitled to monetary relief in an amount to be determined at trial.

22. Because of the aforesaid infringing acts, MIDI has suffered and continues to suffer great and irreparable injury, for which MIDI has no adequate remedy at law.

THIRD CLAIM FOR RELIEF

23. On February 4, 1997, the U.S. Patent and Trademark Office (“PTO”) duly and legally issued U.S. Patent No. 5,599,300 (the ‘300 Patent) titled “Method for Electrosurgically Obtaining Access to the Biliary Tree With an Adjustably Positionable Needle-Knife” naming George W. Weaver, Damond C. Holsinger, David F. Leighton, and Harold Jacob as inventors. MIDI is a co-owner of the ‘300 Patent with the exclusive right to enforce the ‘300 Patent and the exclusive right to recover all damages for infringement of that patent.

24. This is a claim for patent infringement and arises under the Patent Laws of the United States 35 U.S.C. § 100, *et seq.*

25. MIDI is informed and believes, and thereon alleges, that Cook has infringed and is infringing, and is inducing the infringement of the ‘300 Patent by making, having made, using, selling and/or offering for sale biliary catheters according to the invention claimed in the ‘300 Patent and by knowingly and actively aiding and abetting others to directly infringe the ‘300 Patent through the manufacture, use, sale and

offer for sale of their infringing products to persons who purchased and used said biliary catheters.

26. Each of Cook's infringing activities is without the consent of, authority of, or license from MIDI.

27. Cook's acts constitute direct, contributory, and/or induced infringement of the '300 Patent in violation of 35 U.S.C. 271(a), (b), and (c).

28. On information and belief, Cook's infringement of the '300 Patent has been, and continues to be, deliberate and willful. On information and belief, Cook's infringing acts were with actual knowledge of the '300 Patent. On information and belief, Cook acted despite an objectively high likelihood that their acts constituted infringement of the '300 Patent, which was valid, and that this high likelihood was known or should have been known to Cook.

29. MIDI is informed and believes, and thereon alleges, that Cook has derived and received, and will continue to derive and receive, gains, profits, and advantages from the aforesaid acts of infringement in an amount that is not presently known to MIDI. By reason of the aforesaid infringing acts, MIDI has been damaged and is entitled to monetary relief in an amount to be determined at trial.

30. Because of the aforesaid infringing acts, MIDI has suffered and continues to suffer great and irreparable injury, for which MIDI has no adequate remedy at law.

FOURTH CLAIM FOR RELIEF

31. On August 4, 1998, the U.S. Patent and Trademark Office ("PTO") duly and legally issued U.S. Patent No. 5,788,681 (the '681 Patent) titled "Multi-Lumen Endoscopic Catheter" naming George W. Weaver, Harold Jacob, David F. Leighton, and

Damond C. Holsinger as inventors. MIDI is a co-owner of the '681 Patent with the exclusive right to enforce the '681 Patent and the exclusive right to recover all damages for infringement of that patent.

32. This is a claim for patent infringement and arises under the Patent Laws of the United States 35 U.S.C. § 100, *et seq.*

33. MIDI is informed and believes, and thereon alleges, that Cook has infringed and is infringing, and is inducing the infringement of the '681 Patent by making, having made, using, selling and/or offering for sale biliary catheters according to the invention claimed in the '681 Patent and by knowingly and actively aiding and abetting others to directly infringe the '681 Patent through the manufacture, use, sale and offer for sale of their infringing products to persons who purchased and used said biliary catheters.

34. Each of Cook's infringing activities is without the consent of, authority of, or license from MIDI.

35. Cook's acts constitute direct, contributory, and/or induced infringement of the '681 Patent in violation of 35 U.S.C. 271(a), (b), and (c).

36. On information and belief, Cook's infringement of the '681 Patent has been, and continues to be, deliberate and willful. On information and belief, Cook's infringing acts were with actual knowledge of the '681 Patent. On information and belief, Cook acted despite an objectively high likelihood that their acts constituted infringement of the '681 Patent, which was valid, and that this high likelihood was known or should have been known to Cook.

37. MIDI is informed and believes, and thereon alleges, that Cook has derived and received, and will continue to derive and receive, gains, profits, and advantages from the aforesaid acts of infringement in an amount that is not presently known to MIDI. By reason of the aforesaid infringing acts, MIDI has been damaged and is entitled to monetary relief in an amount to be determined at trial.

38. Because of the aforesaid infringing acts, MIDI has suffered and continues to suffer great and irreparable injury, for which MIDI has no adequate remedy at law.

FIFTH CLAIM FOR RELIEF

39. On December 1, 1998, the U.S. Patent and Trademark Office (“PTO”) duly and legally issued U.S. Patent No. 5,843,028 (the ‘028 Patent) titled “Multi-Lumen Endoscopic Catheter” naming George W. Weaver, Harold Jacob, David F. Leighton, and Damond C. Holsinger as inventors. MIDI is a co-owner of the ‘028 Patent with the exclusive right to enforce the ‘028 Patent and the exclusive right to recover all damages for infringement of that patent.

40. This is a claim for patent infringement and arises under the Patent Laws of the United States 35 U.S.C. § 100, *et seq.*

41. MIDI is informed and believes, and thereon alleges, that Cook has infringed and is infringing, and is inducing the infringement of the ‘028 Patent by making, having made, using, selling and/or offering for sale biliary catheters according to the invention claimed in the ‘028 Patent and by knowingly and actively aiding and abetting others to directly infringe the ‘028 Patent through the manufacture, use, sale and offer for sale of their infringing products to persons who purchased and used said biliary catheters.

42. Each of Cook's infringing activities is without the consent of, authority of, or license from MIDI.

43. Cook's acts constitute direct, contributory, and/or induced infringement of the '028 Patent in violation of 35 U.S.C. 271(a), (b), and (c).

44. On information and belief, Cook's infringement of the '028 Patent has been, and continues to be, deliberate and willful. On information and belief, Cook's infringing acts were with actual knowledge of the '028 Patent. On information and belief, Cook acted despite an objectively high likelihood that their acts constituted infringement of the '028 Patent, which was valid, and that this high likelihood was known or should have been known to Cook.

45. MIDI is informed and believes, and thereon alleges, that Cook has derived and received, and will continue to derive and receive, gains, profits, and advantages from the aforesaid acts of infringement in an amount that is not presently known to MIDI. By reason of the aforesaid infringing acts, MIDI has been damaged and is entitled to monetary relief in an amount to be determined at trial.

46. Because of the aforesaid infringing acts, MIDI has suffered and continues to suffer great and irreparable injury, for which MIDI has no adequate remedy at law.

SIXTH CLAIM FOR RELIEF

47. On August 3, 2004, the U.S. Patent and Trademark Office ("PTO") duly and legally issued U.S. Patent No. 6,770,066 (the '066 Patent) titled "Multi-Lumen Endoscopic Catheter" naming George W. Weaver, Harold Jacob, David F. Leighton, and Damond C. Holsinger as inventors. MIDI is a co-owner of the '066 Patent with the

exclusive right to enforce the '066 Patent and the exclusive right to recover all damages for infringement of that patent.

48. This is a claim for patent infringement and arises under the Patent Laws of the United States 35 U.S.C. § 100, *et seq.*

49. MIDI is informed and believes, and thereon alleges, that Cook has infringed and is infringing, and is inducing the infringement of the '066 Patent by making, having made, using, selling and/or offering for sale biliary catheters according to the invention claimed in the '066 Patent and by knowingly and actively aiding and abetting others to directly infringe the '066 Patent through the manufacture, use, sale and offer for sale of their infringing products to persons who purchased and used said biliary catheters.

50. Each of Cook's infringing activities is without the consent of, authority of, or license from MIDI.

51. Cook's acts constitute direct, contributory, and/or induced infringement of the '066 Patent in violation of 35 U.S.C. 271(a), (b), and (c).

52. On information and belief, Cook's infringement of the '066 Patent has been, and continues to be, deliberate and willful. On information and belief, Cook's infringing acts were with actual knowledge of the '066 Patent. On information and belief, Cook acted despite an objectively high likelihood that their acts constituted infringement of the '066 Patent, which was valid, and that this high likelihood was known or should have been known to Cook.

53. MIDI is informed and believes, and thereon alleges, that Cook has derived and received, and will continue to derive and receive, gains, profits, and advantages from

the aforesaid acts of infringement in an amount that is not presently known to MIDI. By reason of the aforesaid infringing acts, MIDI has been damaged and is entitled to monetary relief in an amount to be determined at trial.

54. Because of the aforesaid infringing acts, MIDI has suffered and continues to suffer great and irreparable injury, for which MIDI has no adequate remedy at law.

WHEREFORE, MIDI prays for judgment against Defendants, jointly and severally, as follows:

A. An order adjudging Defendants to have deliberately and willfully infringed the '302 Patent under 35 U.S.C. 271.

B. An order adjudging Defendants to have deliberately and willfully infringed the '299 Patent under 35 U.S.C. 271.

C. An order adjudging Defendants to have deliberately and willfully infringed the '300 Patent under 35 U.S.C. 271.

D. An order adjudging Defendants to have deliberately and willfully infringed the '681 Patent under 35 U.S.C. 271.

E. An order adjudging Defendants to have deliberately and willfully infringed the '028 Patent under 35 U.S.C. 271.

F. An order adjudging Defendants to have deliberately and willfully infringed the '066 Patent under 35 U.S.C. 271.

G. That Defendants, their agents, servants, employees and attorneys, and all those persons in active concert or participation with them, be forthwith preliminarily and thereafter permanently enjoined from directly or indirectly infringing the '302 Patent, the

'299 Patent, the '300 Patent, the '681 Patent, the '066 Patent, and the '028 Patent in violation of 35 U.S.C. 271.

H. That Defendants be directed to file with this Court and serve on MIDI within thirty (30) days after the service of the injunction a report in writing, under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction;

I. That MIDI be awarded damages adequate to compensate it for Defendants' deliberate and willful infringement of '302 Patent, the '299 Patent, the '300 Patent, the '681 Patent, the '028 Patent, and the '066 Patent together with pre-judgment and post-judgment interest, as well as enhanced damages pursuant to 35 U.S.C. 284.

J. That MIDI be awarded its reasonable attorneys fees and costs in this action pursuant to, inter alia, 35 U.S.C. 285; and


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

Respectfully submitted,

Dated: December 1, 2009

MALINA & ASSOCIATES, PLLC

By: _____


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second amended complaint (JAC-133)