

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

ERGO LICENSING, LLC and)	
UVO HÖLSCHER)	
)	
Plaintiffs,)	
)	Docket No. CV-08-259-GZS
v.)	
)	
CAREFUSION 303, INC.)	(JURY TRIAL DEMANDED)
)	(INJUNCTIVE RELIEF REQUESTED)
Defendant.)	
_____)	

SECOND AMENDED COMPLAINT

Plaintiffs Ergo Licensing, LLC (“Ergo”) and Uvo Hölscher¹ (“Hölscher”), through counsel, complains against CareFusion 303, Inc. (“CareFusion 303”), formerly known as both Cardinal Health 303, Inc. (“Cardinal 303”) and Alaris Medical Systems, Inc. (“Alaris”), as follows:

Nature of this Action

1. This is an action brought by Ergo, a Maine-based licensing company, and Dr. Hölscher, a professor of medical engineering at a prestigious German university, to enforce their rights under United States Patent laws. Ergo is owned, in part, by Dr. Hölscher. In the early 1990’s, Dr. Hölscher and several colleagues received a United States patent for their invention of a certain automated medical infusion system used for administering several fluids simultaneously to a single patient. Several years later, Alaris began selling systems covered by Dr. Hölscher’s patent without his permission. Cardinal Health, Inc. (“Cardinal Health”) acquired Alaris in 2004 and continued the infringement. Cardinal Health formed Cardinal 303 as the successor to Alaris after the acquisition. Cardinal Health later spun off its clinical and medical products business and

¹ Hölscher is added as a party-plaintiff pursuant to this Court’s June 25, 2010 Order.

formed CareFusion Corporation, of which CareFusion 303 is a wholly owned subsidiary. CareFusion 303 is a successor to Cardinal 303. Despite, Plaintiffs' attempts, Defendant has not accepted offers to license the patent rights. This action is therefore necessary to stop the infringement.

The Parties

2. Ergo is a Maine Limited Liability Company located in Portland, Maine.
3. Dr. Hölscher is a German national residing in Steinfurt, Germany .
4. CareFusion 303 is a wholly owned subsidiary of CareFusion Corporation.

CareFusion 303 is headquartered at 3750 Torrey View Court, San Diego, CA 92130. CareFusion Corporation is a Delaware Corporation and is headquartered at 3750 Torrey View Court, San Diego, CA 92130. CareFusion Corporation is a spin-off of Cardinal Health's clinical and medical products business. Cardinal 303, now known as CareFusion 303, was a wholly owned subsidiary of Cardinal. Cardinal 303 was formed as a successor to Alaris after Cardinal acquired Alaris in 2004.

Jurisdiction and Venue

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1338(a) and 1332. The action for patent infringement is brought under the patent laws of the United States, including 35 U.S.C. §§ 271 et seq.

6. Venue is proper in this Court pursuant to 28 U.S.C. §1400(b) and 28 U.S.C. §§1391(c) and (d).

Facts

7. Before June 19, 1993, Dr. Hölscher, Holger Ebert, Bernt Klinger, and Matthias Heimermann invented a multi-channel fluid delivery system for medical infusion applications.

After receiving a German patent, the inventors applied for a United States patent on June 14, 1994, pursuant to the Patent Cooperation Treaty (“PCT”).

8. United States Patent No. 5,507,412 (“the ‘412 Patent”) was issued on April 16, 1996, to Dr. Hölscher and his colleagues for their invention. A true and accurate copy of the ‘412 Patent is attached as Exhibit 1.

9. By virtue of an assignment dated March 8, 1999, Dr. Hölscher became and continues to be the sole owner the ‘412 Patent.

10. The ‘412 Patent is valid and enforceable.

11. Ergo is the exclusive licensee for the United States, subject to any existing obligation of Dr. Hölscher, and has been granted the rights to license and enforce the ‘412 Patent.

12. On, May 15, 1995, Alaris filed patent application Serial No.08/440871 for an automated infusion system with dose rate calculator. The Patent Examiner initially rejected the Alaris application as lacking novelty over the ‘412 Patent because Alaris’s claimed system possessed all the same features as those claimed by the ‘412 Patent. On October 4, 1996, Alaris responded to the rejection by amending its claims to add additional features and by contending the additional features made its claimed invention novel. Alaris never contended that its invention lacked any of the features of the ‘412 Patent. On June 30, 1998, Alaris received United States Patent No. 5,772,635 (“the ‘635 Patent”) for its claimed invention.

13. Alaris began infringing the ‘412 Patent by making, using, selling, and offering for sale infusion systems covered by the ‘412 Patent, such as the Alaris Medley™ Medication Safety System (8100 Series).

14. Cardinal Health acquired Alaris in 2004 and formed Cardinal 303. Cardinal Health and Cardinal 303 continued making, using, offering for sale, and selling the infringing Alaris

Systems. Cardinal Health later spun off its clinical and medical products business and formed CareFusion Corporation. CareFusion 303 is a wholly owned subsidiary of CareFusion Corporation and makes, uses, offers for sale, and sells the infringing Alaris Systems.

15. Dr. Hölscher corresponded directly with members of Cardinal Health's legal department in Ohio as recently as December, 2005, to bring the infringement to Cardinal Health's attention and to offer reasonable licensing terms to Cardinal Health.

16. Ergo corresponded directly with members of Cardinal Health's legal department in 2008, to remind Cardinal Health of the continued infringement and to renew the offer of reasonable licensing terms.

17. CareFusion 303 and its predecessors-in-interest (Cardinal 303 and Alaris) never obtained a license, infringed and continue to infringe the '412 Patent.

18. CareFusion 303's infringement is willful.

Count I: Patent Infringement

19. Plaintiffs repeat and incorporate by reference the averments set forth in paragraphs 1 through 18 above.

20. Alaris has infringed the '412 Patent by making, offering for sale, and selling in the United States infusion systems covered by the '412 Patent without permission.

21. Since the acquisition of Alaris, Cardinal 303 infringed the '412 Patent by making, offering for sale, and selling in the United States, infusion systems covered by the '412 Patent without permission.

22. CareFusion 303 is a successor-in-interest to Alaris and Cardinal 303, and CareFusion 303 is, therefore, liable for the infringement of Alaris and Cardinal 303.

23. Since CareFusion 303 was formed as a result of the Cardinal Health's spin off of

its clinical and medical products line, CareFusion 303 infringed the '412 Patent by making, offering for sale, and selling in the United States, infusion systems covered by the '412 Patent without permission.

24. CareFusion 303's infringement is willful.

Prayer for Relief

Plaintiffs request the following relief:

1. That the Court enter judgment that Defendant has infringed the '412 Patent;
2. That the Court permanently enjoin Defendant, its parents, subsidiaries, affiliates, divisions, officers, agents, servants, employees, directors, partners, representatives and all parties in active concert and/or participation with them from directly or indirectly making, having made, selling, offering for sale, distributing and/or using products including composites that infringe the '412 Patent;
3. That the Court order Defendant to account for and pay to Plaintiffs all damages caused by its infringement of the '412 Patent, in an amount no less than a reasonable royalty for the use made of the invention, together with interest;
4. That the Court increase damages pursuant to 35 U.S.C. § 284;
5. That the Court find this to be an exceptional case under 35 U.S.C. §285 and award Plaintiffs their reasonable attorneys' fees and costs; and
6. Order such other and further relief that this Court deems just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Plaintiffs respectfully demand a trial by jury on all issues that are properly triable to a jury in this action.

Dated: June 29, 2010

/s/ James G. Goggin

James G. Goggin

Seth W. Brewster

Sara E. Hirshon

Attorneys for Ergo Licensing, LLC

and Uvo Hölscher

Verrill Dana, LLP

One Portland Square

Portland, ME 04112

(207) 774-4000

jgoggin@verrilldana.com

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Randall Kay
JONES DAY
12265 El Camino Real
Suite 200
San Diego, CA 92130

Kathryn B. Riley
DLA Piper
401 B Street, Suite 1700
San Diego, CA 92101-4297

William D. Hagedorn
PRETI, FLAHERTY LLP
P.O. Box 9546
Portland, ME 04112-9546

Dated: June 29, 2010

/s/ James G. Goggin
James G. Goggin

Verrill Dana, LLP
One Portland Square
Portland, ME 04112
(207) 774-4000
jgoggin@verrilldana.com

