

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PALOMAR MEDICAL
TECHNOLOGIES, INC. and THE
GENERAL HOSPITAL CORPORATION,

Plaintiffs,

v.

TRIA Beauty, Inc.

Defendant.

Civil Action No. 09-cv-11081-RWZ

JURY DEMANDED

FIRST AMENDED COMPLAINT

INTRODUCTION

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

PARTIES

2. Plaintiff Palomar Medical Technologies, Inc. (“Palomar”) is a Delaware corporation with a principal place of business at 82 Cambridge Street, Burlington, Massachusetts 01830.

3. Plaintiff The General Hospital Corporation is a Massachusetts not-for-profit corporation doing business as the Massachusetts General Hospital (“MGH”) with a principal place of business at 55 Fruit Street, Boston, Massachusetts 02114.

4. Upon information and belief, defendant TRIA Beauty, Inc. (“TRIA Beauty”) is a California corporation with a principal place of business at 5880 West Las Positas Boulevard, Suite 52, Pleasanton, California 94588.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over Palomar and MGH's claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this District under 28 U.S.C. §§ 1400(b). TRIA Beauty has transacted business and committed acts of infringement nationwide, including in this District, by, among other activities, marketing and selling the TRIA Laser Hair Removal System nationwide through its website and through national retailers such as QVC. This action arises from the transaction of that business and infringement.

7. There is no basis for assignment of this intellectual property action to a particular location or division of the Court pursuant to Civil L.R. 3-2(c).

FIRST CLAIM FOR RELIEF
(Patent Infringement)

8. Palomar is the exclusive licensee of U.S. Patent No. 5,735,844 (the "'844 patent"), entitled "Hair Removal Using Optical Pulses," which is assigned to MGH. The '844 patent was duly and legally issued on April 7, 1998, and a true and correct copy of the '844 patent is attached hereto as Exhibit A.

9. TRIA Beauty has and continues to infringe the '844 patent, including without limitation, by making, using, selling and offering for sale products using light technology for hair removal, including but not limited to TRIA Beauty's "TRIA Laser Hair Removal System."

10. Upon information and belief, TRIA Beauty's infringement has been and continues to be willful and deliberate.

11. As a result of TRIA Beauty's infringement, Palomar and MGH will suffer severe and irreparable harm, unless infringement is enjoined by this Court, and have suffered substantial damages.

SECOND CLAIM FOR RELIEF
(Patent Infringement)

12. Plaintiffs incorporate the allegations contained in the preceding paragraphs as if fully set forth here.

13. Palomar is the exclusive licensee of U.S. Patent No. 5,595,568 (“the ‘568 patent”) entitled “Permanent Hair Removal Using Optical Pulses,” which is assigned to MGH. The ‘568 patent was duly and legally issued on January 21, 1997, and a true and correct copy of the ‘568 patent is attached hereto as Exhibit B.

14. TRIA Beauty has and continues to infringe the ‘568 patent, including without limitation, by making, using, selling and offering for sale products using light technology for hair removal, including but not limited to TRIA Beauty’s “TRIA Laser Hair Removal System.”

15. Upon information and belief, TRIA Beauty’s infringement has been and continues to be willful and deliberate.

16. As a result of TRIA Beauty’s infringement, Palomar and MGH will suffer severe and irreparable harm, unless infringement is enjoined by this Court, and have suffered substantial damages.

WHEREFORE, Palomar and MGH request that the Court:

17. Adjudge that MGH is the owner and Palomar is the exclusive licensee of the ‘844 patent with right to recovery thereunder, and that the ‘844 patent is good and valid in law and enforceable;

18. Adjudge that MGH is the owner and Palomar is the exclusive licensee of the ‘568 patent with right to recovery thereunder, and that the ‘568 patent is good and valid in law and enforceable;

19. Adjudge that TRIA Beauty has and continues to infringe the '844 patent, and that such infringement has been willful and deliberate;

20. Adjudge that TRIA Beauty has and continues to infringe the '568 patent, and that such infringement has been willful and deliberate;

21. Preliminarily and permanently enjoin TRIA Beauty, its officers, directors, employees, agents, licensees, successors, assigns, and all persons in concert with them, from further infringement of the '844 patent;

22. Preliminarily and permanently enjoin TRIA Beauty, its officers, directors, employees, agents, licensees, successors, assigns, and all persons in concert with them, from further infringement of the '568 patent;

23. Award Palomar and MGH compensatory damages;

24. Treble the damages assessed;

25. Award Palomar and MGH its costs and reasonable attorneys' fees; and

26. Award Palomar and MGH such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Palomar and MGH claim a trial by jury on all issues so triable.

Dated: October 8, 2009

Respectfully submitted,

PALOMAR MEDICAL TECHNOLOGIES, INC.
and THE GENERAL HOSPITAL CORPORATION

By their attorneys,

/s/ Dimple Chaudhary

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CERTIFICATE OF SERVICE

I, Dimple Chaudhary, hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic court filing (ECF) system, this 8th day of October 2009.

/s/ Dimple Chaudhary
Dimple Chaudhary (BBO # 674854)