

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BACUS LABORATORIES, INC.
an Illinois corporation,

Plaintiff,

v.

MICROBRIGHTFIELD, INC.,
a Vermont corporation, and
LIPPINCOTT, WILLIAMS AND WILKINS,
INC., a Delaware corporation,

Defendants.

DOCKETED

AUG 23 2004

04C 5493

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U.S. DISTRICT COURT

JURY TRIAL DEMANDED

JUDGE CASTILLO

MAGISTRATE JUDGE LEVIN

COMPLAINT

Plaintiff, Bacus Laboratories, Inc. ("Bacus"), complains against Defendants, MicroBrightField, Inc. ("MicroBrightField") and Lippincott, Williams and Wilkins, Inc. ("Lippincott"), as follows:

1. Bacus is a corporation incorporated under the laws of the State of Illinois, with its place of business at 410 Eisenhower Lane North, Lombard, Illinois.
2. MicroBrightField is, upon information and belief, a Vermont corporation with a principal place of business at 185 Allen Brook Lane, Suite 201, Williston, Vermont.
3. Lippincott is, upon information and belief, a Delaware corporation with a principal place of business at 530 Walnut Street, Philadelphia, Pennsylvania and an office at 4711 Golf Road, Suite 650, Skokie, Illinois.

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4. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 271 *et seq.* The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a). Also, the matter in controversy exceeds, exclusive of interests and costs, the sum specified by 28 U.S.C. § 1332.

5. This Court has personal jurisdiction over MicroBrightField and Lippincott. Venue in this judicial district is proper under 28 U.S.C. § 1391.

6. Bacus is in the business of developing, manufacturing and selling microscope imaging technology and virtual microscopy products for pathology, research, and medical education. Virtual microscope technology involves the scanning and digitization of images from a real-world microscope slide. These virtual slides may be accessed by a computer user and manipulated to emulate the function of a real microscope and slide.

7. Bacus developed the first commercially available virtual microscope slide technology and introduced a microscope imaging workstation under the brand name BLISS. Bacus markets its BLISS product and other products and services nationwide, including virtual slides and software for viewing virtual slides.

8. Bacus is currently in a start-up phase. A major portion of its start-up costs are associated with the development, manufacture, marketing, and sales of the BLISS product. A major portion of Bacus' development costs is attributable to its investment in patent protection for its new technology.

9. MicroBrightField is also in the business of developing, manufacturing, and selling virtual microscope technology. MicroBrightField scans and digitizes images

to create virtual slides. MicroBrightField makes and sells viewer software under the name "Virtual Slice," which allows a computer user to access and manipulate virtual slides. On information and belief, MicroBrightField sells and offers to sell this virtual microscope technology to Lippincott and to others.

10. Lippincott is an international publisher of professional health information for physicians, nurses, specialized clinicians, educational institutions, and students. Lippincott publishes educational books, CDs, and DVDs for use by institutions and students.

11. On information and belief, Lippincott is offering to sell the well-known textbook, Rubin's Pathology, with compact disks and DVDs made by MicroBrightField, which Lippincott calls the "Virtual Pathology Slide Set." On information and belief, the compact disks and DVDs contain virtual images of microscope slides and software for viewing said virtual microscope slide images. On information and belief, the compact disks contain links to view images of virtual slides stored on a separate website. On information and belief, Lippincott is also offering to sell the "Virtual Pathology Slide Set" separately from the textbook. On information and belief, Lippincott is accepting orders for the textbook and its "Virtual Pathology Slide Set," which it plans to publish in October 2004.

12. Bacus has invested heavily in developing a market for its virtual microscope slides and software for viewing same in the education field, including selling to educational institutions. The anticipated sale of the "Virtual Pathology Slide

Set" alone and in conjunction with the new Lippincott textbook is likely to severely and irreparably damage Bacus' customer relationships and opportunities in the educational field.

COUNT I
INFRINGEMENT OF PATENT NO. 6,674,881

13. Bacus incorporates and realleges the allegations of paragraphs 1-12 as if set forth fully herein.

14. On January 6, 2004, U.S. Patent No. 6,674,881 ("the '881 Patent") entitled "Method and Apparatus for Internet, Intranet, and Local Viewing of Virtual Microscope Slides" was duly and legally issued to Bacus Research Laboratories, Inc., on an application filed by James W. Bacus and James V. Bacus.

15. By assignment, Bacus is the owner of all right, title and interest in the '881 Patent.

16. MicroBrightField has been, and is, willfully infringing the '881 Patent by making, using, offering to sell, and/or selling virtual microscope technology marketed under the name "Virtual Slice" and by offering to sell the "Virtual Pathology Slide Set" to Lippincott and to others; by inducing others to infringe the '881 Patent; and/or by contributing to the infringement by others of the '881 Patent.

17. Lippincott has been, and is, willfully infringing the '881 Patent by offering to sell the "Virtual Pathology Slide Set" by itself and with the fourth edition of the

textbook Rubin's Pathology; by inducing others to infringe the '881 Patent; and/or by contributing to the infringement by others of the '881 Patent.

18. Bacus is being damaged by the infringement. Unless enjoined by the Court, MicroBrightField and Lippincott will continue to infringe, induce the infringement of, and/or contributorily infringe the '881 patent and Bacus will suffer severe and irreparable harm.

COUNT II
INFRINGEMENT OF PATENT NO. 6,522,774

19. Bacus incorporates and realleges the allegations of paragraphs 1-12 as if set forth fully herein.

20. On February 18, 2003, U.S. Patent No. 6,522,774 ("the '774 Patent") entitled "Method and Apparatus for Creating A Virtual Microscope Slide" was duly and legally issued to Bacus Research Laboratories, Inc., on an application filed by James W. Bacus and James V. Bacus.

21. By assignment, Bacus is the owner of all right, title and interest in the '774 Patent.

22. MicroBrightField has been, and is, willfully infringing the '774 Patent by making, using, offering to sell, and/or selling virtual microscope technology marketed under the name "Virtual Slice" and by offering to sell the "Virtual Pathology Slide Set" to Lippincott and to others; by inducing others to infringe the '774 Patent; and/or by contributing to the infringement by others of the '774 Patent.

23. Lippincott has been, and is, willfully infringing the '774 Patent by offering to sell the "Virtual Pathology Slide Set" by itself and with the fourth edition of the textbook Rubin's Pathology; by inducing others to infringe the '774 Patent; and/or by contributing to the infringement by others of the '774 Patent.

24. Bacus is being damaged by the infringement. Unless enjoined by the Court, MicroBrightField and Lippincott will continue to infringe, induce the infringement of, and/or contributorily infringe the '774 Patent and Bacus will suffer severe and irreparable harm.

COUNT III
INFRINGEMENT OF PATENT NO. 6,272,235

25. Bacus incorporates and realleges the allegations of paragraphs 1-12 as if set forth fully herein.

26. On August 7, 2001, U.S. Patent No. 6,272,235 ("the '235 Patent") entitled "Method and Apparatus for Creating A Virtual Microscope Slide" was duly and legally issued to Bacus Research Laboratories, Inc., on an application filed by James W. Bacus and James V. Bacus.

27. By assignment, Bacus is the owner of all right, title and interest in the '235 Patent.

28. MicroBrightField has been, and is, willfully infringing the '235 Patent by making, using, offering to sell, and/or selling virtual microscope technology marketed under the name "Virtual Slice" and by offering to sell the "Virtual Pathology Slide Set"

to Lippincott and to others; by inducing others to infringe the '235 Patent; and/or by contributing to the infringement by others of the '235 Patent.

29. Lippincott has been, and is, willfully infringing the '235 Patent by offering to sell the "Virtual Pathology Slide Set" by itself and with the fourth edition of the textbook Rubin's Pathology; by inducing others to infringe the '235 Patent; and/or by contributing to the infringement by others of the '235 Patent.

30. Bacus is being damaged by the infringement. Unless enjoined by the Court, MicroBrightField and Lippincott will continue to infringe, induce the infringement of, and/or contributorily infringe the '235 patent and Bacus will suffer severe and irreparable harm.

COUNT IV
INFRINGEMENT OF PATENT NO. 6,396,941

31. Bacus incorporates and realleges the allegations of paragraphs 1-12 as if set forth fully herein.

32. On May 28, 2002, U.S. Patent No. 6,396,941 ("the '941 Patent") entitled "Method and Apparatus for Internet, Intranet, and Local Viewing of Virtual Microscope Slides" was duly and legally issued to Bacus Research Laboratories, Inc., on an application filed by James W. Bacus and James V. Bacus.

33. By assignment, Bacus is the owner of all right, title and interest in the '941 Patent.

34. MicroBrightField has been, and is, willfully infringing the '941 Patent by making, using, offering to sell, and/or selling virtual microscope technology marketed under the name "Virtual Slice" and by offering to sell the "Virtual Pathology Slide Set" to Lippincott and to others; by inducing others to infringe the '941 Patent; and/or by contributing to the infringement by others of the '941 Patent.

35. Lippincott has been, and is, willfully infringing the '941 Patent by offering to sell the "Virtual Pathology Slide Set" by itself and with the fourth edition of the textbook Rubin's Pathology; by inducing others to infringe the '941 Patent; and/or by contributing to the infringement by others of the '941 Patent.

36. Bacus is being damaged by the infringement. Unless enjoined by the Court, MicroBrightField and Lippincott will continue to infringe, induce the infringement of, and/or contributorily infringe the '941 patent and Bacus will suffer severe and irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Bacus prays for:

1. Judgment that the '881, '774, '235 and '941 Patents are valid, enforceable and infringed by MicroBrightField and Lippincott;
2. A preliminary and permanent injunction enjoining MicroBrightField and Lippincott, its officers, agents, employees and those persons acting in active concert or

participation with MicroBrightField and Lippincott from infringing, inducing infringement of, or contributorily infringing the '881, '774, '235 and '941 Patents;

3. An award of damages arising out of the infringement, inducing infringement or contributory infringement by MicroBrightField and Lippincott of the '881, '774, '235 and '941 Patents, together with interest;

4. Judgment that the damages so adjudged be trebled;

5. Judgment that Bacus be awarded its attorney's fees, costs and expenses incurred in this action; and

6. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Bacus demands trial by jury of all issues triable of right by a jury.

Date: August 20, 2004



John F. Flannery

Karl R. Fink

Rudy I. Kratz

Kenneth E. Plochinski

FITCH, EVEN, TABIN & FLANNERY

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Attorneys for Plaintiff, Bacus Laboratories, Inc.

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

JUDGE CASTILLO

Civil Cover Sheet

MAGISTRATE JUDGE LEVIN

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

Plaintiff(s): Bacus Laboratories, Inc.**Defendant(s): MicroBrightField, Inc. and Lippincott, Williams and Wilkins, Inc.****County of Residence: DuPage****County of Residence:****Plaintiff's Atty:** Karl R. Fink; John F. Flannery;**Defendant's Atty:**

Rudy I. Kratz; Kenneth E.

Plochinski

Fitch, Even, Tabin & Flannery

120 So. LaSalle Street, Suite 1600,

Chicago, IL 60603

312/577-7000

04C 5493U.S. DISTRICT COURT
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FILED FOR DOCKETING
04 AUG 20 AM 11:54**II. Basis of Jurisdiction:****3. Federal Question (U.S. not a party)****III. Citizenship of Principal Parties****(Diversity Cases Only)**

Plaintiff:- N/A

Defendant:- N/A

DOCKETED

AUG 23 2004

IV. Origin :**1. Original Proceeding****V. Nature of Suit:****830 Patent****VI. Cause of Action:****Patent Infringement Under 35 U.S.C. Section 271 et seq.****VII. Requested in Complaint**

Class Action: No

Dollar Demand:

Jury Demand: Yes

VIII. This case IS NOT a refiling of a previously dismissed case.**Signature:****Date:**

8-20-04

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, print this form, sign and date it and submit it with your new civil action. **Note: You may need to adjust the font size in your browser display to make the form print properly.**

Revised: 06/28/00

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UNITED STATES DISTRICT COURT JUDGE CASTILLO
NORTHERN DISTRICT OF ILLINOIS

In the Matter of

EASTERN DIVISION

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04C 5493Case Number **WABISTATE JUDGE LEVIN**

Bacus Laboratories, Inc.

v.


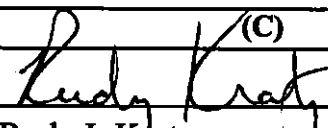
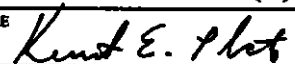
MicroBrightField, Inc. and

Lippincott, Williams and Wilkins, Inc.

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

Bacus Laboratories, Inc.

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 U.S. DISTRICT COURT
 CLERK

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MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
(C)		(D)	
SIGNATURE 		SIGNATURE 	
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