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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

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CIBA VISION CORPORATION,)
)
Plaintiff,)
)
v.)
)
JOHNSON & JOHNSON VISION)
CARE, INC.,)
)
Defendant.)
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CASE NO:

3:06-cv-300-4-32TEM

COMPLAINT

Plaintiff CIBA Vision Corporation ("CIBA"), by way of this Complaint against Defendant Johnson & Johnson Vision Care, Inc. ("J&J"), avers as follows:

1. This is a civil action for patent infringement arising under the Patent Laws of the United States, Title 35, United States Code.

2. This Complaint pertains to contact lenses marketed by J&J under the trade name ACUVUE[®] Advance[™] with HydraClear[™] ("Acuvue Advance Spherical") and ACUVUE[®] Advance[™] for Astigmatism with HydraClear[™] ("Acuvue Advance Toric").

PARTIES

3. Plaintiff CIBA is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 11460 Johns Creek Parkway, Duluth, Georgia 30097.

4. Defendant J&J is a corporation incorporated and existing under the laws of the State of Florida with its principal place of business at 7500 Centurion Parkway, Suite 100, Jacksonville, Florida 32256.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over the Defendant because Defendant resides in this judicial district and is doing business in this judicial district.

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

FACTS

8. CIBA is owner by assignment of all right, title and interest in U.S. Patent No. 6,951,894 (the “‘894 patent”).

9. The ‘894 patent was duly and properly issued on October 4, 2005.

10. On March 21, 2006 the United States Patent and Trademark Office issued a Certificate of Correction for the ‘894 patent. Copies of the ‘894 patent and the Certificate of Correction are attached hereto as Exhibit A.

11. The ‘894 patent (with its Certificate of Correction) has been at all times valid and enforceable.

12. CIBA and J&J are direct competitors in the market of ophthalmic goods, which includes contact lenses.

13. Upon information and belief, J&J began manufacturing Acuvue Advance Spherical contact lenses in April, 2003, in its facilities in Jacksonville, Florida to prepare for the commercial launch of its Acuvue Advance Spherical contact lens.

14. Upon information and belief, J&J sought and was granted clearance by the United States Food and Drug Administration (“FDA”) on October 16, 2003 to market its Acuvue Advance Spherical contact lens in the United States.

15. Upon information and belief, in or around January, 2004, J&J launched its Acuvue Advance Spherical contact lens in the United States.

16. J&J is actively making, using, selling and/or offering for sale Acuvue Advance contact lenses in the United States.

17. Upon information and belief, J&J began manufacturing its Acuvue Advance Toric contact lens in 2004.

18. J&J is actively making, using, selling and/or offering for sale the Acuvue Advance Toric contact lens in the United States

COUNT I

(Infringement of U.S. Patent No. 6,951,894: Acuvue Advance Spherical)

19. CIBA incorporates by reference the allegations in paragraphs 1-18 above, as if fully alleged herein.

20. Through the conduct alleged above, J&J has infringed and continues to infringe the ‘894 patent by making, using, selling and/or offering for sale Acuvue Advance Spherical contact lenses without authorization from CIBA.

21. Upon information and belief, J&J's infringement of the '894 patent has been wilful and deliberate.

22. J&J's infringement of the '894 patent has caused irreparable injury to CIBA and will continue to cause irreparable injury unless and until J&J is permanently enjoined by the Court. CIBA has no adequate remedy at law for J&J's infringement of the '894 patent.

COUNT II

(Infringement of U.S. Patent No. 6,951,894: Acuvue Advance Toric)

23. CIBA incorporates by reference the allegations in paragraphs 1-18 above, as if fully alleged herein.

24. Through the conduct alleged above, J&J has infringed and continues to infringe the '894 patent by making, using, selling and/or offering for sale Acuvue Advance Toric contact lenses without authorization from CIBA.

25. Upon information and belief, J&J's infringement of the '894 patent has been wilful and deliberate.

26. J&J's infringement of the '894 patent has caused irreparable injury to CIBA and will continue to cause irreparable injury unless and until J&J is permanently enjoined by the Court. CIBA has no adequate remedy at law for J&J's infringement of the '894 patent.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiff CIBA demands:

A. A preliminary and permanent injunction restraining J&J, its subsidiaries, officers, agents, servants, employees, and all other persons in active concert or participation with it, from further infringement of the '894 patent.

B. That judgment be entered against J&J for damages sustained as a result of J&J's infringement of the '894 patent, and that the damages be trebled pursuant to 35 U.S.C. § 284 as a result of J&J's willful and deliberate infringement of the '894 patent.

C. That the Court declare this to be an exceptional case under 35 U.S.C. § 285 and award CIBA its costs, expenses and reasonable attorneys' fees incurred in this action.

D. That CIBA recover pre-judgment and post-judgment interest on each and every award.

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

Dated: April 3, 2006

~~Respectfully submitted,~~

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