

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

HILL-ROM SERVICES, INC.,
HILL-ROM COMPANY, INC.,
HILLENBRAND INDUSTRIES, INC.,

Plaintiffs,

vs.

VERSUS TECHNOLOGY, INC.,
A4 HEALTH SYSTEMS, INC.,
HEALTHCARE INFORMATION
TECHNOLOGY, INC.,
SURGICAL INFORMATION
SYSTEMS, LLC, PATIENT CARE
TECHNOLOGY SYSTEMS, LLC,

Defendants.

Civil Action No. 1:03CV01227

VERSUS TECHNOLOGY, INC., and
FRESHLOC TECHNOLOGIES, INC.,

Plaintiffs,

vs.

HILLENBRAND INDUSTRIES, INC.,
HILL-ROM SERVICES, INC.,
HILL-ROM COMPANY, INC.,
VISONIC TECHNOLOGIES LTD.,
VT AMERICAS, INC., and ELPAS
ELECTRO-OPTIC SYSTEMS LTD.,

Defendants.

Civil Action No. 1:04CV01116
(Transferred from the Western
District of Michigan)

SECOND AMENDED COMPLAINT

The plaintiffs, Hill-Rom Services, Inc. (“HRS”), Hill-Rom Company, Inc. (“HRC”), and Hillenbrand Industries, Inc. (“HII”) (collectively, “Hill-Rom”), for their Second Amended Complaint against the defendants, Versus Technology, Inc. (“Versus”), A4 Health Systems, Inc. (“A4”), Healthcare Information Technology, Inc. (“HIT”), Surgical Information Systems, LLC

(“SIS”), and Patient Care Technology Systems, LLC (“PCTS”) (collectively, the “Defendants”),
allege and state as follows:

PARTIES, JURISDICTION AND VENUE

1. HRS is a Delaware corporation and HRC and HII are Indiana corporations, with their principal place of business in Batesville, Indiana. HRS and HRC are wholly-owned subsidiaries of HII.

2. On information and belief, Versus is a Delaware corporation with its principal place of business in Traverse City, Michigan.

3. On information and belief, A4 is a Delaware corporation with its principal place of business in Cary, North Carolina.

4. On information and belief, HIT is a North Carolina corporation with its principal place of business in Charlotte, North Carolina. On information and belief, HIT was acquired by PCTS in or around the end of 2004. On information and belief, PCTS is a California limited liability company with its principal place of business in California.

5. On information and belief, SIS is a Georgia limited liability company with its principal place of business in Alpharetta, Georgia.

6. This is a complaint for patent infringement pursuant to 35 U.S.C. § 271 et. seq. and for declaratory judgment. This Court has subject matter jurisdiction over Hill-Rom’s claims pursuant to 28 U.S.C. §§ 1331, 1338, and 2201.

7. The Court has personal jurisdiction over the Defendants because they have done business in North Carolina, including business that gives rises to the claims asserted in this Complaint.

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

COUNT I - PATENT INFRINGEMENT
(HRS v. All Defendants)

Hill-Rom's Patents

9. On September 12, 1995 United States Patent Reexamination Certificate No. RE 35,035 (“the ‘035 patent”) entitled “Locating System and Method” was duly and legally issued to Robert T. Shipley and assigned at issuance to the Fisher Berkeley Corporation. All of Fisher Berkeley’s rights in the ‘035 patent have, in turn, been assigned to HRS, and HRS is the owner of the ‘035 patent.

10. By operation of law, the term of the ‘035 patent has expired. However, as its owner HRS is still entitled to seek damages for infringements occurring during the term of the patent.

11. On October 8, 2002, United States Patent No. 6,462,656 (“the ‘656 patent”) entitled “Personnel and Asset Tracking Method and Apparatus” was duly and legally issued to Daniel J. Ulrich, Michael Edward Wagener, Sanjeev Patel, Joseph James Schmid, and Robert J. Jennings, and assigned at issuance to HRS. Since that time, HRS has been and is the owner of the ‘656 patent.

Defendants’ Infringement

12. On information and belief, during the course of the term of the ‘035 patent the Defendants infringed the ‘035 patent by making, selling, offering for sale and using locator systems and methods embodying at least claims 27 and 31 of the ‘035 patent, and contributing to and/or inducing the infringement of at least these claims of the ‘035 patent by others.

13. On information and belief, the Defendants have and are continuing to infringe the ‘656 patent by making, selling, offering for sale and using locator systems, methods and software embodying at least claims 21, 26, 75 and 79 of the ‘656 patent, and contributing to and/or

inducing the infringement of at least these claims of the '656 patent by others, and will continue to do so unless enjoined by the Court.

The Harm to HRS

14. On information and belief, the Defendants have, by their infringing conduct and inducement of infringement by others, caused HRS damages and irreparable harm for which there is no adequate remedy at law.

15. Upon information and belief, the Defendants have engaged in their conduct willfully and in complete disregard of, or with indifference to, HRS's rights and interests.

16. HRS has suffered damage as a result of the Defendants' infringement to date.

17. This is an exceptional case as that term is defined in 35 U.S.C. § 285.

DECLARATORY JUDGMENT COUNTS
(HRS, HRC, and HII v. Versus)

18. There is an actual controversy between the parties and the Court has subject matter jurisdiction over this declaratory judgment claim pursuant to 28 U.S.C. § 2201. On March 15, 2004, after the Complaint in this case was filed, Versus filed a Complaint ("Versus's Complaint") against HRS, HRC, HII and others before the United States District Court for the Western District of Michigan, Civil Action No. 1:04 CV 0168. HRS, HRC, and HII deny all of the material allegations of Versus's Complaint.

COUNT II - DECLARATORY JUDGMENT FOR NON-INFRINGEMENT

19. HRS, HRC and HII incorporate herein by reference paragraphs 1 through 18, the same as if realleged here.

20. HRS, HRC and HII have not infringed United States Patent Nos. 5,027,314, 5,572,195 or 6,154,139 or United States Reissue Patent No. 36,791 by the COM Linx Local Positioning Module or any other product.

21. In any event, Versus has released any claim against HRS, HRC, and/or HII for infringement of these patents, past or future, by a “Non-Exclusive Patent License Agreement” (the “License”) entered into between Versus and HRS as of September 1, 2000.

COUNT III- DECLARATORY JUDGMENT FOR NO RESCISSION

22. HRS, HRC and HII incorporate herein by reference paragraphs 1 through 21, the same as if realleged here.

23. The License between Versus and HRS is not rescindable.

24. The License granted to HRS an “irrevocable, fully paid up and royalty free perpetual” non-exclusive license to make, have made for it, import, use, sale, have sold, lease or otherwise dispose of Licensed Products, as defined in the License, under United States Patent Nos. 5,027,314, 5,572,195, 6,154,139 or United States Reissue Patent No. 36,791. The consideration for the License has been fully paid to Versus by HRS.

25. The License is valid and enforceable according to its terms.

26. HRS has not breached the License. All relevant making by and for HRS, all relevant importing and uses by and for HRS, and all relevant offers for sale, sales and other dispositions by and for HRS have been Licensed Products under the License.

COUNT IV - DECLARATORY JUDGMENT FOR NO AGREEMENT

27. HRS, HRC and HII incorporate herein by reference paragraphs 1 through 26, the same as if realleged here.

28. Neither HRS, HRC nor HII ever reached any general agreement with Versus.

29. Neither HRS, HRC nor HII have made any enforceable agreement with Versus that have not been reduced to writing and signed by the parties thereto, or made any material promise or representation to Versus upon which it could reasonably rely to its detriment.

30. To the contrary, the License made by HRS with Versus contains an integration provision superseding all prior agreements and understandings, oral and written, relating thereto.

31. Neither HRS, HRC nor HII have ever reached agreement with Versus on a development agreement or a supply agreement. The negotiation between HRS and Versus for development and supply agreements never resulted in an enforceable agreement.

COUNT V - DECLARATORY JUDGMENT FOR NO MISREPRESENTATION OR
PROMISSORY ESTOPPEL

32. HRS, HRC and HII incorporate herein by reference paragraphs 1 through 31, the same as if realleged here.

33. The negotiation between HRS, HRC and HII and Versus for the License and other agreements, including development and supply agreements, did not involve any material promise or representation, false or otherwise, made by HRS, HRC and/or HII on which Versus could reasonably rely to change position to its detriment.

34. Versus has no actionable claim against HRS, HRC and HII for misrepresentation, “innocent misrepresentation,” or promissory estoppel.

COUNT VI - DECLARATORY JUDGMENT FOR NO ANTITRUST VIOLATION

35. HRS, HRC and HII incorporate herein by reference paragraphs 1 through 34, the same as if realleged here.

36. HRS, HRC and HII have not committed any antitrust violation against Versus under §§ 1 or 2 of the Sherman Act or § 3 of the Clayton Act.

37. HRS is permitted to lawfully enforce infringement claims under the United States patents it owns against Versus, and the other Defendants, without violating any antitrust law.

RELIEF

WHEREFORE, Plaintiffs Hill-Rom Services, Inc., Hill-Rom Company, Inc., and Hillenbrand Industries, Inc. respectfully request that this Court:

1. Preliminarily and permanently enjoin the Defendants and their officers, agents, servants, employees, and attorneys, and those in active concert or participation with them who receive actual notice of the Order, from importing, manufacturing, using, selling and/or offering for sale devices which infringe the '656 patent.

2. Issue an Order directing the Defendants and their officers, agents, servants, employees, and attorneys, and those acting in concert and participation with them who receive actual notice of the order, to destroy all molds, machines, tooling, or other equipment used in the manufacture of items infringing the '656 patent.

3. Award HRS monetary damages adequate to compensate HRS for past infringement of both the '035 and '656 patents, and in accordance with 35 U.S.C. § 284, up to and including treble the amount of actual damages assessed, together with costs and prejudgment interest.

4. Award HRS its reasonable attorneys' fees in accordance with 35 U.S.C. § 285.

5. Enter a declaration that HRC, HRS, and HII have not infringed any patent in suit of which Versus is the owner or exclusive licensee, and/or that Versus has released any claim it may have otherwise had against HRS, HRC, and HII for patent infringement by the "irrevocable" License entered into on September 1, 2000.

6. Enter a declaration that the License between Versus and HRS is valid and enforceable according to its terms and that HRS has not breached the License.

7. Enter a declaration that HRC, HRS, and HII have not committed any antitrust violations against Versus, including any violations of §§ 1 and 2 of the Sherman Act and § 3 of the Clayton Act.

8. Award any and all relief found necessary and proper under these circumstances.

JURY DEMAND

Plaintiffs demand a trial by jury.

This the 2nd day of August, 2006.

Respectfully submitted,

/s/ Richard T. Boyette

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing "Second Amended Complaint" was filed electronically this 2nd day of August, 2006. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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and I hereby certify that I have mailed the document to the following non CM/ECF participants:

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