

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TYCO HEALTHCARE GROUP LP
MALLINCKRODT INC. and
LIEBEL-FLARSHEIM COMPANY

Plaintiffs,

v.

MEDRAD, INC.

Defendant.

Case No. 1:06cv763

WEBER

Judge:

COMPLAINT AND JURY DEMAND

Plaintiffs, Tyco Healthcare Group LP ("Tyco"), Mallinckrodt Inc. ("Mallinckrodt") and Liebel-Flarsheim Company ("L-F") complain against the defendant, Medrad, Inc. ("Medrad"), as follows:

THE PARTIES

1. Tyco Healthcare Group LP is a limited partnership organized and existing under the laws of the State of Delaware having a place of business at 15 Hampshire Street, Mansfield, Massachusetts, 02048.

2. Mallinckrodt is a corporation organized and existing under the laws of the State of Delaware having an address of 675 McDonnell Boulevard, Hazelwood, Missouri 63042. Mallinckrodt is an affiliate of Tyco.

3. L-F is a Delaware corporation having a place of business at 2111 East Galbraith Road, Cincinnati, Ohio 45215. L-F is an affiliate of Mallinckrodt.

4. Medrad is a Pennsylvania corporation having a place of business at One Medrad Drive, Indianola, Pennsylvania 15051. Medrad does substantial business in the State of Ohio, including in the Southern District of Ohio and within the jurisdiction of the Western Division of the United States District Court for the Southern District of Ohio.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, Title 35, United States Code and under Section 2 of the Sherman Act, Title 15, United States Code. Jurisdiction of this Court over Count I of this Complaint is based upon 28 U.S.C. §§ 1331 and 1338(a), and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Jurisdiction of this Court over Count II of this Complaint is based upon 15 U.S.C. § 4 (equitable relief), 15 U.S.C. § 15 (treble damage relief), and 15 U.S.C. § 26 (equitable relief).

6. Based upon the continuous and systematic business activities of Medrad in the State of Ohio, including the Southern District of Ohio and within the jurisdiction of the Western Division of the United States District Court for the Southern District of Ohio, this Court has personal jurisdiction over Medrad.

7. Venue in this Court is based upon 15 U.S.C. §§ 15, 22, and 26, and 28 U.S.C. §§ 1391 and 1400 (b).

BACKGROUND FACTS

History of Litigation Between the Parties

8. Both Medrad and Tyco, through its affiliates Mallinckrodt and L-F, design, manufacture, market and sell powered medical injectors for the delivery of contrast media pharmaceuticals to patients undergoing diagnostic imaging procedures such as angiography, computed tomography ("CT") and magnetic resonance ("MR"). In the imaging procedure, the patient is placed in or near a medical scanner that is used to detect medical conditions within the patient. The injection of a contrast agent into the body of the patient provides increased contrast of patient tissue during the imaging procedure.

9. Both Medrad and L-F have established over the years extensive patent portfolios in the field of powered medical injectors. Moreover, both parties have engaged in frequent litigations to enforce their respective patents rights against the other.

10. On November 13, 1998, L-F (Mallinckrodt was later added as a party by Medrad) commenced an action against Medrad in the United States District Court for the Southern District of Ohio, Western Division, Case No. 1:98-cv-0858, for infringement by Medrad of U.S. Patent Nos. 5,456,669, 5,658,261 and 5,662,612, which was later amended to include U.S. Patent No. 5,928,197 (hereinafter "the First Cincinnati Action"). That action is directed to Medrad's medical injectors marketed under the names MCT+, Envision, Pulsar, Vistron, Spectris and Spectris Solaris, and encompasses most of the medical injectors sold by Medrad since 1994. The First Cincinnati Action is currently on appeal before the United States Court of Appeals for the Federal Circuit.

11. On or about April 25, 2000, Medrad filed a complaint against Mallinckrodt, L-F and others with the United States International Trade Commission, which instituted Investigation No. 337-TA-434 (hereinafter "the ITC Investigation"), alleging infringement of U.S. Patent No. Reissue 36,648 ("the '648 reissue patent"), which had issued on April 11, 2000, by the importation and sale by L-F and Mallinckrodt of an MR medical injector marketed under the name Optistar MR. The ITC Investigation was terminated on February 12, 2001, after the Administrative Law Judge held the '648 reissue patent invalid.

12. On or about April 25, 2000, Medrad also commenced an action against Mallinckrodt, L-F and others in the United States District Court for the Western District of Pennsylvania, Case No. 2:00-cv-799, for infringement of the '648 reissue patent (hereinafter "the First Pittsburgh Action"). That action was stayed during the prosecution of the ITC Investigation, and Medrad dismissed the First Pittsburgh Action on March 3, 2001 in view of the ITC's holding the '648 reissue patent invalid.

13. On October 24, 2001, Medrad commenced an action against Tyco, Mallinckrodt, L-F and others in the United States District Court for the Western District of Pennsylvania, Case No. 2:01-cv-1997 ("the Second Pittsburgh Action"), for infringement of Medrad's United States Patent No. 5,808,203 by the manufacture, importation, use, offer for sale and sale of the Optistar MR medical injector.

14. On January 16, 2002, Medrad amended its complaint in the Second Pittsburgh Action, to allege infringement against Tyco, Mallinckrodt and L-F of United States Patent No. 6,339,718 ("the '718 patent"), which had issued on January 15, 2002.

15. While the ITC Investigation was still pending, Medrad had filed for a reissue of the '648 reissue patent. The reissue of the '648 reissue patent was granted and U.S.

Patent No. Reissue 37,602 ("the '602 reissue patent") issued on March 26, 2002. On that very day, Medrad filed a motion for leave to file a second amended complaint in the Second Pittsburgh Action to allege infringement of the '602 reissue patent.

16. The First Cincinnati Action included a substantial claim by L-F against Medrad under the Antitrust Laws of the United States alleging monopolistic and predatory practices by Medrad that had injured L-F in its business. That portion of the First Cincinnati Action was tried to a jury between September 11, 2002 and October 9, 2002. Medrad entered into a confidential settlement with L-F just prior to the jury returning with its verdict.

17. Turning back to the Second Pittsburgh Action, during the course of that Action, L-F and Mallinckrodt developed evidence that the claims of the '203 and '718 patents were invalid. Medrad avoided having the claims of those patents declared invalid by executing on or about August 11, 2003, a covenant not to sue and forever release, among others, Tyco, Mallinckrodt and L-F from any and all claims for patent infringement of the '203 and '718 patents for Optistar injector systems that were publicly available for purchase in the United States as of August 11, 2003. Thus, although Medrad agreed to not sue Tyco, Mallinckrodt and L-F, that agreement was only with respect to Optistar injector systems offered for sale and sold as of August 11, 2003.

18. On September 7, 2004, L-F and Mallinckrodt commenced an action against Medrad in the United States District Court for the Southern District of Ohio, Western Division, Case No. 1:04-cv-607, for infringement by Medrad of U.S. Patent Nos. 5,456,669, 5,658,261, 5,662,612 and U.S. Patent No. 5,928,197 ("the Second Cincinnati Action"). That action is directed to Medrad's medical injector marketed under the name Stellant, which was

introduced by Medrad subsequent to the filing of the First Cincinnati Action. The Second Cincinnati Action is also currently on appeal before the Court of Appeals for the Federal Circuit.

19. Based upon at least Medrad's previous claims for alleged infringement of the '718 patent, Tyco, Mallinckrodt and L-F were under a reasonable apprehension that they would be sued for infringement of the '718 patent, and another Medrad patent, U.S. Patent No. 6,643,537 ("the '537 patent"), which had issued November 4, 2003 as a continuation of the '718 patent, when they took concrete steps toward the introduction of their new OptiVantage CT medical injector in November 2004. Therefore, on November 15, 2004, Tyco, Mallinckrodt and L-F commenced an action against Medrad in the United States District Court for the Southern District of Ohio, Western Division, Case No. 1:04-cv-774, seeking a declaratory judgment that the '718 and '537 patents are invalid and unenforceable ("the Third Cincinnati Action"). Although Medrad moved to dismiss the Third Cincinnati Action for lack of a case or controversy, the motion was denied. Medrad thereafter counterclaimed for infringement of the '718 and '537 patents, and also brought claims for infringement of four more of its patents, U.S. Patent Nos. 6,743,205, 6,336,913, 6,676,634 and 6,726,657. The Third Cincinnati Action is currently pending.

Development of CAN in Automation Injection Interface Protocols

20. CAN in Automation ("CiA") is an international non-profit organization whose membership develops and supports CAN (Controller Area Network)-based protocols. CiA is a standards setting organization whose members develop and support open standards or protocols for various industries by which all members can participate in the development of a

uniform set of standards or protocols open to all permitting them to make their products compatible with products of others in a Controller Area Network.

21. CiA established the CANopen SIG Medical Devices TF Injection Interface Unit technical committee ("Committee") to encourage CANopen interfacing between medical fluid injectors and medical diagnostic imaging devices. Tyco, Mallinckrodt and L-F and Medrad, along with most of the manufacturers of medical injectors and medical scanners participated in the selection and adoption of a standard. The concept embodied in an open standard is that all participants are free to implement the standard in their equipment and thus compete on a level playing field.

22. The Committee has adopted a standard for standardizing communication interfacing between medical injectors and medical imaging or scanning devices (the "Standard").

23. Late in this selection and adoption process, Medrad announced that claims of U.S. Patent No. 6,970,735 entitled "Data Communication and Control For Medical Imaging Systems" ("the '735 patent") covered the Standard under consideration by CiA, and that medical injectors and medical scanners using the Standard would infringe the '735 patent. A copy of the '735 patent is attached hereto as Exhibit 1.

24. Medrad stated that it would be willing to grant a license under the '735 patent to the manufacturers of medical scanners and manufactures of medical injectors, and it presented to the Committee a proposed license agreement.

25. On information and belief, Medrad's proposed license was not made in a good faith effort to license any of the manufacturers of medical injectors and was, instead, a sham intended to obtain unfair marketing advantages and to close out competitors from the field.

26. In particular, under the proposed license, Medrad's customers, the manufacturers of medical scanners, would receive a license under the '735 patent royalty-free. However, Medrad's competitors, i.e., manufacturers of medical injectors, would be required to pay Medrad a high royalty for each injector sold. Moreover, the proposed license requires all licensees to grant to Medrad a worldwide, perpetual and non-terminable, royalty-free license under any patents they may have that relate to implementation, support or promotion of use of the Standard as well as any improvements made thereafter.

27. The proposed license further contains a condition precedent to obtaining a license that requires the licensee to dismiss with prejudice all claims or lawsuits, existing or threatened, against Medrad ("the Condition Precedent"). Accordingly, for Tyco, Mallinckrodt and L-F to secure a license from Medrad under the '735 patent, they would be required to dismiss with prejudice and forgo their very substantial claims for damages in the First and Second Cincinnati Actions. However, Medrad's patent infringement claims against Tyco, Mallinckrodt and L-F in the Second Pittsburgh Action and Third Cincinnati Action would continue.

28. On information and belief, no other member of the Committee has any claims or lawsuits against Medrad. Accordingly, the Condition Precedent is aimed solely at Tyco, Mallinckrodt and L-F.

29. Tyco, Mallinckrodt and L-F have made an injection system that Medrad would assert infringes the '735 patent.

30. Tyco, Mallinckrodt and L-F have actively prepared, developed, and intend to introduce to the market a medical injector that will operate under the Standard protocol adopted by the CiA Committee for communications interfaces between medical imaging systems and medical injectors, which Medrad has asserted will infringe claims of the '735 patent.

31. Tyco, Mallinckrodt and L-F have a reasonable apprehension, based on Medrad's prior actions in asserting its patents against them and its statements regarding the '735 patent, that Medrad will file suit against them for infringement of the '735 patent.

COUNT I
DECLARATION OF INVALIDITY, UNENFORCEABILITY AND NON-
INFRINGEMENT OF UNITED STATES PATENT NO. 6,970,735

32. The allegations of paragraphs 1-31 are incorporated by reference as though fully set forth herein.

33. This Count is based upon an actual and continuing controversy between the parties with respect to the purported validity, enforceability, and infringement of the '735 patent.

34. None of Tyco, Mallinckrodt or L-F, or any of their customers infringes any valid claim of the '735 patent.

35. On information and belief, the '735 patent is invalid and void for failure to comply with the statutory requirements of patentability specified in Title 35 U.S.C., including, but not limited to, 35 U.S.C. §§ 102, 103, and/or 112.

36. On information and belief, the '735 patent is unenforceable due to inequitable conduct committed by Medrad and/or individuals on behalf of Medrad by the knowing, willful and deliberate omission and misrepresentation of facts material to the prosecution of the '735 patent to the United States Patent and Trademark Office ("PTO"), which omissions and misrepresentations were made with the intent to mislead and/or deceive the PTO Examiner.

37. Specifically, the '735 patent is directed to a communication interface enabling the exchange of information between the injector and the imaging system. In its application filed with the PTO Medrad stated:

The injector system may communicate information from the injector system to the imaging system. Likewise, the imaging system may communicate data or information from the imaging system to the injector system. Such communication can be unidirectional or bi-directional.

38. Medrad represented in its application filed with the PTO that the state of the prior art permitted only the communication of timing information between an injector and an imager, but not the transmission or communication of other data. Medrad stated in its application:

The communication interface of the present invention is a substantial improvement over previous systems that merely communicated timing information via relay closures. In the present invention, data transmission includes information sent between devices regarding operating parameters, operator input, device status information, and/or control sequencing. In addition, data transferred from one device to another device in the present invention can be used to enable active control of the receiving device from that data. . . . Currently available systems merely relay analog closures between an injector and an imager to communicate the timing of certain states and are not used for data transmission or communication.

39. During prosecution of the application leading to the '735 patent and in response to a rejection by the PTO Examiner based on a patent to Baumann et al. (U.S. Pat. 4,477,923), Medrad repeated the statements quoted in paragraph 38 to the PTO Examiner and distinguished the Baumann et al. patent by stating:

Unlike the present invention, Baumann does not disclose or suggest a data interface or a communication interface to exchange or enable sharing of data comprising timing data and other data between the injector and the imaging unit.

40. In this response, Medrad amended its claims to recite that the data or information exchanged or shared between the injector and the imaging unit comprises timing data and other data. Medrad gave as examples of "other data" information regarding operating parameters, operator input, device status information, and/or control sequencing.

41. On information and belief, years prior to the earliest filing date to which the claims of the '735 patent may be accorded and years prior to Medrad's making these statements to the PTO, Medrad offered for sale and sold injectors, including the Mark V, Mark V Plus, MCT and MCT Plus injectors, which included communication interfaces between the injectors and imaging systems. These interfaces transmitted "other data" between the injectors and the imaging systems.

42. On information and belief, years prior to the earliest filing date to which the claims of the '735 patent may be accorded and years prior to Medrad's making these statements to the PTO, Medrad produced and distributed printed publications describing both unidirectional and bi-directional communication of "other data" between its injectors and programmers, computer systems and other digital imaging systems.

43. Still further, during the time that Medrad was prosecuting the application that issued as the '735 patent, Medrad had in its possession, custody and control a 1990 manual for an L-F Angiomat 6000 injector entitled "Angiomat 6000 Digital Injection System – Operator's Manual," Document Number 600950, Rev. 1. That manual discloses that the Angiomat 6000 included a "Universal Interface Connection" that "accepts cables from various

types of imaging equipment for signal exchange and control." Although Medrad cited the Angiomat 6000 Digital Injection System – Operator's Manual, Document Number 600950, Rev. 1, to the PTO in connection with a number of other patent applications during the same time that the '735 patent was pending in the PTO, it did not cite the manual to the PTO during prosecution of the '735 patent.

44. On information and belief, Medrad and/or individuals on Medrad's behalf knowingly, willfully and deliberately, with the intent to mislead and/or deceive the PTO, failed to inform the PTO during the prosecution of the '735 patent of the information and publications set out in paragraphs 41-43.

45. On information and belief, had Medrad and/or individuals on Medrad's behalf not knowingly, willfully and deliberately failed to disclose the facts to the PTO set out in paragraphs 41-43, the '735 patent would not have issued.

46. On information and belief, the PTO Examiner justifiably relied upon the knowing, willful and deliberate misrepresentations and omissions of the facts set out in paragraphs 38-43 by Medrad and/or individuals on behalf of Medrad when granting the '735 patent.

47. On information and belief, Medrad and/or individuals on Medrad's behalf were aware during the prosecution of the '735 patent of the facts set out in paragraphs 41-43 and still knowingly, willfully and deliberately failed to disclose them to the PTO because it knew that had it disclosed them to the PTO, the '735 patent would not have issued.

48. On information and belief, the '735 patent issued only as a result of a knowing, willful and deliberate scheme of misrepresentations and omissions of fact to the PTO

set out in paragraphs 38-43 orchestrated on behalf of Medrad by Medrad's employees, representatives, and/or agents.

COUNT II
SECTION 2 OF THE SHERMAN ACT, 15 U.S.C. § 2,
MONOPOLIZATION AND ATTEMPTED MONOPOLIZATION
OF THE MARKET FOR MEDICAL INJECTOR SYSTEMS

49. The allegations of paragraphs 1-48 are incorporated by reference as though fully set forth herein.

50. On information and belief, Medrad is the owner of the '735 patent.

51. On information and belief, Medrad is the dominant supplier in the market for medical injectors for use in connection with medical imaging procedures in the United States having a market share in excess of 70%.

52. On information and belief, Medrad has asserted in bad faith that the Standard adopted by the CiA Committee for communications interfaces between medical imaging systems and medical injectors will infringe claims of the '735 patent and has threatened to enforce the '735 patent against injector manufacturers who adopt the Standard knowing the '735 patent to be invalid and to have been obtained through a scheme of misrepresentations and omissions to the PTO that constitute fraud on the PTO in order to obtain, maintain or increase Medrad's monopoly power by precluding competitors from selling medical injectors utilizing the Standard and/or by coercing unfair concessions from competitors, such as payment of exorbitant royalties, the dismissal or settlement of all actions of such competitors against Medrad and the automatic worldwide, perpetual and royalty-free licensing to Medrad by all competitors of existing patent rights and future improvements in the field.

53. On information and belief, the '735 patent was fraudulently obtained by Medrad and/or individuals on behalf of Medrad by the knowing, willful and deliberate omission and misrepresentation of facts material to the prosecution of the '735 patent to the PTO, which omissions and misrepresentations were made with the intent to mislead and/or deceive the PTO Examiner and which the Examiner relied on in issuing the '735 patent.

54. Specifically, the '735 patent is directed to a communication interface enabling the exchange of information between the injector and the imaging system. In its application filed with the PTO Medrad stated:

The injector system may communicate information from the injector system to the imaging system. Likewise, the imaging system may communicate data or information from the imaging system to the injector system. Such communication can be unidirectional or bi-directional.

55. Medrad represented in its application filed with the PTO that the state of the prior art permitted only the communication of timing information between an injector and an imager, but not the transmission or communication of other data. Medrad stated in its application:

The communication interface of the present invention is a substantial improvement over previous systems that merely communicated timing information via relay closures. In the present invention, data transmission includes information sent between devices regarding operating parameters, operator input, device status information, and/or control sequencing. In addition, data transferred from one device to another device in the present invention can be used to enable active control of the receiving device from that data. . . . Currently available systems merely relay analog closures between an injector and an imager to communicate the timing of certain states and are not used for data transmission or communication.

56. During prosecution of the application leading to the '735 patent and in response to a rejection by the PTO Examiner based on a patent to Baumann et al. (U.S. Pat. 4,477,923), Medrad repeated statements quoted in paragraph 55 to the PTO Examiner and distinguished the Baumann et al. patent by stating:

Unlike the present invention, Baumann does not disclose or suggest a data interface or a communication interface to exchange or enable sharing of data comprising timing data and other data between the injector and the imaging unit.

57. In this response, Medrad amended its claims to recite that the data or information exchanged or shared between the injector and the imaging unit comprises timing data and other data. Medrad gave as examples of "other data" information regarding operating parameters, operator input, device status information, and/or control sequencing.

58. On information and belief, years prior to the earliest filing date to which the claims of the '735 patent may be accorded and years prior to Medrad's making these statements to the PTO, Medrad offered for sale and sold injectors, including the Mark V, Mark V Plus, MCT and MCT Plus injectors, which included communication interfaces between the injectors and imaging systems. These interfaces transmitted "other data" between the injectors and the imaging systems.

59. On information and belief, years prior to the earliest filing date to which the claims of the '735 patent may be accorded and years prior to Medrad's making these statements to the PTO, Medrad produced and distributed printed publications describing both unidirectional and bi-directional communication of "other data" between its injectors and programmers, computer systems and other digital imaging systems.

60. Still further, during the time that Medrad was prosecuting the application that issued as the '735 patent, Medrad had in its possession, custody and control a 1990 manual for an L-F Angiomat 6000 injector entitled "Angiomat 6000 Digital Injection System – Operator's Manual," Document Number 600950, Rev. 1. That manual discloses that the Angiomat 6000 included a "Universal Interface Connection" that "accepts cables from various types of imaging equipment for signal exchange and control." Although Medrad cited the Angiomat 6000 Digital Injection System – Operator's Manual, Document Number 600950, Rev. 1, to the PTO in connection with a number of other patent applications during the same time that the '735 patent was pending in the PTO, it did not cite the manual to the PTO during prosecution of the '735 patent.

61. On information and belief, Medrad and/or individuals on Medrad's behalf knowingly, willfully and deliberately, with the intent to fraudulently mislead and/or deceive the PTO, failed to inform the PTO during the prosecution of the '735 patent of the information and publications set out in paragraphs 58-60.

62. On information and belief, had Medrad and/or individuals on Medrad's behalf not knowingly, willfully and deliberately failed to disclose the facts to the PTO set out in paragraphs 58-60, the '735 patent would not have issued.

63. On information and belief, the PTO Examiner justifiably relied upon the knowing, willful and deliberate misrepresentations and omissions of the facts set out in paragraphs 54-60 by Medrad and/or individuals on behalf of Medrad when granting the '735 patent.

64. On information and belief, Medrad and/or individuals on Medrad's behalf were aware during the prosecution of the '735 patent of the facts set out in paragraphs 58-60 and

still knowingly, willfully and deliberately failed to disclose them to the PTO because it knew that had it disclosed them to the PTO, the '735 patent would not have issued.

65. On information and belief, the '735 patent issued only as a result of a knowing, willful and deliberate scheme of fraudulent misrepresentations and omissions of fact to the PTO set out in paragraphs 54-60 orchestrated on behalf of Medrad by Medrad's employees, representatives, and/or agents.

75. For the purposes of this Count II, the relevant product market is medical injectors for use in medical imaging procedures, and the relevant geographic market is the United States.

76. As a result of the aforementioned fraudulent actions of Medrad, Medrad has monopolized and attempted to monopolize the relevant market in violation of Section 2 of the Sherman Act. Medrad has the power to control the price of medical injectors for use in imaging procedures and has improperly acquired and maintained that power through the aforementioned knowing, willful and deliberate bad faith assertion of the '735 patent and its fraudulent misrepresentations and omissions of facts to the PTO. This monopoly power has been used by Medrad to exclude entry into the relevant market, and to exclude, regulate, and restrain competition in the relevant market at issue in this case.

77. On information and belief, Medrad willfully engaged in the aforementioned fraudulent conduct with the intent of acquiring and maintaining its monopoly power in the relevant market. Medrad engaged in the aforementioned conduct for predatory, anti-competitive, exclusionary and willful purposes, and for no legitimate business justification or purpose. Among other things, on information and belief, Medrad has unreasonably created artificial barriers to entry into the relevant market at issue in this case, and has unreasonably

increased the costs of Tyco, Mallinckrodt, L-F and the costs of all other competitors in the manufacture, sale and distribution of injector products in the relevant market at issue in this case.

78. Medrad's acts have produced and will continue to produce the following anti-competitive effects, among others:

(a) Competition in the manufacture, sale and distribution of injector products in the relevant market at issue in this case has been, and will be, unreasonably restrained and eliminated, and has been, and will be, monopolized by Medrad;

(b) Prices for products in the relevant market at issue in this case have been, and will continue to be, substantially higher than prices that would prevail in a competitive market;

(c) Barriers to entry in the relevant market have been and will be, raised to levels that are insurmountable, assuring that Medrad will maintain, or increase, its monopoly power; and

(d) Innovation and development in the relevant market and related markets has been, and will continue to be, stifled.

79. As a direct and proximate result of Medrad's unlawful acts, Tyco, Mallinckrodt and L-F have been injured in their business and property, are threatened with immediate and irreparable additional loss and harm, and will continue to be so threatened unless Medrad is enjoined from continuing its illegal, unfair and predatory acts.

PRAYER FOR RELIEF

WHEREFORE, Tyco Healthcare Group LP, Mallinckrodt Inc. and Liebel-Flarsheim Company (referred to collectively as "Tyco") pray that:

1. With respect to Count I of the Complaint,
 - A. A declaratory judgment be entered declaring that the '735 patent is invalid;
 - B. A declaratory judgment be entered declaring that the '735 patent is unenforceable;
 - C. A declaratory judgment be entered declaring that neither Tyco nor any of its customers has infringed or will infringe any of the claims of the '735 patent; and
 - D. This case be adjudged and decreed exceptional under 35 U.S.C. § 285 entitling Tyco to an award of its reasonable attorney fees and that such reasonable attorney fees be awarded.
2. With respect to Count II of the Complaint,
 - A. A judgment be entered awarding Tyco damages in an amount sufficient to compensate for all harm caused by the conduct of Medrad, including the costs incurred by Tyco in this action;
 - B. An order be entered trebling the amount of compensatory damages pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15;
 - C. An order be entered granting permanent injunctive relief as may be reasonably necessary or appropriate to eliminate the effects of Medrad's violations of the

antitrust laws and to restore effective competition in the manufacture, sale and distribution of medical injectors for use in imaging procedures; and

D. A judgment be entered awarding Tyco punitive damages as authorized by law.

3. That Tyco be awarded its costs and prejudgment interest on all damages;

4. That Medrad be required to file with the court within thirty (30) days after entry of the final judgment of this cause of action a written statement under oath setting forth in detail the manner in which Medrad has complied with the judgment; and

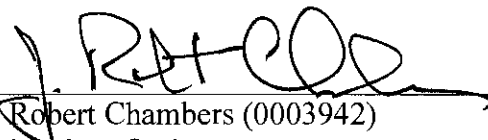
5. For such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs Tyco Healthcare Group LP, Mallinckrodt Inc. and Liebel-Flarsheim Company hereby demand and request trial by jury of all issues that are triable by jury.

TYCO HEALTHCARE GROUP LP,
MALLINCKRODT INC. and
LIEBEL-FLARSHEIM COMPANY

Dated: November 7, 2006


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