

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EXERGEN CORPORATION,

Plaintiff,

v.

KIDZ-MED, INC.,
AMERICAN SCIENTIFIC RESOURCES, INC.,
and TECNIMED S.R.L.,

Defendants.

Civil Action No.:

COMPLAINT AND DEMAND FOR JURY TRIAL

For its Complaint, Plaintiff alleges as follows:

The Parties

1. Plaintiff Exergen Corporation (“Exergen”) is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and having its principal place of business at 400 Pleasant Street, Watertown, Massachusetts, within this judicial District.

2. Exergen is a leading innovator in the field of medical thermometry. Exergen’s founder and president, Francesco Pompei, is the inventor of over sixty issued United States patents.

3. Defendant Kidz-Med, Inc. is, upon information and belief, a corporation organized under the laws of the State of New York, having a place of business at New Paltz, NY, and doing business in this judicial District, including business related to the claims asserted in this Complaint.

4. Defendant American Scientific Resources, Inc. is, upon information and belief, a corporation organized under the laws of the State of Nevada, having a place of business at

Weston, FL, and doing business in this judicial District, including business related to the claims asserted in this Complaint. Upon information and belief, Defendant American Scientific Resources, Inc. owns, controls and directs the operations of Defendant Kidz-Med, Inc.

5. Defendant Tecni-Med S.R.L. (“Tecni-Med”) is, upon information and belief, a corporation organized and existing under the laws of the Republic of Italy, with a place of business in Varese, Italy, and doing business in this judicial District, including business related to the claims asserted in this Complaint.

Jurisdiction and Venue

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

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332 (a) (1), (2), and (3) and 1338(a). The amount in controversy, upon information and belief, exceeds \$75,000.00.

8. Venue is proper in this court under 28 U.S.C. §§ 1391 (b), (c), and (d), and 1400(b).

COUNT I

(Infringement of U.S. Patent No. 5,012,813)

9. Exergen is the owner of United States Letters Patent No. 5,012,813, entitled RADIATION DETECTOR HAVING IMPROVED ACCURACY (“the ‘813 patent”). The ‘813 patent was duly and legally issued by the United States Patent Office on May 7, 1991, and is valid and subsisting and in full force and effect. A copy of the ‘813 patent is attached to the Complaint as Exhibit A.

10. Upon information and belief, each of the defendants has infringed, contributed to the infringement of, and/or actively induced infringement of the ‘813 patent by making, using, offering to sell, selling and/or importing devices embodying the patented invention in the United States and will continue to do so unless enjoined by this Court.

COUNT II

(Infringement of U.S. Patent No. 6,056,435)

11. Exergen is the owner of United States Letters Patent No. 6,056,435, entitled AMBIENT AND PERFUSION NORMALIZED TEMPERATURE DETECTOR (“the ‘435 patent”). The ‘435 patent was duly and legally issued by the United States Patent Office on May 2, 2000, and is valid and subsisting and in full force and effect. A copy of the ‘435 patent is attached to the Complaint as Exhibit B.

12. Upon information and belief, each of the defendants has infringed the ‘435 patent by making, using, offering to sell, selling and/or importing devices embodying the patented invention in the United States and will continue to do so unless enjoined by this Court.

COUNT III

(Infringement of U.S. Patent No. 6,299,347)

13. Exergen is the owner of United States Letters Patent No. 6,299,347, entitled AMBIENT AND PERFUSION NORMALIZED TEMPERATURE DETECTOR (“the ‘347 patent”). The ‘347 patent was duly and legally issued by the United States Patent Office on October 9, 2001, and is valid and subsisting and in full force and effect. A copy of the ‘347 patent is attached to the Complaint as Exhibit C.

14. Upon information and belief, each of the defendants has infringed the ‘347 patent by making, using, offering to sell, selling and/or importing devices embodying the patented invention in the United States and will continue to do so unless enjoined by this Court.

COUNT IV

(Infringement of U.S. Patent No. 6,499,877)

15. Exergen is the owner of United States Letters Patent No. 6,499,877, entitled AMBIENT AND PERFUSION NORMALIZED TEMPERATURE DETECTOR. (the ‘677 patent’). The ‘877 patent was duly and legally issued by the United States Patent Office on December 31, 2002, and is valid and subsisting and in full force and effect. A copy of the ‘386 patent is attached to the Complaint as Exhibit E.

16. Upon information and belief, each of the defendants has infringed the ‘677 patent by making, using, offering to sell, selling and/or importing devices embodying the patented invention in the United States and will continue to do so unless enjoined by this Court.

COUNT V

(Infringement of U.S. Patent No. 7,314,309)

17. Exergen is the owner of United States Letters Patent No. 7,314,309, entitled AMBIENT AND PERFUSION NORMALIZED TEMPERATURE PROBE (“the ‘309 patent”). The ‘309 patent was duly and legally issued by the United States Patent Office on January 1, 2008, and is valid and subsisting and in full force and effect. A copy of the ‘309 patent is attached to the Complaint as Exhibit D.

18. Upon information and belief, each of the defendants has infringed the ‘309 patent by making, using, offering to sell, selling and/or importing devices embodying the patented invention in the United States and will continue to do so unless enjoined by this Court.

WILLFUL INFRINGEMENT

19. Upon information and belief, defendants have notice and knowledge of at least the ‘813, ‘435, and ‘347 patents.

20. Upon information and belief, defendants' infringement of at least the '813, '435, and '347 patents has been and continues to be willful.

WHEREFORE, Exergen prays that this Court:

A. Enter judgment that each of the defendants has infringed the '813, '435, '347, '877 and '309 patents.

B. Enter an order preliminarily and permanently enjoining each of the defendants, its agents and employees, and any others acting in concert with it, from infringing U.S. Patent Nos. 5,012,813; 6,056,435; 6,299,347; 6,499,877; and 7,314,309.

C. Award Exergen its damages resulting from defendants' patent infringement pursuant to 35 U.S.C. § 284;

D. Find that defendants' infringement has been willful and increase the damages awarded to Exergen three times the amount assessed, pursuant to 35 U.S.C. § 284;

E. Find this to be an exceptional case and award Exergen its attorney's fees, pursuant to 35 U.S.C. § 285;

F. Award Exergen its prejudgment interest and post judgment interest on its damages and award Exergen its costs; and

G. Award Exergen such other and further relief as it deems just and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury.

By its attorneys

Dated: August 15, 2008

/s/ Heidi Harvey _____
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