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DEKA PRODUCTS LIMITED PARTNERSHIP

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17 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
18 **SAN FRANCISCO DIVISION**

19 BAXTER HEALTHCARE
CORPORATION, BAXTER
20 INTERNATIONAL INC., BAXTER
HEALTHCARE SA, and DEKA
21 PRODUCTS LIMITED PARTNERSHIP,

22 *Plaintiffs and Counter-defendants,*

23 vs.

24 FRESenius MEDICAL CARE
HOLDINGS, INC., d/b/a FRESenius
25 MEDICAL CARE NORTH AMERICA,
and FRESenius USA, INC.,

26
27 *Defendants and Counter-claimants.*

Case No. C 07-01359 PJH(JL)

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

1 **FIRST AMENDED COMPLAINT**

2 Plaintiffs Baxter Healthcare Corporation, Baxter International Inc., and Baxter
3 Healthcare SA (jointly “Baxter”) and DEKA Products Limited Partnership (“DEKA”)
4 (collectively “Plaintiffs”) allege as follows:

5 **THE PARTIES**

6 1. Baxter Healthcare Corporation is a Delaware corporation with its principal place
7 of business in Deerfield, Illinois. Baxter International Inc. is a Delaware corporation with its
8 principal place of business in Deerfield, Illinois. Baxter Healthcare SA is a Switzerland
9 corporation with its principal place of business in Wallisellen, Switzerland. Baxter is a leading
10 provider of dialysis-related products and services to assist patients with kidney disease.
11 Specifically, Baxter is a leading provider of products for peritoneal dialysis, including peritoneal
12 dialysis systems, disposables, and related equipment.

13 2. DEKA is a New Hampshire limited partnership, with its principal place of
14 business in Manchester, New Hampshire.

15 3. Fresenius Medical Care Holdings d/b/a Fresenius Medical Care North America is
16 a New York Corporation with its principal place of business in Lexington, Massachusetts.
17 Fresenius USA, Inc. is a Massachusetts corporation with its principal place of business in
18 Walnut Creek, California. Fresenius Medical Care Holdings and Fresenius USA, Inc.
19 (collectively “Fresenius”) make dialysis machines, equipment and supplies, provide dialysis
20 services and operate dialysis clinics across the United States.

21 **JURISDICTION AND VENUE**

22 4. This action is for patent infringement arising under the Patent Laws of the United
23 States, in particular 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has exclusive subject
24 matter jurisdiction over the subject matter of this litigation under 28 U.S.C. §§ 1331 and 1338(a).

25 5. This Court has personal jurisdiction over Fresenius. Fresenius has consented to
26 personal jurisdiction and Fresenius has made an appearance in this case. Fresenius has
27 systematic and continuous contacts in this judicial district, regularly transacts business within
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1 this judicial district, and regularly avails itself of the benefits of this judicial district. For
2 example, Fresenius USA, Inc.'s principal place of business is located within this District.
3 Fresenius also has numerous employees, and receives substantial revenue in this judicial district.
4 On information and belief, Fresenius is using or plans to use the Liberty Cyclor in dialysis
5 centers in this judicial district.

6 6. Venue properly lies in this Court under 28 U.S.C. §§ 1391(b) and (c) and
7 1400(b). Defendants agree that venue properly lies in this Court.

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9 **PLAINTIFFS' COUNTS OF INFRINGEMENT**

10 **COUNT I: INFRINGEMENT OF THE '823 PATENT**

11 7. Plaintiffs reallege paragraphs 1-6 above as if fully set forth herein.

12 8. On June 6, 1995, the United States Patent and Trademark Office ("USPTO") duly
13 and legally issued United States Patent No. 5,421,823 entitled "Peritoneal Dialysis Methods That
14 Emulate Gravity Flow" (the "'823 patent"). The '823 patent was assigned to DEKA, which has
15 granted an exclusive license to Baxter in the peritoneal dialysis field. DEKA and Baxter hold all
16 right, title, and interest in and to the '823 patent for uses in the peritoneal dialysis field. A copy
17 of the '823 patent is attached hereto as Exhibit A.

18 9. The '823 patent is valid and enforceable.

19 10. Fresenius, in violation of one or more of 35 U.S.C. § 271(a), (b), and (c), has
20 directly infringed the '823 patent, induced infringement of the '823 patent, and/or contributorily
21 infringed the '823 patent.

22 11. Fresenius had and has actual notice of the '823 patent, and has infringed and is
23 infringing the '823 patent with knowledge of Plaintiffs' patent rights. Fresenius' acts of
24 infringement have been and are willful and deliberate.

AMENDED COUNT II: INFRINGEMENT OF THE '626 PATENT

12. Plaintiffs reallege paragraphs 1-6 above as if fully set forth herein.

13. On July 11, 1995, the USPTO duly and legally issued United States Patent No. 5,431,626 entitled "Liquid Pumping Mechanisms for Peritoneal Dialysis Systems Employing Fluid Pressure" (the "'626 patent"). The '626 patent was assigned to DEKA, which has granted an exclusive license to Baxter in the peritoneal dialysis field. DEKA and Baxter hold all right, title, and interest in and to the '626 patent for uses in the peritoneal dialysis field. A copy of the '626 patent is attached hereto as Exhibit B.

14. The '626 patent is valid and enforceable.

15. Fresenius, in violation of one or more of 35 U.S.C. § 271(a), (b), and (c), has directly infringed the '626 patent, induced infringement of the '626 patent, and/or contributorily infringed the '626 patent.

16. Fresenius had and has actual notice of the '626 patent, and has infringed and is infringing the '626 patent with knowledge of Plaintiffs' patent rights. Fresenius' acts of infringement have been and are willful and deliberate.

AMENDED COUNT III: INFRINGEMENT OF THE '510 PATENT

17. Plaintiffs reallege paragraphs 1-6 above as if fully set forth herein.

18. On August 1, 1995, the USPTO duly and legally issued United States Patent No. 5,438,510 entitled "User Interface and Monitoring Functions for Automated Peritoneal Dialysis Systems" (the "'510 patent"). The '510 patent was assigned to DEKA, which has granted an exclusive license to Baxter in the peritoneal dialysis field. DEKA and Baxter hold all right, title, and interest in and to the '510 patent for uses in the peritoneal dialysis field. A copy of the '510 patent is attached hereto as Exhibit C.

19. The '510 patent is valid and enforceable.

20. Fresenius, in violation of one or more of 35 U.S.C. § 271(a), (b), and (c), has directly infringed the '510 patent, induced infringement of the '510 patent, and/or contributorily infringed the '510 patent.

1 21. Fresenius had and has actual notice of the '510 patent, and has infringed and is
2 infringing the '510 patent with knowledge of Plaintiffs' patent rights. Fresenius' acts of
3 infringement have been and are willful and deliberate.

4 **AMENDED COUNT IV: INFRINGEMENT OF THE '062 PATENT**

5 22. Plaintiffs reallege paragraphs 1-6 above as if fully set forth herein.

6 23. On January 7, 2003, the USPTO duly and legally issued United States Patent No.
7 6,503,062 entitled "Method for Regulating Fluid Pump Pressure" (the "'062 patent"). The '062
8 patent was assigned to DEKA, which has granted an exclusive license to Baxter in the peritoneal
9 dialysis field. DEKA and Baxter hold all right, title, and interest in and to the '062 patent for
10 uses in the peritoneal dialysis field. A copy of the '062 patent is attached hereto as Exhibit D.

11 24. The '062 patent is valid and enforceable.

12 25. Fresenius, in violation of one or more of 35 U.S.C. § 271(a), (b), and (c), has
13 directly infringed the '062 patent, induced infringement of the '062 patent, and/or contributorily
14 infringed the '062 patent.

15 26. Fresenius had and has actual notice of the '062 patent, and has infringed and is
16 infringing the '062 patent with knowledge of Plaintiffs' patent rights. Fresenius' acts of
17 infringement have been and are willful and deliberate.

18 **AMENDED COUNT V: INFRINGEMENT OF THE '369 PATENT**

19 27. Plaintiffs reallege paragraphs 1-6 above as if fully set forth herein.

20 28. On October 26, 2004, the USPTO duly and legally issued United States Patent
21 No. 6,808,369 entitled "System for Regulating Fluid Pump Pressures" (the "'369 patent"). The
22 '369 patent was assigned to DEKA, which has granted an exclusive license to Baxter in the
23 peritoneal dialysis field. DEKA and Baxter hold all right, title, and interest in and to the '369
24 patent for uses in the peritoneal dialysis field. A copy of the '369 patent is attached hereto as
25 Exhibit E.

26 29. The '369 patent is valid and enforceable.

1 39. The '547 patent is valid and enforceable.

2 40. Fresenius, in violation of one or more of 35 U.S.C. § 271(a), (b), and (c), has
3 directly infringed the '547 patent, induced infringement of the '547 patent, and/or contributorily
4 infringed the '547 patent.

5 41. Fresenius had and has actual notice of the '547 patent, and has infringed and is
6 infringing the '547 patent with knowledge of Plaintiffs' patent rights. Fresenius' acts of
7 infringement have been and are willful and deliberate.

8 **AMENDED COUNT VIII: INFRINGEMENT OF THE '751 PATENT**

9 42. Baxter realleges paragraphs 1-6 above as if fully set forth herein.

10 43. On August 16, 2005, the USPTO duly and legally issued United States Patent No.
11 6,929,751 entitled "Vented Medical Fluid Tip Protector Methods" (the "'751 patent"). The '751
12 patent was assigned to Baxter. Baxter holds all right, title, and interest in and to the '751 patent.
13 A copy of the '751 patent is attached hereto as Exhibit H.

14 44. The '751 patent is valid and enforceable.

15 45. Fresenius, in violation of one or more of 35 U.S.C. § 271(a), (b), and (c), has
16 directly infringed the '751 patent, induced infringement of the '751 patent, and/or contributorily
17 infringed the '751 patent.

18 46. Fresenius had and has actual notice of the '751 patent, and has infringed and is
19 infringing the '751 patent with knowledge of Plaintiffs' patent rights. Fresenius' acts of
20 infringement have been and are willful and deliberate.

21 **AMENDED COUNT IX: INFRINGEMENT OF THE '719 PATENT**

22 47. Baxter realleges paragraphs 1-6 above as if fully set forth herein.

23 48. On August 1, 2006, the USPTO duly and legally issued United States Patent No.
24 7,083,719 entitled "Medical System Including Vented Tip Protector" (the "'719 patent"). The
25 '719 patent was assigned to Baxter. Baxter holds all right, title, and interest in and to the '719
26 patent. A copy of the '719 patent is attached hereto as Exhibit I.

27 49. The '719 patent is valid and enforceable.

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October 19, 2007

October 19, 2007

By: /s David K. Callahan s/

By: /s Maureen K. Toohey s/

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ELECTRONIC FILING DECLARATION OF DAVID K. CALLAHAN, P.C.

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I, David K. Callahan, declare as follows:

1. I am a partner at Kirkland & Ellis LLP, and I am Baxter Healthcare Corporation's legal counsel in the above-captioned litigation.
2. Pursuant to the Northern District of California Electronic Filing Procedures and General Order No. 45, I attest that Maureen K. Toohey, counsel for Plaintiff DEKA Products Limited Partnership, concurs in the filing of this document and has granted me permission to electronically file this document absent her actual signature.

Dated: October 19, 2007

Respectfully submitted,

Kirkland & Ellis LLP

By: /s David K. Callahan s/
David K. Callahan, P.C. (IL 620227),
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