

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

**UNITED STATES ENDOSCOPY
GROUP, INC.**
5976 Heisley Road
Mentor, Ohio 44060,

Plaintiff,

v.

**CONMED ENDOSCOPIC
TECHNOLOGIES, INC.,**
129 Concord Road, Building 3
Billerica, Massachusetts 01821-4600,

CONMED CORPORATION,
525 French Road
Utica, New York 13502, and

**GRANIT MEDICAL INNOVATIONS,
LLC**
992 Fifth Avenue
New York, NY 10028

Defendants.

) CASE NO. 1:06cv1253
)
) JUDGE BOYKO
)
) **SECOND AMENDED COMPLAINT FOR**
) **PATENT INFRINGEMENT, BREACH OF**
) **CONTRACT, CONVERSION,**
) **ACCOUNTING AND DECLARATORY**
) **JUDGMENT**
)
) **DEMAND FOR JURY TRIAL**

2006 SEP 22 13

Plaintiff United States Endoscopy Group, Inc. ("USEG") files this Complaint against Defendants ConMed Endoscopic Technologies, Inc., ConMed Corporation, (collectively, "ConMed"), and Granit Medical Innovations, LLC ("GMI") and hereby complains and avers as follows:

1. This is an action for damages and injunctive relief to remedy direct infringement, inducement to infringe and/or contributory infringement by Defendants of utility patents assigned to and owned by USEG, and to remedy breach of contract, breach of confidentiality, and conversion by GMI. The patented invention at issue is a medical device used to capture and remove tissue during endoscopic surgical procedures.

THE PARTIES

2. Plaintiff United States Endoscopy Group, Inc. (“USEG”) is a corporation existing under the laws of the State of Ohio, with a principal place of business at 5976 Heisley Road, Mentor, Ohio 44060. USEG makes and sells medical and surgical instruments, including endoscopic instruments and accessories.

3. Defendant ConMed Endoscopic Technologies, Inc. (“ConMed Endoscopic”) is a corporation existing under the laws of the Commonwealth of Massachusetts, with a principal place of business at 129 Concord Road, Building 3, Billerica, Massachusetts 01821-4600. ConMed Endoscopic regularly does business in Ohio, including selling its products in this judicial district.

4. Defendant ConMed Corporation is a corporation existing under the laws of the State of New York, with a principal place of business at 525 French Road, Utica, New York 13502. Either directly or through one of its subsidiaries, ConMed Corporation regularly does business in Ohio, including selling its products in this judicial district.

5. Defendant GMI is a limited liability company existing under the laws of the State of New York, with a principal place of business at 992 Fifth Avenue, New York, NY 10028. Upon information and belief, GMI licenses and has provided instructions, designs and know-how used in the manufacture, sale and distribution of the devices in issue in this case (hereinafter

defined as the “Accused Devices”) to ConMed knowing that such products will be distributed and sold throughout the United States, including in this judicial district; or GMI has entered into a license or distribution agreement with ConMed providing that ConMed shall manufacture and/or sell the Accused Devices with GMI knowing that such products will be distributed and sold throughout the United States, including in this judicial district.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this controversy concerning patent infringement claims by virtue of Title 35 U.S.C., Sections 271 and 281, and Title 28 U.S.C., §§ 1331 and 1338(a). This Court has supplemental subject matter jurisdiction over USEG’s claims that are related to its patent claims pursuant to 28 U.S.C. § 1367. This Court has subject matter jurisdiction over USEG’s claims for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202. Because there exists a diversity of citizenship among the parties and the amount in controversy, exclusive of interest and costs, exceeds \$75,000, this Court also has jurisdiction over the subject of this action pursuant to 28 U.S.C. § 1332.

7. This Court has personal jurisdiction over the Defendants pursuant to the provisions of the Ohio Long Arm Statute, O.R.C. § 2307.382, and the laws of the United States. Defendants maintain an established distribution network for offering for sale, selling and shipping products into the Northern District of Ohio, including their complete line of endoscopic instruments. One or more of these devices are the Accused Devices at issue in this action. Defendants have marketed, sold, shipped and offered for sale the Accused Devices in this judicial district. The marketing and sale of the devices at issue in this action will induce or contribute to the infringement of the patents at issue in this litigation within this state. In addition, Defendants’ actions as described in this complaint have caused and will cause tortious

injury to Plaintiff, a resident of this state, and permit Defendants to wrongfully derive substantial revenue from activities within this state. Upon information and belief, Defendants derive substantial revenue from activities within this state and have sold a substantial amount of products into this state. Upon information and belief, by licensing and providing instructions and designs used in the manufacture of the "Accused Devices" to ConMed knowing that such products will be distributed and sold throughout the United States, including in this judicial district, GMI is inducing ConMed to infringe the patents-in-suit in this judicial district.

8. GMI has entered into an agreement with USEG in this state. Pursuant to that agreement, GMI and/or its predecessor-in interest have conducted business in this state. Further, GMI and/or its predecessor-in-interest have engaged in a persistent course of conduct in this state and have derived substantial revenue from sales and royalties in this district. Further, upon information and belief, GMI has granted licenses and provided designs and instructions to ConMed to induce ConMed to distribute and sell the Accused Devices throughout the United States and into this judicial district.

9. Upon information and belief, ConMed has employees that reside in this judicial district that offer for sale, sell and distribute the Accused Devices in this judicial district. ConMed has an established employee or sales representative network in this judicial district that markets, distributes, sells and offers for sale products in this judicial district, including the Accused Devices.

10. Venue is proper in this judicial district pursuant to Title 28 U.S.C. Sections 1391 and 1400(b).

COUNT I - PATENT INFRINGEMENT

11. On July 1, 1997, United States Letters Patent No. 5,643,283 for "Surgical Pouch" ("the '283 Patent") was duly and legally issued naming Marlin E. Younker as the inventor. A true and correct copy of the '283 Patent is attached hereto as Exhibit A.

12. On May 17, 2006, Mr. Younker assigned the '283 Patent to USEG. A copy of that assignment is attached as Exhibit B.

13. On May 25, 1999, United States Letters Patent No. 5,906,621 for "Endoscopic Surgical Device" ("the '621 Patent") was duly and legally issued naming Dean J. Secrest and Marlin E. Younker as the inventors. A true and correct copy of the '621 Patent is attached hereto as Exhibit C.

14. On May 13, 1996, Mr. Secrest and Mr. Younker assigned the '621 Patent to USEG. This assignment is recorded at Reel/Frame Number 007998/0375 in the United States Patent and Trademark Office.

15. Upon information and belief, on March 15, 2002, GMI filed a 510k pre-market notification with the Food and Drug Administration ("FDA") seeking approval for marketing its Nakao Snare II and Nakao Snare III devices in the United States. Upon information and belief, GMI's 510k pre-market notification bears or was assigned FDA identification number K020891. Upon information and belief, GMI's 510k pre-market notification states that the Nakao Snare II and Nakao Snare III devices are substantially equivalent to previously-approved products manufactured, sold and marketed by Plaintiff USEG.

16. By way of letter dated June 17, 2002, the FDA approved GMI's Nakao Snare II and Nakao Snare III devices for marketing in the United States. The FDA's approval was based on the FDA's finding that the Nakao Snare II and Nakao Snare III devices are substantially

equivalent to USEG's previously-approved devices. This approval letter is referred to herein as the "K02891 Approval Letter."

17. Upon information and belief, the Nakao Snare II and Nakao Snare III devices are part of a group of products known as The Nakao Snare Line.

18. GMI's Web site, www.granitmedical.com, states that The Nakao Snare Line is "to be distributed by ConMed Endoscopic Technologies beginning May 2006."

19. Upon information and belief, Defendants, alone and in combination, are currently manufacturing, offering for sale, using, marketing, importing and/or selling surgical devices in the United States including a device manufactured, marketed and sold under the trade name "Nakao Spider-Net™ Retrieval Device" (the "Accused Devices"). Upon information and belief, GMI is licensing the name "Nakao" and the technology related to the Accused Devices to ConMed. USEG raised the issue of the '283 and '621 patents and potential infringement thereof with GMI prior to GMI's dealings with ConMed. GMI had knowledge of the '283 and '621 Patents when GMI entered into the license agreement with ConMed providing for the manufacture and sale of the Accused Devices. GMI is inducing and intending to induce ConMed's infringement of the '283 and '621 Patents through its license agreement with ConMed and through providing instructions, plans and designs to ConMed.

20. Upon information and belief, ConMed has not applied for nor received marketing approval for the Accused Devices from the FDA.

21. Upon information and belief, the Nakao Spider-Net™ Retrieval Device is part of the group of products known as The Nakao Snare Line.

22. Defendants' making, using, importing, selling and/or offering to sell the Accused Devices in the United States infringes one or more claims of the '283 and '621 Patents.

23. The Accused Devices directly infringe at least one claim of the '283 Patent and at least one claim of the '621 Patent.

24. Defendants' manufacture, importation, marketing and/or sale of the Accused Devices within the United States induces customers procuring the Accused Devices to infringe the '283 and '621 Patent.

25. Defendants' manufacture, importation, marketing and/or sale of the Accused Devices within the United States contributes to the infringement of the '283 Patent and '621 Patent by users of the Accused Devices.

26. Upon information and belief, Defendants' acts of direct infringement, inducement to infringe, and/or contributory infringement are willful, wanton, and deliberate, without license, and with full knowledge and awareness of the '283 Patent and the '621 Patent.

27. The harm to Plaintiff within this judicial district and elsewhere in the United States resulting from the acts of direct infringement, inducement to infringe, and/or contributory infringement of the '283 Patent and the '621 Patent by the Defendants set forth above, is irreparable, continuing, and not fully compensable by money damages.

28. Upon information and belief, the Defendants have profited and will continue to profit by their wrongful activities. Plaintiff has been and will be damaged by the Defendants' infringing activities. The amount of monetary damages which Plaintiff has suffered by the acts of the Defendants set forth above cannot be determined without an accounting.

COUNT II - BREACH OF CONTRACT

29. USEG incorporates the foregoing paragraphs of this Complaint as though fully rewritten herein.

30. On December 13, 1993, USEG entered into a written agreement with Wilk & Nakao Medical Technology Corp. ("W&N") (hereinafter, the "1993 Agreement"). A true and correct copy of the 1993 Agreement is attached hereto as Exhibit D.

31. At the time the 1993 Agreement was formed, the principal stockholders of W&N were Dr. Naomi L. Nakao and Dr. Peter J. Wilk.

32. Pursuant to the 1993 Agreement, W&N granted USEG an exclusive license to manufacture a "cauterization snare with attached capture pocket," called the "Nakao Snare," to be based upon designs and concepts for which W&N had certain "Patent Rights." In consideration thereof, USEG agreed to pay royalties to W&N based on sales of the Nakao Snare.

33. Upon information and belief, on January 23, 2002, W&N assigned all of its right, title and interest in the 1993 Agreement to GMI.

34. Upon information and belief, GMI's principal shareholders are Dr. Naomi Nakao and her husband, Moshe Granit.

35. Pursuant to paragraph 12(e) of the 1993 Agreement, on June 3, 2002, USEG consented to the assignment to GMI. Thereafter, USEG paid and sent all royalty payments due under the 1993 Agreement to GMI.

36. The 1993 Agreement is an enforceable contract between USEG and GMI.

37. USEG has at all times performed its obligations under the 1993 Agreement.

38. None of the patents included in the "Patent Rights" under the 1993 Agreement disclosed or claimed a retention tether.

39. At the time of the 1993 Agreement, USEG had developed proprietary rights in retention tether technology. USEG desired to protect its tether technology rights from misappropriation by others, including W&N. When W&N entered into the 1993 Agreement, it expressly acknowledged both its understandings that USEG had previously invented tether technology related to surgical snares and that USEG intended to completely retain its rights in that technology. Further, W&N agreed that USEG would retain complete rights, title and interest in that retention tether technology throughout their relationship, including any advancements made by USEG to that technology in connection with the development of the Nakao Snare. In the unlikely event that W&N made an improvement to USEG's tether technology, W&N agreed to fully disclose any improvements in retention tether technology to USEG and to assign to USEG a one-half ownership interest in any such improvement. The 1993 Agreement provided that the parties would jointly decide whether to pursue patent protection for any improvement. Paragraph 11 of the 1993 Agreement specifically states:

11. IMPROVEMENTS TO PRODUCT:

If, during the term of this Agreement, W&N makes improvements or develops technology directly related to the Product and relating to the Patent Rights, such improvement or technology shall be owned by W&N. If, during the term of this Agreement, USE[G] makes improvements or develops technology directly related to the retention tether described in Exhibit C, USE[G] shall be the owner of such improvements. If, during the term of this Agreement, W&N make[] [sic] improvements to the retention tether and/or USE[G] makes improvements to the Product of the Patent Rights, such improvements shall be jointly owned by both parties. In such event, the inventor or inventors shall assign one-half divided interest in such improvement invention to each of the parties. The parties shall jointly decide whether patent applications, domestic and foreign, are to be filed for the improvement inventions which are jointly owned, and costs for obtaining such patent shall be equally born by the parties. The parties may come to separate agreements, if necessary or desired, concerning commercialization of any improvement invention.

40. On information and belief, on March 29, 1994, about only three months after signing the 1993 Agreement, Dr. Nakao and Dr. Wilk filed U.S. Application Serial Number 08/213,196, which ultimately issued as U.S. Patent No. 5,486,182 (the "182 patent"). A form of retention tether is disclosed in the '182 patent. The retention tether disclosed in the '182 patent constitutes "improvements to the retention tether" as contemplated by Paragraph 11 of the 1993 Agreement. Dr. Nakao derived and misappropriated the retention tether and/or the portions of the retention tether and retention tether technology disclosed in the '182 patent from USEG. Dr. Nakao is not an inventor of any retention tether technology disclosed and claimed in the '182 patent.

41. In breach of the 1993 Agreement, W&N did not disclose to USEG what W&N obviously believed to be improvements to the retention tether to USEG, W&N did not jointly decide with USEG whether the application that led to the '182 patent would be filed, and W&N did not assign a one-half divided interest in the application to USEG. W&N did not even inform USEG of the filing of that application.

42. On information and belief, on November 2, 1994, Dr. Nakao and Dr. Wilk filed U.S. Application Serial No. 08/333,363, which ultimately issued as U.S. Patent 5,759,187 ("the '187 patent"). Forms of retention tethers are disclosed and claimed in the '182 patent. The retention tethers disclosed in the '187 patent constitute "improvements to the retention tether" as contemplated by Paragraph 11 of the 1993 Agreement. In fact, Dr. Nakao derived and misappropriated the retention tethers and/or several portions of the retention tethers and retention tether technology disclosed and claimed in the '182 and '187 patents from USEG. Dr. Nakao is not an inventor of any retention tether technology disclosed and claimed in the '187 patent.

43. In breach of the 1993 Agreement, W&N did not disclose to USEG what W&N obviously believed to be improvements to the retention tether to USEG, W&N did not jointly decide with USEG whether the application that led to the '187 patent would be filed, and W&N did not assign a one-half divided interest in the application to USEG. W&N did not even inform USEG of the filing of that application.

44. Upon information and belief, in July 2005, GMI entered into an exclusive license agreement with ConMed. Upon information and belief, pursuant to this July 2005 license agreement, ConMed began to manufacture, sell and distribute the Nakao Spider Net Retrieval Device under the '182 and '187 patents filed by Dr. Nakao and Dr. Wilk (hereinafter the "July 2005 Agreement").

45. Upon information and belief, GMI did not previously license or commercialize the retention tethers disclosed and claimed in the '182 or '187 patents or any other retention tether technology prior to the July 2005 Agreement. Upon information and belief, GMI has not previously attempted to enforce the '182 or '187 patents prior to the July 2005 Agreement.

46. In material breach of the 1993 Agreement, GMI did not come to any separate agreement with USEG regarding ConMed's commercialization or license of the alleged inventions of the '182 and '187 patents or any other retention tether technology. GMI has not assigned any of the rights or royalties under the July 2005 Agreement to USEG.

47. USEG has been damaged directly by GMI's material breaches of the 1993 Agreement.

48. As a result GMI's material breaches of the 1993 Agreement, USEG is entitled to damages in an amount to be determined at trial.

COUNT III - BREACH OF CONFIDENTIALITY

49. USEG incorporates the foregoing paragraphs of this Complaint as though fully rewritten herein.

50. Regarding Confidentiality, the 1993 Agreement provided as follows:

10. CONFIDENTIALITY

(a) The parties agree that information supplied by one party to the other in confidence, and identified in writing as such, solely for use under this Agreement shall remain the property of the disclosing party.

(b) During the term of this Agreement, the parties agree:

- (i) not to use or permit use of any identified confidential information except in accordance with this Agreement;
- (ii) not to disclose any identified confidential information to others except to the extent such disclosure is absolutely necessary to perform this Agreement and only then if such disclosure is subject to the same limitations on the recipient as set forth herein.

(c) It is understood and agreed that neither party shall be under an obligation of confidentiality to the extent any identified confidential information:

- (i) Has previously been made public;
- (ii) Was already known to the other party at the time the disclosure was made by the disclosing party;
- (iii) Becomes public knowledge other than by breach of this Agreement; and
- (iv) Becomes otherwise available from a third party not bound by any confidential relationship.

(d) The obligations of confidentiality under this Paragraph shall survive any termination of this Agreement unless specifically waived in writing by the disclosing party.

51. USEG has at all times performed its confidentiality obligations under the 1993 Agreement.

52. In the course of developing the Nakao Snare under the 1993 Agreement, USEG provided confidential information to Dr. Nakao, including without limitation, information relating to USEG's proprietary retention tether technology.

53. In breach of the confidentiality provisions of the 1993 Agreement, W&N and/or Dr. Nakao failed to maintain USEG's confidential information as such, and used it in ways that were not in accordance with the 1993 Agreement.

54. W&N's filing of patent applications incorporating a form of retention tether derived from USEG's confidential retention tether technology breached the confidentiality provisions of the 1993 Agreement.

55. GMI's commercialization of the purported inventions of the '182 and '187 patents and other retention tether technology through ConMed materially breached the confidentiality provisions of the 1993 Agreement.

56. USEG has been damaged directly by W&N and GMI's breaches of the confidentiality provisions of the 1993 Agreement.

57. As a result of W&N's and GMI's breaches of the confidentiality provisions of the 1993 Agreement, USEG is entitled to damages in an amount to be determined at trial.

COUNT IV- COMMON LAW CONVERSION

58. USEG incorporates the foregoing paragraphs of this Complaint as though fully rewritten herein.

59. In the course of developing the Nakao Snare under the 1993 Agreement, W&N, the predecessor in interest to GMI, obtained proprietary information belonging to USEG, including without limitation, USEG's retention tether technology.

60. USEG owns any retention tether technology that GMI is licensing to or has provided to ConMed, including the retention tethers disclosed in the '182 and '187 patents.

61. GMI has exerted wrongful control and exercised dominion over USEG's retention technology by licensing the alleged inventions claimed and disclosed in the '182 and '187

patents and any other retention tether technology derived from USEG without informing or obtaining the consent of USEG.

62. Based upon GMI's actions, USEG has been directly and proximately damaged. By entering into the July 2005 Agreement, GMI has damaged USEG's rights in USEG's retention tether technology.

63. GMI, as assignee of the misappropriated technology, is liable to USEG in an amount to be determined at trial.

COUNT V- ACCOUNTING

64. USEG incorporates the foregoing paragraphs of this Complaint as though fully rewritten herein.

65. GMI's conduct, as described herein, has enabled GMI to receive monies that are partially due and owing to USEG.

66. A formal accounting is necessary to enable USEG to determine the extent of the damage done by the above-described wrongful acts.

67. USEG is, therefore, entitled to an accounting of all benefits and profits obtained by GMI relating to its wrongful acts.

COUNT VI- DECLARATORY JUDGMENT OF OWNERSHIP OF PATENTS

68. USEG incorporates the foregoing paragraphs of this Complaint as though fully rewritten herein.

69. By virtue of ConMed's Answer to First Amended Complaint for Patent Infringement and Counterclaims, an actual and justiciable controversy has arisen and now exists between the parties concerning the rights, duties and obligations of the parties under the 1993

Agreement and the resulting and respective ownership rights of the parties in and to the '182 and '187 patents.

70. Paragraph 11 of the 1993 Agreement provides that: "If, during the term of this Agreement, USE makes improvements or develops technology directly related to the retention tether described in Exhibit C, USE shall be the owner of such improvements. If, during the term of this Agreement, W&N make[] [sic] improvements to the retention tether and/or USE makes improvements to the Product of the Patent Rights, such improvements shall be jointly owned by both parties. In such event, the inventor or inventors shall assign one-half divided interest in such improvement invention to each of the parties."

71. The retention tether disclosed in the '182 patent constitutes "improvements to the retention tether" as contemplated by Paragraph 11 of the 1993 Agreement. The retention tethers disclosed in the '187 patent constitute "improvements to the retention tether" as contemplated by Paragraph 11 of the 1993 Agreement. Dr. Nakao derived and misappropriated the retention tethers and/or several portions of the retention tether technology disclosed and claimed in the '182 and '187 patents from USEG. Dr. Nakao is not an inventor of any retention tether technology disclosed in the '182 and '187 patents.

72. Based upon the foregoing, USEG is entitled to a declaration from this Court that USEG is the rightful owner or joint owner of the '182 and '187 patents and any license agreement related thereto.

**COUNT VII -- DECLARATION OF RIGHT, TITLE
AND INTEREST IN THE JULY 2005 AGREEMENT**

73. USEG incorporates the foregoing paragraphs of this Complaint as though fully rewritten herein.

74. By virtue of ConMed's Answer to First Amended Complaint for Patent Infringement and Counterclaims, an actual and justiciable controversy has arisen and now exists between the parties concerning the rights, title and interests of the parties under the July 2005 Agreement between GMI and ConMed.

75. Upon information and belief, the July 2005 Agreement grants ConMed, *inter alia*, an exclusive license to practice the alleged inventions of the '182 and '187 patents, in exchange for royalty payments to be received by GMI.

76. USEG, as the rightful owner or joint owner of the '182 and '187 patents, is entitled to a declaration from this Court of its rights, title and interest under the July 2005 Agreement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States Endoscopy Group., Inc. prays:

- (a) for a judgment that USEG owns the '283 Patent and the '621 Patent;
- (b) for a judgment that the '283 Patent and the '621 Patent are valid and enforceable;
- (c) for a judgment that the Defendants have directly infringed the '283 Patent and the '621 Patent;
- (d) for a judgment that Defendants have induced the infringement of the '283 Patent and the '621 Patent;
- (e) for a judgment that Defendants have contributed to the infringement of the '283 Patent and the '621 Patent;
- (f) for a preliminary and permanent injunction against further infringement (through contribution, inducement, or otherwise) of the '283 Patent and

the '621 Patent by Defendants, their officers, directors, employees, agents, licensees, servants, successors, and assigns, and any and all persons acting on their behalf;

- (g) for an order that Defendants destroy all tooling used to make the Accused Devices and any other products inducing or contributing to the infringement of the '283 Patent or the '621 Patent;
- (h) for an accounting to establish Plaintiff's damages and for judgment against the Defendants awarding this damage amount;
- (i) for a judgment that Defendants' infringement is willful and that the award of damages be increased three times the amount assessed under 35 U.S.C. § 284;
- (j) for a judgment that GMI breached the 1993 Agreement;
- (k) for a judgment that GMI breached the confidentiality provisions of the 1993 Agreement;
- (l) declaratory judgment that USEG is the rightful owner or joint owner of the '182 and '187 patents;
- (m) declaratory judgment of USEG's rights, title and interest under the July 2005 Agreement;
- (n) for an assessment of costs and attorneys' fees against the Defendants;
- (o) for a finding that this action is exceptional and for an award to Plaintiff of its reasonable attorneys' fees incurred in this action under 35 U.S.C. § 285; and

(p) for such other and further relief as may be just and appropriate.

Respectfully submitted,

Dated: September 21, 2006

By: /s/ John S. Cipolla _____
JOHN S. CIPOLLA (0043614)
jcipolla@calfee.com
JOHN J. EKLUND (0010895)
jeklund@calfee.com
TRACY SCOTT JOHNSON (0064579)
tjohnson@calfee.com
GEORGIA E. YANCHAR (0071458)
gyanchar@calfee.com
CALFEE, HALTER & GRISWOLD LLP
800 Superior Avenue, Suite 1400
Cleveland, Ohio 44114
Phone: (216) 622-8200 Fax: (216) 241-0816
Attorneys for United States Endoscopy Group,
Inc.

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2006 a copy of the foregoing SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT, BREACH OF CONTRACT, CONVERSION, ACCOUNTING AND DECLARATORY JUDGMENT was filed manually with the Court. The following were served by hand delivery and first class U.S. mail on September 22, 2006.

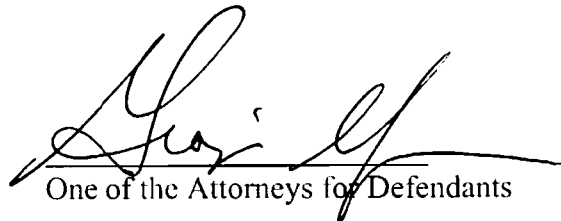
By Hand Delivery:

Peter C. Elliott
Benesch, Friedlander, Coplan & Aronoff LLP
2300 BP Tower
200 Public Square
Cleveland, OH 44114-2378

By First Class U.S. Mail:

James H. Shalek
Proskauer Rose LLP
1585 Broadway
New York, NY 10036-8299

Dated: September 22, 2006



One of the Attorneys for Defendants