

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**REMBRANDT VISION  
TECHNOLOGIES, L.P.,**

**Plaintiff,**

**v.**

**CIBA VISION CORPORATION,**

**Defendant.**

**CIVIL ACTION NO. 2:09-CV-40**

**Honorable Charles Everingham IV**

**JURY TRIAL CONDITIONALLY DEMANDED**

**COMPLAINT FOR RELIEF FOR CONTINUED PATENT  
INFRINGEMENT**

This Complaint is filed based on an Order of the Court (Dkt. No. 453) issued in the matter *Rembrandt Vision Technologies, L.P. v. CIBA Vision Corporation*, Case No. 2:05-CV-00491-CE, presently before the Honorable Charles Everingham IV. Pursuant to that Order, Defendant shall file its Answer within the time provided by the Federal Rules of Civil Procedure.

**THE PARTIES**

1. Plaintiff Rembrandt Vision Technologies, L.P. (“Rembrandt”) is a New Jersey limited partnership and has an address at 401 City Avenue, Suite 900, Bala Cynwyd, Pennsylvania 19004.
2. Defendant CIBA Vision Corporation (“CIBA”) is a Delaware corporation and has an address at 11460 Johns Creek Parkway, Duluth, Georgia 30097. CIBA is doing business in Texas and is already a litigant in a related proceeding before this Court.

**JURISDICTION**

3. This infringement matter arises under the Patent Act, 35 U.S.C. §1 *et seq.*

4. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1331 and §1338.

5. The Court has personal jurisdiction over CIBA. CIBA has committed acts of patent infringement in this judicial district. CIBA is otherwise present and doing business in this judicial district.

6. Venue is proper in this judicial district under 28 U.S.C. §1391(b), (c) and §1400(b).

### **CLAIMS FOR RELIEF**

7. Rembrandt is the owner by assignment of U.S. Pat. No. 5,712,327 (“the ’327 patent”), which is titled “Soft Gas Permeable Contact Lens Having Improved Clinical Performance.”

8. In the matter *Rembrandt Vision Technologies, L.P. v. CIBA Vision Corporation*, Case No. 2:05-CV-00491-CE (“*Rembrandt I*”), Rembrandt brought suit against CIBA for infringement of the ’327 patent.

9. The *Rembrandt I* matter was tried to a jury from January 30, 2008, through February 6, 2008. On February 6, 2008, the jury rendered a verdict (Dkt. No. 363) in favor of Rembrandt. The jury found that CIBA’s Focus Night and Day and O<sub>2</sub>Optix contact lens products directly infringe claims 1, 2, and 6 of the ’327 patent under 35 U.S.C. §271(a). For each product, the jury also found that CIBA infringed claims 1, 2, and 6 of the ’327 patent under 35 U.S.C. §271(f)(1) by its supply from the United States of all or a substantial portion of the components of the patented invention and active inducement of the combination of such components outside the United States in a manner that would infringe the ’327 patent if such combination occurred within the United States. For each product, the jury also found that CIBA infringed claims 1, 2, and 6 of the ’327 patent under 35 U.S.C. §271(f)(2) by its supply from the United States of a component of its contact lenses that is especially made or adapted for use in the products and not a staple article or commodity of commerce suitable for substantial noninfringing

use, knowing that such component is so made or adapted, with the intent that the component will be combined outside the United States in a manner that would infringe the '327 patent if the combination occurred within the United States. In addition, the jury rejected CIBA's invalidity defenses and awarded reasonable royalty damages in the amount of \$41,083,853.00.

10. On March 27, 2008, the Court held a bench trial on CIBA's inequitable conduct defense in the *Rembrandt I* matter. On September 26, 2008, the Court issued a Memorandum Opinion and Order (Dkt. No. 426) rejecting CIBA's inequitable conduct defense and held that the '327 patent is enforceable.

11. On February 26, 2009, the Court issued a Final Judgment (Dkt. No. 454) in the *Rembrandt I* matter and also issued a Memorandum Opinion and Order (Dkt. No. 453) in which it granted Rembrandt's motion to sever claims relating to post-verdict infringements and request for discovery. In particular, the Court severed from the *Rembrandt I* matter Rembrandt's continuing causes of action for CIBA's post-verdict infringement of the '327 patent; assigned a new case number for litigation of those causes; and directed Rembrandt to file an appropriate complaint. In addition, the Court "grant[ed] Rembrandt's request for discovery . . . concerning CIBA's raw data and testing, product and manufacturing specifications, and FDA correspondences relating to its contemplated modifications to the design or manufacture of the Focus Night and Day and O<sub>2</sub>Optix contact lens products", and also "grant[ed] Rembrandt's request for discovery of the same corresponding to the O<sub>2</sub>Optix Custom contact lenses and any other silicone hydrogel contact lens product of CIBA made, used, or sold, or imported into the United States since the issuance of the verdict."

12. This Complaint is filed pursuant to the Court's Memorandum Opinion and Order (Dkt. No. 453) to recover post-verdict relief, including injunctive and monetary relief resulting from CIBA's continuing infringements relating to its Focus Night and

Day and O<sub>2</sub>Optix contact lens products and from any infringements relating to other CIBA silicone hydrogel contact lens products.

13. On information and belief, since the jury verdict of February 6, 2008, CIBA has continued to make, sell, and supply in the United States and worldwide Focus Night and Day and O<sub>2</sub>Optix contact lens products, and these products are identical to or not colorably different from the products that have already been adjudicated infringing products in the *Rembrandt I* matter.

14. On information and belief, such acts constitute willful infringement of the '327 patent under 35 U.S.C. §271(a), §271(f)(1) and §271(f)(2).

15. As a result of CIBA's willful infringement, Rembrandt is entitled to damages that adequately compensate it. CIBA's pre-verdict and post-verdict acts of infringement are distinct. Now that CIBA's liability for infringement as well as the validity and enforceability of the '327 patent have been determined and the Court has entered a Final Judgment in the *Rembrandt I* matter, the amount of damages to which Rembrandt is entitled as a result of CIBA's post-verdict acts must take into account the different relationship of the parties and other factors.

16. As a result of CIBA's acts, Rembrandt is also entitled to injunctive relief.

17. Rembrandt may seek to amend this Complaint after discovery of CIBA if it determines that CIBA has directly or indirectly infringed the '327 patent by making, selling, and/or supplying in the United States or worldwide other products, including modified versions of the Focus Night and Day and O<sub>2</sub>Optix products, that constitute acts of infringement under 35 U.S.C. §1 *et seq.*

**REQUEST FOR RELIEF**

WHEREFORE, Rembrandt requests that the Court:

- A. Enjoin CIBA, its officers, agents, servants, employees, attorneys, affiliates, divisions, parents, and subsidiaries, and those acting in active concert or participation with them, from infringing the '327 patent;
- B. Pursuant to 35 U.S.C. §284, conduct an accounting and award damages adequate to compensate Rembrandt for CIBA's continuing infringement of the '327 patent and award pre-judgment interest;
- C. Conduct an accounting and award additional damages adequate to compensate Rembrandt for any infringements that may occur after any trial in this matter and that are not part of the Judgment ultimately entered – although Rembrandt believes that no new full trial is required in light of the *Rembrandt I* matter;
- D. Pursuant to 35 U.S.C. §284, award increased damages for CIBA's willful infringement of the '327 patent;
- E. Pursuant to 35 U.S.C. §285, declare this case “exceptional” and award Rembrandt costs, including reasonable attorney fees; and
- F. Grant Rembrandt all other relief to which it is entitled.

**JURY DEMAND**

Rembrandt believes that no new full trial regarding its Claims For Relief is required in light of the *Rembrandt I* matter, but if the Court holds otherwise, it demands a trial by jury of all issues so triable.

Dated: March 9, 2009

Respectfully submitted,

REMBRANDT VISION TECHNOLOGIES, L.P.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on March 9, 2009, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s Robert Christopher Bunt  
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