

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

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U.S. DISTRICT COURT
2006 OCT 16 PM 4:39
TX EASTERN-MARSHALL

BAXTER HEALTHCARE CORPORATION)
and DEKA PRODUCTS LIMITED)
PARTNERSHIP)

Plaintiffs,)

v.)

FRESENIUS MEDICAL CARE HOLDINGS,)
INC. d/b/a FRESENIUS MEDICAL CARE)
NORTH AMERICA and FRESENIUS USA,)
INC.)

Defendants.)

BY _____

CIVIL ACTION NO.

2-06CV-438

JURY TRIAL DEMANDED

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COMPLAINT

Plaintiff Baxter Healthcare Corporation ("Baxter") and Deka Products Limited Partnership ("Deka") (collectively "Plaintiffs") allege as follows:

THE PARTIES

1. Baxter is a Delaware corporation with its principal place of business in Deerfield, Illinois. Baxter is a leading provider of dialysis-related products and services to assist patients with kidney disease. Specifically, Baxter is a leading provider of products for peritoneal dialysis, including peritoneal dialysis systems, disposables, and related equipment.

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

3. Fresenius Medical Care Holdings d/b/a Fresenius Medical Care North America is a New York Corporation with its principal place of business in Lexington,

Massachusetts. Fresenius USA, Inc. is a Massachusetts corporation with its principal place of business in Walnut Creek, California. Fresenius Medical Care Holdings and Fresenius USA, Inc. (collectively "Fresenius") make dialysis machines, equipment and supplies, provide dialysis services and operate dialysis clinics across the United States.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over Baxter's patent infringement claims under 28 U.S.C. § 1331 and 1338(a).

5. This Court has personal jurisdiction over Fresenius. Fresenius has systematic and continuous contacts in this judicial district, regularly transacts business within this judicial district, and regularly avails itself of the benefits of this judicial district. For example, Fresenius is registered to do business in Texas, and owns and operates numerous dialysis clinics in Texas, including over twenty in this judicial district, which offer both hemodialysis and peritoneal dialysis. Fresenius also has numerous employees, and receives substantial revenue in Texas and in this judicial district. On information and belief, Fresenius pays taxes in Texas based on revenue generated in Texas and in this judicial district. Fresenius' website states that the Liberty Cyclor is exclusively marketed in the United States. On information and belief, Fresenius is using or plans to use the Liberty Cyclor in dialysis centers in Texas and in this judicial district.

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

FACTUAL ALLEGATIONS

7. On June 6, 1995, the United States Patent and Trademark Office (“USPTO”) duly and legally issued United States Patent No. 5,421,823 entitled “Peritoneal Dialysis Methods That Emulate Gravity Flow” (the “’823 patent”). The ‘823 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 ‘823 patent for uses in the peritoneal dialysis field. A copy of the ‘823 patent is attached hereto as Exhibit A.

8. Fresenius infringes the ‘823 patent by making, selling, using, promoting and/or offering for sale in the United States products including the Liberty Cyclor peritoneal dialysis systems and related disposable items and equipment.

COUNT I: INFRINGEMENT OF THE ‘823 PATENT

9. Plaintiffs reallege paragraphs 1-8 above as if fully set forth herein.

10. Fresenius, in violation of 35 U.S.C. § 271(a), has directly infringed and is directly infringing the ‘823 patent by making, using, selling and/or offering for sale the Liberty Cyclor as well as related disposables and equipment in the United States.

11. Fresenius, in violation of 35 U.S.C. § 271(b), has actively and knowingly induced and is actively and knowingly inducing the direct infringement of the ‘823 patent by intentionally aiding and abetting third parties’ use and/or sale of the invention of the ‘823 patent through its making, using, promoting, selling, and/or offering for sale the Liberty Cyclor.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Baxter and Deka pray for the following relief against Fresenius:

1. For judgment in favor of Plaintiffs that Fresenius has infringed and is infringing Plaintiffs' patent;
2. For an injunction prohibiting Fresenius from making, using, selling, or offering for sale the infringing products in the United States;
3. For an award of damages for Fresenius' infringement of Plaintiffs' patent, together with interest (both pre-and post-judgment), costs and disbursements as fixed by this Court under 35 U.S.C. § 284;
4. For a determination that Fresenius' infringement has been and is willful, and an award of treble the amount of damages and losses sustained by Plaintiffs as a result of Fresenius' infringement, under 35 U.S.C. § 284;
5. For a determination that this is an exceptional case within the meaning of 35 U.S.C. § 285, and an award to Plaintiffs of their reasonable attorneys' fees; and
6. For such other and further relief in law or in equity to which Plaintiffs may be justly entitled.

DEMAND FOR JURY TRIAL

Plaintiffs Baxter and Deka demand a trial by jury of any and all issues triable of right before a jury.

Dated: October 16, 2006

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