

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FILED: NOVEMBER 4, 2008

08 CV 6337

HEALTHWAYS, INC. and
ROBERT BOSCH NORTH AMERICA
CORP.,

Plaintiffs,

v.

ALERE, INC.,

Defendant.

)
) JUDGE MANNING
) MAGISTRATE JUDGE SCHENKIER
)
) PH Civil Action No.
)
) Judge
)
) Jury Trial Demanded
)
)
)
)

COMPLAINT

Plaintiffs, Healthways, Inc. (“Healthways”) and Robert Bosch North America Corporation (“Robert Bosch”) for their complaint against Defendant Alere, Inc. (“Alere”) seeking damages, injunctive relief, and other relief for patent infringement, allege as follows:

PARTIES, JURISDICTION AND VENUE

1. Healthways is a Delaware corporation with its principal place of business at 701 Cool Springs Boulevard, Franklin, Tennessee 37067.

2. Robert Bosch is a Delaware corporation with its principal place of business at 2800 S. 25th Avenue, Broadview, Illinois 60153.

3. Upon information and belief, Alere is a Delaware corporation with its principal place of business at 595 Double Eagle Court, Suite 1000, Reno, Nevada 89521. Upon information and belief, on September 9, 2008, Alere Medical, Inc., ParadigmHealth, Inc., and Matria Healthcare, Inc. combined to form a single entity currently operating as Alere. Upon information and belief, Alere, doing business as Matria, Inc., also has an office at 9500 West

Bryn Mawr Avenue, Suite 500, Rosemont, Illinois 60018, which is located in this Judicial District. Alere is in the business of providing health care services.

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

5. Venue properly lies in this Court under 28 U.S.C. §§ 1391(b), (c) and 1400(b) because Alere is subject to personal jurisdiction in this Judicial District due to its substantial and continuous contacts with Illinois and because Alere has committed acts of infringement in Illinois, including the Northern District of Illinois.

BACKGROUND

6. Healthways is the leading provider of specialized, comprehensive health and care support solutions to help millions of people maintain or improve their health and, as a result, reduce overall healthcare costs. Healthways' solutions are designed to help healthy individuals stay healthy, mitigate and slow the progression of disease associated with family or lifestyle risk factors, and promote the best possible health for those already affected by disease. Healthways' proven, evidence-based programs provide highly specific and personalized interventions for each individual in a population, irrespective of age or health status, and are delivered to consumers by phone, mail, internet and face-to-face interactions, both domestically and internationally. Healthways also provides a national, fully accredited complementary and alternative health provider network, offering convenient access to individuals who seek health services outside of, and in conjunction with, the traditional healthcare system.

7. On August 26, 1997, United States Patent No. 5,660,176 (the "'176 Patent") was duly and legally issued for an invention entitled "Computerized Medical Diagnostic And Treatment Advice System." A true and correct copy of the '176 Patent is attached hereto as Exhibit A. The '176 Patent is assigned on its face to First Opinion Corporation.

8. On January 27, 1998, United States Patent No. 5,711,297 (the “‘297 Patent”) was duly and legally issued for an invention entitled “Computerized Medical Advice System And Method Including Meta Function.” A true and correct copy of the ‘297 Patent is attached hereto as Exhibit B. The ‘297 Patent is assigned on its face to First Opinion Corporation.

9. On February 9, 1999, United States Patent No. 5,868,669 (the “‘669 Patent”) was duly and legally issued for an invention entitled “Computerized Medical Diagnostic And Treatment Advice System.” A true and correct copy of the ‘669 Patent is attached hereto as Exhibit C. The ‘669 Patent is assigned on its face to First Opinion Corporation.

10. On June 8, 1999, United States Patent No. 5,910,107 (the “‘107 Patent”) was duly and legally issued for an invention entitled “Computerized Medical Diagnostic And Treatment Advice Method.” A true and correct copy of the ‘107 Patent is attached hereto as Exhibit D. The ‘107 Patent is assigned on its face First Opinion Corporation.

11. On September 5, 2000, United States Patent No. 6,113,540 (the “‘540 Patent”) was duly and legally issued for an invention entitled “Computerized Medical Diagnostic And Treatment Advice System.” A true and correct copy of the ‘540 Patent is attached hereto as Exhibit E. The ‘540 Patent is assigned on its face to First Opinion Corporation.

12. On March 27, 2001, United States Patent No. 6,206,829 (the “‘829 Patent”) was duly and legally issued for an invention entitled “Computerized Medical Diagnostic And Treatment Advice System Including Network Access.” A true and correct copy of the ‘829 Patent is attached hereto as Exhibit F. The ‘829 Patent is assigned on its face to First Opinion Corporation.

13. On May 22, 2001, United States Patent No. 6,234,964 (the “‘964 Patent”) was duly and legally issued for an invention entitled “Disease Management System And Method.” A

true and correct copy of the '964 Patent is attached hereto as Exhibit G. The '964 Patent is assigned on its face to First Opinion Corporation.

14. On November 19, 2002, United States Patent No. 6,482,156 (the "'156 Patent") was duly and legally issued for an invention entitled "Computerized Medical Diagnostic And Treatment Advice System Including Network Access." A true and correct copy of the '156 Patent is attached hereto as Exhibit H. The '156 Patent is assigned on its face to First Opinion Corporation.

15. On August 3, 2004, United States Patent No. 6,770,029 (the "'029 Patent") was duly and legally issued for an invention entitled "Disease Management System And Method Including Correlation Assessment." A true and correct copy of the '029 Patent is attached hereto as Exhibit I. The '029 Patent is assigned on its face to First Opinion Corporation.

16. On February 1, 2005, United States Patent No. 6,849,045 (the "'045 Patent") was duly and legally issued for an invention entitled "Computerized Medical Diagnostic And Treatment Advice System Including Network Access." A true and correct copy of the '045 Patent is attached hereto as Exhibit J. The '045 Patent is assigned on its face to First Opinion Corporation.

17. On November 20, 2007, United States Patent No. 7,297,111 (the "'111 Patent") was duly and legally issued for an invention entitled "Computerized Medical Diagnostic And Treatment Advice System." A true and correct copy of the '111 Patent is attached hereto as Exhibit K. The '111 Patent is assigned on its face to Clinical Decision Support, LLC.

18. On August 1, 2007, Healthways acquired substantially all of the assets of First Opinion Corporation, including certain systems, software applications, and supporting intellectual property relating to medical diagnosis and treatment advice. These assets include the

'176 Patent, the '297 Patent, the '669 Patent, the '107 Patent, the '540 Patent, the '829 Patent, the '964 Patent, the '156 Patent, the '029 Patent, the '045 Patent, and the '111 Patent.

19. Healthways and Robert Bosch entered into a joint licensing agreement enabling Healthways and Robert Bosch to jointly enforce, *inter alia*, the '176 Patent, the '297 Patent, the '669 Patent, the '107 Patent, the '540 Patent, the '829 Patent, the '964 Patent, the '156 Patent, the '029 Patent, the '045 Patent, and the '111 Patent.

20. Notwithstanding Healthways' and Robert Bosch's patent rights, Alere began using and selling health service products, including "health portals," which provide "a secure gateway to reliable, practical health and wellness information, with personalized updates and reminders tailored to [a user's] specific health needs." Alere also began using and selling health service products including "a combination of preventive, educational and care management services and programs" offered through its Miavita website (available at <https://www.miavita.com>). Alere also began using and selling health service products including the TRAX system, which "provides the sole mechanism through which all of the patient's clinical data from multiple providers and sources can be accessed and analyzed by a clinician on behalf of the patient."

21. Alere's health service products infringe numerous claims in the '176 Patent, the '297 Patent, the '669 Patent, the '107 Patent, the '540 Patent, the '829 Patent, the '964 Patent, the '156 Patent, the '029 Patent, the '045 Patent, and the '111 Patent.

COUNT I

Patent Infringement of U.S. Patent No. 5,660,176

22. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs of this Complaint.

23. By making, using, importing, selling, and/or offering to sell products that include, among other features, “a secure gateway to reliable, practical health and wellness information, with personalized updates and reminders tailored to [a user’s] specific health needs” offered through its “health portals,” its “combination of preventive, educational and care management services” offered through its Miavita website (available at <https://www.miavita.com>), and its TRAX system, Alere has infringed and continues to infringe the claims of the ‘176 Patent directly, contributorily, and/or through inducement. Alere has engaged in the foregoing infringing conduct in the United States without authority from Healthways or Robert Bosch and during the term of the ‘176 Patent.

24. Alere’s conduct has caused Healthways and Robert Bosch to suffer and, unless enjoined by the Court, will cause Healthways and Robert Bosch to continue to suffer damage to their operation, reputation, and goodwill.

COUNT II

Patent Infringement of U.S. Patent No. 5,711,297

25. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs of this Complaint.

26. By making, using, importing, selling, and/or offering to sell products that include, among other features, “a secure gateway to reliable, practical health and wellness information, with personalized updates and reminders tailored to [a user’s] specific health needs” offered through its “health portals,” its “combination of preventive, educational and care management services” offered through its Miavita website (available at <https://www.miavita.com>), and its TRAX system, Alere has infringed and continues to infringe the claims of the ‘297 Patent directly, contributorily, and/or through inducement. Alere has engaged in the foregoing

infringing conduct in the United States without authority from Healthways or Robert Bosch and during the term of the '297 Patent.

27. Alere's conduct has caused Healthways and Robert Bosch to suffer and, unless enjoined by the Court, will cause Healthways and Robert Bosch to continue to suffer damage to there operation, reputation, and goodwill.

COUNT III

Patent Infringement of U.S. Patent No. 5,868,669

28. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs of this Complaint.

29. By making, using, importing, selling, and/or offering to sell products that include, among other features, "a secure gateway to reliable, practical health and wellness information, with personalized updates and reminders tailored to [a user's] specific health needs" offered through its "health portals," its "combination of preventive, educational and care management services" offered through its Miavita website (available at <https://www.miavita.com>), and its TRAX system, Alere has infringed and continues to infringe the claims of the '669 Patent directly, contributorily, and/or through inducement. Alere has engaged in the foregoing infringing conduct in the United States without authority from Healthways or Robert Bosch and during the term of the '669 Patent.

30. Alere's conduct has caused Healthways and Robert Bosch to suffer and, unless enjoined by the Court, will cause Healthways and Robert Bosch to continue to suffer damage to there operation, reputation, and goodwill.

COUNT IV

Patent Infringement of U.S. Patent No. 5,910,107

31. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs of this Complaint.

32. By making, using, importing, selling, and/or offering to sell products that include, among other features, “a secure gateway to reliable, practical health and wellness information, with personalized updates and reminders tailored to [a user’s] specific health needs” offered through its “health portals,” its “combination of preventive, educational and care management services” offered through its Miavita website (available at <https://www.miavita.com>), and its TRAX system, Alere has infringed and continues to infringe the claims of the ‘107 Patent directly, contributorily, and/or through inducement. Alere has engaged in the foregoing infringing conduct in the United States without authority from Healthways or Robert Bosch and during the term of the ‘107 Patent.

33. Alere’s conduct has caused Healthways and Robert Bosch to suffer and, unless enjoined by the Court, will cause Healthways and Robert Bosch to continue to suffer damage to there operation, reputation, and goodwill.

COUNT V

Patent Infringement of U.S. Patent No. 6,113,540

34. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs of this Complaint.

35. By making, using, importing, selling, and/or offering to sell products that include, among other features, “a secure gateway to reliable, practical health and wellness information, with personalized updates and reminders tailored to [a user’s] specific health needs” offered through its “health portals,” its “combination of preventive, educational and care management

services” offered through its Miavita website (available at <https://www.miavita.com>), and its TRAX system, Alere has infringed and continues to infringe the claims of the ‘540 Patent directly, contributorily, and/or through inducement. Alere has engaged in the foregoing infringing conduct in the United States without authority from Healthways or Robert Bosch and during the term of the ‘540 Patent.

36. Alere’s conduct has caused Healthways and Robert Bosch to suffer and, unless enjoined by the Court, will cause Healthways and Robert Bosch to continue to suffer damage to there operation, reputation, and goodwill.

COUNT VI

Patent Infringement of U.S. Patent No. 6,206,829

37. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs of this Complaint.

38. By making, using, importing, selling, and/or offering to sell products that include, among other features, “a secure gateway to reliable, practical health and wellness information, with personalized updates and reminders tailored to [a user’s] specific health needs” offered through its “health portals,” its “combination of preventive, educational and care management services” offered through its Miavita website (available at <https://www.miavita.com>), and its TRAX system, Alere has infringed and continues to infringe the claims of the ‘829 Patent directly, contributorily, and/or through inducement. Alere has engaged in the foregoing infringing conduct in the United States without authority from Healthways or Robert Bosch and during the term of the ‘829 Patent.

39. Alere’s conduct has caused Healthways and Robert Bosch to suffer and, unless enjoined by the Court, will cause Healthways and Robert Bosch to continue to suffer damage to there operation, reputation, and goodwill.

COUNT VII

Patent Infringement of U.S. Patent No. 6,234,964

40. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs of this Complaint.

41. By making, using, importing, selling, and/or offering to sell products that include, among other features, “a secure gateway to reliable, practical health and wellness information, with personalized updates and reminders tailored to [a user’s] specific health needs” offered through its “health portals,” its “combination of preventive, educational and care management services” offered through its Miavita website (available at <https://www.miavita.com>), and its TRAX system, Alere has infringed and continues to infringe the claims of the ‘964 Patent directly, contributorily, and/or through inducement. Alere has engaged in the foregoing infringing conduct in the United States without authority from Healthways or Robert Bosch and during the term of the ‘964 Patent.

42. Alere’s conduct has caused Healthways and Robert Bosch to suffer and, unless enjoined by the Court, will cause Healthways and Robert Bosch to continue to suffer damage to there operation, reputation, and goodwill.

COUNT VIII

Patent Infringement of U.S. Patent No. 6,482,156

43. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs of this Complaint.

44. By making, using, importing, selling, and/or offering to sell products that include, among other features, “a secure gateway to reliable, practical health and wellness information, with personalized updates and reminders tailored to [a user’s] specific health needs” offered through its “health portals,” its “combination of preventive, educational and care management

services” offered through its Miavita website (available at <https://www.miavita.com>), and its TRAX system, Alere has infringed and continues to infringe the claims of the ‘156 Patent directly, contributorily, and/or through inducement. Alere has engaged in the foregoing infringing conduct in the United States without authority from Healthways or Robert Bosch and during the term of the ‘156 Patent.

45. Alere’s conduct has caused Healthways and Robert Bosch to suffer and, unless enjoined by the Court, will cause Healthways and Robert Bosch to continue to suffer damage to there operation, reputation, and goodwill.

COUNT IX

Patent Infringement of U.S. Patent No. 6,770,029

46. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs of this Complaint.

47. By making, using, importing, selling, and/or offering to sell products that include, among other features, “a secure gateway to reliable, practical health and wellness information, with personalized updates and reminders tailored to [a user’s] specific health needs” offered through its “health portals,” its “combination of preventive, educational and care management services” offered through its Miavita website (available at <https://www.miavita.com>), and its TRAX system, Alere has infringed and continues to infringe the claims of the ‘029 Patent directly, contributorily, and/or through inducement. Alere has engaged in the foregoing infringing conduct in the United States without authority from Healthways or Robert Bosch and during the term of the ‘029 Patent.

48. Alere’s conduct has caused Healthways and Robert Bosch to suffer and, unless enjoined by the Court, will cause Healthways and Robert Bosch to continue to suffer damage to there operation, reputation, and goodwill.

COUNT X

Patent Infringement of U.S. Patent No. 6,849,045

49. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs of this Complaint.

50. By making, using, importing, selling, and/or offering to sell products that include, among other features, “a secure gateway to reliable, practical health and wellness information, with personalized updates and reminders tailored to [a user’s] specific health needs” offered through its “health portals,” its “combination of preventive, educational and care management services” offered through its Miavita website (available at <https://www.miavita.com>), and its TRAX system, Alere has infringed and continues to infringe the claims of the ‘045 Patent directly, contributorily, and/or through inducement. Alere has engaged in the foregoing infringing conduct in the United States without authority from Healthways or Robert Bosch and during the term of the ‘045 Patent.

51. Alere’s conduct has caused Healthways and Robert Bosch to suffer and, unless enjoined by the Court, will cause Healthways and Robert Bosch to continue to suffer damage to there operation, reputation, and goodwill.

COUNT XI

Patent Infringement of U.S. Patent No. 7,297,111

52. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs of this Complaint.

53. By making, using, importing, selling, and/or offering to sell products that include, among other features, “a secure gateway to reliable, practical health and wellness information, with personalized updates and reminders tailored to [a user’s] specific health needs” offered through its “health portals,” its “combination of preventive, educational and care management

services” offered through its Miavita website (available at <https://www.miavita.com>), and its TRAX system, Alere has infringed and continues to infringe the claims of the ‘111 Patent directly, contributorily, and/or through inducement. Alere has engaged in the foregoing infringing conduct in the United States without authority from Healthways or Robert Bosch and during the term of the ‘111 Patent.

54. Alere’s conduct has caused Healthways and Robert Bosch to suffer and, unless enjoined by the Court, will cause Healthways and Robert Bosch to continue to suffer damage to their operation, reputation, and goodwill.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that the Court enter a judgment in Plaintiff’s favor and against Defendant and provide Plaintiffs the following relief:

- A. Order, adjudge, and decree that Alere has infringed the ‘176 Patent;
- B. Order, adjudge, and decree that Alere has infringed the ‘297 Patent;
- C. Order, adjudge, and decree that Alere has infringed the ‘669 Patent;
- D. Order, adjudge, and decree that Alere has infringed the ‘107 Patent;
- E. Order, adjudge, and decree that Alere has infringed the ‘540 Patent;
- F. Order, adjudge, and decree that Alere has infringed the ‘829 Patent;
- G. Order, adjudge, and decree that Alere has infringed the ‘964 Patent;
- H. Order, adjudge, and decree that Alere has infringed the ‘156 Patent;
- I. Order, adjudge, and decree that Alere has infringed the ‘029 Patent;
- J. Order, adjudge, and decree that Alere has infringed the ‘045 Patent;
- K. Order, adjudge, and decree that Alere has infringed the ‘111 Patent;
- L. Order, adjudge, and decree that Alere’s infringement is exceptional under 35 U.S.C. § 285;

- M. Issue preliminary and permanent injunctive relief under 35 U.S.C. § 283 prohibiting Alere and its respective parents, subsidiaries, principals, officers, agents, affiliates, servants, attorneys, employees, and all others in privity with them from infringing the '176 Patent, the '297 Patent, the '669 Patent, the '107 Patent, the '540 Patent, the '829 Patent, the '964 Patent, the '156 Patent, the '029 Patent, the '045 Patent, and the '111 Patent;
- N. Award Plaintiffs damages for patent infringement including prejudgment interest and costs against Alere under 35 U.S.C. §§ 284;
- O. Award Plaintiffs their reasonable attorneys' fees under 35 U.S.C. § 285; and
- P. Award such other and further relief as the Court may deem just.

JURY DEMAND

Plaintiffs demand trial by jury.

Dated: November 4, 2008

Respectfully submitted,

By: /s/ Michael J. Abernathy

Michael J. Abernathy
mabernathy@bellboyd.com
Sanjay K. Murthy
smurthy@bellboyd.com
Christopher E. Hanba
chanba@bellboyd.com
Nolan R. Hubbard
nhubbard@bellboyd.com
Benjamin E. Weed
bweed@bellboyd.com
BELL, BOYD & LLOYD LLP
70 West Madison Street, Suite 3100
Chicago, Illinois 60602
Telephone: (312) 372-1121
Facsimile: (312) 827-8000

ATTORNEYS FOR PLAINTIFFS