

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

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
JAN 15 2008
BY DAVID J. MALAND, CLERK
DEPUTY _____

Dr. Paul Teirstein

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Plaintiff,

v.

CIVIL ACTION NO. **608CV14**

AGA Medical Corporation

Defendant.

DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT

For its complaint, Plaintiff Dr. Paul Teirstein (hereinafter "Plaintiff"), by and through its attorneys Carstens & Cahoon, LLP and Gruber Hurst Johansen and Hail, LLP, avers as follows:

PARTIES

- 1. Plaintiff is a resident of California.
- 2. Upon information and belief, Defendant AGA Medical Corporation ("AGA") is a Minnesota corporation, organized under the laws of the State of Minnesota with its principal place of business located at 5050 Nathan Lane North, Plymouth, Minnesota, 55442.

VENUE AND JURISDICTION

- 3. This is an action for patent infringement arising under the Patent Laws of the United States, *35 U.S.C. §§ 1 et seq.* Accordingly, this Court has jurisdiction over the subject matter of this action pursuant to *28 U.S.C. §§ 1338(a) and 1331.*
- 4. This Court has personal jurisdiction over Defendant because Defendant conducts business in this judicial district and in the State of Texas and has committed acts of patent

infringement and/or has contributed to or induced acts of patent infringement by others in this judicial district as well as other places in Texas and the United States.

5. Venue is proper in this jurisdiction pursuant to *28 U.S.C. §§ 1391(b), 1391(c), and/or 1400(b)*. Venue is proper because Defendant is subject to personal jurisdiction in this judicial district, Defendant has regularly conducted business in this district by selling infringing products which directly reach customers in this district, and acts complained of herein occurred within this district.

ACTS GIVING RISE TO THE COMPLAINT

6. Plaintiff is a pioneer in the design of various medical devices. Plaintiff invented a novel apparatus and method of use for a body passageway closure device. The device is inserted into a body passageway, for example, an unwanted passageway in an artery, and closes or occludes the passageway. Plaintiff used his own ingenuity and resources in both inventing the invention and applying for a patent covering the invention.

7. On March 19, 1996, the United States Patent and Trademark Office (PTO) duly and legally issued U.S. Patent No. 5,499,995 entitled "Body Passageway Closure Apparatus and Method of Use" (hereinafter "'995") to Plaintiff. A complete copy of the '995 patent is attached as Exhibit A.

8. Plaintiff is the owner of all rights, title and interest in the '995 patent and has the exclusive right to bring suit to enforce it. This includes the right to recover for past, present, and future infringement as well as receive injunctive relief from infringement of the '995 patent.

9. On January 4, 1999, Plaintiff voluntarily submitted the '995 patent to the PTO for reexamination in light of other prior art.

10. On September 10, 2001, the PTO confirmed claims 3-5, 7-8, 12-13, 15-25, 27, 30-31, and 34-40.

11. Upon information and belief, Defendant is in the business of manufacturing occluding devices and accessories for the occluding devices. Defendant sells a multitude of devices and accessories all over the world and in the United States. Many of these devices are used to occlude various passageways. An example of these devices include, but are not limited to, the Septal Occluder, the Multi-Fenestrated Septal Occluder (not pictured), the PFO Occluder (not pictured), the Membranous VSD Occluder (not pictured), the Vascular Plug, the Vascular Plug II (not pictured), the Duct Occluder, the Muscular VSD, and the P.I. Muscular VSD (not pictured). Pictures of some of the devices manufactured by AGA are attached as Exhibits B, C, D, and E.

12. Upon information and belief, many of these and other devices manufactured by Defendant infringe the '995 patent. Defendant has not entered into any licensing agreement with Plaintiff regarding Plaintiff's patent. Thus, upon information and belief, Defendants are manufacturing, selling, and profiting from these infringing products. Plaintiff has not received any financial benefit from the exploitation of his invention by Defendants.

13. On November 2, 2004, Plaintiff sent an email to Mr. Gourgeon and Mr. Borg who are employed by Defendant seeking to license the '995 patent to Defendant. The email stated that Plaintiff and his attorneys believe that many of Defendant's devices infringe on claims 7, 12, 21, 27, and 36 of the '995 patent.

14. Plaintiff and Plaintiff's attorney sent multiple letters to Defendant and Defendant's attorney alleging infringement; Defendant's attorney responded to some but not all of the letters, failing to respond to the last letter sent to Defendant. While Plaintiff has contacted

Defendant repeatedly in hopes of reaching an amicable agreement, no such agreement has been achieved.

15. Furthermore, upon information and belief, subsequent to Plaintiff's first letter objecting to and notifying Defendant of the infringement, Defendant received FDA approval and began manufacturing and selling other devices, such as the Vascular Plug II, which likewise infringe on Plaintiff's patent. Thus, upon information and belief, despite Plaintiff's repeated objections, Defendant has not only knowingly continued to infringe Plaintiff's patent with existing devices, but has also released new devices which also infringe the '995 patent, and continues to develop infringing devices.

CLAIMS FOR RELIEF

COUNT ONE

Infringement of the '995 Patent

16. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 15, inclusive.

17. The '995 patent is valid and enforceable.

18. Upon information and belief, in violation of 35 *U.S.C.* § 271, Defendant without authority makes, uses, offers to sell, and sells within the United States, or imports into the United States products that infringe the '995 patent either literally and/or by the doctrine of equivalents, including, but not limited to, the Septal Occluder, the Multi-Fenestrated Septal Occluder, the PFO Occluder, the Membranous VSD Occluder, the Vascular Plug, the Vascular Plug II, the Duct Occluder, the Muscular VSD, and the P.I. Muscular VSD. Upon information and belief,

these and other products are covered by at least one or more of the following claims of the '995 patent: 7, 12, 21, 27, and 36 of the '995 patent.

19. Upon information and belief, and in violation of *35 U.S.C. § 271*, Defendant contributes to and or induces infringement of the '995 patent by others. In particular, Defendant sells the infringing products to doctors, hospitals, and/or clinics with the intent that Defendant's customers infringe the '995 patent by using the infringing products.

20. Upon information and belief, Defendant has willfully infringed the '995 patent.

21. Upon information and belief, unless enjoined, Defendant will continue to infringe, directly and or indirectly under *35 U.S.C. § 271*.

22. Defendant's infringement has caused Plaintiff damages. Plaintiff is entitled to recover from Defendant damages pursuant to *35 U.S.C. § 284*, in an amount to be determined at trial.

23. This case is exceptional, and Plaintiff is entitled to an award of reasonable attorneys' fees pursuant to *35 U.S.C. § 285*.

24. Defendant's conduct has caused irreparable harm to Plaintiff. Plaintiff is thus entitled to a permanent injunction against future infringement under *35 U.S.C. § 283*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- A. Enter judgment that Defendant has infringed the '995 patent;
- B. Enter judgment that Defendant's infringement of the '995 patent has been willful;
- C. Enter judgment requiring Defendant pay damages for infringement pursuant to *35 U.S.C. § 284*, including an accounting;

- D. Enter judgment requiring Defendant pay treble damages pursuant to *35 U.S.C. § 284*;
- E. Enter judgment requiring Defendant pay pre-judgment interest, pursuant to *35 U.S.C. § 284*, and post-judgment interest pursuant to *28 U.S.C. § 1961*;
- F. Enter judgment requiring Defendant pay costs of court;
- G. Enter judgment requiring Defendant pay reasonable attorneys' fees pursuant to *35 U.S.C. § 285*;
- H. Enter a permanent injunction enjoining Defendant, its officers, agents, employees, attorneys, servants, and those persons acting in active concert or participation with any of them, including their successors and assigns, from directly or indirectly infringing the '995 patent pursuant to *35 U.S.C. § 283*;
- I. Enter such other further relief to which Plaintiff may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

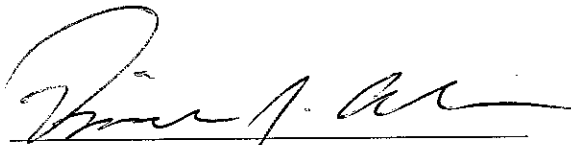
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable in this action.

Dated: January 14, 2008

Respectfully submitted,

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