

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

BAXA CORPORATION,

Plaintiff,

CIVIL ACTION NO. 6:06-cv-353-Orl-19JGG

v.

JURY TRIAL DEMANDED

FORHEALTH TECHNOLOGIES, INC.

Defendant.

SECOND AMENDED COMPLAINT

Plaintiff Baxa Corporation (“Baxa”) alleges the following:

JURISDICTION AND VENUE

1. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101, *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).

PARTIES

2. Baxa is and was at all times relevant herein a Colorado corporation with its principal place of business at 14445 Grasslands Drive, Englewood, Colorado 80112.

3. On information and belief, ForHealth Technologies, Inc. (“ForHealth”) is and was at all times relevant herein a Delaware corporation with its principal place of business at 790 Fentress Boulevard, Daytona Beach, Florida 32114.

THE PATENTS

4. Baxa realleges paragraphs 1-3 of its Complaint.

5. On October 25, 2005, United States Patent No. 6,957,522 B2 (“the ‘522 patent”) entitled “Method and System for Labeling Syringe Bodies” was duly and legally issued to Brian Baldwin, *et al.* A true and correct copy of the ‘522 patent is attached hereto as Exhibit A. The patent has since been assigned to Baxa.

6. On July 12, 2005, United States Patent No. 6,915,619 B2 (“the ‘619 patent”) entitled “Method for Handling Syringe Bodies” was duly and legally issued to Brian Baldwin. A true and correct copy of the ‘619 patent is attached hereto as Exhibit B. The patent has since been assigned to Baxa.

7. After Baxa filed its original complaint in the United States District Court for the Northern District of Texas on November 18, 2005, ForHealth requested an *ex parte* reexamination with the United States Patent and Trademark Office (“PTO”) of the ‘522 and the ‘619 patents on November 22, 2005. The original lawsuit was transferred to this Court and stayed pending the completion of the reexamination proceeding.

8. The PTO completed the reexamination of the ‘522 patent on October 2, 2007. The Reexamination Certificate issued by the PTO states that “no amendments [were] made to the patent” in reexamination and “as a result of reexamination, it has been determined that: the patentability of [all claims] is confirmed.” Exhibit C (the full patent number is now 6,957,522 C1).

9. The PTO completed the reexamination of the ‘619 patent on December 4, 2007. The Reexamination Certificate issued by the PTO states that “as a result of reexamination, it has been determined that: [t]he patentability of claims 16-26 is confirmed. Claims 1-15 are cancelled.” Exhibit D (the full patent number is now 6,915,619 C1).

COUNT ONE

(Infringement of U.S. Patent No. 6,957,522 C1)

10. Baxa realleges paragraphs 1-9 of its Complaint.

11. ForHealth has directly, indirectly, contributorily, and/or by inducement, literally or under the doctrine of equivalents, infringed and continues to infringe the '522 patent by its manufacture, use, sale, and/or offer for sale of products, including, but not limited to the "IntelliFill i.v." and related products, within this judicial district and elsewhere in the United States, that infringe one or more claims of the '522 patent. ForHealth is liable for its infringement of the '522 patent pursuant to 35 U.S.C. § 271.

12. Baxa is informed and believes, and thereon alleges, ForHealth's infringement of the '522 patent has been and continues to be willful, deliberate, and in conscious disregard of Baxa's rights, making this an exceptional case within the meaning of 35 U.S.C. § 285.

13. ForHealth's infringement of the '522 patent has caused and continues to cause damage to Baxa in an amount to be proven at trial.

COUNT TWO

(Infringement of U.S. Patent No. 6,915,619 C1)

14. Baxa realleges paragraphs 1-13 of its Complaint.

15. ForHealth has directly, indirectly, contributorily, and/or by inducement, literally or under the doctrine of equivalents, infringed and continues to infringe the '619 patent by its manufacture, use, sale, and/or offer for sale of products, including, but not limited to the "IntelliFill i.v." and related products, within this judicial district and elsewhere in the United States, that infringe one or more claims of the '619 patent. ForHealth is liable for its infringement of the '619 patent pursuant to 35 U.S.C. § 271.

16. Baxa is informed and believes, and thereon alleges, ForHealth's infringement of the '619 patent has been and continues to be willful, deliberate, and in conscious disregard of Baxa's rights, making this an exceptional case within the meaning of 35 U.S.C. § 285.

17. ForHealth's infringement of the '619 patent has caused and continues to cause damage to Baxa in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Baxa requests that judgment be entered in its favor and against ForHealth as follows:

1. Declaring that ForHealth has infringed United States Patent No. 6,957,522 C1 and 6,915,619 C1;
2. Permanently enjoining ForHealth, its officers, agents, employees, and those acting in privity with them, from further infringement, contributory infringement and/or inducing infringement of United States Patent No. 6,957,522 C1 and 6,915,619 C1;
3. Awarding profits and other damages arising from ForHealth's infringement of United States Patent No. 6,957,522 C1 and 6,915,619 C1, including treble damages, to Baxa, together with prejudgment and post-judgment interest, in an amount according to proof;
4. Declaring this to be an "exceptional case" within the meaning of 35 U.S.C. § 285 and awarding treble damages and reasonable attorneys' fees to Baxa; and
5. Awarding Baxa such other costs and such further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Baxa demands a trial by jury on all issues triable of right by a jury.

DATED: April 17, 2008

/s/ DAVID E. SIPIORA
DAVID E. SIPIORA
Colorado Bar No. 29759
KENNETH S. CHANG
Colorado Bar No. 35353
Townsend and Townsend and Crew LLP
1200 17th Street, Suite 2700
Denver, Colorado 80202
(303) 571-4000 Telephone
(303) 571-4321 Facsimile
Lead Trial Counsel for Plaintiff, Baxa Corporation

RICHARD E. MITCHELL
Florida Bar No. 0168092
DANIEL E. TRAVER
Florida Bar No. 0585262
GrayRobinson, P.A.
301 E. Pine Street, Suite 1400
Post Office Box 3068
Orlando, Florida 32802-3068
(407) 843-8880 Telephone
(407) 244-5690 Facsimile
Local Counsel for Plaintiff, Baxa Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing of the foregoing to each of the attorneys of record.

/s/ RICHARD E. MITCHELL
RICHARD E. MITCHELL

61244626 v1