

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT

-----X Civ. Action No. 06-CV-0683-RJH  
DR. PAULA SMALL, :  
: ECF CASE  
Plaintiff,:  
:  
v. : **JURY TRIAL DEMANDED**  
:  
NOBEL BIOCARE USA, LLC, , NOBEL :  
BIOCARE AB, HENRY SCHEIN, INC., :  
CAMLOG USA, INC., CAMLOG :  
BIOTECHNOLOGIES AG, CAMLOG HOLDING :  
AG, ALTATEC GMBH, NEOSS LTD., NEOSS :  
INC., IMPLANT DIRECT MFG. LLC d/b/a :  
IMPLANT DIRECT, LLC, SOUTHERN :  
IMPLANTS, INC., SOUTHERN IMPLANTS :  
(PTY) LTD., MEGAGEN USA, INC., and :  
MEGAGEN CO., LTD., :  
Defendants.:  
:  
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**SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Dr. Paula Small, by her attorneys Dickstein Shapiro LLP, for her Second Amended Complaint against defendants Nobel Biocare USA, LLC; Nobel Biocare AB; Henry Schein, Inc.; Camlog USA, Inc.; Camlog Biotechnologies AG; Camlog Holding AG; Altatec GmbH; Neoss Ltd.; Neoss Inc.; Implant Direct Mfg. LLC d/b/a Implant Direct, LLC; Southern Implants, Inc.; Southern Implants (Pty) Ltd.; MegaGen USA, Inc.; MegaGen Co., Ltd. (collectively, "Defendants") alleges as follows:

**THE PARTIES**

1. Plaintiff Paula Small, DDS is a citizen and resident of the State of New York who currently resides at 52 East End Avenue, 29AB, New York, New York 10028-7954.

2. On information and belief, defendant Nobel Biocare USA, LLC is incorporated in the State of Delaware, and is a foreign limited liability company registered in the State of New York, with a principal place of business of 22715 Savi Ranch Parkway, Yorba Linda, California 92887.

3. On information and belief, defendant Nobel Biocare AB is domiciled at Bohusgatan 15, 411 39 Goteborg, Sweden; its mailing address is Box 5190, SE-402 26 Goteborg, Sweden.

4. On information and belief, defendant Henry Schein, Inc. is incorporated in the State of Delaware, with a principal place of business of 135 Duryea Road, Melville, New York 11747.

5. On information and belief, defendant Camlog USA, Inc. is incorporated in the State of Delaware, with a principal place of business of 135 Duryea Road, Melville, New York 11747.

6. On information and belief, defendant Camlog Biotechnologies AG is domiciled at Margarethenstrasse 38, CH-4053 Basel, Switzerland.

7. On information and belief, defendant Camlog Holding AG is domiciled at Margarethenstrasse 38, CH-4053 Basel, Switzerland.

8. On information and belief, defendant Altatec GmbH is domiciled at Maybachstrasse 5, D-71299 Wimsheim, Germany.

9. On information and belief, defendant Neoss Inc. is incorporated in the State of Delaware, and is a foreign limited liability company registered in the State of New York, with a principal place of business of 21820 Burbank Blvd., Ste. 220, Woodland Hills, CA 91367.

10. On information and belief, defendant Neoss Ltd. is domiciled at Windsor House, Cornwall Road, Harrogate, N. Yorks, United Kingdom HG1-2PW.

11. On information and belief, defendant Implant Direct Mfg. LLC d/b/a Implant Direct, LLC is incorporated in the State of Nevada, with a principal place of business of 27030 Malibu Hills Road, Calabassas Hills, California 91301.

12. On information and belief, defendant Southern Implants, Inc. is incorporated in the State of Delaware, with a principal place of business of 5 Holland Bldg 209, Irvine, California, 92618.

13. On information and belief, defendant Southern Implants (Pty) Ltd. is domiciled at 1 Albert Road, Irene, 0062, South Africa; its mailing address is P.O. Box 605, Irene, 0062, South Africa.

14. On information and belief, defendant MegaGen USA, Inc. is incorporated in the State of New Jersey, with a principal place of business of 120 Sylvan Avenue, Suite 301, Englewood Cliffs, New Jersey 07632.

15. On information and belief, defendant MegaGen Co., Ltd. is domiciled at 377-2, Gyochoon-ri, Jain-myeon, Gyeongsan-si, Gyeongbuk, Korea.

#### **NATURE OF ACTION**

16. This is an action for patent infringement against Defendants based on their importation, manufacture, use, offer for sale, and sale of products, and their contribution to and inducement of third parties to use, offer for sale, and sell products, that infringe Dr. Small's patent rights, including the sale of infringing products in New York and throughout the United States.

17. Dr. Small seeks damages for Defendants' patent infringement, contributory infringement and inducement of infringement, an injunction against Defendants, and a declaration that Defendants have infringed and are infringing and inducing and contributing to the infringement of Dr. Small's patent rights by importing, making, using, offering for sale, and selling infringing products.

### **JURISDICTION AND VENUE**

18. This action arises under the patent law of the United States, 35 U.S.C. §§ 1 *et seq.* This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

19. This court has personal jurisdiction over Defendants because all of the Defendants transact business within this judicial District and because Defendants have committed acts of infringement of Dr. Small's patent in this State and within this District.

20. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c), and pursuant to § 1400(b).

### **PATENT INFRINGEMENT COUNT**

21. Dr. Small realleges and incorporates by reference paragraphs 1-20 of this Second Amended Complaint as if fully set forth herein.

22. Dr. Small is an inventor of United States Reissue Patent No. RE38,945 (the "'945 patent") entitled "Dental Implants and Methods for Extending Service Life" which was duly and legally granted on January 24, 2006 in the name of Paula S. Fried and Leonard Cooper. Paula S. Fried is Dr. Small's previous married name.

23. Dr. Small is the exclusive owner of title to and all rights in the '945 patent.

24. On information and belief, defendants Nobel Biocare USA, LLC, and Nobel Biocare AB (collectively "Nobel") have manufactured, used, sold, imported, and/or offered for

sale; continue to manufacture, use, sell, import and/or offer for sale; and will in the future manufacture, use, sell, import and/or offer for sale products including but not limited to the Replace, and systems using the Stargrip, and abutments and prosthetics for use therewith, including, but not limited to, Branemark System Mark III, Branemark System Mark IV, and Nobel Speedy brand of implants, including products with differing designs, surfaces, diameters, and lengths, in the State of New York and this District.

25. On information and belief, Nobel's past, current and future manufacturing, use, sale, importation, and/or offers for sale of its products, including, but not limited to, Replace, and systems using the Stargrip, and abutments and prosthetics for use therewith, including, but not limited to, Branemark System Mark III, Branemark System Mark IV, and Nobel Speedy brand of implants, including products with differing designs, surfaces, diameters, and lengths, infringe the '945 patent, either literally and/or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271(a).

26. Nobel intended that their infringing implants be used by the purchasers, including oral surgeons, periodontic specialists and dentists, of Nobel's implants with complimentary abutments and prosthetics throughout the State of New York and this District, knowing that Nobel's products were made to infringe the '945 patent and have no substantial non-infringing use. Accordingly, pursuant to 35 U.S.C. § 271(c), Nobel has contributed and continues to contribute to the infringement of the '945 patent.

27. On information and belief, Nobel knew of the '590 patent at least as early as February 2000, having actual knowledge of U.S. Patent No. 5,810,590, the patent of which the '945 patent reissued, and that the '590 patent had been submitted for reissuance in September 2000, resulting in the '945 patent. On information and belief, Nobel's infringement of the '945

patent has been, and continues to be, deliberate and willful. On information and belief, Nobel acted despite an objectively high likelihood that its manufacture, use, sale, offers for sale of its infringing products constituted infringement of the '945 patent and that this high likelihood was known or should have been known to Nobel.

28. On information and belief, defendants Henry Schein, Inc., Camlog USA, Inc., Camlog Biotechnologies AG, Camlog Holding AG, and Altatec GmbH (collectively "Camlog") have manufactured, used, sold, imported, and/or offered for sale; continue to manufacture, use, sell, import and/or offer for sale; and will in the future manufacture, use, sell, import and/or offer for sale products including but not limited to the Screw-Line, Root-Line, Cylinder-Line, and Screw-Cylinder-Line brand of implants, including products with differing designs, surfaces, diameters, and lengths, in the State of New York and this District.

29. On information and belief, Camlog's past, current and future manufacturing, use, sale, importation, and/or offers for sale of its products, including, but not limited to, Screw-Line, Root-Line, Cylinder-Line, and Screw-Cylinder-Line brand of implants, including products with differing designs, surfaces, diameters, and lengths, infringe the '945 patent, either literally and/or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271(a).

30. On information and belief, Camlog knew of the '945 patent at least as early as January 2006. On information and belief, Camlog's infringement of the '945 patent has been, and continues to be, deliberate and willful. On information and belief, Camlog acted despite an objectively high likelihood that its manufacture, use, sale, offers for sale of its infringing products constituted infringement of the '945 patent and that this high likelihood was known or should have been known to Camlog.

31. On information and belief, defendants Neoss Ltd. and Neoss Inc. (collectively “Neoss”) have manufactured, used, sold, imported, and/or offered for sale; continue to manufacture, use, sell, import and/or offer for sale; and will in the future manufacture, use, sell, import and/or offer for sale products including but not limited to the Neoss Implant System brand of implants, including products with differing designs, surfaces, diameters, and lengths, in the State of New York and this District.

32. On information and belief, Neoss’s past, current and future manufacturing, use, sale, importation, and/or offers for sale of its products, including, but not limited to, Neoss Implant System brand of implants, including products with differing designs, surfaces, diameters, and lengths, infringe the ‘945 patent, either literally and/or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271(a).

33. On information and belief, Neoss knew of the ‘945 patent at least as early as January 2006. On information and belief, Neoss’s infringement of the ‘945 patent has been, and continues to be, deliberate and willful. On information and belief, Neoss acted despite an objectively high likelihood that its manufacture, use, sale, offers for sale of its infringing products constituted infringement of the ‘945 patent and that this high likelihood was known or should have been known to Neoss.

34. On information and belief, defendant Implant Direct Mfg. LLC d/b/a Implant Direct, LLC has manufactured, used, sold, imported, and/or offered for sale; continue to manufacture, use, sell, import and/or offer for sale; and will in the future manufacture, use, sell, import and/or offer for sale products including but not limited to the ReActive, RePlant, and RePlus brand of implants, including products with differing designs, surfaces, diameters, and lengths, in the State of New York and this District.

35. On information and belief, Implant Direct's past, current and future manufacturing, use, sale, importation, and/or offers for sale of its products, including, but not limited to, ReActive, RePlant, and RePlus brand of implants, including products with differing designs, surfaces, diameters, and lengths, infringe the '945 patent, either literally and/or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271(a).

36. On information and belief, Implant Direct knew of the '945 patent at least as early as January 2006. On information and belief, Implant Direct's infringement of the '945 patent has been, and continues to be, deliberate and willful. On information and belief, Implant Direct acted despite an objectively high likelihood that its manufacture, use, sale, offers for sale of its infringing products constituted infringement of the '945 patent and that this high likelihood was known or should have been known to Implant Direct.

37. On information and belief, defendants Southern Implants, Inc. and Southern Implants (Pty) Ltd. (collectively "Southern Implants") have manufactured, used, sold, imported, and/or offered for sale; continue to manufacture, use, sell, import and/or offer for sale; and will in the future manufacture, use, sell, import and/or offer for sale products including but not limited to the Tri-Nex, Tri-Nex Co-Axis and Tri-Max brand of implants, including products with differing designs, surfaces, diameters, and lengths, in the State of New York and this District.

38. On information and belief, Southern Implants' past, current and future manufacturing, use, sale, importation, and/or offers for sale of its products, including, but not limited to, Tri-Nex, Tri-Nex Co-Axis and Tri-Max brand of implants, including products with differing designs, surfaces, diameters, and lengths, infringe the '945 patent, either literally and/or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271(a).



39. On information and belief, Southern Implants knew of the '945 patent at least as early as January 2006. On information and belief, Southern Implants' infringement of the '945 patent has been, and continues to be, deliberate and willful. On information and belief, Southern Implants acted despite an objectively high likelihood that its manufacture, use, sale, offers for sale of its infringing products constituted infringement of the '945 patent and that this high likelihood was known or should have been known to Southern Implants.

40. On information and belief, defendants MegaGen USA, Inc. and MegaGen Co., Ltd. (collectively "MegaGen") have manufactured, used, sold, imported, and/or offered for sale; continue to manufacture, use, sell, import and/or offer for sale; and will in the future manufacture, use, sell, import and/or offer for sale products including but not limited to the EZ Plus Internal System brand of implants, including products with differing designs, surfaces, diameters, and lengths, in the State of New York and this District.

41. On information and belief, MegaGen's past, current and future manufacturing, use, sale, importation, and/or offers for sale of its products, including, but not limited to, EZ Plus Internal System brand of implants, including products with differing designs, surfaces, diameters, and lengths, infringe the '945 patent, either literally and/or under the doctrine of equivalents, pursuant to 35 U.S.C. § 271(a).

42. On information and belief, MegaGen knew of the '945 patent at least as early as January 2006. On information and belief, MegaGen's infringement of the '945 patent has been, and continues to be, deliberate and willful. On information and belief, MegaGen acted despite an objectively high likelihood that its manufacture, use, sale, offers for sale of its infringing products constituted infringement of the '945 patent and that this high likelihood was known or should have been known to MegaGen.

43. The products identified in paragraphs 24-42, as well as their use, are covered by the claims of the '945 patent, and thus infringe the patent.

44. Defendants have caused, and continue to cause, the infringing products identified in paragraphs 24-42 to be sold and used in New York and throughout the United States.

45. Defendants have infringed and continue to infringe the '945 patent.

46. Defendants have knowingly and actively encouraged, aided and abetted, and continue to encourage, aid and abet others to directly infringe the '945 patent through the manufacture, use, sale, offers for sale of their infringing products, without authority or license from Dr. Small, to purchasers of Defendants products, including oral surgeons, periodontic specialists and dentists who purchase and use the infringing implants throughout the State of New York and this District. Accordingly, pursuant to 35 U.S.C. § 271(b), Defendants have actively induced and continue to induce infringement of the '945 patent.

47. Unless enjoined, Defendants will continue to infringe, induce these other to infringe, and contribute to the infringement by these others of the '945 patent.

48. On information and belief, Defendants had actual knowledge of the '945 patent, and their infringement of the '945 patent has been, and continues to be, deliberate and willful. On information and belief, Defendants acted despite an objectively high likelihood that their manufacture, use, sale, offers for sale of their infringing products constituted infringement of the '945 patent and that this high likelihood was known or should have been known to Defendants.

49. Dr. Small has been damaged and continues to suffer damages resulting from Defendants' direct and/or indirect infringement of the '945 patent pursuant to 35 U.S.C. § 284. Defendants' conduct has caused and, unless enjoined pursuant to 35 U.S.C. § 283, will continue to cause irreparable harm to Dr. Small.

WHEREFORE, plaintiff Dr. Small requests that this Court enter judgment as follows:

- A. Declaring that the '945 patent is infringed by Defendants;
- B. Ordering that Defendants, including all officers, agents, servants, representatives, employees, and attorneys, and those persons in active concert or participation with Defendants, are preliminarily and permanently enjoined from infringing the '945 patent;
- C. Awarding to Dr. Small damages adequate to compensate her for Defendants' deliberate and willful infringement of the '945 patent, together with interest, as well as enhanced damages pursuant to 35 U.S.C. § 284;
- D. Awarding to Dr. Small her reasonable attorneys' fees and costs in this action pursuant to *inter alia* 35 U.S.C. § 285; and
- E. Granting such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on each Count of her Complaint, as well as each and every defense asserted thereto.

Dated: New York, New York  
November 16, 2009

DICKSTEIN SHAPIRO LLP

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DR. PAULA SMALL,

Plaintiff,

v.

NOBEL BIOCARE USA, LLC, NOBEL  
BIOCARE AB, HENRY SCHEIN, INC.,  
CAMLOG USA, INC., CAMLOG  
BIOTECHNOLOGIES AG, CAMLOG  
HOLDING AG, ALTATEC GMBH, NEOSS  
LTD., NEOSS INC., IMPLANT DIRECT MFG.  
LLC d/b/a IMPLANT DIRECT, LLC,  
SOUTHERN IMPLANTS, INC., SOUTHERN  
IMPLANTS (PTY) LTD., MEGAGEN USA,  
INC., and MEGAGEN CO., LTD.,

Defendants

Civ. Action No. 06-CV-0683 (RJH)

**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2009, a true copy of the Second Amended

Complaint for Patent Infringement was served on the following via electronic mail:

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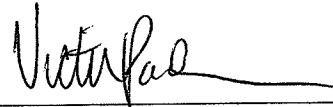
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Implant Direct, LLC, Southern Implants, Inc., Southern  
Implants (PTY) Ltd., Megagen USA, Inc. and Megagen Co.,  
Ltd.**

Dated: New York, New York  
November 16, 2009



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Victor M. Padro