

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

MY HEALTH, INC. and)	
UNIVERSITY OF ROCHESTER,)	
)	
Plaintiffs,)	Civil Action No.
)	
v.)	
)	(JURY TRIAL DEMANDED)
ZEOMEGA, INC.,)	
)	
Defendant.)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs My Health, Inc. (“My Health”) and University of Rochester (collectively “Plaintiffs”) bring this action against defendant ZeOmega, Inc. (“ZeOmega”), and allege as follows:

THE PARTIES

1. The University of Rochester is an educational institution chartered by the State of New York, with a principal office at 601 Elmwood Avenue, Rochester, New York.
2. My Health, Inc. is a Delaware corporation having a principal place of business at 555 Bryant Street, Suite #715, Palo Alto, California 94301.
3. On information and belief, ZeOmega is a corporation organized and existing under the laws of Delaware having an agent registered for service of process known as Sathya Rangaswamy who is located at 3010 Gaylord Pkwy, Suite 210, Frisco, Texas 75034, and is doing business in this judicial district from its corporate headquarters located at 3010 Gaylord Pkwy, Suite 210, Frisco, Texas 75034-8666.

SUMMARY OF THE CASE

4. While with the University of Rochester, Michael E. Eiffert and Lisa C. Schwartz invented a unique technology that assists healthcare providers in monitoring and treating patients. Consequently, on September 2, 2003, the University of Rochester was awarded United States Patent No. 6,612,985 entitled “Method and system for monitoring and treating a patient” (the “’985 Patent”).

5. My Health is an early stage company, fostering medical technologies through the proof of concept stage for larger more established entities.

6. My Health focuses on serving as a pipeline for new technologies, assisting scientist and engineers in bringing their ideas to fruition and, ultimately, to companies with the expertise to market on a global scale.

7. On August 1, 2008, the University of Rochester granted an exclusive license under the ‘985 Patent to My Health.

8. ZeOmega has not been granted a license or any other rights to the ’985 Patent.

9. It is believed that ZeOmega has generated significant sales of products incorporating the University’s technology, easily exposing ZeOmega to significant liability for its infringement of the ’985 Patent.

JURISDICTION AND VENUE

10. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code. Subject-matter jurisdiction over Plaintiffs’ claims is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

11. ZeOmega has transacted business, contracted to supply goods or services, and caused injury to Plaintiffs within Texas and this judicial district, and have otherwise purposefully availed themselves of the privileges and benefits of the laws of Texas, and are, therefore, subject to jurisdiction of this Court.

12. Upon information and belief, ZeOmega has placed its infringing products into the stream of commerce throughout the United States with the expectation that they will be used by consumers in this judicial district, which products and services have been offered for sale, sold, and used in this judicial district.

13. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

**FIRST CLAIM FOR RELIEF
INFRINGEMENT OF U.S. PATENT NO. 6,612,985**

14. The '985 Patent, a copy of which is attached hereto as Exhibit A, was duly and legally issued by the United States Patent and Trademark Office. The University of Rochester is the owner by assignment of all right, title, and interest in and to the '985 Patent. My Health is the exclusive licensee of the '985 Patent, including the right to sue for and recover all past, present and future damages for infringement of the '985 Patent.

15. Upon information and belief, ZeOmega, either alone or in conjunction with others, has in the past and continues to infringe, contribute to infringement, and/or induce infringement of the '985 Patent by making, using, selling and/or offering to sell, and/or causing others to use, methods and systems, including, but not limited to ZeOmega's Jiva product, which infringes one or more claims of the '985 Patent, including, but not limited to claims 1, 4, and 7 of the '985 Patent.

ZeOmega is liable for infringement of one or more claims of the '985 Patent, including, but not limited to claims 1, 4 and 7, of the '985 Patent pursuant to 35 U.S.C. § 271.

16. ZeOmega is liable for indirect infringement of the '985 Patent by inducing and/or contributing to direct infringements of the '985 Patent committed by end users of ZeOmega's Jiva product.

17. ZeOmega's acts of infringement have caused damage to Plaintiffs, and Plaintiffs are entitled to recover from ZeOmega the damages sustained as a result of ZeOmega's wrongful acts in an amount subject to proof at trial.

18. As a consequence of the infringement complained of herein, Plaintiffs have been irreparably damaged in an extent not yet determined and will continue to be irreparably damaged by such acts in the future unless ZeOmega is enjoined from committing further acts of infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for entry of judgment that:

- A. ZeOmega has infringed the '985 Patent;
- B. ZeOmega account for and pay to Plaintiffs all damages caused by its infringement of the '985 patent in accordance with 35 U.S.C. § 284;
- C. Plaintiffs be granted permanent injunctive relief pursuant to 35 U.S.C. § 283 enjoining ZeOmega, its officers, agents, servants, employees, and those persons in active concert or participation with them from further acts of patent infringement;
- D. Plaintiffs be granted pre-judgment and post-judgment interest on the damages caused to it by reason of ZeOmega's patent infringement complained of herein;
- E. Plaintiffs be granted their reasonable attorneys' fees;

F. Costs be awarded to Plaintiffs; and,

G. Plaintiffs be granted such other and further relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all claims and issues so triable.

Respectfully submitted,

Dated: April 23, 2012

By: /s/ Elizabeth L. DeRieux

S. Calvin Capshaw
State Bar No. 03783900
ccapshaw@capshawlaw.com
Elizabeth L. DeRieux
State Bar No. 05770585
ederieux@capshawlaw.com
CAPSHAW DERIEUX, L.L.P.
114 East Commerce Avenue
Gladewater, Texas 75647
Telephone: (903) 236-9800
Facsimile: (903) 236-8787

James B. Belshe*
jbelshe@kmclaw.com
James T. Burton*
jburton@kmclaw.com
KIRTON | McCONKIE
60 East South Temple, Suite 1800
Salt Lake City, UT 84111
Telephone: (801) 328-3600
Fax: (801) 321-4893

Michael R. Wolford*
mwolford@wolfordfirm.com
THE WOLFORD LAW FIRM LLP
600 Reynolds Arcade Building
16 East Main Street
Rochester, New York 14614
Telephone: (585) 325-8008
Facsimile: (585) 325-8009

**Pro Hac Vice Application Pending*

C. Dale Quisenberry
State Bar No. 24005040
dquisenberry@pqelaw.com

John T. Polasek
State Bar. No. 16088590
tpolasek@pqelaw.com

Jeffrey S. David
State Bar No. 24053171
j david@pqelaw.com

POLASEK, QUISENBERRY & ERRINGTON, L.L.P.
6750 West Loop South, Suite 920
Bellaire, Texas 77401
Telephone: (832) 778-6000
Facsimile: (832) 778-6010

ATTORNEYS FOR PLAINTIFF