

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

AIRMID IP LLC,

Plaintiff,

v.

TERUMO CARDIOVASCULAR SYSTEMS
CORPORATION,

Defendant.

No.

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Airmid IP LLC (“Airmid”), for its complaint for patent infringement against Terumo Cardiovascular Systems Corporation (“Terumo”), states the following:

JURISDICTIONAL STATEMENT

1. This is a claim for patent infringement that arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original jurisdiction over the subject matter of this claim under 28 U.S.C. §§ 1331 and 1338(a).

BACKGROUND

2. This case presents claims for infringement of two patents relating generally to perfusion circuits used to keep patients alive during cardiopulmonary bypass surgery. The patents cover inventions of two respected individuals in the field of cardiovascular surgery, Dr. Venkatarmana Vijay and Mr. Kevin McCusker.

3. The infringed patents are: (a) United States Patent No. 6,852,280, titled "Condensed Perfusion Circuit for Cardiopulmonary Bypass and Cardioplegia," issued to the inventors by the United States Patent and Trademark Office on February 8, 2005 (the “280 patent”); and (b) United States Patent No. 6,946,099, titled "Methods of Using Condensed

Perfusion Circuit for Cardiopulmonary Bypass and Cardioplegia,” issued by the United States Patent and Trademark Office to the inventors on September 20, 2005 (the “’099 patent”).

4. The inventors, Dr. Vijay and Mr. McCusker, have assigned title and other relevant rights in the ‘280 and ‘099 patents to Airmid. Airmid has standing to bring suits for infringement of the patents.

5. Terumo is infringing the ‘280 and ‘099 patents in the United States by its actions as set forth below, that include selling bypass perfusion circuits under the trade name ROCSafe.

THE PARTIES

6. Plaintiff Airmid is a Texas limited liability company.

7. Defendant Terumo is a Delaware corporation with its principal place of business in Ann Arbor, Michigan.

JURISDICTION AND VENUE

8. Terumo is subject to personal jurisdiction in this judicial district. Terumo is registered to do business as a foreign corporation in the State of Michigan, has a registered agent for service of process in Michigan, and also has its principal place of business in this judicial district. Terumo also conducts regular and systematic business in this judicial district, and has committed acts of infringement in this judicial district.

9. Terumo is a resident of the State of Michigan of this judicial district for purposes of the venue statutes, 28 U.S.C. §§ 1391(c) and 1400(b). Venue is proper in this district.

CLAIMS FOR PATENT INFRINGEMENT

10. Terumo has infringed one or more claims of the '280 patent within the meaning of 35 U.S.C. § 271(a). In the United States, Terumo makes and/or imports, uses, sells and offers for sale, infringing condensed bypass perfusion circuits that include those sold under the Terumo trade name ROCSafe, and other medical equipment related to the perfusion circuits.

11. Terumo has infringed one or more claims of the '280 patent within the meaning of 35 U.S.C. § 271(b) by knowingly and intentionally inducing direct infringement of the '280 patent by others, such as customers and end users, who use ROCSafe perfusion circuits and related equipment to infringe the '280 patent. Terumo has had actual notice of the '280 patent, and of its infringing activity. Terumo's acts of inducement include, without limitation, selling ROCSafe perfusion circuits and related equipment with the intention that customers and end users use the products in an infringing manner; encouraging customers and end users to use the products in an infringing manner; and providing instructions and education to customers and end users to use the products in an infringing manner.

12. Terumo has infringed one or more claims of the '280 patent within the meaning of 35 U.S.C. § 271(c) by knowingly and intentionally contributing to the direct infringement of the '280 patent by others, such as its customers and end users, who use ROCSafe perfusion circuits and related equipment. Terumo has contributed to such infringement by knowingly selling and offering to sell, and continuing to knowingly sell and offer to sell, the aforementioned products, where such products constitute a material part of the patented invention, which Terumo knows are especially made or adapted for use in an infringing manner, and which Terumo knows are not staple articles or commodities of commerce suitable for substantial non-infringing uses. Terumo has had actual notice of the '280 patent, and of its infringing activity.

13. Terumo has infringed one or more claims of the '099 patent within the meaning of 35 U.S.C. § 271(b) by knowingly and intentionally inducing direct infringement of the '099 patent by others, such as customers and end users, who use ROCSafe perfusion circuits and related Terumo equipment to practice methods that infringe the '099 patent. Terumo has had actual notice of the '099 patent, and of its infringing activity. Terumo's acts of inducement include, without limitation, selling ROCSafe perfusion circuits and related equipment with the

intention that customers and end users use the products in an infringing manner; encouraging customers and end users to use the products in an infringing manner; and providing instructions and education to customers and end users to use the products in an infringing manner.

14. Terumo has infringed one or more claims of the '099 patent within the meaning of 35 U.S.C. § 271(c) by knowingly and intentionally contributing to the direct infringement of the '280 patent by others, such as its customers and end users, who use ROCSafe perfusion circuits and related Terumo equipment to practice methods that infringe the '099 patent. Terumo has contributed to such infringement by knowingly selling and offering to sell, and continuing to knowingly sell and offer to sell, the aforementioned products, where such products constitute a material part of the patented invention, which Terumo knows are especially made or adapted for use in an infringing manner, and which Terumo knows are not staple articles or commodities of commerce suitable for substantial non-infringing uses. Terumo has had actual notice of the '099 patent, and of its infringing activity.

15. Terumo has had knowledge of the patents and of its infringement, and has continued to willfully and recklessly infringe the '280 and '099 patents.

16. To the extent required by law, Airmid has complied with the provisions of 35 U.S.C. § 287.

17. Terumo's above stated acts of infringement have injured Airmid, and Airmid is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

WHEREFORE, Plaintiff Airmid respectfully requests that the Court enter judgment against Terumo (including its subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees, and all persons in active concert or participation with it) granting the following relief:

- a. The entry of judgment in favor of Airmid and against Terumo;
- b. An award of damages adequate to compensate Airmid for the infringement by Terumo, but in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284, together with prejudgment interest from the date infringement began;
- c. A finding that this case is exceptional and an award to Airmid of its reasonable attorneys' fees and costs as provided by 35 U.S.C. § 285;
- d. A finding that Terumo's infringement has been willful, and an award of enhanced damages;
- e. A permanent injunction prohibiting Terumo from further acts of infringement; and
- f. Any other and further relief to which Airmid is entitled, or that this Court or a jury may deem just and proper.

JURY DEMAND

Plaintiff Airmid demands a trial by jury on all issues presented in this Complaint and all issues so triable in this action.

Respectfully submitted,

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