

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

2012 JUL -6 P 3: 22

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

NOBEL BIOCARE USA, LLC, a Delaware
limited liability company and NOBEL BIOCARE
PROCERA LLC, a Delaware limited liability
company,

Plaintiffs,

v.

TECHNIQUE D'USINAGE SINLAB, INC., a
Canadian corporation,

Defendant.

Civil Action No. 1:12cv 730

LO/JFA

JURY DEMANDED

COMPLAINT FOR DECLARATORY JUDGMENT

NATURE OF THE ACTION

1. This is a civil action under the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq., for declaration of patent non-infringement and/or invalidity of U.S. Patent No. 6,382,975 (“the ‘975 patent”), U.S. Patent No. 6,814,575 (“the ‘575 patent”), U.S. Patent No. 7,331,786 (“the ‘786 patent”), U.S. Patent No. 7,866,980 (“the ‘980 patent”), and U.S. Patent No. 8,021,153 (“the ‘153 patent”)(collectively the “Patents-in-Suit”).

PARTIES

2. Plaintiff Nobel Biocare USA, LLC is a Delaware limited liability company with its principal place of business at 22715 Savi Ranch Parkway, Yorba Linda, CA 92887.

3. Plaintiff Nobel Biocare Procera LLC is a Delaware limited liability company with a place of business at 800 Corporate Drive, Mahwah, NJ 07430-2011.

4. Nobel is informed and believes, and thereupon alleges, that Defendant Technique D'Usinage Sinlab, Inc. ("Sinlab") is a Canadian federal corporation with its principal place of business at 3517 Boul De La Grande-Allée, Boisbriand, Quebec, J7H 1H5 (Canada) and a registered office address at 52, rue des Feux-Follets, Morin-Heights Quebec J0R 1H0.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over Sinlab by virtue of 35 U.S.C. § 293.

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1338 and 2201.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and 35 U.S.C. § 293.

FACTUAL BACKGROUND

8. Nobel provides products, services, and training in the field of implant dentistry, including computer-aided design and computer-aided manufacturing. Among Nobel's products and services are the NobelGuide™ Surgical Template, NobelClinician™ software, NobelProcera™ Implant Bar Overdenture and NobelProcera™ Software.

9. On or about June 14, 2012, Sinlab's U.S. counsel issued letters to Nobel regarding the Patents-in-Suit. A copy of the letter provided to Nobel Biocare Procera LLC is attached hereto as Exhibit 1. The letter states that Sinlab is the owner of all rights and interests in the Patents-in-Suit and that these "[p]atents are generally dental implant drill guides and certain dental implant superstructures."

10. In its communication with Nobel attached as Exhibit 1, Sinlab stated that Nobel "is infringing upon the Patents in direct violation of 35 U.S.C. § 271" and that "[t]he purpose of

this letter is to demand that you immediately cease and desist in any further activities which infringe upon the Patents.” The letter included specific demands, including a request that Nobel immediately cease and desist from any infringing activities, provide a complete accounting of any income received by Nobel as a result of any infringing activities, and provide a statement of compliance on or before July 2, 2012.

11. Sinlab’s U.S. counsel further stated that “if [Nobel] should fail to comply with the demands set forth herein by 5:00 p.m. on July 2, 2012, our client has authorized us to file a lawsuit against your company on July 3, 2012.”

12. Sinlab has also made public announcements regarding the communications it has sent to Nobel. A copy of such announcement is attached hereto as Exhibit 2. According to the announcement, Sinlab has filed “notices for patent infringement” of the Patents-in-Suit against Nobel and several other companies. The press release states that the notice for patent infringement “formally requires to immediately ceas[e] the manufacturing and the selling of manufacturing programs of the superstructure and/or the surgical guide for dental implant placements covered by the patents” and that “[f]ailure to comply will generate immediate legal proceedings.”

13. On July 2, 2012, counsel for Nobel contacted Sinlab’s counsel to request additional time to review and respond to the letter and to request that Sinlab extend its July 3 deadline for initiating litigation. No response has been received to Nobel’s communication.

14. Sinlab has already initiated patent litigation against Nobel in Canada. On or about June 25, 2010, Sinlab initiated an action against BioCad Medical Inc., an entity wholly owned by Nobel Biocare, for patent infringement of Canadian Patent No. 2,575,964 relating to dental implant superstructures.

15. As a result of the communication from Sinlab, its public announcement, and its history of litigation with Nobel, an actual controversy exists between Nobel and Sinlab regarding the invalidity of the Patents-in-Suit and/or non-infringement by Nobel's products and systems, including but not limited to the NobelGuide™ Surgical Template, NobelClinician™ software, NobelProcera™ Implant Bar Overdenture and NobelProcera™ Software. Each of the Patents-In-Suit is identified in the paragraphs below.

16. Sinlab has asserted that it is the owner of all rights and interest in the '975 patent, entitled "Manufacturing A Dental Implant Drill Guide And A Dental Implant Superstructure." A copy of the '975 patent is attached hereto as Exhibit 3.

17. Sinlab has asserted that that is the owner of all rights and interest in the '575 patent, entitled "Manufacturing A Dental Implant Drill Guide And A Dental Implant Superstructure." A copy of the '575 patent is attached hereto as Exhibit 4.

18. Sinlab has asserted that it is the owner of all rights and interest in the '786 patent, entitled "Manufacturing A Dental Implant Drill Guide And A Dental Implant Superstructure." A copy of the '786 patent is attached hereto as Exhibit 5.

19. Sinlab has asserted that it is the owner of all rights and interest in the '980 patent, entitled "Manufacturing Of A Dental Implant Superstructure." A copy of the '980 patent is attached hereto as Exhibit 6.

20. Sinlab has asserted that it is the owner of all rights and interest in the '153 patent, entitled "Manufacturing A Dental Implant Drill Guide And A Dental Implant Superstructure." A copy of the '153 patent is attached hereto as Exhibit 7.

**FIRST CLAIM FOR RELIEF – DECLARATORY JUDGMENT OF NON-
INFRINGEMENT AND/OR INVALIDITY OF THE ‘975 PATENT**

21. Nobel incorporates by reference and realleges each of the allegations set forth in Paragraphs 1-20 above.

22. Nobel has not and does not directly infringe, indirectly infringe, contribute to, or induce infringement of any valid and enforceable claim of the ‘975 patent, including at least Claim 1.

23. One or more claims of the ‘975 patent, including at least Claim 1, is invalid for violation of one or more provisions of 35 U.S.C. §§ 102, 103, 112 and/or 282.

24. Nobel is entitled to offer its products and services, including the NobelGuide™ Surgical Template, NobelClinician™ software, NobelProcera™ Implant Bar Overdenture and NobelProcera™ Software, without interference by Sinlab.

**SECOND CLAIM FOR RELIEF – DECLARATORY JUDGMENT OF NON-
INFRINGEMENT AND/OR INVALIDITY OF THE ‘575 PATENT**

25. Nobel incorporates by reference and realleges each of the allegations set forth in Paragraphs 1-20 and 22-24 above.

26. Nobel has not and does not directly infringe, indirectly infringe, contribute to, or induce infringement of any valid and enforceable claim of the ‘575 patent, including at least Claim 1 and Claim 7.

27. One or more claims of the ‘575 patent, including at least Claims 1 and 7, are invalid for violation of one or more provisions of 35 U.S.C. §§ 102, 103, 112 and/or 282.

28. Nobel is entitled to offer its products and services, including the NobelGuide™ Surgical Template, NobelClinician™ software, NobelProcera™ Implant Bar Overdenture and NobelProcera™ Software, without interference by Sinlab.

**THIRD CLAIM FOR RELIEF – DECLARATORY JUDGMENT OF NON-
INFRINGEMENT AND/OR INVALIDITY OF THE ‘786 PATENT**

29. Nobel incorporates by reference and realleges each of the allegations set forth in Paragraphs 1-20, 22-24, and 26-28 above.

30. Nobel has not and does not directly infringe, indirectly infringe, contribute to, or induce infringement of any valid and enforceable claim of the ‘786 patent, including at least Claim 1.

31. One or more claims of the ‘786 patent, including at least Claim 1, is invalid for violation of one or more provisions of 35 U.S.C. §§ 102, 103, 112 and/or 282.

32. Nobel is entitled to offer its products and services, including the NobelGuide™ Surgical Template, NobelClinician™ software, NobelProcera™ Implant Bar Overdenture and NobelProcera™ Software, without interference by Sinlab.

**FOURTH CLAIM FOR RELIEF – DECLARATORY JUDGMENT OF NON-
INFRINGEMENT AND/OR INVALIDITY OF THE ‘980 PATENT**

33. Nobel incorporates by reference and realleges each of the allegations set forth in Paragraphs 1-20, 22-24, and 26-28, and 30-32 above.

34. Nobel has not and does not directly infringe, indirectly infringe, contribute to, or induce infringement of any valid and enforceable claim of the ‘980 patent, including at least Claim 1.

35. One or more claims of the '980 patent, including at least Claim 1, is invalid for violation of one or more provisions of 35 U.S.C. §§ 102, 103, 112 and/or 282.

36. Nobel is entitled to offer its products and services, including the NobelGuide™ Surgical Template, NobelClinician™ software, NobelProcera™ Implant Bar Overdenture and NobelProcera™ Software, without interference by Sinlab.

**FIFTH CLAIM FOR RELIEF – DECLARATORY JUDGMENT OF NON-
INFRINGEMENT AND/OR INVALIDITY OF THE '153 PATENT**

37. Nobel incorporates by reference and realleges each of the allegations set forth in Paragraphs 1-20, 22-24, and 26-28, and 30-32, and 34-36 above.

38. Nobel has not and does not directly infringe, indirectly infringe, contribute to, or induce infringement of any valid and enforceable claim of the '153 patent, including at least Claims 1, 16, and 25.

39. One or more claims of the '153 patent, including at least Claims 1, 16, and 25, are invalid for violation of one or more provisions of 35 U.S.C. §§ 102, 103, 112 and/or 282.

40. Nobel is entitled to offer its products and services, including the NobelGuide™ Surgical Template, NobelClinician™ software, NobelProcera™ Implant Bar Overdenture and NobelProcera™ Software, without interference by Sinlab.

DEMAND FOR JURY TRIAL

41. Nobel demands a trial by jury on all issues so triable.

REQUESTED RELIEF

WHEREFORE, Nobel requests that:

a. This Court enter a judgment declaring that one or more claims of the '975 patent is invalid;

b. This Court enter a judgment declaring that Nobel has not directly infringed, contributorily infringed, or induced others to infringe any valid and enforceable claim of the '975 patent;

c. This Court enter a judgment declaring that one or more claims of the '575 patent is invalid;

d. This Court enter a judgment declaring that Nobel has not directly infringed, contributorily infringed, or induced others to infringe any valid and enforceable claim of the '575 patent;

e. This Court enter a judgment declaring that one or more claims of the '786 patent is invalid;

f. This Court enter a judgment declaring that Nobel has not directly infringed, contributorily infringed, or induced others to infringe any valid and enforceable claim of the '786 patent;

g. This Court enter a judgment declaring that one or more claims of the '980 patent is invalid;

h. This Court enter a judgment declaring that Nobel has not directly infringed, contributorily infringed, or induced others to infringe any valid and enforceable claim of the '980 patent;

i. This Court enter a judgment declaring that one or more claims of the '153 patent is invalid;

j. This Court enter a judgment declaring that Nobel has not directly infringed, contributorily infringed, or induced others to infringe any valid and enforceable claim of the '153 patent;

k. This Court enter a judgment declaring that it is the right of Nobel to continue to make, use and sell its products and services, including the NobelGuide™ Surgical Template, NobelClinician™ software, NobelProcera™ Implant Bar Overdenture and NobelProcera™ Software, without any threat or other interference by Sinlab;

l. That Sinlab and its agents, representatives, attorneys, and those persons in active concert or participation with them who receive actual notice thereof, be preliminarily and permanently enjoined from threatening or initiating infringement litigation against Nobel or any of its customers, distributors, or suppliers, or any prospective or present customers, distributors or suppliers of Nobel, or charging any of them either orally or in writing with infringement of any of the Patents-in-Suit;

m. That the Court declare this case to be exceptional and award Nobel its attorney's fees and expenses incurred in this action;

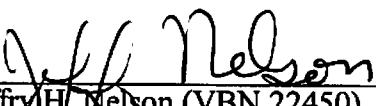
n. Nobel be awarded costs pursuant to 28 U.S.C. § 1920;

o. Nobel be awarded relief under § 2202;

p. Nobel be awarded such other and further relief as this Court deems proper.

Respectfully submitted,

July 6, 2012



Jeffrey H. Nelson (VBN 22450)
jhn@nixonvan.com
Michael E. Crawford (VBN 39566)
mec@nixonvan.com
NIXON & VANDERHYE P.C.
901 N. Glebe Rd.
Arlington, VA 22203
Phone: 703-816-4000
Fax: 703-816-4100

John B. Sganga, Jr. (*pro hac vice pending*)
Sheila N. Swaroop (*pro hac vice pending*)
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
Phone: 949-760-0404
Facsimile: 949-760-9502
Email: 2jbs@knobbe.com

*Counsel for Plaintiff NOBEL BIOCARE USA LLC and
NOBEL BIOCARE PROCERA LLC*