

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

TYCO HEALTHCARE GROUP LP)	
and UNITED STATES SURGICAL)	
CORPORATION,)	
)	Civil Action No. 9:09-cv-176 (KFG)
Plaintiffs,)	
v.)	
)	
APPLIED MEDICAL RESOURCES CORP.,)	JURY TRIAL DEMANDED
)	
Defendant.)	
)	

AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs Tyco Healthcare Group LP ("Tyco Healthcare") and United States Surgical Corporation ("USSC") (collectively, "Plaintiffs"), for their Amended Complaint against Defendant Applied Medical Resources Corp. ("Applied"), hereby allege as follows and demand a jury trial on all the issues so triable.

THE PARTIES

1. Plaintiff Tyco Healthcare Group LP is a Delaware limited partnership having a place of business at 15 Hampshire Street, Mansfield, Massachusetts 02048.
2. Plaintiff USSC is a Delaware corporation having a place of business at 150 Glover Avenue, Norwalk, Connecticut 06856.
3. Upon information and belief, Applied is a California corporation having a place of business at 22872 Avenida Empresa, Rancho Santa Margarita, California 92688.

NATURE OF THE ACTION

4. This is an action for patent infringement of U.S. Patent Nos. 5,304,143 ("the '143 patent"), 5,685,854 ("the '854 patent"), 5,603,702 ("the '702 patent") and 5,895,377

("the '377 patent") (collectively, "the Asserted Patents"). This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Applied is subject to personal jurisdiction in this Court as evidenced by, *inter alia*, its systematic and continuous contacts in this judicial district and its offers to sell and sale of products that infringe the Asserted Patents in this judicial district.

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

THE PATENTS

8. On April 19, 1994, the '143 patent, titled "Valve System For Introducing Objects Into Anatomical Body Portions," was duly and legally issued to USSC as assignee. USSC is the current assignee of the '143 patent, and is the owner of the right to sue and to recover for any current or past infringement of that patent. A true and correct copy of the '143 patent is attached hereto as Exhibit A.

9. On November 11, 1997, the '854 patent, titled "Valve System For Introducing Objects Into Anatomical Body Portions," was duly and legally issued to USSC as assignee. USSC is the current assignee of the '854 patent, and is the owner of the right to sue and recover for any current or past infringement of that patent. A true and correct copy of the '854 patent is attached hereto as Exhibit B.

10. On February 18, 1997, the '702 patent, titled "Valve System For Cannula Assembly," was duly and legally issued to USSC as assignee. Tyco Healthcare is the current assignee of the '702 patent, and is the owner of the right to sue and recover for any current or

past infringement of that patent. A true and correct copy of the '702 patent is attached hereto as Exhibit C.

11. On April 20, 1999, the '377 patent, titled "Valve System For Cannula Assembly," was duly and legally issued to USSC as assignee. Tyco Healthcare is the current assignee of the '377 patent, and is the owner of the right to sue and recover for any current or past infringement of that patent. A true and correct copy of the '377 patent is attached hereto as Exhibit D.

FACTS GIVING RISE TO THIS ACTION

12. On July 19, 2006, Tyco Healthcare filed a Complaint against Applied in this Court, alleging that Applied's "Universal Seal" products willfully infringed, *inter alia*, the Asserted Patents. The case was designated Civil Action No. 06-CV-151-RC-KFG.

13. On March 9, 2007, Tyco Healthcare filed a First Amended Complaint in Civil Action No. 06-CV-151-RC-KFG, alleging that Applied's "Kii" 5mm products also willfully infringed the Asserted Patents.

14. On October 29, 2009, to address any concern regarding whether Tyco Healthcare or its corporate sibling USSC owned the Asserted Patents, Tyco Healthcare and USSC jointly brought this action, Civil Action No. 09-CV-176-RC-KFG, and consented to the Court dismissing the prior action, without prejudice.

15. In this 09-176 action, Tyco Healthcare and USSC accused of patent infringement both the Universal Seal and Kii 5mm products that had been the subject of the 06-151 action, and additional Universal Seal and Kii products in which Applied had modified the septum shield.

16. In March 2010, the Court conducted a jury trial in this 09-176 action on the Universal Seal and Kii 5mm products originally at issue in the 06-151 action. The jury

found, *inter alia*, that those products infringed Tyco's '377 patent and awarded damages. The Court subsequently added pre-judgment interest to that damage award.

17. Remaining at issue in this 09-176 action are the Universal Seal and Kii products in which Applied modified the septum shields (the "Modified Products").

18. Upon information and belief, Applied modified the septum shields in its Universal Seal and Kii products such that each of them contains either single-thickness fingers or Ws, as exemplified by the septum shields shown below:



(single-thickness fingers)



(Ws)

19. Upon information and belief, Applied began selling products with the single-thickness fingers septum shield, including Kii products, no later than February 2008.

20. Upon information and belief, Applied started selling products with the Ws septum shield, including Universal Seal products, no later than October 2009.

21. Applied has infringed the '143 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States, medical devices comprising or containing a "Universal Seal" or a "Kii" system as claimed thereby, including but not limited to the "Premium Disposable Trocar Systems with Universal Seal," "Convertible Trocar Systems with Universal Seal," "Optical Separator Systems with Universal Seal,"

"Separator Access Systems with Universal Seal," "12, 11, and 8mm Disposable Trocar Systems with Universal Seal," "Blunt Tip Trocars with Universal Seal" "Disposable Cannulas and Universal Seals," "Universal Seals," "Kii Access Systems," "Kii Cannulas and Seals," and "Kii Dual Packs," as described by Applied website (<http://www.appliedmedical.com>), Applied's 2006 Product Catalog (AP00980-AP01039) and Applied's 2007 Product Catalog (Tyco-Applied 006660-006717), and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271(a), (b) and/or (c).

22. Despite Applied's modifications, it has infringed and continues to infringe Claims 12, 13, 14 and 31 of the '143 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States, medical devices comprising or containing a "Universal Seal" or a "Kii" system or seal further comprising or containing: (i) a septum shield with single-thickness fingers; or (ii) a septum shield with Ws, as illustrated above, and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271 (a), (b), and/or (c).

23. Applied has infringed the '854 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States, medical devices comprising or containing a "Universal Seal" or a "Kii" system as claimed thereby, including but not limited to the "Premium Disposable Trocar Systems with Universal Seal," "Convertible Trocar Systems with Universal Seal," "Optical Separator Systems with Universal Seal," "Separator Access Systems with Universal Seal," "12, 11, and 8mm Disposable Trocar Systems with Universal Seal," "Blunt Tip Trocars with Universal Seal," "Disposable Cannulas and Universal Seals," "Universal Seals," "Kii Access Systems," "Kii Cannulas and Seals," and "Kii Dual Packs," as described by Applied's website (<http://www.appliedmedical.com>), Applied's

2006 Product Catalog (AP00980-AP01039) and Applied's 2007 Product Catalog (Tyco-Applied 006660-006717), and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271 (a), (b) and/or (c).

24. Despite Applied's modifications, it has infringed and continues to infringe Claims 4 and 5 of the '854 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States, medical devices comprising or containing a "Universal Seal" or a "Kii" system or seal further comprising or containing: (i) a septum shield with single-thickness fingers; or (ii) a septum shield with Ws, as illustrated above, and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271 (a), (b), and/or (c).

25. Applied has infringed the '702 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States, medical devices comprising or containing a "Universal Seal" or a "Kii" system as claimed thereby that have "guard members" with more flexible end portions, including but not limited to certain models of the "Premium Disposable Trocar Systems with Universal Seal," "Convertible Trocar Systems with Universal Seal," "Optical Separator Systems with Universal Seal" "Separator Access Systems with Universal Seal," "12, 11, and 8mm Disposable Trocar Systems with Universal Seal," "Blunt Tip Trocars with Universal Seal," "Disposable Cannulas and Universal Seals," "Universal Seals," "Kii Access Systems," "Kii Cannulas and Seals," and "Kii Dual Packs," as described by Applied's website (<http://www.appliedmedical.com>), Applied's 2006 Product Catalog (AP00980-AP01039) and Applied's 2007 Product Catalog (Tyco-Applied 006660-006717), and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271(a), (b) and/or (c).

26. Despite Applied's modifications, it has infringed and continues to infringe Claims 1 and 5 the '702 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States, medical devices comprising or containing a "Universal Seal" system or seal further comprising or containing a septum shield with Ws, as illustrated above, and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271 (a), (b), and/or (c).

27. Applied has infringed the '377 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States, certain medical devices comprising or containing a "Universal Seal" or a "Kii" system as claimed thereby that have "guard members" with more flexible end portions, including but not limited to certain models of the "Premium Disposable Trocar Systems with Universal Seal," "Convertible Trocar Systems with Universal Seal," "Optical Separator Systems with Universal Seal," "Separator Access Systems with Universal Seal," "12, 11, and 8mm Disposable Trocar Systems with Universal Seal," "Blunt Tip Trocars with Universal Seal," "Disposable Cannulas and Universal Seals," "Universal Seals," "Kii Access Systems," "Kii Cannulas and Seals," and "Kii Dual Packs," as described by Applied's website (<http://www.appliedmedical.com>), Applied's 2006 Product Catalog (AP00980-AP01039) and Applied's 2007 Product Catalog (Tyco-Applied 006660-006717), and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271(a), (b) and/or (c).

28. Despite Applied's modifications, it has infringed and continues to infringe Claims 1 and 2 of the '377 patent by making, using, offering to sell and/or selling within the United States, and/or importing into the United States, medical devices comprising or containing a "Universal Seal" system or seal further comprising or containing a septum shield with Ws, as

illustrated above, and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271 (a), (b), and/or (c).

29. Applied does not have any license to practice the subject matter claimed by the '143, '854, '702 and/or '377 patents. Applied does not have any other authority to practice the subject matter claimed by the '143, '854, '702 and '377 patents.

30. Applied has been aware of the '143, '854, '702 and '377 patents since at least July 2006 when Plaintiffs filed their initial Complaint in Civil Action No. 06-CV-151-RC-KFG.

31. Plaintiffs have complied with the notice provisions of 35 U.S.C. § 287(a) at all relevant times with respect to the '143, '854, '702 and '377 patents.

32. Upon information and belief, Applied has willfully infringed each of the '143, '854, '702 and '377 patents by making, using, offering to sell and/or selling within the United States, and/or importing into the United States, its Modified Products, and/or inducing and/or contributing to such conduct, without authority and in violation of 35 U.S.C. § 271 (a), (b), and/or (c). Applied's willful infringement of these patents renders this an exceptional case pursuant to 35 U.S.C. § 285.

33. Plaintiffs have been irreparably harmed by Applied's infringement and willful infringement of the '143, '854, '702 and '377 patents and will continue to be irreparably harmed by that infringement unless and until it is enjoined by this Court. The remedies available at law to Plaintiffs are inadequate to address the injuries that Plaintiffs have suffered and will continue to suffer as a result of Applied's infringement of the '143, '854, '702 and '377 patents. Considering the balance of hardships between Plaintiffs and Applied, an injunction is warranted because the hardships that would be imposed upon Applied by issuance of an injunction are less

than those faced by Plaintiffs should an injunction not issue. The public interest would also be served by issuance of an injunction. Applied's infringement of the '143, '854, '702 and '377 patents has also caused damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Tyco Healthcare and USSC pray for judgment:

- A. Adjudging that Defendant Applied has infringed the '143, '854, '702 and '377 patents;
- B. Enjoining Applied, its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any of them, from making, using, offering to sell and/or selling within the United States, and/or importing into the United States, the Modified Products, or any other product that infringes or induces or contributes to the infringement of the '143, '854, '702 and '377 patents prior to the expiration of those patents, including any extensions;
- C. Awarding damages adequate to compensate for Applied's infringement of the '143, '854, '702 and '377 patents, together with interest and costs as fixed by the Court;
- D. Adjudging that Applied has willfully infringed the '143, '854, '702 and '377 patents and trebling the damages awarded for Applied's infringement pursuant to 35 U.S.C. § 284;
- E. Declaring this case to be exceptional within the meaning of 35 U.S.C. § 285 and awarding to Tyco Healthcare and USSC the attorney fees, costs and expenses they incur in this action; and
- F. Awarding Tyco Healthcare and USSC such other and further relief as the Court deems proper and just.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure Rule 38, Tyco Healthcare and USSC

hereby demand a trial by jury for all the issues so triable.

Dated: June 10, 2010

Respectfully submitted,

/s/ Peter J. Armenio

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Attorneys for Plaintiffs
TYCO HEALTHCARE GROUP LP and
UNITED STATES SURGICAL CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that the all counsel of record, who are deemed to have consented to electronic service are being served this 10th day of June, 2010, with copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Ben Quarmby

Ben Quarmby