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Attorneys for Plaintiff

Otto Bock HealthCare LP

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

OTTO BOCK HEALTHCARE LP, a
Minnesota limited partnership,

Plaintiff,

vs.

EVOLUTION INDUSTRIES, INC., a
Florida corporation,

Defendant.

COMPLAINT

Case No. 2:12-cv-00267-DN
Magistrate Judge David Nuffer

Jury Demanded

Plaintiff Otto Bock HealthCare LP, by and through counsel alleges and complains against
Defendant Evolution Industries, Inc. as follows:

THE PARTIES

1. Plaintiff Otto Bock HealthCare LP (“Otto Bock” or “Plaintiff”) is a Minnesota limited partnership having its principal place of business at 2 Carlson Parkway, Suite 100, Minneapolis, Minnesota 55447, and its manufacturing facility at 3820 W. Great Lakes Drive,

Salt Lake City, Utah 84120. Plaintiff designs, develops, manufactures, and sells products to help people increase and retain their physical independence, including unique and patented vacuum-controlled artificial limb prosthetics, throughout the United States, including this judicial district.

2. Upon information and belief, Defendant Evolution Industries, Inc. (“Evoii” or “Defendant”) is a Florida corporation having a place of business at 7199 S. Conway Rd., Suite 100, Orlando, Florida 32812. Upon information and belief, Defendant makes, sells and distributes prosthetics, including vacuum-controlled artificial limb prosthetics throughout the United States, including this judicial district.

JURISDICTION AND VENUE

3. This action is for patent infringement under 35 U.S.C. § 271. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

4. This Court has personal jurisdiction over Evoii due to its infringing activities in the State of Utah, including the sale, offering for sale, and/or advertising of infringing products in Utah.

5. Venue is proper in the District of Utah pursuant to 28 U.S.C. § 1391.

GENERAL ALLEGATIONS

6. Otto Bock owns a valid and enforceable United States patent, U.S. Patent No. 6,726,726 (“the ‘726 patent”), entitled “Vacuum Apparatus And Method For Managing Residual Limb Volume In An Artificial Limb.” The ‘726 patent issued April 27, 2004. A copy of the ‘726 patent is attached as Exhibit A.

7. Evoii makes, uses, and sells vacuum-controlled artificial limb prosthetic systems that include a vacuum pump (*e.g.*, Evolution EVP-001 electric vacuum pump), a prosthetic

socket (*e.g.*, Evolution Definitive Socket), prosthetic liners (*e.g.*, Evolution Custom Origin Liner), suspension sleeves (*e.g.*, Evolution Suspension Sleeve), a sheath (*e.g.*, Evolution Aura Locking Seal), and a vacuum valve (*e.g.*, Evolution VV01-003 vacuum valve kit) (collectively “the Evoii system”). The Evoii system infringes one or more of the claims of the ‘726 patent. Images of the infringing Evoii system components are attached as Exhibit B.

8. At no time has Otto Bock given Evoii permission, license, or authorization to use Otto Bock’s patented vacuum-controlled prosthetic technology.

9. Upon information and belief, Evoii was aware of the ‘726 patent claims prior to the filing of this action.

10. Despite having knowledge of Otto Bock’s patent rights, Evoii will likely continue to willfully and deliberately engage in acts of infringement of the ‘726 patent unless enjoined by this Court.

11. Evoii’s continued making, using, importing, selling, offering for sale, and distribution of the Evoii system has injured, is injuring, and will continue to cause irreparable injury to Otto Bock and Otto Bock’s valuable patent rights and market share.

FIRST CAUSE OF ACTION

(Patent Infringement Under 35 U.S.C. § 271)

12. Otto Bock re-alleges and incorporates by this reference the preceding allegations of this Complaint.

13. Evoii’s actions as described above, and specifically Evoii’s unauthorized manufacture, use, importation, offers to sell, and sales of the Evoii system together, constitute direct infringement of the ‘726 patent under 35 U.S.C. § 271(a).

14. By manufacturing and selling the components of the Evoii system separately (*i.e.*, sockets, vacuum pumps, vacuum valve kits, liners, sleeves and seals), Evoii specifically intends that others, including doctors and hospitals, will infringe the claims of the '726 patent and thereby actively induces others to directly infringe the '726 patent under 35 U.S.C. § 271(b).

15. The components of the Evoii system (*i.e.*, sockets, vacuum pumps, vacuum valve kits, liners, sleeves and seals) are (a) material components of the vacuum-controlled prosthetic systems claimed in the '726 patent, (b) specially made to be used in vacuum-controlled prosthetic systems that infringe the '726 patent, and (c) are not staple articles or commodities of commerce suitable for substantial non-infringing uses. Thus, by manufacturing and selling the components of the Evoii system separately, Evoii contributes to the direct infringement of the '726 patent by others, including doctors and hospitals, under 35 U.S.C. § 271(c).

16. Evoii's continued actions of making, using, importing, selling, offering for sale, and/or distributing the Evoii system has injured, is injuring, and will cause irreparable injury to Otto Bock if not preliminarily and permanently enjoined.

17. Any further manufacturing, sales, offers for sale, uses, importing, or distribution by Evoii of the Evoii system or any components thereof will demonstrate a deliberate and conscious decision to infringe the '726 patent or, at the very least, a reckless disregard of Otto Bock's patent rights.

18. Otto Bock is entitled to an injunction prohibiting Evoii from further making, using, selling, or offering to sell the Evoii system and any components thereof without permission or license from Otto Bock under 35 U.S.C. § 283.

19. Otto Bock is entitled to recover all damages caused by Evoii's infringement under 35 U.S.C. § 284.

20. If Evoii has continued to manufacture, use, offer to sell, and/or sell the Evoii system or any component thereof following its notice of the '726 patent claims, Otto Bock will be entitled to treble damages and attorneys' fees and costs incurred in this action, along with prejudgment interest under 35 U.S.C. §§ 284, 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that:

a. the Court preliminarily and permanently enjoin Defendant, its officers, directors, principals, agents, servants, employees, successors and assigns, and all others aiding, abetting, or acting in concert or active participation therewith, from making, using, selling, or offering to sell the Evoii system and all components thereof, from infringing the '726 patent, and from contributing to or inducing infringement of the '726 patent;

b. the Court enter judgment against Defendant for direct and induced infringement of the '726 patent under 35 U.S.C. § 271;

c. the Court order that Defendant account to Plaintiff for all sales, revenues, and profits derived from the sale of the Evoii system components, and that Defendants pay to Plaintiff all compensatory damages to which Plaintiff is entitled by law, including without limitation lost profits, reasonable royalties, price erosion damages, and convoyed sales damages;

d. the Court award Plaintiff three times the damages found in accordance with subparagraph (c) above pursuant to 35 U.S.C. § 284;

e. the Court award Plaintiff, against Defendant, the costs and reasonable attorneys' fees and expenses incurred in this action pursuant to 35 U.S.C. § 285 and the equity powers of the Court;

f. the Court award Plaintiff prejudgment interest against Defendant on all sums allowed by law; and

g. the Court award Plaintiff such other and further relief as the Court may deem just and proper.

JURY DEMAND

Otto Bock demands that all claims or causes of action raised in this Complaint be tried by a jury to the fullest extent possible under the United States Constitution.

DATED this 19th day of March, 2012.

HOLLAND & HART LLP

/s/ Brett L. Foster

L. Grant Foster

Brett L. Foster

Mark A. Miller

Attorneys for Plaintiff

Otto Bock HealthCare LP