

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Medafor, Inc.; HemArrest, Inc.,

Case No.: 0:12-cv-02407

Plaintiff,

vs.

**FIRST AMENDED AND
SUPPLEMENTAL COMPLAINT
FOR PATENT INFRINGEMENT**

Hemostasis, LLC,

(JURY TRIAL DEMANDED)

Defendant.

**FIRST AMENDED AND SUPPLEMENTAL COMPLAINT FOR PATENT
INFRINGEMENT**

Plaintiffs, Medafor, Inc. (“Medafor”) and HemArrest, Inc. (“HemArrest”) (collectively referred to as “Plaintiffs”), file this Amended and Supplemental Complaint for claims of inducement of patent infringement against Defendant Hemostasis, LLC (“Hemostasis”), and seek a judgment for a permanent injunction and damages.

INTRODUCTION

This is an action for patent infringement under the Patent Laws of the United States, 35 U.S.C. §§ 101 *et seq*, against Hemostasis for infringing United States Patent No. 6,060,461, owned by Medafor.

PARTIES

1. Plaintiff Medafor is a Minnesota corporation with its principal place of business at 2700 Freeway Boulevard, Suite 800, Minneapolis, Minnesota 55430.
2. Plaintiff HemArrest is a Minnesota corporation with its principal place of business at 4618 Edgebrook Place, Edina, Minnesota 55424.
3. Upon information and belief, Defendant Hemostasis, LLC is a Delaware

corporation with its principal place of business at 5000 Township Parkway, Saint Paul, Minnesota 55110.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), in that this civil action arises under the federal patent statutes, 35 U.S.C. §§ 271 and 281–285.

5. This Court has personal jurisdiction over Hemostasis because it has transacted and solicited business, engaged in other persistent courses of conduct, and derived substantial revenue from goods and services provided to individuals and entities in this State and in this District and because its principal place of business is in this State and in this District. Thus, Hemostasis is subject to personal jurisdiction of this Court and is amenable to service of process under Federal Rule of Civil Procedure, Rule 4(e).

6. Venue in the District of Minnesota is proper pursuant to 28 U.S.C. §§ 1391 (b), (c), and 1400(b) because Hemostasis is a corporation over which the Court has personal jurisdiction and Hemostasis has committed acts within this judicial district giving rise to this action and resides in this judicial district.

BACKGROUND

7. The Plaintiff Medafor is engaged in the business of designing, manufacturing, and selling hemostatic technology and owns the asserted patent. Medafor marks its products with the asserted patent. Plaintiff HemArrest is joined as a plaintiff based solely on its ownership of a security interest in the asserted patent.

8. On May 9, 2000, the United States Patent and Trademark Office (“USPTO”) duly and legally issued United States Patent No. 6,060,461 entitled “Topically Applied Clotting

Material” (“the ’461 Patent”) to James Franklin Drake.

9. On February 4, 1999, James Franklin Drake assigned the ’461 Patent to HemArrest, Inc. This was recorded in the USPTO on February 8, 1999.

10. On April 30, 2011, HemArrest, Inc. assigned the ’461 Patent to Medafor, Inc. This was recorded with the USPTO on July 21, 2011.

11. On May 4, 2011, Medafor, Inc. assigned a security interest in the ’461 Patent to HemArrest, Inc. The security interest was recorded with the USPTO on May 5, 2011.

12. On September 4, 2012, the USPTO office duly and legally issued an Ex Parte Reexamination Certificate for the United States Patent No. 6,060,461 C1. The USPTO confirmed the validity of the each of the ’461 Patent’s claims and also allowed 18 new claims.

13. Plaintiffs own all rights, titles, and interests in the claims of the ’461 Patent. A true and correct copy of the ’461 Patent is attached hereto as Exhibit A.

14. Hemostasis has and continues to infringe claims of the ’461 Patent directly and has and continues to induce infringement of claims of the ’461 Patent and will continue to do so unless enjoined.

COUNT I—INFRINGEMENT OF U.S. PATENT NO. 6,060,461

15. Plaintiffs incorporate and re-allege paragraphs 1 through 14.

16. Hemostasis has known of the ’461 Patent since shortly after it issued. Hemostasis has known of the Ex-Parte Re-Examination Certificate since shortly before September 2012. Hemostasis has had actual knowledge of the ’461 patent based on at least a) marking of Medafor’s products with the ’461 patent, b) actual notice of the ’461 Patent given in written communications directly from Medafor to Hemostasis, c) actual notice of the ’461 Patent by Hemostasis’s review of it in early 2000, and d) actual notice of the ’461 Patent given in a written

notice of infringement directly from Medafor to Hemostasis. On May 1, 2000, Medafor issued a public press release stating that the USPTO had issued the '461 Patent and called out the primary claim of the '461 Patent. On August 15, 2012, Medafor issued a press release stating that the USPTO had confirmed the validity of each of the '461 Patent's claims in reexamination and also validated 18 new claims to the original patent. Further, on May 13, 2011, Medafor sent a letter to its shareholders stating that it had recently acquired the "HemArrest patent" (the '461 patent), and on August 6, 2012, informed shareholders in a letter that its patent had been validated in reexamination. On information and belief, Spearman Group LLC is an active shareholder of Medafor and Mr. Daniel M. Spearman is Spearman Group LLC's General Partner. On information and belief, Mr. Daniel M. Spearman is also the Manager of Hemostasis and in his duty as Manager imparted Hemostasis with actual notice of the '461 Patent. On information and belief, in 2000, Mr. Daniel M. Spearman met with Josh Waldman, the former COO of Medafor, to discuss the technology behind the '461 Patent. At that meeting, Mr. Spearman reviewed the '461 Patent and acknowledged the scope of the '461 Patent to cover hemostatic powders. Finally, on September 18, 2012, counsel for Medafor sent a letter to Mr. Spearman and Mr. Keith Roberts at Hemostasis stating that the '461 Patent had recently been confirmed in reexamination and identifying specific products as infringing the '461 Patent and demanding Hemostasis to cease and desist making the infringing products.

17. On information and belief, Hemostasis has been and is making, using, selling, offering for sale, and/or importing, without license or authority from Plaintiffs, in this district and elsewhere in the United States, certain hemostat powders, including, without limitation, BleedArrest Powder OTC and NexStat Topical Hemostat Powder (collectively, the "Hemostasis Accused Products") and have induced the sale and/or use in this judicial district and elsewhere in

the United States of those Hemostasis Accused Products which results in direct infringement of one or more of the claims of the '461 Patent.

18. On information and belief, the '461 Patent is directly infringed by Hemostasis's own testing and promotion of the Hemostasis Accused Products, and also by direct and indirect customers of Hemostasis who use the Hemostasis Accused Products in a manner that directly infringes one or more claims of the '461 Patent. Hemostasis's customers directly infringe the '461 Patent by applying the Hemostasis Accused Products to a wound of an animal where extravascular blood flow is present and applying pressure for a certain period time in order to enhance clot formation, in accordance with instructions provided by Hemostasis.

19. On information and belief, Hemostasis specifically intends its sale, import, and/or use of the Hemostasis Accused Products to be used in a manner that directly infringes the '461 Patent. On information and belief, Hemostasis induces its customers to directly infringe the '461 Patent by promoting, advertising, and instructing distributors and customers on how to apply the Hemostasis Accused Products to a wound of an animal that enhances the formation of clots in a wound of an animal. Hemostasis's promotion, advertising, and instruction efforts that induce infringement of one or more of the '461 Patent claims include, at a minimum, product packaging, video presentations on its website, advertising on its website, and product instruction for use on its website.

20. On information and belief, Hemostasis's indirect and direct customers follow Hemostasis's promotion, advertising, and/or instructions and when they do, they directly infringe the '461 Patent. Hemostasis is aware and intends that its customers will and do follow Hemostasis's instructions for use of the Hemostasis Accused Products, and in doing so such customers will perform each limitation of claims of the '461 Patent and will directly infringe

claims of the '461 Patent.

21. On information and belief, Hemostasis will continue to induce infringement of the '461 Patent unless enjoined by the Court.

22. On information and belief, Hemostasis has had knowledge of the '461 Patent since its original issuance in 2000 and its reexamined claims since shortly before September 2012, yet it continues to induce infringement of the '461 Patent. On information and belief, Hemostasis has continued to induce infringement since the filing of the original Complaint on September 18, 2012. This induced infringement of the '461 Patent by Hemostasis is willful and deliberate, entitling Plaintiffs to increased damages under 35 U.S.C. § 284 and to attorney's fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

23. The infringement of the '461 Patent has and will continue to cause the Plaintiffs irreparable injury and damage unless Defendant Hemostasis is enjoined from its infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Medafor and HemArrest, pray for the following relief:

1. An entry of judgment that Hemostasis, its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them to be found to have induced the direct infringement of the '461 Patent;

2. An order enjoining, preliminarily and permanently, Hemostasis, its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them, from making, using, selling, offering for sale, or importing into the United States products which infringe the '461 Patent;

3. An award of damages adequate to compensate Plaintiffs for Hemostasis's infringement of the '461 Patent;

4. That the award of damages for infringement of the '461 Patent be trebled as provided for by 35 U.S.C. § 284 for willful infringement by Hemostasis;

5. A post-judgment equitable accounting of damages for the period of infringement of the '461 Patent following the period of damages established by Plaintiffs at trial;

6. If a permanent injunction is not granted, a judicial determination of the conditions of future infringement such as a royalty bearing compulsory license or such other relief as the Court deems appropriate;

7. A finding that this case is exceptional pursuant to 35 U.S.C. § 285;

8. An award of prejudgment interest, costs and disbursements, and attorney fees; and

9. Such other and further relief as the Court deems Plaintiffs, Medafor and HemArrest, may be entitled to in law and equity.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all issues so triable.

DATED: October 17, 2012

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

By: /s/ Jake M. Holdreith
Jake M. Holdreith, (MN Bar No. 0211011)
Christine S. Yun Sauer (MN Bar No. 0391314)

2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015
Telephone: (612) 349-8500
Facsimilie: (612) 339-4181
Email: JMHoldreith@rkmc.com
CSYunSauer@rkmc.com

**ATTORNEYS FOR PLAINTIFFS
MEDAFOR, INC. & HEMARREST, INC.**