

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MEDTRICA SOLUTIONS LTD., a Canada
corporation,

Plaintiff,

v.

CYGNUS MEDICAL, LLC, a Connecticut
limited liability company,

Defendant,

v.

STERIS Corp., an Ohio corporation,

Third Party Defendant.

CASE NO. 2:12-cv00538-RSL

FIRST AMENDED
THIRD PARTY COMPLAINT
FOR PATENT INFRINGEMENT
AGAINST STERIS

DEMAND FOR JURY TRIAL

Defendant Cygnus Medical, LLC ("Cygnus") for its First Amended Third Party
Complaint for Patent Infringement against STERIS Corporation ("STERIS"), states and
alleges as the following:

FIRST AMENDED THIRD PARTY COMPLAINT
AGAINST STERIS - 1
Case No. 2:12-CV-00538-RSL

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THE PARTIES

1
2 1. Plaintiff Medtrica Solutions Ltd. ("Medtrica") is a Canada corporation, with its
3 principal place of business in Vancouver, British Columbia, Canada.

4 2. Cygnus is a Connecticut limited liability company with offices in Branford,
5 Connecticut.
6

7 3. STERIS is an Ohio corporation with offices in Mentor, Ohio.
8

9 **JURISDICTION AND VENUE**

10 4. This action by Cygnus is for damages and injunctive relief from patent
11 infringement by STERIS, and arises under the United States Patent Laws, particularly 35 U.S.C.
12 §271 et seq.
13

14 5. This Court has subject matter jurisdiction based on 28 U.S.C. § 1331 and
15 1338(a).

16 6. Upon information and belief, STERIS distributes, promotes, markets, sells,
17 offers for sale, and/or advertises its products in this District and to businesses and individuals
18 in this District. Thus, this Court has personal jurisdiction over STERIS and venue is proper in
19 this Court pursuant to 28 U.S.C. § 1391(b) and (c).
20

21 **THE PATENT**

22
23 7. Cygnus is the owner of the entire right, title and interest in United States Patent
24 No. 7,648,023 ("the '023 patent"), entitled "Endoscope Pre-Clean Kit," which was duly and
25 legally issued by the United States Patent and Trademark Office on January 19, 2010 in the
26

1 name of the inventors, Walter L. Maguire, Jr. and Shaun Sweeney. A copy of the '023 patent
2 is attached as Exhibit A.

3
4 **ACTS GIVING RISE TO THIS ACTION**

5
6 8. Upon information and belief, STERIS has been and still is directly infringing,
7 contributing to infringement, and/or inducing infringement of one or more claims of the '023
8 patent pursuant to 35. US.C. § 271 *et seq.* by making, using, selling, offering for sale,
9 importing, supplying, maintaining, servicing, supporting, supplying a component of, and/or
10 causing the supply of a component of infringing endoscope pre-clean kits (including, but not
11 limited to, the STERIS Revital-Ox Bedside Complete ["Revital-Ox"] 215mL) without the
12 authorization of Cygnus.

13
14 9. STERIS' November 11, 2011 press release for the launch of the Revital-Ox is
15 attached at Exhibit B. A photograph of a specimen of the 215mL Revital-Ox is attached at
16 Exhibit C.

17 10. On April 2, 2012, Medtrica initiated a Declaratory Judgment action against
18 Cygnus seeking a judgment that the '023 patent was invalid and their D-Zyme Appli-Kit
19 ("Appli-Kit") product did not infringe.

20
21 11. Upon information and belief, Medtrica has been and still is manufacturing
22 components of Revital-Ox and selling them to STERIS. STERIS has been and still is
23 preparing the Revital-Ox for sale and marketing and selling the Revital-Ox in the United
24 States.

25 12. Upon information and belief, Medtrica provides at least a pouch to STERIS,
26 which is a component of the infringing Revital-Ox. The pouch is a material component of the

1 claims of the '023 patent. The pouch is specifically designed and manufactured for the
2 Revital-Ox and has no substantial non-infringing use. Upon information and belief, the
3 Revital-Ox pouch is a relabeled Appli-Kit pouch.

4 13. Upon information and belief, STERIS provides at least the pre-diluted
5 detergent, which is a component of the infringing Revital-Ox. The press release in Exhibit B
6 advertises benefits of STERIS' proprietary pre-diluted detergent. The pre-diluted detergent is
7 a material component of the claims of the '023 patent. Upon information and belief, the pre-
8 diluted detergent is specifically designed and manufactured for the Revital-Ox and has no
9 substantial non-infringing use. STERIS and/or Medtrica, either alone or in combination, then
10 sell the Revital-Ox to customers who directly infringe the '023 patent by using the product.

11 14. STERIS provides instructions for using the Revital-Ox on the package (see
12 Exhibit C), thereby contributing to and/or inducing its customers' infringing use of the
13 Revital-Ox.

14 15. For at least these reasons, STERIS has been and still is contributing to
16 infringement and/or inducing infringement of one or more claims of the '023 patent pursuant
17 to 35, U.S.C. § 271 *et seq.*

18 16. Cygnus has been and continues to be damaged by the loss of sales and
19 customers by STERIS' infringement of the '023 patent, and claims all damages to which it is
20 entitled, including but not limited to lost profits and reasonable.

21 17. Upon information and belief, STERIS was made aware of the '023 patent in
22 May of 2012, and may have known about the '023 patent before that time. STERIS has
23 known of the '023 patent, continued to sell the Revital-Ox despite an objectively high
24 likelihood that doing so constituted infringement of a valid patent, and knew or should have
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1 known of the foregoing objectively high risk. For at least these reasons, STERIS'
 2 infringement, inducement of infringement, and contributory infringement is willful, making
 3 this an exceptional case under 35 U.S.C. § 285 and entitling Cygnus to attorney's fees under
 4 35 U.S.C. § 285 and treble damages under 35 U.S.C. § 284.

5
 6 18. The harm to Cygnus resulting from the infringing acts of STERIS is
 7 irreparable, continuing, not fully compensable by money damages, and will continue unless
 8 permanently enjoined by this Court.

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 10 **CYGNUS' PRAYER FOR RELIEF**

11 WHEREFORE, Cygnus prays for judgment as follows:

12 A. That a judgment be entered that STERIS has directly infringed, actively
 13 induced others to infringe, and/or contributorily infringed the '023 patent;

14 B. That a preliminary and permanent injunction be entered against STERIS, its
 15 officers, agents, servants, employees, and attorneys, and those persons in active concert or
 16 participation with STERIS who receive actual notice of the injunction by personal service or
 17 otherwise, from any further infringement of the '023 patent pursuant to 35 U.S.C. § 283;

18 C. That Cygnus be awarded its damages, suffered by reason of the infringement
 19 by STERIS, together with prejudgment interest;

20 D. That the damages be awarded to Cygnus be trebled pursuant to 35 U.S.C. §
 21 284 due to willful acts of infringement alleged herein;

22 E. That this be declared an exceptional case pursuant to 35 U.S.C. § 285;

23 F. That Cygnus be awarded its attorney's fees and costs; and
 24
 25
 26

1 G. That Cygnus be awarded any other and further relief that this Court may deem
2 just and proper or otherwise permitted by law.

3 **DEMAND FOR JURY TRIAL**

4 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Cygnus hereby
5 demands trial by jury.
6

7 Respectfully submitted,

8 VANDEBERG JOHNSON & GANDARA LLP
9

10 Dated this 3rd day of December, 2012

/s/ Daniel Gandara

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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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Dated: December 3, 2012

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