

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

|                     |   |  |
|---------------------|---|--|
| REMBRANDT VISION    | ) |  |
| TECHNOLOGIES, L.P., | ) |  |
|                     | ) |  |
| Plaintiff,          | ) |  |
|                     | ) |  |
| v.                  | ) |  |
|                     | ) |  |
| JOHNSON & JOHNSON   | ) |  |
| VISION CARE INC.,   | ) |  |
|                     | ) |  |
| Defendant.          | ) |  |

Civil Action No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

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**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Rembrandt Vision Technologies, L.P. ("Rembrandt Vision") states and alleges as follows:

**PARTIES**

1. Rembrandt Vision is a limited partnership organized under the laws of the state of New Jersey with its principal place of business at 401 City Avenue, Suite 900, Bala Cynwyd, Pennsylvania 19004.

2. Defendant Johnson & Johnson Vision Care, Inc. ("J&J Vision Care") is a Florida corporation, with its principal place of business at 7500 Centurion Parkway, Suite 100, Jacksonville, Florida 32256, and doing business throughout this judicial district and throughout the United States.

**JURISDICTION**

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

4. This Court has personal jurisdiction over J&J Vision Care because it has committed acts giving rise to this action within Texas and within this judicial district and has established minimum contacts within the forum such that the exercise of jurisdiction over J&J Vision Care would not offend traditional notions of fair play and substantial justice.

### VENUE

5. Venue in the Eastern District of Texas is proper pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(b) because J&J Vision Care has committed acts within this judicial district giving rise to this action, and J&J Vision Care has and continues to conduct business in this judicial district, including one or more acts of selling, using, importing and/or offering for sale infringing products in this District.

6. Venue in the Eastern District of Texas is also proper for the interest of judicial economy. This Court presided over *Rembrandt Vision Technologies, L.P., v. Bausch & Lomb, Incorporated and Ciba Vision Corporation*, case number 2:05-cv-491. In that matter, this Court properly construed the claims of United States Patent Number 5,712,327 (“the ‘327 patent), which is also asserted in this case, and presided over a jury trial between Rembrandt Vision and Ciba Vision Corp. regarding infringement and validity of that patent.

7. In addition to the jury trial, this Court conducted a bench trial on Ciba Vision Corp.’s inequitable conduct defense. This Court rejected that defense.

8. This Court also heard and decided post-trial motions in the *Rembrandt Vision Technologies, L.P., v. Bausch & Lomb, Incorporated and Ciba Vision Corporation* case. By a

judgment entered February 26, 2009, this Court by the Honorable Judge Everingham adjudged that the '327 patent was infringed by Ciba Vision Corp. and not invalid, and approved the jury's finding of a reasonable royalty of Forty One Million, Eighty Three Thousand, Eight Hundred and Fifty Three Dollars (\$41,083,853.00) in actual damages.

### **BACKGROUND**

#### **Rembrandt Vision**

9. The United States Patent and Trademark Office duly and legally issued the '327 patent, entitled "Soft Gas Permeable Contact Lens Having Improved Clinical Performance," to Dr. Sing-Hsiung Chang and Mei-Zyh Chang on January 27, 1998. A copy of the '327 patent is attached as Exhibit A.

10. Dr. and Mrs. Chang worked for many years on making improvements to the oxygen-permeability and tear-wettability of contact lenses, in particular soft contact lenses. Apart from the '327 patent, Dr. Chang is the named inventor of three other patents relating to soft, oxygen permeable contact lenses.

11. Based on agreements with Dr. and Mrs. Chang, Rembrandt Vision is the owner of all right, title, and interest, including the right to sue, enforce, and recover damages for all infringements, past, present, and future, of the '327 patent.

#### **J&J Vision Care**

12. J&J Vision Care has known of the '327 patent since at least July 1999.

13. J&J Vision Care recognizes that Dr. and Mrs. Chang made a key innovation in the '327 patent.

14. Among other things, J&J Vision Care recognizes that Dr. Chang was among the first to solve the problems with silicone hydrogel lenses that prevented them from being used as extended wear lenses.

15. J&J Vision Care sought a license to the '327 patent from Dr. Chang.

16. J&J Vision Care never obtained a license to the '327 patent.

17. J&J Vision Care has made, used, sold and/or offered to sell and/or continues to make, use, sell and offer to sell the Acuvue Advance and Acuvue Oasys contact lenses.

### COUNT I

#### **PATENT INFRINGEMENT (THE '327 PATENT)**

18. Rembrandt Vision restates and realleges each of the allegations set forth above and incorporates them herein.

19. J&J Vision Care has infringed and continues to infringe the '327 patent by making, using, selling and/or offering to sell within the United States products that embody one or more of the claims of the '327 patent, or by contributing to the infringement of the '327 patent, inducing others to infringe the '327 patent, or carrying out other acts constituting infringement under 35 U.S.C. § 271(f). Such infringing conduct includes, but is not limited to, making, using, selling, or offering to sell Acuvue Advance and Acuvue Oasys contact lenses.

20. J&J Vision Care does not have a license or permission to use the claimed subject matter in the '327 patent.

21. As a direct and proximate result of J&J Vision Care's infringement of the '327 patent, Rembrandt Vision has been injured and has been caused significant financial damage.

22. J&J Vision Care's infringement has been and is willful.

23. J&J Vision Care will continue to infringe the '327 patent, and thus cause irreparable injury and damage to Rembrandt Vision, unless enjoined by this Court.

**PRAYER FOR RELIEF**

**WHEREFORE**, Rembrandt Vision prays for the following relief:

1. Entry of judgment that J&J Vision Care has willfully infringed the '327 patent and is liable to Rembrandt Vision for infringement.
2. An award of damages adequate to compensate Rembrandt Vision for J&J Vision Care's infringement of the '327 patent.
3. An award of treble damages pursuant to 35 U.S.C. §284 for J&J Vision Care's willful infringement.
4. A post-judgment equitable accounting of damages for the period of infringement of the '327 patent following the period of damages established by Rembrandt Vision at trial.
5. An order enjoining J&J Vision Care from infringing, inducing others to infringe, or contributing to the infringement of the '327 patent.
6. If a permanent injunction is not granted, a judicial determination of the conditions for future infringement such as a royalty-bearing compulsory license or such other relief as the Court deems appropriate.
7. An order requiring J&J Vision Care to deliver for destruction all infringing products in its possession.
8. A finding that this case is exceptional pursuant to 35 U.S.C. § 285.
9. An award of prejudgment interest, costs and disbursements, and attorney fees.
10. Such other and further relief as the Court deems Rembrandt Vision may be entitled to in law and equity.

**JURY DEMAND**

A jury trial is demanded on all issues so triable, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: June 22, 2009

By: Lawrence L. Germer  
Lawrence L. Germer  
Texas State Bar No. 07824000  
Charles W. Goehringer, Jr.  
Texas State Bar No. 00793817  
**GERMER GERTZ, L.L.P.**  
550 Fannin, Suite 400  
P.O. Box 4915  
Beaumont, Texas 77704  
Telephone: (409) 654-6700  
Facsimile: (409) 835-2115  
llgermer@germer.com  
cwgoehringer@germer.com

Of Counsel:

Ronald J. Schutz (MN Bar No. 130849)  
Jake M. Holdreith (MN Bar No. 211011)  
Diane L. Simerson (MN Bar No. 270702)  
Patrick M. Arenz (MN Bar No. 0386537)

**ROBINS, KAPLAN, MILLER & CIRESI L.L.P.**  
800 LaSalle Avenue, Suite 2800  
Minneapolis, Minnesota 55402  
Telephone: (612) 349-8500  
Facsimile: (612) 339-4181  
E-mail: RJSchutz@rkmc.com  
JMHoldreith@rkmc.com  
DLSimerson@rkmc.com  
PMArenz@rkmc.com

**Attorneys for Plaintiff**  
**Rembrandt Vision Technologies, L.P.**