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UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

CATHETER CONNECTIONS, INC, a Delaware corporation Plaintiff, v. IVERA MEDICAL CORPORATION, a California corporation Defendant.	**COMPLAINT FOR DECLARATORY JUDGMENT OF NON-INFRINGEMENT AND INVALIDITY OF PATENTS** **JURY TRIAL DEMANDED** Case No.: 2:12-cv-00530-BCW Magistrate Judge Brooke C. Wells

Plaintiff Catheter Connections, Inc. ("Catheter Connections" or "Plaintiff") Complains of Defendant Ivera Medical Corporation ("Ivera" or Defendant) and alleges as follows:

JURISDICTION AND VENUE

1. On information and belief, Ivera engages in business in Utah and in this District, and has thus purposefully availed itself of the privilege of doing business in the State of Utah and in this District, both generally and specifically, by marketing medical products throughout.

THE PARTIES

2. Catheter Connections is a Delaware corporation engaged in the development and sale of products to help prevent IV catheter related blood stream infections ("CRBSI") and central line associated bloodstream infections ("CLABSI") with its principal place of business in Salt Lake City, Utah.

3. Ivera is a California corporation, which has alleged in at least ten pleadings filed in both State and Federal Courts that its principal place of business is 3525 Del Mar Heights Road, Suite 430, San Diego, California 92130. Only a UPS Store is located at 3525 Del Mar Heights Road, San Diego, California 92130. Inside that store there is a wall of mailboxes, including mailbox number 430.

1. Bobby Rogers ("Rogers"), Ivera's CEO, testified in Ivera Medical Corporation v. Amsino International, Inc., Hospira, Inc. and Mark Godfrey, Los Angeles Superior Court, BC424826, that Ivera "doesn't really have a location", and that the Del Mar Heights address is only a "mail drop" but that its contract manufacturer, PEDI, is located in California. Ivera has offered for sale and sold its "Curos® Port Protector" ("Curos"), in Utah and throughout the United States. Ivera is currently selling Curos in Utah and conducting a product trial of that device in Murray, Utah.

JURISDICTION AND VENUE

4. These claims arise under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the Patent Laws of the United States, 35 U.S.C. § 1 *et seq*.

5. This Court has subject matter jurisdiction based upon 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

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

7. Supporting these contentions, and upon information and belief, in January 2012, Ivera began a six-month product evaluation trial of its Curos at Intermountain Medical Center, Murray, Utah ("IMC"); IMC is a hospital in the 22-hospital system of Intermountain Healthcare

("IHC"). Upon information and belief, Ivera is trying to secure an agreement from IHC for the purchase and use of, *inter alia*, its Curos, which is purportedly covered by the patents in suit (U.S. Patent 7,780,794 ("the '794 Patent") and U.S. Patent 7,985,302 ("the '302 Patent")).

DECLARATORY JUDGMENT OF NON-INFRINGEMENT AND/OR INVALIDITY

8. On April 18, 2012, and without prior notice or warning to Catheter Connections, Ivera sued Catheter Connections alleging patent infringement of the patents in suit, *i.e.*, the '794 Patent and the '302 Patent ("the California litigation"). Ivera v. Catheter Connections, 3:12-cv-00954-H (WVG) (S.D. Cal.). However, venue is improper in the Southern District of California for the California litigation since Catheter Connections has conducted no business transactions in that district.

9. Upon information and belief, Ivera is fully aware that the patents in suit are not infringed by Catheter Connections and its suit was filed against Catheter Connections for improper purposes, including but not limited to interfering with Catheter Connections' market penetration, market traction, financings, and business focus.

10. Upon information and belief, Ivera sued in Southern District of California to cause Catheter Connections undue burden and expense, knowing full well that Catheter Connections has conducted no business there and that substantially all evidence relevant to the issues of non-infringement, anticipation, obviousness, claim construction and (if applicable) damages is in Utah, and that all employees and all third-party witnesses reside and work in Utah (except one that splits time between Catheter Connections' offices in Salt Lake City and a home office located in Orange County, California), and all are not within the subpoena power of the Southern District Court of California.

STATEMENT OF THE CASE

11. This is a declaratory judgment action seeking a declaration of non-infringement and/or invalidity of the '794 patent and the '302 patent. The '794 patent, issued on August 24, 2010. The '302 patent, issued on July 26, 2011.

12. Defendant has asserted the ‘794 patent and the ‘302 patent against Plaintiff in its recent suit against Plaintiff in the District of California, alleging infringement of the ‘794 patent and the ‘302 patent by the manufacture, use and sale of Plaintiff’s DualCap Solo™ product. Defendant has not agreed to provide a covenant not to assert the ‘794 patent and the ‘302 patent against Plaintiff’s DualCap Solo product, and has already announced that it intends to pursue all legal remedies to keep Plaintiff’s product off of the market. Accordingly, a justiciable case or controversy exists and Plaintiff requires a declaratory judgment that the manufacture, use, sale, offer of sale in and/or importation into the United States of Plaintiff’s DualCap Solo would not infringe the claims of the ‘794 patent and the ‘302 patent, or alternatively that the ‘794 patent and the ‘302 patent are invalid.

13. To avoid legal uncertainty and to protect its substantial investment in its DualCap Solo product, Plaintiff has brought this action for declaratory judgment against the ‘794 patent and the ‘302 patent. An actual justiciable controversy exists between the parties as to the infringement and invalidity of the ‘794 patent and the ‘302 patent.

Count I

Declaratory Judgment of Invalidity of

United States Patent 7,780,794 B2

14. Plaintiff realleges and incorporates by reference the allegations of the foregoing paragraphs.

15. The ‘794 patent is invalid for failure to meet one or more of the requirements of patentability under 35 U.S.C. § 101, et seq., including but not limited to 35 U.S.C. §§ 102, 103 and 112.

16. The claims of the ‘794 patent are invalid because the alleged inventions claimed therein are anticipated in view of the prior art to one having ordinary skill in the art and thus fail to satisfy the conditions for patentability set forth in 35 U.S.C. § 102.

17. The claims of the '794 patent are invalid because the alleged inventions claimed therein are obvious in view of the prior art to one having ordinary skill in the art and thus fail to satisfy the conditions for patentability set forth in 35 U.S.C. § 103.

18. The claims of the '794 patent are invalid because the alleged inventions claimed therein fail to satisfy the conditions for patentability set forth in 35 U.S.C. § 112.

19. Plaintiff is entitled to a declaratory judgment that the claim of the '794 patent are invalid.

Count II

Declaratory Judgment of Non-Infringement of

United States Patent 7,780,794 B2

20. Plaintiff realleges and incorporates by reference the foregoing allegations.

21. A case or controversy exists between Plaintiff and Defendant concerning the non-infringement of the '794 patent requiring a declaration of rights by this Court.

22. Plaintiff's DualCap Solo did not and does not infringe any valid and enforceable claim of the '794 patent under 35 U.S.C. § 271, nor would the manufacture, use, sale, offer of sale in and/or importation into the United States of Plaintiff's DualCap Solo infringe any valid and enforceable claim of the '794 patent.

23. Plaintiff is entitled to a declaration that the manufacture, use, sale, offer of sale in and/or importation into the United States of the DualCap Solo would not infringe any valid and enforceable claims of the '794 patent.

Count III

Declaratory Judgment of Invalidity of

United States Patent 7,985,302 B2

24. Plaintiff realleges and incorporates by reference the allegations of the foregoing paragraphs.

25. The ‘302 patent is invalid for failure to meet one or more of the requirements of patentability under 35 U.S.C. § 101, et seq., including but not limited to 35 U.S.C. §§ 102, 103 and 112.

26. The claims of the ‘302 patent are invalid because the alleged inventions claimed therein are anticipated in view of the prior art to one having ordinary skill in the art and thus fail to satisfy the conditions for patentability set forth in 35 U.S.C. § 102.

27. The claims of the ‘302 patent are invalid because the alleged inventions claimed therein are obvious in view of the prior art to one having ordinary skill in the art and thus fail to satisfy the conditions for patentability set forth in 35 U.S.C. § 103.

28. The claims of the ‘302 patent are invalid because the alleged inventions claimed therein fail to satisfy the conditions for patentability set forth in 35 U.S.C. § 112.

29. Plaintiff is entitled to a declaratory judgment that the claim of the ‘302 patent are invalid.

Count IV

Declaratory Judgment of Non-Infringement of

United States Patent 7,985,302 B2

30. Plaintiff realleges and incorporates by reference the foregoing allegations.

31. A case or controversy exists between Plaintiff and Defendant concerning the non-infringement of the ‘302 patent requiring a declaration of rights by this Court.

32. Plaintiff’s DualCap Solo did not and does not infringe any valid and enforceable claim of the ‘302 patent under 35 U.S.C. § 271, nor would the manufacture, use, sale, offer of sale in and/or importation into the United States of Plaintiff’s DualCap Solo infringe any valid and enforceable claim of the ‘302 patent.

33. Plaintiff is entitled to a declaration that the manufacture, use, sale, offer of sale in and/or importation into the United States of the DualCap Solo would not infringe any valid and enforceable claims of the ‘302 patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter a Judgment and Order in its favor against Defendant:

1. Declaring that the claims of the '794 patent and the '302 patent are invalid and/or unenforceable;

2. Declaring that no valid and enforceable claim of the '794 patent and the '302 patent has been infringed;

3. Permanently enjoining Defendant, its officers, agents, directors, servants, employees, subsidiaries, and assigns, and all those acting under the authority of or in privy with them or with any of them, from asserting or otherwise seeking to enforce the '794 patent and the '302 patent against either Plaintiff or its DualCap Solo product;

4. Declaring that this case is an exceptional case under 35 U.S.C. § 285 and awarding Plaintiff its attorney's fees, costs, and expenses; and

5. Awarding Plaintiff any further additional relief as the Court may deem just, proper, and equitable.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues properly triable by jury.

Dated: June 5th, 2012

Respectfully Submitted,

By: / s/ Vicki E. Farrar
VICKI E. FARRAR
Attorney for Plaintiff
CATHETER CONNECTIONS, INC.