

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NEUROWAVE MEDICAL TECHNOLOGIES)
LLC, an Illinois Limited Liability Company,)

Plaintiff,)

v.)

Case No. _____

COMFORT QUEST, INC., a Delaware)
Corporation; Thomas Mann, an individual; and)
Joseph Norris, an individual,)

JURY DEMANDED

Defendants.)

COMPLAINT FOR PATENT INFRINGEMENT

Neurowave Medical Technologies LLC (“Neurowave”) files this Complaint against Comfort Quest, Inc., Thomas Mann, and Joseph Norris (each a “Defendant” and collectively the “Defendants”) for infringement of United States Patent Nos. 6,076,018 (hereinafter “the ‘018 patent”), 6,567,695 (hereinafter “the ‘695 patent”), and 7,127,288 (hereinafter “the ‘288 patent”). The ‘018, ‘695 and ‘288 patents are each individually referred to as an “Asserted Patent” and collectively as the “Asserted Patents.”

THE PARTIES

Neurowave Medical Technologies LLC

1. Neurowave is a limited liability company organized and existing under the laws of the State of Illinois with its principal place of business at 200 East Randolph Street, Suite 2200, Chicago, Illinois 60601.

2. Neurowave, formerly known as Relief Band Medical Technology LLC (see name-change document at Exhibit A), is a privately held neuroscience company that develops, manufactures, and commercializes patented transdermal neuromodulation devices for the treatment of a wide range of acute and chronic clinical conditions.

3. Prior to 2010, Neurowave marketed and sold its patented transdermal neuromodulation devices on both a prescription basis (“RX Devices”) and an over-the-counter basis (“OTC Devices”). In an effort to obtain a Current Procedural Terminology (CPT) code from the CPT Editorial Panel of the American Medical Association for its RX Devices to enable patients to obtain reimbursement for the devices from insurance, Neurowave temporarily ceased marketing its OTC Devices in the US market in September 2010.

4. Since December 2012, when it became apparent that a new CPT code would not be granted for the RX Devices, Neurowave has been planning for re-entry of its OTC Devices into the market.

5. Neurowave’s efforts to reintroduce its patented OTC Devices into the market have been materially hindered by Defendant Comfort Quest’s selling of the Accused Products to Neurowave’s former customer of the OTC Devices.

Defendants Comfort Quest, Inc., Thomas Mann and Joseph Norris

6. Upon information and belief, Defendant Comfort Quest, Inc. is a Delaware corporation with a principal place of business at 41 Post St., San Jose, CA 95113.

7. ComfortQuest, Inc. has and continues to import, sell, and/or offer to sell the

Comfort Quest Morning Sickness Relief device (Model: CQ-P3, as shown in Exhibit B) and the Comfort Quest Anti Motion Sickness Band (Model: CQ-M3, as shown in Exhibit C) at least for resale by various retailers in this Judicial District and through website that can be accessed by residents of this Judicial District for purchase.

8. Upon information and belief, Defendant Thomas Mann is an individual residing at 1909 Hidden Meadow Drive, Knoxville, Tennessee, 37922.

9. Upon information and belief, Defendant Mann is currently an officer and/or director of Defendant Comfort Quest. In his role at Defendant Comfort Quest, Mr. Mann knowingly and actively assisted in Comfort Quest's infringement of the Asserted Patents.

10. Defendant Mann worked for Plaintiff Neurowave's predecessor company, Woodside Biomedical Inc, from January 1997 through 2003, then for Neurowave from December 2006 through January 2010. At Woodside Biomedical Inc., Mr. Mann was Executive Vice President of Operations, and he was later retained as a consultant for Neurowave regarding its OTC Devices and RX Devices. In both roles, Mr. Mann had access to Neurowave's confidential and proprietary product and business information, and was integrally involved in the sales and marketing strategies of Neurowave. Mr. Mann also had intimate knowledge of Neurowave's patent portfolio relating to its transdermal neuromodulation devices, including the Asserted Patents, and knew or should have known his actions would induce Comfort Quest to infringe.

11. Upon information and belief, Defendant Joseph Norris is an individual residing at 5937 Indian Ave , San Jose, CA 95113.

12. Upon information and belief, Defendant Norris is currently an officer and/or director of Defendant Comfort Quest. In his role at Defendant Comfort Quest, Mr. Norris

knowingly and actively assisted in Comfort Quest's infringement of the Asserted Patents.

13. Defendant Norris was a sales representative for Neurowave's predecessor, Woodside Biomedical, Inc. In that role Mr. Norris gained intimate knowledge of Woodside's transdermal neuromodulation devices products and the related patents, , including the Asserted Patents, and knew or should have known his actions would induce Comfort Quest to infringe. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

JURISDICTION AND VENUE

14. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States' patent statutes, 35 U.S.C. § 101 *et seq.*

15. Venue is proper under 28 U.S.C. §§ 1391(c) and 1400(b) because Defendants have committed acts of infringement in this district and/or are deemed to reside in this district.

16. This Court has personal jurisdiction over Defendants and venue is proper in this district because Defendants have committed, and continue to commit, acts of infringement in the State of Illinois, including in this district and/or have engaged in continuous and systematic activities in the State of Illinois, including in this district.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 6,076,018)

17. Neurowave incorporates paragraphs 1 through 16 herein by reference.

18. On June 13, 2000, the United States Patent and Trademark Office duly issued

U.S. Patent No. 6,076,018, entitled “Method and Apparatus for Low Power Regulated Output in Battery Powered Electrotherapy Devices.” A true and correct copy of the ‘018 patent is attached as Exhibit D.

19. Neurowave is the owner of all right, title and interest in and to the ‘018 patent, including the right to recover any and all remedies for current and past infringement.

20. Defendants have directly and/or indirectly infringed and continue to directly and/or indirectly infringe one or more claims of the ‘018 patent in this judicial district and elsewhere in Illinois and the United States, without the consent or authorization of Neurowave, by or through their making, having made, offering for sale, selling, and/or use of the patented apparatuses and methods for regulating the output in a battery powered electrotherapy device, and controlling the discharge of a battery to a load.

21. On information and belief, Defendants have actual knowledge that their acts would constitute infringement of the ‘018 patent and still pursued the actions described herein in wanton disregard of Neurowave’s exclusive rights.

22. Neurowave has been substantially and irreparably harmed by Defendants’ infringing conduct and will continue to be irreparably damaged as a result of their infringing activities. Defendants’ actions complained of herein will continue unless Defendants are enjoined by this Court.

23. Defendants are, thus, liable to Neurowave in an amount that adequately compensates it for their infringement of the ‘018 patent, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

24. As a result of Defendants willful infringement of the '018 patent, Neurowave is further entitled to an award of its attorneys' fees and up to treble damages from Defendants under 35 U.S.C. § 285.

25. Neurowave is further entitled to an injunction prohibiting Defendants from continuing their infringing acts.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 6,567,695)

26. Neurowave incorporates paragraphs 1 through 26 herein by reference.

27. On May 20, 2003, the United States Patent and Trademark Office duly issued U.S. Patent No. 6,567,695, entitled "Electro-Acupuncture Device with Stimulation Electrode Assembly." A true and correct copy of the '695 patent is attached as Exhibit E.

28. Neurowave is the owner of all right, title and interest in and to the '695 patent, including the right to recover any and all remedies for current and past infringement.

29. Defendants have directly and/or indirectly infringed and continue to directly and/or indirectly infringe one or more claims of the '695 patent in this judicial district and elsewhere in Illinois and the United States, without the consent or authorization of Neurowave, by or through their making, having made, offering for sale, selling, and/or use of the patented apparatuses and methods for regulating the output in a battery powered electrotherapy device, and controlling the discharge of a battery to a load.

30. On information and belief, Defendants have actual knowledge that their acts would constitute infringement of the '695 patent and still pursued the actions described herein in wanton disregard of Neurowave's exclusive rights.

31. Neurowave has been substantially and irreparably harmed by Defendants' infringing conduct and will continue to be irreparably damaged as a result of their infringing activities. Defendants' actions complained of herein will continue unless Defendants are enjoined by this Court.

32. Defendants are, thus, liable to Neurowave in an amount that adequately compensates it for their infringement of the '695 patent, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

33. As a result of Defendants willful infringement of the '695 patent, Neurowave is further entitled to an award of its attorneys' fees and up to treble damages from Defendants under 35 U.S.C. § 285.

34. Neurowave is further entitled to an injunction prohibiting Defendants from continuing their infringing acts.

COUNT III

(INFRINGEMENT OF U.S. PATENT NO. 7,127,288)

35. Neurowave incorporates paragraphs 1 through 36 herein by reference.

36. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

37. On October 24, 2006, the United States Patent and Trademark Office duly issued U.S. Patent No. 7,127,288, entitled "Method and Apparatus for Low Power, Regulated Output in Battery Powered Electrotherapy Devices." A true and correct copy of the '288 patent is attached as Exhibit F.

38. Neurowave is the owner of all right, title and interest in and to the '288

patent, including the right to recover any and all remedies for current and past infringement.

39. Defendants have directly and/or indirectly infringed and continue to directly and/or indirectly infringe one or more claims of the '288 patent in this judicial district and elsewhere in Illinois and the United States, without the consent or authorization of Neurowave, by or through their making, having made, offering for sale, selling, and/or use of the patented apparatuses and methods for regulating the output in a battery powered electrotherapy device, and controlling the discharge of a battery to a load.

40. On information and belief, Defendants have actual knowledge that their acts would constitute infringement of the '288 patent and still pursued the actions described herein in wanton disregard of Neurowave's exclusive rights.

41. Neurowave has been substantially and irreparably harmed by Defendants' infringing conduct and will continue to be irreparably damaged as a result of their infringing activities. Defendants' actions complained of herein will continue unless Defendants are enjoined by this Court.

42. Defendants are, thus, liable to Neurowave in an amount that adequately compensates it for their infringement of the '288 patent, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

43. As a result of Defendants willful infringement of the '288 patent, Neurowave is further entitled to an award of its attorneys' fees and up to treble damages from Defendants under 35 U.S.C. § 285.

44. Neurowave is further entitled to an injunction prohibiting Defendants from

continuing their infringing acts.

45. **PRAYER FOR RELIEF**

Neurowave requests that this Court find in its favor and against Defendant, and that this Court grant Neurowave the following relief:

- a. Enter judgment for Neurowave on this Complaint;
- b. Enter judgment that one or more claims of the '018, '695, and '288 Patents have been infringed, either directly or indirectly by each Defendant;
- c. Enter judgment that the Defendants account for and pay to Neurowave all damages to and costs incurred by Neurowave because of Defendants' infringing activities and other conduct complained of herein;
- d. Award Neurowave damages resulting from Defendants' infringement in accordance with 35 U.S.C. § 284;
- e. Enter a permanent injunction enjoining Defendant and their offices, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with them, from infringing or inducing infringement of each Asserted Patent, or, in the alternative, judgment that Defendants account for and pay to Neurowave a reasonable royalty and an ongoing post judgment royalty because of Defendants' past, present and future infringing activities and other conduct complained of herein;
- f. That Neurowave be granted pre-judgment and post-judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein; and

- g. That Neurowave be granted such other and further relief as the Court may deem just and proper under the circumstances.

JURY DEMAND

Neurowave hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: June 26, 2013

Respectfully submitted,

/s/ Jordan A. Sigale

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