

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION**

THE UNIVERSITY OF IOWA and
THE UNIVERSITY OF IOWA
RESEARCH FOUNDATION,

Plaintiffs,

v.

PHONAK, LLC,

Defendant.

Civil Action No. _____

COMPLAINT AND JURY DEMAND

COMPLAINT

Plaintiffs, The University of Iowa (“University”) and The University of Iowa Research Foundation (“UIRF” or, collectively with the University, as “IOWA”), allege as their Complaint against Phonak, LLC (“Phonak”) the following:

NATURE OF ACTION

1. This is an action for infringement of U.S. Patent No. 6,577,739 (the “739 patent”). The ‘739 Patent is based on an invention of Richard Ray Hurtig, Ph.D., Professor of Communication Sciences & Disorders and Starch Faculty Fellow, and Christopher William Turner, Ph.D., Professor of Communication Sciences & Disorders and Professor of Otolaryngology, both of the University of Iowa Carver College of Medicine and the University of Iowa College of Liberal Arts & Sciences, who assigned the patents to UIRF.

2. Phonak infringes the ‘739 Patent through its making, using, offering for sale, selling, and/or importing into the United States hearing aid devices that incorporate the technology claimed in the ‘739 Patent. Despite diligent efforts by the Plaintiffs to persuade Phonak to respect the ‘739 Patent, Phonak has refused to do so. Accordingly, Plaintiffs have no choice but to bring this action for patent infringement.

THE PARTIES

3. The University is a public institution of higher education created by the Iowa legislature and located in Iowa City, Iowa.

4. UIRF is a 501(c)(3) corporation organized and existing under the laws of Iowa, with its principal place of business located at 6 Gilmore Hall, 112 North Capitol Street, Iowa City, Iowa 52242-5500. Although separately incorporated in 1975, the UIRF is an affiliated organization of the University and acts as an instrumentality of the University by performing functions that the University would itself ordinarily carry out. Specifically, the University has designated the UIRF as the owner of its patent rights and manager of its interests in qualifying inventions. Pursuant to this designation, the UIRF is organized and operates to support the research and educational missions of the University by transferring University-invented technologies to the marketplace for the benefit of the University, its inventors, the State of Iowa, and society at large. Through the commercialization of University intellectual property, and the formation of new business ventures to support those technologies, the UIRF also serves a key role in the University's efforts to support and enhance economic development within the State of Iowa.

5. Upon information and belief, Phonak, LLC is organized and existing under the laws of the State of Delaware, with its principal place of business located at 4520 Weaver Parkway, Warrenville, Illinois 60555.

6. Phonak is a subsidiary of Sonova Holding AG (“Sonova”), a hearing care company headquartered in Staefa, Switzerland. Sonova hearing aid products are manufactured and marketed through two brands – Phonak and Unitron. Another Sonova brand, Connect Hearing, provides Phonak and Unitron hearing aid products directly to patients.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1338(a) because this is a case arising under the patent laws of the United States (35 U.S.C. § 1, *et seq.*, and particularly 35 U.S.C. § 271), as well as pursuant to 28 U.S.C. § 1331 because this matter involves a federal question.

8. This Court has personal jurisdiction over the Defendant because Defendant has solicited and transacted business within the State of Iowa and caused foreseeable injury within the State of Iowa, and otherwise engaged in conduct both within and without the State of Iowa sufficient to confer upon this Court the right and authority to exercise personal jurisdiction over Defendant, consistent with principles of due process.

9. Venue is proper in the Southern District of Iowa under 28 U.S.C. §§ 1391 and 1400(b).

THE PATENT-IN-SUIT

10. On June 10, 2003, the United States Patent and Trademark Office duly and legally issued the '739 Patent, entitled "Apparatus and Methods for Proportional Audio Compression and Frequency Shifting" and naming Richard Ray Hurtig and Christopher William Turner as inventors. A copy of the '739 Patent is attached as Exhibit A.

11. UIRF is the owner of all right, title, and interest in and to the '739 Patent.

FACTUAL ALLEGATIONS

12. The '739 Patent addresses one of the most common challenges facing people with hearing impairment – poor perception of high frequency sounds – by compressing selected high frequency sounds into a lower frequency range, where both hearing sensitivity and discrimination ability are better.

13. Upon information and belief, Phonak hearing aid devices that employ a frequency compression technology called "SoundRecover" infringe the '739 patent. Such devices include, but are not limited to, the Audeo, Ambra, Bolero, Virto, Naida, Dalia, Cassia, Solena, Exelia Art, and Nios hearing aid devices.

14. Phonak does not have a license to the '739 patent and is not otherwise authorized to practice the invention claimed in the '739 patent.

15. Upon information and belief, Phonak has been aware of the '739 patent at least as early as May 13, 2013, when the parties exchanged correspondence regarding the '739 patent. Nevertheless, Phonak continued its infringing activities, in deliberate and willful disregard of Plaintiffs' patent rights.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 6,577,739

16. Plaintiffs repeat, reallege, and incorporate the allegations of paragraphs 1-15 as if set forth fully herein.

17. Defendant Phonak has infringed and is currently infringing one or more claims of the '739 patent in violation of 35 U.S.C. §§ 271 through its making, using, selling, offering for sale, and/or importing into the United States hearing aid devices, including but not limited to the Audeo, Ambra, Bolero, Virto, Naida, Dalia, Cassia, Solena, Exelia Art, and Nios hearing aid devices.

18. Phonak's infringement has been without the express or implied license of the '739 patent.

19. Plaintiffs have been damaged by Phonak's infringement of the '739 patent.

20. Phonak's infringement of the '739 patent has been, and continues to be, in willful disregard of Plaintiffs' lawful rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that the Court enter judgment:

- (a) That the Defendant infringes one or more claims of U.S. Patent No. 6,577,739;
- (b) That the Plaintiffs are entitled to monetary damages in an amount to be determined by the jury;
- (c) That the Defendant's illegal activities were willful, justifying enhanced damages;
- (d) That this case is exceptional, justifying an award to the Plaintiffs of attorneys' fees and costs incurred in this action, pursuant to 35 U.S.C. § 285;
- (e) Awarding Plaintiffs prejudgment interest and costs pursuant to 35 U.S.C. § 284; and

- (f) Granting Plaintiffs such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Plaintiffs demand trial by jury on all issues triable by a jury in this case.

Respectfully submitted, this 3rd day of October 2014.

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