

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 15-20071-CIV-ALTONAGA/O'SULLIVAN

STAT MEDICAL DEVICES, INC.,
a Florida corporation,

Plaintiff,

vs.

INTRINSYK LLC,
a/k/a INTRINSYK MEDICAL DEVICES LLC,
d/b/a INTRINSYK
a Massachusetts limited liability company,

and PAUL R. FULLER, an individual,

Defendants.

FIRST AMENDED COMPLAINT

COMES NOW Plaintiff, Stat Medical Devices, Inc. ("Plaintiff"), and files its First Amended Complaint against Defendants, Intrinsyk LLC, a/k/a Intrinsyk Medical Devices LLC, d/b/a Intrinsyk ("Defendant Intrinsyk") and Paul R. Fuller ("Defendant Fuller") (collectively "Defendants"), as follows.

1. This is an action for: (I - VI) patent infringement pursuant to the Patent Laws of the United States, 35 U.S.C. §1, et seq.; (VII) breach of contract under the Common Law of the State of Florida; and (VIII) tortious interference with a business relationship under the Common Law of the State of Florida.

The Parties

2. Plaintiff, Stat Medical Devices, Inc., is a corporation of the state of Florida having

its principal address at 2065 N.E. 153 Street, North Miami Beach, Florida.

3. Upon information and belief, Defendant Intrinsyk LLC, is a limited liability company organized and existing under the laws of the state of Massachusetts, is registered to do business in New Hampshire, and has a principal address at 15 Emer Road #205 Salem, New Hampshire 03079.

4. Defendant Fuller was previously employed by Plaintiff from about December 8, 2004 through about June 11, 2013.

5. Upon information and belief, Defendant Fuller is a Principal, Officer, and/or Controlling Member of Defendant Intrinsyk; has the capacity to control the acts of Defendant Intrinsyk; supervises and has the ability to supervise the acts of infringement alleged against Defendant Intrinsyk; has induced, caused and/or is a motivating force behind the infringing activity set forth herein; and has a financial interest in and/or actually participated in this infringing activity.

Jurisdiction and Venue

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 and §1338(a). Jurisdiction over Plaintiff's state law claims is conferred by 28 U.S.C. §§ 1338(b) and 1367.

7. Personal jurisdiction is established in this Court pursuant to Florida Statute §48.193 *et. seq.* as the tortious acts complained of herein were committed in the State of Florida, the property infringed is situated in the State of Florida, and the acts were directed at Plaintiff, an entity based in Florida.

8. Personal jurisdiction is also established in this Court as, upon information and

belief, the Defendants have sufficient contacts in the State of Florida because the Defendants knowingly sell and/or offer to sell infringing products within the State of Florida.

9. Venue is properly established in this Court pursuant to 28 U.S.C. §1391(b), §1391(c), and §1400(b) as, upon information and belief, Defendants have sufficient contacts in the Southern District of Florida to be deemed to reside in this Judicial District, and Defendants have engaged in acts of patent infringement, breach of contract, and tortious interference within this Judicial District, said acts being the subject of this Complaint.

Plaintiff's Patented Inventions

10. United States Patent No. 7,947,057 ("the '057 patent") was duly and legally issued on May 24, 2011 for a lancet having adjustable penetration depth, and the '057 patent is valid and fully enforceable. A true and accurate copy of the '057 patent is attached hereto as Exhibit A.

11. United States Patent No. 8,834,503 ("the '503 patent") was duly and legally issued on September 16, 2014 for a lancet having adjustable penetration depth, and the '503 patent is valid and fully enforceable. A true and accurate copy of the '503 patent is attached hereto as Exhibit B.

12. United States Patent No. 6,764,496 ("the '496 patent") was duly and legally issued on July 20, 2004 for a single use lancet assembly, and the '496 patent is valid and fully enforceable. A true and accurate copy of the '496 patent is attached hereto as Exhibit C.

13. United States Patent No. 8,034,069 ("the '069 patent") was duly and legally issued on October 11, 2011 for a single use lancet assembly, and the '069 patent is valid and fully enforceable. A true and accurate copy of the '069 patent is attached hereto as Exhibit D.

14. United States Patent No. 8,353,924 ("the '924 patent") was duly and legally issued on January 15, 2013 for a single use lancet assembly, and the '924 patent is valid and fully enforceable. A true and accurate copy of the '924 patent is attached hereto as Exhibit E.

15. United States Patent No. 8,814,896 ("the '896 patent") was duly and legally issued on August 26, 2014 for a single use lancet assembly, and the '896 patent is valid and fully enforceable. A true and accurate copy of the '896 patent is attached hereto as Exhibit F .

16. Plaintiff is the sole assignee and, as such, is the owner of all right, title, and interest in and to U.S. Patent Numbers 7,947,057; 8,834,503; 6,764,496; 8,034,069; 8,353,924; and, 8,814,896 (hereinafter, collectively, "the Stat Patents").

COUNT I – Infringement of the '057 Patent

17. Plaintiff incorporates by reference the allegations of paragraphs 1 through 16 as if fully set forth in this paragraph.

18. Upon information and belief, Defendants, having notice and knowledge thereof, are and have been infringing independent claims 4, 5, and 9 of the '057 patent either literally or under the doctrine of equivalents by making, using, offering for sale, and/or selling in the United States, or by importing into the United States, including in this Judicial District, one or more lancing devices, including the INTRINSYK POISE Lancing Device. Exhibit G includes a true and accurate copy of Defendants' webpage for its INTRINSYK POISE Lancing Device.

19. Plaintiff has never authorized or otherwise granted any right to Defendants to manufacture, use, offer for sale, sell, or otherwise distribute in the United States, or import into the United States, any lancing device under any claim of the '057 patent, including independent claims 4, 5, and 9.

20. Upon information and belief, Defendants had notice of their infringement and, as such, Defendants' infringement of independent claims 4, 5, and 9 of the '057 patent has been willful, wanton, and deliberate.

21. Upon information and belief, Defendants will continue to infringe independent claims 4, 5, and 9 of the '057 patent to the irreparable damage of Plaintiff, unless enjoined by the Court.

22. Plaintiff has no adequate remedy at law

COUNT II – Infringement of the '503 Patent

23. Plaintiff incorporates by reference the allegations of paragraphs 1 through 16 as if fully set forth in this paragraph.

24. Upon information and belief, Defendants, having notice and knowledge thereof, are and have been infringing independent claims 1, 18, 25, 26, 32, 34, 36, 37, and 39 of the '503 patent either literally or under the doctrine of equivalents by making, using, offering for sale, and/or selling in the United States, or by importing into the United States, including in this Judicial District, one or more lancing devices, including the INTRINSYK POISE Lancing Device. Exhibit G includes a true and accurate copy of Defendants' webpage for its INTRINSYK POISE Lancing Device.

25. Plaintiff has never authorized or otherwise granted any right to Defendants to manufacture, use, offer for sale, sell, or otherwise distribute in the United States, or import into the United States, any lancing device under any claim of the '503 patent, including independent claims 1, 18, 25, 26, 32, 34, 36, 37, and 39.

26. Upon information and belief, Defendants had notice of their infringement and, as

such, Defendants' infringement of independent claims 1, 18, 25, 26, 32, 34, 36, 37, and 39 of the '503 patent has been willful, wanton, and deliberate.

27. Upon information and belief, Defendants will continue to infringe independent claims 1, 18, 25, 26, 32, 34, 36, 37, and 39 of the '503 patent to the irreparable damage of Plaintiff, unless enjoined by the Court.

28. Plaintiff has no adequate remedy at law.

COUNT III – Infringement of U.S. Patent No. 6,764,496

29. Plaintiff incorporates by reference the allegations of paragraphs 1 through 16 as if fully set forth in this paragraph.

30. Upon information and belief, Defendants, having notice and knowledge thereof, are and have been infringing claims 1 through 9, 11, and 12 of the '496 patent either literally or under the doctrine of equivalents by making, using, offering for sale, and/or selling in the United States, or by importing into the United States, including in this Judicial District, one or more single use lancet devices, including the INTRINSYK SOLACE single use lancet device. True and accurate copies of Defendant's website for its INTRINSYK SOLACE single use lancet device are attached hereto as Exhibit H.

31. Plaintiff has never authorized or otherwise granted any right to Defendants to manufacture, use, offer for sale, sell, or otherwise distribute in the United States, or import into the United States, any single use lancet device under claims 1 through 9, 11, and 12 of the '496 patent.

32. Upon information and belief, Defendants had notice of their infringement and, as such, Defendants' infringement of claims 1 through 9, 11, and 12 of the '496 patent has been

willful, wanton, and deliberate.

33. Upon information and belief, Defendant will continue to infringe claims 1 through 9, 11, and 12 of the '496 patent to the irreparable damage of Plaintiff, unless enjoined by the Court.

34. Plaintiff has no adequate remedy at law.

COUNT IV – Infringement of U.S. Patent No. 8,034,069

35. Plaintiff incorporates by reference the allegations of paragraphs 1 through 16 as if fully set forth in this paragraph.

36. Upon information and belief, Defendants, having notice and knowledge thereof, are and have been infringing claims 1 through 6 of the '069 patent either literally or under the doctrine of equivalents by making, using, offering for sale, and/or selling in the United States, or by importing into the United States, including in this Judicial District, one or more single use lancet devices, including the INTRINSYK SOLACE single use lancet device. True and accurate copies of Defendant's website for its INTRINSYK SOLACE single use lancet device are attached hereto as Exhibit H.

37. Plaintiff has never authorized or otherwise granted any right to Defendants to manufacture, use, offer for sale, sell, or otherwise distribute in the United States, or import into the United States, any single use lancet device under claims 1 through 6 of the '069 patent.

38. Upon information and belief, Defendants had notice of their infringement and, as such, Defendants' infringement of claims 1 through 6 of the '069 patent has been willful, wanton, and deliberate.

39. Upon information and belief, Defendants will continue to infringe claims 1

through 6 of the '069 patent to the irreparable damage of Plaintiff, unless enjoined by the Court.

40. Plaintiff has no adequate remedy at law.

COUNT V – Infringement of U.S. Patent No. 8,353,924

41. Plaintiff incorporates by reference the allegations of paragraphs 1 through 16 as if fully set forth in this paragraph.

42. Upon information and belief, Defendants, having notice and knowledge thereof, are and have been infringing claims 1 through 4 of the '924 patent either literally or under the doctrine of equivalents by making, using, offering for sale, and/or selling in the United States, or by importing into the United States, including in this Judicial District, one or more single use lancet devices, including the INTRINSYK SOLACE single use lancet device. True and accurate copies of Defendant's website for its INTRINSYK SOLACE single use lancet device are attached hereto as Exhibit H.

43. Plaintiff has never authorized or otherwise granted any right to Defendants to manufacture, use, offer for sale, sell, or otherwise distribute in the United States, or import into the United States, any single use lancet device under claims 1 through 4 of the '924 patent.

44. Upon information and belief, Defendants had notice of their infringement and, as such, Defendants' infringement of claims 1 through 4 of the '924 patent has been willful, wanton, and deliberate.

45. Upon information and belief, Defendants will continue to infringe claims 1 through 4 of the '924 patent to the irreparable damage of Plaintiff, unless enjoined by the Court.

46. Plaintiff has no adequate remedy at law.

COUNT VI – Infringement of U.S. Patent No. 8,814,896

47. Plaintiff incorporates by reference the allegations of paragraphs 1 through 16 as if fully set forth in this paragraph.

48. Upon information and belief, Defendants, having notice and knowledge thereof, are and have been infringing claims 1 through 4 of the '896 patent either literally or under the doctrine of equivalents by making, using, offering for sale, and/or selling in the United States, or by importing into the United States, including in this Judicial District, one or more single use lancet devices, including the INTRINSYK SOLACE single use lancet device. True and accurate copies of Defendant's website for its INTRINSYK SOLACE single use lancet device are attached hereto as Exhibit H.

49. Plaintiff has never authorized or otherwise granted any right to Defendants to manufacture, use, offer for sale, sell, or otherwise distribute in the United States, or import into the United States, any single use lancet device under claims 1 through 4 of the '896 patent.

50. Upon information and belief, Defendants had notice of their infringement and, as such, Defendant 's infringement of claims 1 through 4 of the '896 patent has been willful, wanton, and deliberate.

51. Upon information and belief, Defendant will continue to infringe claims 1 through 4 of the '896 patent to the irreparable damage of Plaintiff, unless enjoined by the Court.

52. Plaintiff has no adequate remedy at law.

COUNT VII – Breach of Contract by Defendant Fuller

53. Plaintiff incorporates by reference the allegations of paragraphs 1 through 9, inclusive, as if fully set forth in this paragraph.

54. Defendant Fuller executed an Employment Agreement (“Employment

Agreement”) with Plaintiff on or about December 8, 2004. A true and accurate copy of the Employment Agreement is attached hereto as Exhibit I.

55. Paragraph 1 of the Employment Agreement states, in whole, “I do hereby agree that during the term of my employment and/or association with Stat, or at any time thereafter, I shall not communicate, divulge or use for the benefit of any other person, persons, partnership, proprietorship, association, corporation, or entity any knowledge, trade secrets, Confidential Information, or know-how concerning the systems of operation, programs, services, products, clients, employees, or practices of Stat pertaining to which may be communicated to me, nor shall I divert any business to competitors of Stat.”

56. Paragraph 4 of the Employment Agreement states, in whole, “I further agree that upon the expiration or termination of any term of employment, service, or associate with Stat with which I am an employee, I shall refrain from any and all contacts with other employees, staff members, job-seekers or clients of Stat for any business or otherwise restricted purpose for a period of one (1) year immediately following such expiration or termination.”

57. Additionally, Attorney Jonathan A. Heller, counsel for Plaintiff, sent a letter to Defendant Fuller on or about August 15, 2013 (“Heller Letter”), shortly after Defendant Fuller’s employment with Plaintiff was terminated. A true and accurate copy of the Heller Letter is attached as Exhibit J.

58. The Heller Letter provided clear notice to Defendant Fuller of his obligation under the aforementioned paragraph 4 of the Employment Agreement.

59. Upon information and belief, at some time before the one-year anniversary of Defendant Fuller’s employment termination, Defendant Fuller did knowingly contact Tom

Gannon, then an employee of Plaintiff, in order to induce Mr. Gannon to terminate his employment relationship with Plaintiff.

60. Upon information and belief, Defendant Fuller has and is currently communicating, divulging or using for the benefit of Defendant Intrinsyk, knowledge, trade secrets, confidential information, or know-how concerning the systems of operation, programs, services, products, clients, employees, or practices which Defendant Fuller learned while employed by Plaintiff.

61. Upon information and belief, Defendant Fuller has and is currently diverting business to competitors of Plaintiff, including at least, Defendant Intrinsyk.

62. Therefore, Defendant Fuller has materially breached the Employment Agreement.

63. As a result of the foregoing breaches, Plaintiff has been damaged.

64. At all times material hereto, Plaintiff has performed its obligations under the Employment Agreement.

65. Plaintiff has no adequate remedy at law.

COUNT VIII – Tortious Interference with a Business Relationship by Defendant Fuller

66. Plaintiff incorporates by reference the allegations of paragraphs 1 through 9, and 54 through 61 as if fully set forth in this paragraph.

67. Tom Gannon was previously employed by Plaintiff until about July 2013.

68. Mr. Gannon's employment relationship with Plaintiff was the subject of a valid, oral contract as well as a continuing business expectancy.

69. Defendant Fuller, being at one time employed by Plaintiff, had knowledge of the employment relationship between Mr. Gannon and Plaintiff.

70. Upon information and belief, the interference by Defendant Fuller did induce Mr. Gannon to terminate his employment relationship with Plaintiff.

71. Upon information and belief, Defendant Fuller improperly, intentionally, and unjustifiably interfered by having an improper reason, as well as, utilizing improper methods.

72. To wit, upon information and belief, Defendant Fuller contacted and induced Mr. Gannon to terminate his employment with Plaintiff, solely to leverage Mr. Gannon's intimate knowledge of Plaintiff's commercially sensitive information in order to facilitate infringement of the STAT Patents.

73. Additionally, Defendant Fuller breached his own Employment Agreement with Plaintiff by contacting Mr. Gannon within the year following Defendant Fuller's termination of employment, thus utilizing improper means to contact Mr. Gannon.

74. The termination of employment relationship by Mr. Gannon has damaged Plaintiff.

75. Upon information and belief, Defendant Fuller persisted in his course of action, despite the knowledge that his conduct would result in damage to Plaintiff, or at least was highly likely to result in damage to Plaintiff.

76. Plaintiff has no adequate remedy at law.

REMEDIES

WHEREFORE, Plaintiff requests:

A. That the Court find Defendant's aforesaid acts constitute infringement of independent claims 4, 5, and 9 of the '057 patent, either literally or under the doctrine of equivalents.

B. That the Court find Defendants' aforesaid acts constitute infringement of independent claims 1, 18, 25, 26, 32, 34, 36, 37, and 39 of the '503 patent, either literally or under the doctrine of equivalents.

C. That the Court find Defendants' aforesaid acts constitute infringement of claims 1 through 9, 11, and 12 of the '496 patent, either literally or under the doctrine of equivalents.

D. That the Court find Defendants' aforesaid acts constitute infringement of claims 1 through 6 of the '069 patent, either literally or under the doctrine of equivalents.

E. That the Court find Defendants' aforesaid acts constitute infringement of claims 1 through 4 of the '924 patent, either literally or under the doctrine of equivalents.

F. That the Court find Defendants' aforesaid acts constitute infringement of claims 1 through 4 of the '896 patent, either literally or under the doctrine of equivalents.

G. That, pursuant to 35 U.S.C. §283, Defendants, and all of their agents, servants, employees, successors, assigns and all persons acting in concert or in active participation with Defendants, be preliminarily and permanently enjoined and restrained from making, using, offering to sell, and/or selling in the United States, and/or importing into the United States the INTRINSYK POISE Lancing Device and any other lancing device that infringes independent claims 4, 5, and 9 of the '057 patent or independent claims 1, 18, 25, 26, 32, 34, 36, 37, and 39 of the '503 patent, either literally or under the doctrine of equivalents.

H. That, pursuant to 35 U.S.C. §283, Defendants, and all of their agents, servants, employees, successors, assigns and all persons acting in concert or in active participation with Defendants, be preliminarily and permanently enjoined and restrained from making, using, offering to sell, and/or selling in the United States, and/or importing into the United States the

INTRINSYK SOLACE Lancing Device and any other lancing device that infringes claims 1 through 9, 11, and 12 of the '496 patent, claims 1 through 6 of the '069 patent, claims 1 through 4 of the '924 patent, and claims 1 through 4 of the '896 patent, either literally or under the doctrine of equivalents.

I. That Defendants be ordered to deliver up for destruction all INTRINSYK POISE Lancing Devices and any other lancing device that infringes independent claims 4, 5, and 9 of the '057 patent or independent claims 1, 18, 25, 26, 32, 34, 36, 37, and 39 of the '503 patent, either literally or under the doctrine of equivalents.

J. That Defendants be ordered to deliver up for destruction all INTRINSYK SOLACE Lancing Devices and any other lancing device that infringes claims 1 through 9, 11, and 12 of the '496 patent, claims 1 through 6 of the '069 patent, claims 1 through 4 of the '924 patent, and claims 1 through 4 of the '896 patent, either literally or under the doctrine of equivalents.

K. That Defendants be enjoined from employing Mr. Gannon in connection with production, distribution, or sales of lancing devices.

L. That Defendants be directed to file with this Court and serve upon Plaintiff within thirty (30) days after service of the injunction issued in this action a written report under oath setting forth in detail the manner in which the Defendants have complied with the injunction.

M. That this Court order an accounting for damages to Plaintiff resulting from Defendant's infringement of independent claims 4, 5, and 9 of the '057 patent, independent claims 1, 18, 25, 26, 32, 34, 36, 37, and 39 of the '503 patent, claims 1 through 9, 11, and 12 of the '496 patent, claims 1 through 6 of the '069 patent, claims 1 through 4 of the '924 patent, and

claims 1 through 4 of the '896 patent

N. That Plaintiff recover damages adequate to compensate for Defendant's infringement of independent claims 4, 5, and 9 of the '057 patent, independent claims 1, 18, 25, 26, 32, 34, 36, 37, and 39 of the '503 patent, claims 1 through 9, 11, and 12 of the '496 patent, claims 1 through 6 of the '069 patent, claims 1 through 4 of the '924 patent, and claims 1 through 4 of the '896 patent calculated as not less than a reasonable royalty of any financial or any other calculable benefit conferred upon Defendant as a result of Defendant's infringement.

O. That the Court enter a declaration making this case exceptional within the meaning of 35 U.S.C. §285, based upon Defendants' deliberate, wanton, and willful infringement of independent claims 4, 5, and 9 of the '057 patent independent claims 1, 18, 25, 26, 32, 34, 36, 37, and 39 of the '503 patent, claims 1 through 9, 11, and 12 of the '496 patent, claims 1 through 6 of the '069 patent, claims 1 through 4 of the '924 patent, and claims 1 through 4 of the '896 patent, and that Plaintiff recover its attorneys' fees and costs pursuant to 35 U.S.C. §285.

P. That Plaintiff recover treble damages pursuant to 35 U.S.C. §284, based upon Defendant's deliberate, wanton, and willful infringement of independent claims 4, 5, and 9 of the '057 patent, independent claims 1, 18, 25, 26, 32, 34, 36, 37, and 39 of the '503 patent, claims 1 through 9, 11, and 12 of the '496 patent, claims 1 through 6 of the '069 patent, claims 1 through 4 of the '924 patent, and claims 1 through 4 of the '896 patent.

Q. That Plaintiff recover damages sufficient to compensate it for Defendant Fuller's Breach of Contract.

R. That Plaintiff recover damages sufficient to compensate it for Defendant Fuller's

Tortious Interference with Plaintiff's Business Relationship.

S. That Plaintiff recover punitive damages based upon Defendant Fuller's Tortious Interference with Plaintiff's Business Relationship.

T. That Plaintiff recover its taxable costs and disbursements herein.

U. That Plaintiff recover both pre-judgment and post-judgment interest.

V. That Plaintiff has such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: April 30, 2015

s/ W. John Eagan
John Cyril Malloy, III
jcmalloy@malloylaw.com
Florida Bar No. 964,220
Peter A. Matos
pmatoss@malloylaw.com
Florida Bar No. 992,879
Oliver A. Ruiz
Florida Bar No. 524,786
oruiz@malloylaw.com
John Fulton, Jr.
Florida Bar No. 173,800
jfulton@malloylaw.com
W. John Eagan
jeagan@malloylaw.com
Florida Bar No. 105,101
MALLOY & MALLOY, P.L.
2800 S.W. Third Avenue
Miami, Florida 33129
Telephone (305) 858-8000
Facsimile (305) 858-0008