

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PHOTONICS CURING LLC,

Plaintiff,

v.

KERR CORPORATION,

Defendant.

CIVIL ACTION NO. 2:15-cv-634

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Photonics Curing LLC ("Plaintiff"), by and through its undersigned counsel, files this Original Complaint against Defendant Kerr Corporation ("Defendant" or "Kerr") as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant's infringement of United States Patent No. 6,468,077 ("the '077 patent") entitled "Compact Device for Curing Dental Compositions and Method of Curing". A true and correct copy of the '077 Patent is attached hereto as Exhibit A. Plaintiff is the owner by assignment of the '077 patent. Plaintiff seeks monetary damages and injunctive relief.

PARTIES

2. Plaintiff is a limited liability company organized and existing under the laws of the State of Texas. Plaintiff maintains its principal place of business at 1400 Preston Rd., Suite 400, Plano, Texas 75093.

3. Upon information and belief, Defendant is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1717 West Collins Avenue, Orange, California 92867. Defendant can be served with process through its registered agent, C T Corporation System located at 1999 Bryan St., STE 900 Dallas, TX 75201.

JURISDICTION AND VENUE

4. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over Defendant because: Defendant is present within or has minimum contacts within the State of Texas and the Eastern District of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; Defendant has sought protection and benefit from the laws of the State of Texas; Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas; and Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Texas and in the Eastern District of Texas.

6. More specifically, Defendant, directly and/or through intermediaries, ships, distributes, uses, offers for sale, sells, and/or advertises products and services in the United States, the State of Texas, and the Eastern District of Texas including but not limited to the Accused Instrumentalities as detailed below. Upon information and belief, Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas. Defendant solicits and has solicited customers in the State of Texas and in the Eastern District of Texas. Defendant has paying customers who are residents of the State of Texas and the Eastern District of Texas and who each use and have used the Defendants' products and services in the State of Texas and in the Eastern District of Texas.

7. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b). On information and belief, Defendant has transacted business in this district, and has directly committed acts of patent infringement in this district.

COUNT I – PATENT INFRINGEMENT

8. Plaintiff refers to and incorporates herein the allegations of Paragraphs 1-7 above.

9. The ‘077 patent was duly and legally issued by the United States Patent and Trademark Office on October 22, 2002 after full and fair examination. Plaintiff is the owner by assignment of the ‘077 patent and possesses all rights of recovery under the ‘077 patent, including the exclusive right to sue for infringement and recover past damages, and injunctive relief.

10. Defendant owns, uses, operates, advertises, controls, sells, and otherwise provides apparatuses and methods that infringe the ‘077 patent. The ‘077 patent provides, among other things, “A compact, hand held device for curing photosensitive dental compositions curable by way of irradiation with light of predetermined wavelength comprising: (1) a handle configured for gripping by a user; (2) a light emitting diode head assembly secured to said handle including at least one light emitting diode constructed to emit light of said predetermined wavelength in response to an applied operating current, said light emitting diode having a characteristic maximum luminous power output where increasing the current does not increase the optical power output; and (3) a current supply coupled to said light emitting diode, said current supply operating said light emitting diode at a luminous power output of at least about 85 percent of its characteristic maximum luminous power output.”

11. Defendant owns, uses, operates, advertises, controls, sells, and otherwise provides apparatuses and methods that infringe the ‘077 patent. The ‘077 patent provides, among other things, “A method for curing a photosensitive dental composition for repairing a dental cavity or

a dental surface, said composition being curable by way of irradiation with light of predetermined wavelength, said method comprising: (1) applying the dental composition to the cavity or dental surface; and (2) irradiating said composition with light of said preselected wavelength generated by way of a light emitting diode having characteristic maximum luminous power output where increasing a current supplied to said light emitting diode does not increase its optical power output; (3) wherein said light emitting diode is operated at a luminous power output of at least about 85 percent of said characteristic maximum luminous power output.”

11. Defendant directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products that infringed one or more claims of the ‘077 patent in this district and elsewhere in the United States. Particularly, Defendant makes, uses, tests, provides, offers for sale, and sells their product entitled Kerr DemiPlus and similarly situated Kerr products (“Accused Instrumentality”) which directly infringes the ‘077 patent.

12. Defendant also infringes under 35 U.S.C. § 271(b) by inducing infringement of the ‘077 patent in the State of Texas, literally or under the doctrine of equivalents, in this judicial district, and elsewhere in the United States, by, among other things, advising, encouraging, or otherwise inducing others to perform the steps claimed by the ‘077 patent to the injury of Plaintiff. Defendant actively instructs their customers to use the Accused Instrumentality in a way that infringes the ‘077 patent. Since at least the filing date of the Original Complaint, Defendant has had knowledge of the ‘077 patent, and by continuing the actions described herein, has had specific intent to induce infringement of the ‘077 patent pursuant to 35 U.S.C. § 271(b).

13. Defendant’s customers use the Accused Instrumentality as instructed by Defendant and in doing so, complete all elements in at least Claim 1 of the ‘077 patent making Defendant’s

customers direct infringers of the '077 patent. Defendant specifically intended for its customers to infringe the '077 patent because Defendant was served with this law suit and by at least this date, knew of the '077 patent, and their infringement of the '077 patent, yet Defendant continued to advertise to their customers to use the Accused Instrumentality in an infringing manner. Since the dates listed above, Defendant knew that their customer's acts constituted infringement because they knew about the '077 patent and how it applied to the Accused Instrumentality and Defendant knew that their advertisements and instructions to their customers would make their customers infringe the '077 patent thereby making Defendant have specific intent for their customer's to directly infringe the '077 patent. Defendant would not be able to sell the Accused Instrumentality if they could not advertise and instruct their customers to perform the conduct that infringes the '077 patent.

14. Defendant also infringes under 35 U.S.C. § 271(c) by contributing to infringement of the '077 patent in the State of Texas, literally or under the doctrine of equivalents, in this judicial district, and elsewhere in the United States, by, among other things, offering for sale, selling, or importing the Accused Instrumentality, and advising, encouraging, and contributing so that others can perform all of the steps claimed by the '077 patent to the injury of Plaintiff.

15. Specifically, pursuant to 35 U.S.C. § 271(c), Defendant advertises, sells, and provides the Accused Instrumentality to its Customers, and instructs its Customers, such that when Defendant's customers follow Defendant's instructions, each of said Customers necessarily perform all steps in methods claimed in the '077 patent i.e. each of Defendant's Customers are direct infringers, including at least: claim 14, "A method for curing a photosensitive dental composition for repairing a dental cavity or a dental surface, said composition being curable by way of irradiation with light of predetermined wavelength, said method comprising: (1) applying

the dental composition to the cavity or dental surface; and (2) irradiating said composition with light of said preselected wavelength generated by way of a light emitting diode having characteristic maximum luminous power output where increasing a current supplied to said light emitting diode does not increase its optical power output; (3) wherein said light emitting diode is operated at a luminous power output of at least about 85 percent of said characteristic maximum luminous power output.”

16. Defendant advertises their product (“Accused Instrumentality”) directing customers to use the product in an infringing manner while offering no other substantial noninfringing alternatives. When each of Defendant’s customers use the Accused Instrumentality as Defendant has advertised, all steps or elements necessary for direct infringement of the ‘077 patent have been completed or met. In fact, if a customer uses the Accused Instrumentality for any purpose for which it was intended, then the customer must directly infringe the ‘077 patent.

17. Defendant has known about the ‘077 patent since the service date of the original complaint. Defendant’s products are specifically designed to infringe the apparatus and method claims in the ‘077 patent, and Defendant provides these products to their customers, and instructs, advertises, and helps their customers to use the Accused Instrumentality.

18. There are no substantial non-infringing uses for the Accused Instrumentality, because the device is designed to perform one function, to cure dental compositions. By operating the way it was designed, the Accused Instrumentality necessarily infringes the ‘077 patent.

19. Defendant is willfully and intentionally infringing the ‘077 Patent from at least the date of the filing of this lawsuit.

12. Defendant’s aforesaid activities have been without authority and/or license from Plaintiff.

13. In addition to what is required for pleadings under Form 18 for direct infringement in patent cases, and to the extent any marking was required by 35 U.S.C. § 287, Plaintiff and all predecessors in interest to the '077 Patent complied with all marking requirements under 35 U.S.C. § 287.

14. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of the Defendant's wrongful acts in an amount subject to proof at trial, 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.

15. Defendant's infringement of Plaintiff's exclusive rights under the '077 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

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

PRAYER FOR RELIEF

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

PRAYER FOR RELIEF

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

- A. judgment in favor of Plaintiff that Defendant has directly, and/or jointly, and/or indirectly infringed one or more of the claims of the '077 patent;

- B. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement together with pre-judgment and post-judgment interest;
- C. That, should Defendant's acts of infringement be found to be willful from the time that Defendant became aware of the infringing nature of their actions, which is the time of filing of Plaintiff's Original Complaint at the latest, that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- D. And any further relief that this Court deems just and proper.

Dated: May 8, 2015

Respectfully submitted,

By: /s/ Austin Hansley

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