

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**CONTOURMED INC.,
PLAINTIFF**

V.

**AMERICAN BREAST CARE L.P.,
DEFENDANT**

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CIVIL ACTION: _____

(JURY DEMAND)

ORIGINAL COMPLAINT

Plaintiff ContourMed Inc., (“ContourMed”) brings this Original Complaint against Defendant American Breast Care L.P (“ABC”) and shows the following:

PARTIES

1. ContourMed is a corporation duly organized and existing under the laws of the state of Delaware, with its principal place of business at 2217 Cottondale Lane, Suite A, Little Rock, Arkansas 72202.
2. On information and belief, ABC is a Georgia limited partnership, having its principal place of business at 2150 New Market Parkway Southeast, Suite 112, Marietta, Georgia 30067, and having as its registered agent Dean Benton, who can be served on behalf of ABC at the same address.

JURISDICTION AND VENUE

3. This is an action for patent infringement under 35 U.S.C. §271 *et seq.* in that ABC has infringed and is currently infringing U.S. Patent No. 7,058,439 (the “‘439 Patent”) by practicing one or more of the method claims of the ‘439 Patent and/or by indirectly infringing the ‘439 Patent.
4. This Court has subject matter jurisdiction under 28 U.S.C. §1338(a), because this action arises under the Patent Act as set forth at Title 35 of the United States Code.

5. Venue is proper in this District under 28 U.S.C. §§1391(b) and (c) because a substantial part of the events giving rise to this claim occurred in this District and because ABC is subject to personal jurisdiction in this District. Venue is further proper in this District under 28 U.S.C. §1400(b) because ABC has committed acts of infringement in this District.
6. This Court has personal jurisdiction over ABC in this action on the grounds that, upon information and belief, ABC has committed acts of patent infringement in the State of Texas and ABC does business in the State of Texas directly and through authorized retailers and distributors.

COUNT ONE—PATENT INFRINGEMENT

7. The ‘439 Patent was duly, validly, and legally issued to L. Daniel Eaton, John J. Miller, and John L. May on June 6, 2006. A true and correct copy of the ‘439 Patent is attached as Exhibit 1.
8. All United States patents are presumed valid under 35 U.S.C. §282.
9. ContourMed is the legal assignee of the ‘439 Patent, and the assignment is on record at the USPTO under reel 013222, frame 0506. By virtue of the assignment, ContourMed is the owner of the ‘439 Patent and has the right to recover damages for past and future infringement thereof.
10. ContourMed provides custom prosthesis-forming services in the U.S. using technology disclosed and claimed by the ‘439 Patent for patients who have had a mastectomy. These prosthesis-forming services include certain scanning and transformation steps.
11. ContourMed has complied with any applicable marking requirements of 35 U.S.C. §287 with respect to the ‘439 Patent.

12. On information and belief, ABC has directly infringed and is currently directly infringing the '439 Patent in violation of 35 U.S.C. §271(a), either literally or under the doctrine of equivalents, by practicing particular methods of forming a model of a breast prosthesis for a patient who has had at least one breast partially removed, those methods being protected by at least independent claims 1 and 2 of the '439 Patent.
13. ABC's infringement of the '439 Patent has caused great damage to ContourMed. The amount of these damages is not yet known, but ContourMed has lost profits and royalties as a direct result of the infringement and is entitled to damages adequate to compensate it for the infringement in an amount that is in no event less than a reasonable royalty under 35 U.S.C. §284. ContourMed may also be entitled to recover prejudgment interest, costs, and treble damages under 35 U.S.C. §284. Further, ContourMed reserves the right to amend this Complaint to plead that this case is an exceptional case under 35 U.S.C. §285, entitling ContourMed to an award for its attorneys' fees.
14. As a result of ABC's infringement of the '439 Patent, ContourMed has suffered and continues to suffer irreparable harm and impairment of its patent rights, and is suffering the violation of its patent rights, all of which will continue unless ABC is permanently enjoined by this Court from infringing the '439 Patent under 35 U.S.C. §283. ContourMed has no adequate remedy at law.

DEMAND FOR JURY TRIAL

15. Pursuant to FED. R. CIV. P. 38, ContourMed demands a trial by jury of all issues triable of right to a jury and raised by the pleadings in this action.

REQUEST FOR RELIEF

ContourMed respectfully asks this Court to summon ABC to appear and answer this Original Complaint, and after trial on the merits before a jury, enter the following orders and

judgments:

- a) Finding that ABC infringes the '439 Patent under 35 U.S.C. §271 *et seq.*;
- b) Preliminary and permanent injunctions against ABC and its parents, subsidiaries, divisions, agents, dealers, officers, employees, successors, and assigns, and all others acting in concert or participation with ABC, from practicing the method claims of the '439 Patent;
- c) Awarding ContourMed its damages, costs, and prejudgment interest as may be shown by the evidence—but in no case less than a reasonable royalty;
- d) Awarding ContourMed such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s William D. Cramer /
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