

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MEDIGUS LTD.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. _____
)	
ENDOCHOICE, INC.,)	JURY TRIAL DEMANDED
)	
Defendant.)	
)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Medigus Ltd. (“Medigus” or “Plaintiff”) in support of its Complaint against Defendant Endochoice, Inc. (“Endochoice” or “Defendant”) states and alleges as follows:

THE PARTIES

1. Plaintiff Medigus is an Israeli corporation located at Suite 7A, Industrial Park, POB 3030, Omer 8496500, Israel. Medigus has been a publicly traded company on the Tel Aviv Stock Exchange since March 2006, and the American Depositary Receipts (ADRs) of Medigus have been listed for trading on the NASDAQ Capital Market since May 20, 2015. Medigus’ FDA cleared MUSE™ system, which includes a console and endostapler, enables doctors to treat gastroesophageal reflux disease (GERD). Medigus USA LLC, a Delaware limited liability company, is a wholly-owned subsidiary of Medigus.

2. Upon information and belief, Defendant Endochoice is a Delaware corporation with a principal place of business at 11810 Wills Rd., Alpharetta, GA 30009.

JURISDICTION AND VENUE

3. This is a claim for patent infringement that arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, including 35 U.S.C. § 271. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338.

4. Endochoice is subject to personal jurisdiction in the state of Delaware and this District consistent with the principles of due process as Endochoice resides in this District. Upon information and belief, Endochoice continuously, systematically, and purposefully conducts business within this District, including but not limited to offering for sale and selling the accused products. Endochoice has purposefully availed itself to the privileges and benefits of the laws of Delaware and is therefore subject to the jurisdiction of this Court.

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400 because Endochoice resides in this District, has done business, has infringed, and continues to infringe U.S. Patent No. 6,997,871 within this District, and this action arises from transactions of that business and that infringement.

FACTUAL BACKGROUND

Medigus and U.S. Patent No. 6,997,871

6. Medigus is an innovative medical device company specializing in developing minimally invasive endosurgical tools and highly innovative imaging solutions.

7. On February 14, 2006, the United States Patent and Trademark Office (“USPTO”) duly and lawfully issued U.S. Patent No. 6,997,871 (“the ‘871 Patent”), entitled “Multiple View Endoscopes.” A Certificate of Correction was issued on July 9, 2013. A true and correct copy of the ‘871 Patent with its Certificate of Correction is attached hereto as

Exhibit A.

8. Medigus is the owner, by assignment, of the entire right, title and interest in and to the ‘871 Patent.

9. Generally, the claims of the ‘871 Patent are directed to an endoscope.

Endochoice's Pre-Litigation Knowledge of the '871 Patent

10. Endochoice has had actual knowledge of the '871 Patent since prior to the filing of this complaint. Medigus, prior to the filing of this complaint, specifically informed Endochoice of its infringement of the '871 Patent. For example, a Medigus executive expressly informed Endochoice management in the first half of 2014 that it infringes the '871 Patent. On June 1, 2015, Medigus wrote to Endochoice's Founder, President and CEO Mr. Mark Gilreath, expressly informing him that one or more of Endochoice's products, including the FUSE Endoscopy System, infringed the '871 Patent and sought Endochoice's written response by June 5. A subsequent letter extended the deadline until June 11. Endochoice acknowledged receipt of both letters, but did not provide a substantive response to the letters or state that it would agree to cease its infringement. Rather, Endochoice sought to delay addressing the matter. Endochoice's June 5, 2015 prospectus filed with the Securities and Exchange Commission acknowledges Medigus' charge of infringement of the '871 patent as well as the fact that Endochoice does not own or license any issued U.S. Patent that covers the FUSE system as currently marketed.

11. On August 5, 2014, Endochoice submitted the '871 patent to the USPTO for consideration during the prosecution of its U.S. patent application 13/413,141 entitled "Multi Camera Endoscope Having A Side Service Channel," which subsequently issued as U.S. Patent No. 8,926,502 on January 6, 2015.

12. Despite knowledge of the '871 Patent and its infringement of the same, Endochoice continues to recklessly, willfully, and/or deliberately manufacture, distribute, and sell products that infringe the '871 Patent.

COUNT I

(Infringement of U.S. Patent No. 6,997,871)

13. Plaintiff realleges and incorporates each of the preceding paragraphs as if fully set forth herein.

14. Endochoice is not currently licensed under the `871 Patent and has not obtained authorization from Medigus to utilize its patented technology.

15. Upon information and belief, Endochoice and/or those acting in concert with Endochoice, with actual knowledge of the `871 Patent before the filing of this action, have intentionally infringed and continue to infringe, contribute to infringement, and/or induce infringement of the `871 Patent, either literally or under the doctrine of equivalents. Endochoice's infringing activities in the United States and this District include, among other things, making, using, selling and/or offering to sell products and/or systems, including, but not limited to Endochoice's FUSE Endoscopy System (the "Accused Products"), which infringes at least one claim of the `871 Patent.

16. Upon information and belief, Endochoice, and/or those acting in concert with Endochoice, with actual knowledge of the `871 Patent before the filing of this action, contributed to the infringement of the `871 Patent, by having its direct and indirect customers sell, offer for sale, use, and/or import into the United States and this Judicial District, and placing into the stream of commerce, the Accused Products.

17. Upon information and belief, Endochoice's Accused Products are especially made or adapted such that they infringe the `871 Patent, and have no substantial non-infringing uses.

18. Upon information and belief, Endochoice and/or those acting in concert with Endochoice, with actual knowledge of the `871 Patent before the filing of this action, have intentionally induced infringement of the `871 Patent, by having its direct and indirect customers sell, offer for sale, use, and/or import into the United States and this Judicial District, and placing into the stream of commerce, the Accused Products, with knowledge that such products infringe the `871 Patent.

19. Upon information and belief, Endochoice sells the Accused Products to its customers, with knowledge and intent that its customers would infringe the `871 Patent.

20. Endochoice has had actual notice of the `871 Patent since before the filing of this action, and acted despite an objectively high likelihood that its actions constituted infringement.

21. Despite knowledge of the `871 Patent, Endochoice continues to recklessly, willfully, and/or deliberately make, use, offer for sale, distribute and sell products that infringe the `871 Patent.

22. Upon information and belief, unless enjoined, Endochoice, and/or others acting on behalf of Endochoice, will continue their infringing acts, thereby causing irreparable harm to Medigus for which there is no adequate remedy at law.

23. As a result of Endochoice's infringement of the `871 Patent, Medigus has suffered and will continue to suffer harm and injury, including monetary damages in an amount to be determined at trial, and is entitled to recovery of all said damages.

PRAYER FOR RELIEF

WHEREFORE, Medigus prays for entry of judgment that:

a. Endochoice is liable for infringement, contributory infringement, and inducing infringement of the `871 Patent under 35 U.S.C. § 271;

b. Endochoice, and each of its affiliates, subsidiaries, officers, agents, servants, employees, representatives, successors and assigns, and all other persons in active concert or participation with Endochoice, shall be preliminarily and permanently enjoined from further infringing, contributing to others' infringement, and inducing others to infringe the `871 Patent under 35 U.S.C. § 283;

c. Endochoice shall pay damages to Medigus resulting from Endochoice's infringement of the `871 Patent pursuant to *inter alia* 35 U.S.C. § 284, with an accounting, as needed, for infringing activities after the date of suit;

d. Endochoice's continuing infringement of the '871 Patent was and is willful, justifying trebling the award of damages under 35 U.S.C. § 284, or such other enhancement of the award of damages that the Court deems appropriate;

e. This action be determined to be an exceptional case and Medigus be awarded its attorney's fees, costs, and expenses under *inter alia* 35 U.S.C. § 285;

f. Medigus be entitled to pre-judgment and post-judgment interest and costs against Endochoice, in accordance with *inter alia* 35 U.S.C. § 284; and

g. Medigus be awarded such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Medigus respectfully demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure on any and all issues so triable.

ASHBY & GEDDES

/s/ John G. Day

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