

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MEDTECH PRODUCTS INC.,

Plaintiff,

v.

RANIR, LLC,

Defendants.

Civil Action No. _____

JURY DEMAND

COMPLAINT

Medtech Products Inc. (“Medtech”) hereby asserts claims of patent infringement against Ranir, LLC (“Ranir”), and alleges as follows:

THE PARTIES

1. Medtech is a corporation organized and existing under the laws of Delaware, with its principal place of business at 660 White Plains Road, Ste. #250, Tarrytown, New York 10591.

2. On information and belief, Ranir is a limited liability company organized and existing under the laws of Delaware, with its principal place of business at 4701 East Paris Avenue, Grand Rapids, Michigan 49512.

PATENTS-IN-SUIT

3. On February 9, 2010, the United States Patent Office lawfully issued U.S. Patent No. 7,658,193 (“the ‘193 Patent”), entitled “Interocclusal Appliance and Method” and showing Frank Lesniak (“Lesniak”) as the inventor and Hayloft Enterprises, Inc. d/b/a BPG International (“Hayloft”) as the assignee. A copy of the ‘193 Patent is attached as Exhibit A.

4. On November 27, 2012, the United States Patent Office lawfully issued U.S. Patent No. 8,316,859 (“the ‘859 Patent”), entitled “Interocclusal Appliance and Method” and showing Frank Lesniak as the inventor and Hayloft as the assignee. A copy of the ‘859 Patent is attached as Exhibit B.

5. Hayloft assigned all right, title and interest in and to the ‘193 Patent and the ‘859 Patent to Medtech. That patent assignment grants Medtech all rights to sue for past, present, and future infringements of the ‘193 Patent and the ‘859 Patent and all rights to recover for past, present, and future infringements of the ‘193 Patent and the ‘859 Patent, including any and all rights to any accrued, not yet accrued, present, or future infringement causes of action, and the right to recover any and all past, present, and future damages and seek any other relief for past, present or future acts of infringement of the ‘193 Patent and the ‘859 Patent.

BACKGROUND

6. Medtech and/or its predecessor-in-interest, Dental Concepts, LLC (“DC”), have marketed, distributed, and sold progressive iterations of dental protectors designed to protect the teeth and jaw from the detrimental effects of nighttime teeth grinding, or “bruxism,” under the trademark NIGHTGUARD[®] for almost twenty years.

7. Medtech/DC has been, and Medtech continues to be, an innovator in the marketplace for over-the-counter nighttime dental protectors. Prior to 1997, the FDA limited all bruxism devices to “prescription only” sales. Medtech/DC originated the over-the-counter (“OTC”) nighttime dental protector market when it was the first to obtain formal FDA approval for an OTC dental protective device for bruxism on or about March 3, 2006. For several years thereafter, Medtech/DC’s NIGHTGUARD[®] dental protector was the only significant such

product in the OTC nighttime dental protector market. As such, Medtech/DC is credited with creating the entire category of OTC dental protectors and revolutionizing at-home consumer care for nighttime tooth grinding or bruxism.

8. The quality and efficacy of Medtech's dental products have generated significant product recognition, and Medtech's NIGHTGUARD[®] mark became firmly associated in the minds of the consuming public with the high-quality dental protector products marketed and sold by Medtech.

9. Medtech's innovations in the OTC nighttime dental protector market are further evidenced by the patent protection afforded Medtech's NIGHTGUARD[®] dental protectors.

10. Medtech's most recent and advanced nighttime dental protector is sold under its trademarks THE DOCTOR'S[®] NIGHTGUARD ADVANCED COMFORT[®] (hereinafter "THE DOCTOR'S[®] NIGHTGUARD[®]"). A depiction of Medtech's THE DOCTOR'S[®] NIGHTGUARD[®] is attached as Exhibit C. Medtech markets, distributes, and sells THE DOCTOR'S[®] NIGHTGUARD[®] throughout the United States, Tennessee, and the Memphis area. Medtech's THE DOCTOR'S[®] NIGHTGUARD[®] dental protector is covered by multiple patents, including the '193 Patent and the '859 Patent.

11. Medtech is the assignee of the '193 Patent and the '859 Patent.

12. The '193 Patent and '859 Patent are each valid and subsisting in full force and effect.

13. On information and belief, Defendant Ranir makes, has made, and/or imports and also uses, offers to sell, and sells a product in direct competition with Medtech's patented THE DOCTOR'S[®] NIGHTGUARD[®] dental protector. Ranir's competing product is advertised and distributed under Ranir's brand "REST ASSURED[®] Extra Comfort Night Protector" (hereinafter "Ranir's Infringing Product"). A depiction of Ranir's Infringing Product is attached as Exhibit D.

14. Ranir has no license of the '193 Patent.

15. Ranir does not acquire its Ranir's Infringing Product from a licensee of the '193 Patent.

16. Ranir has no license of the '859 Patent.

17. Ranir does not acquire its Ranir's Infringing Product from a licensee of the '859 Patent.

18. Ranir's Infringing Product infringes one or more claims of the '193 Patent.

19. Ranir's Infringing Product infringes one or more claims of the '859 Patent.

20. Ranir distributes its Ranir's Infringing Product through various retailers, including Walmart, Kroger, and Rite Aid, who each then rebrand Ranir's Infringing Product and market, distribute, and sell the rebranded Ranir's Infringing Product to consumers.

21. On information and belief, Walmart offers for sale and sells Ranir's Infringing Product under the rebranded name "EQUATE Extra Comfort Nighttime Dental Protector." A depiction of the "EQUATE Extra Comfort Nighttime Dental Protector" is attached as Exhibit E.

22. On information and belief, the "EQUATE Extra Comfort Nighttime Dental Protector" is displayed in Walmart in close proximity on the shelf to Medtech's THE DOCTOR'S[®] NIGHTGUARD[®] dental protector and is offered for sale and sold throughout the country and in the Memphis area.

23. On information and belief, Kroger offers for sale and sells Ranir's Infringing Product under the name "KROGER Rest Assured[®] Extra Comfort Night Protector." A depiction of the "KROGER Rest Assured[®] Extra Comfort Night Protector" is attached as Exhibit F.

24. On information and belief, the "KROGER Rest Assured[®] Extra Comfort Night Protector" is displayed in Kroger in close proximity on the shelf to Medtech's THE DOCTOR'S[®] NIGHTGUARD[®] dental protector and is offered for sale and sold throughout the country and in the Memphis area.

25. On information and belief, Rite Aid offers for sale and sells Ranir's Infringing Product under the name "RITE AID Extra Comfort Night Protector." A depiction of the "RITE AID Extra Comfort Night Protector" is attached as Exhibit G.

26. On information and belief, the "RITE AID Extra Comfort Night Protector" is displayed for sale in Rite Aid in close proximity on the shelf to Medtech's THE DOCTOR'S[®] NIGHTGUARD[®] dental protector and is offered for sale and sold throughout the country and in the Memphis area.

JURISDICTION AND VENUE

27. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.*

28. On information and belief, Ranir offers to sell, sells, and distributes Ranir's Infringing Product, which infringes the '193 patent and the '859 Patent, to retailers within this District who then offer to sell and do sell Ranir's Infringing Product under various brand names to consumers within this District. As a result, Ranir places Ranir's Infringing Product in the stream of commerce where such products are sold in this District by distributors to consumers found in this District.

29. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b) and in this division pursuant to W.D. Tenn. L.R. 3.3(b)(1).

COUNT I – INFRINGEMENT OF THE '193 PATENT

30. Medtech realleges and incorporates by reference each of the preceding paragraphs.

31. On information and belief, Ranir, directly or through the actions of its employees, divisions, and/or subsidiaries, has infringed and continues to infringe the '193 patent directly, literally, and/or by equivalents.

32. On information and belief, Ranir has infringed and continues to infringe the '193 patent literally and/or by equivalents under 35 U.S.C. § 271 by making, using, offering for sale, selling and/or importing Ranir's Infringing Product.

33. On information and belief, at least as of the filing of this Complaint, Ranir's infringement of the '193 patent is and has been willful and deliberate, and, further, Ranir's continued infringement after the filing of this Complaint shall constitute willful and deliberate infringement of the '193 patent.

COUNT II – INFRINGEMENT OF THE '859 PATENT

34. Medtech realleges and incorporates by reference each of the preceding paragraphs.

35. On formation and belief, Ranir, directly or through the actions of its employees, divisions, and/or subsidiaries, has infringed and continues to infringe the '859 Patent directly, literally, and/or by equivalents.

36. On information and belief, Ranir has infringed and continues to infringe the '859 Patent literally and/or by equivalents under 35 U.S.C. § 271 by making, using, offering for sale, selling and/or importing Ranir's Infringing Product.

37. On information and belief, at least as of the filing of this Complaint, Ranir's infringement of the '859 Patent is and has been willful and deliberate, and, further, Ranir's continued infringement after the filing of this Complaint shall constitute willful and deliberate infringement of the '859 Patent.

DAMAGES AND RELIEF

38. As a consequence of Ranir infringement of the '193 Patent and/or the '859 Patent, Medtech has been damaged in an amount not yet determined and will suffer additional irreparable damage unless Ranir's infringing acts are enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Medtech respectfully requests that the Court enter judgment against Ranir:

- A. Determining that Ranir has infringed and continues to infringe one or more claims of the '193 Patent;
- B. Determining that Ranir has infringed and continues to infringe one or more claims of the '859 Patent;
- C. Permanently enjoining Ranir, its respective officers, agents, servants, directors, employees, and attorneys, and all persons acting in concert or participation with it, directly or indirectly, or any of them who receive actual notice of the judgment, from further infringing the '193 Patent;
- D. Permanently enjoining Ranir, its respective officers, agents, servants, directors, employees, and attorneys, and all persons acting in concert or participation with it, directly or indirectly, or any of them who receive actual notice of the judgment, from further infringing the '859 Patent;
- E. Ordering Ranir to account for and pay to Medtech all damages suffered by Medtech, or suffered by any predecessor-in-interest of the '193 Patent, as a consequence of Ranir's infringement of the '193 Patent, together with all pre-judgment and post-judgment interest and costs as fixed by the Court;
- F. Ordering Ranir to account for and pay to Medtech all damages suffered by Medtech, or suffered by any predecessor-in-interest of the '859 Patent, as a consequence of Ranir's infringement of the '859 Patent, together with all pre-judgment and post-judgment interest and costs as fixed by the Court;

- G. Trebling or otherwise increasing Medtech's damages under 35 U.S.C. § 284 on the grounds that Ranir's infringement of the '198 Patent and/or the '859 Patent was and is deliberate and willful;
- H. Declaring that this case is exceptional and awarding Medtech its costs and reasonable attorneys' fees in accordance with 35 U.S.C. § 285; and
- I. Granting Medtech such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Medtech hereby requests a trial by jury for all issues so triable.

Dated: September 8, 2015

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