

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

ADVANCED PAIN RESPONSE, LLC,

Plaintiff,

v.

IMEDICOM CO., LTD.,

Defendant.

Case No. _____

DEMAND FOR JURY TRIAL

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

1. Advanced Pain Response, LLC (“APR” or “Plaintiff”), by and through its counsel, hereby brings this action for patent infringement against IMEDICOM Co. Ltd. (“IMEDICOM” or “Defendant”) alleging infringement of the following validly issued patent (the “Patent-in-Suit”): U.S. Patent No. 7,273,468 titled “Steerable fiberoptic epidural balloon catheter and scope” (the ‘468 Patent) attached hereto as Exhibit A.

NATURE OF THE ACTION

2. This is an action for patent infringement arising under the United States Patent Act 35 U.S.C. §§ 1 et seq., including 35 U.S.C. § 271.

PARTIES

3. Plaintiff, Advanced Pain Response, LLC is a corporation organized and existing under the laws of Delaware that maintains its principal place of business at 261 West 35th Street, Suite 1003, New York, NY 10001.

4. Upon information and belief, Defendant IMEDICOM Co. Ltd. is a foreign entity established in South Korea with its principal place of business at #612, 172, LS-ro, Gunpo-si,

Gyeonggi-do, Republic of Korea 15807. Upon information and belief, Defendant has a presence in the United States of America through its distributors and may be served pursuant to the provisions of the Hague Service Convention.

JURISDICTION AND VENUE

5. This lawsuit is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101 et seq. The Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), and 1367.

6. The Court has personal jurisdiction over Defendant for the following reasons: (1) Defendant is present within or has minimum contacts within the State of Texas and in the Eastern District of Texas; (2) Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in this district; (3) Defendant has sought protection and benefit from the laws of the State of Texas; (4) Defendant regularly conducts business within the State of Texas and within this district, and Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Texas and in this district; and (5) Defendant has purposely availed itself of the privileges and benefits of the laws of the State of Texas.

7. 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 Products as detailed below. Upon information and belief, Defendant has committed patent infringement in the State of Texas and in this district; Defendant solicits and has solicited customers in the State of Texas and in this district; and Defendant has paying customers who are residents of the State of Texas and this district and who each use and have used the Defendant's products and services in the State of Texas and in this district.

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

9. Personal jurisdiction is proper over Defendant, and venue is proper in this district, pursuant to Federal Rules of Civil Procedure 4(k)(2).

PATENT-IN-SUIT

10. Plaintiff incorporates the above paragraphs herein by reference.

11. On September 25, 2007, United States Patent No. 7,273,468 titled “Steerable fiberoptic epidural balloon catheter and scope” was duly and legally issued by the United States Patent and Trademark Office. The ’468 Patent is presumed valid and enforceable.

12. Plaintiff is the assignee of all right, title and interest in the ’468 patent, including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the ’468 Patent.

13. The ’468 Patent relates to the medical devices used in treatment for fibrotic lesions in the epidural space of the spinal column. More specifically, the ’468 Patent discloses a steerable fiberoptic catheter/scope with a balloon tip that can be used in body cavities, including epidural space to dilate and decompress the adhesions and also to remove scar tissue. (*See* Ex. A at 1:13-21).

14. The claimed inventions disclosed in the Patent-in-Suit were not well-understood, routine, or conventional. At the time the ’468 Patent was filed, existing techniques to treat fibrosis or epidural lesions were very limited and inefficient. Epidural lesions extend through the epidural space over the length of two or three vertebrae causing lower back pain and sciatica. (*See* Ex. A at 1:50-54). One of the earlier techniques of treating epidural lesions was through surgical explorations. However, it was as inefficient method that was both difficult to execute and

resulted in painful post-operative recovery. (See Ex. A at 2:05-08). Another method that was traditionally used to treat epidural lesions was fluid lysis. In this method, a catheter was inserted into the epidural space cavity between the vertebrae and its distal end placed adjacent the fibrosis comprising the lesion. Then, a calculated fluid dosage was delivered to the lesion with pressure to break the lesion's layers. However, this method was ultimately flawed as well, as it failed to deliver the fluid with enough force to destroy the lesion. It also meant that the process had to be repeated several times. (See Ex. A at 2:13-25). Another conventional method frequently used was fluoroscopic observation techniques for guiding the devices, but this too did not give satisfactory results: such techniques were found to be effective for viewing blockages in veins and arteries but not for epidural cavities. (See Ex. A at 2:27-37). Endoscopic techniques have also been used to navigate through epidural cavities but with limited success, as executing these techniques was difficult and considered dangerous. (See Ex. A at 2:27-37). Other techniques, such as contrast injections, epidurography, and epiduroscopy have improved on older methods; however, no singular technique, device or method has allowed physicians to access the epidural cavity, view a problem area, and therapeutically treat it in a quick, efficient and safe manner. (See Ex. A at 2:62-67).

15. The Patent-in-Suit addressed these technical challenges by, for example, proposing a medical catheter with a balloon tip for fluoroscopic-assisted placement in the epidural space to treat epidural lesions. (See Ex. A at 3:03-07).

16. More specifically, the '468 Patent discloses a medical device that is configured to be directed inside the epidural cavity, is optical in nature and, using a balloon tip, can be inflated inside the cavity for treating the lesions. This tri-functional capability improves upon all the

conventional techniques discussed above. (See Ex. A at 3:39-45).

17. The claims of the '468 Patent do not merely recite the performance of a familiar business practice with a requirement to perform it on the Internet. Instead, the claims recite one or more inventive concepts embodied in a medical device that is configured for use in performing the epidural cavity treatment of lesions through an improved design that includes a disposable catheter portion, a reusable handling portion, and a connecting portion.

18. Moreover, the claimed inventions of the '468 Patent are directed to an improved medical device for the treatment of fibrosis including epidural lesions, and such device cannot be performed with pen and paper or in the human mind. One of ordinary skill in the art at the time of the '468 Patent would have understood that the claimed inventions could not be performed with pen and paper.

ACCUSED PRODUCTS

19. Defendant makes, uses, offers for sale and sells in the U.S. products, systems, and/or services that infringe the Patent-in-Suit, including, but not limited to the epidural catheter line of products including but not limited to the Spinaut-E Epidural Catheter, the Spinaut-V Video Guided Catheter and the Spinaut-H Epidural Balloon Catheter (the "Accused Products" or "Accused Instrumentalities").

COUNT I (Infringement of U.S. Patent No. 7,273,468)

20. Plaintiff incorporates the above paragraphs herein by reference.

21. The '468 Patent is valid, enforceable, and was duly and legally issued by the United States Patent and Trademark Office ("USPTO") on September 25, 2007. The '468 Patent is presumed valid and enforceable. See 35 U.S.C. § 282.

22. Plaintiff is the owner by assignment of the '468 Patent and possesses ownership and owns all rights of recovery under the '468 patent, including the exclusive right to enforce the '468 Patent and pursue lawsuits against infringers.

23. Without a license or permission from Plaintiff, Defendant has infringed and continues to directly and indirectly infringe on one or more claims of the '468 Patent by importing, making, using, offering for sale, or and/or selling the Accused Products in violation of 35 U.S.C. § 271.

Direct Infringement – 35 U.S.C. § 271(a)

24. Plaintiff incorporates the above paragraphs herein by reference, the same as if set forth herein.

25. Without a license or permission from Plaintiff, Defendant IMEDICOM has infringed and continues to directly infringe on one or more claims of the '468 Patent by importing, making, using, offering for sale, and/or selling the Accused Products in violation of 35 U.S.C. § 271.

26. Defendant has been and continues to directly infringe by, among other things, practicing all of the steps of method claims of the '468 Patent, for example, internal testing, quality assurance, research and development, and troubleshooting. *See Joy Techs., Inc. v. Flakt, Inc.*, 6 F.3d 770, 775 (Fed. Cir. 1993); *see also* 35 U.S.C. § 271 (2006).

27. By way of example, Defendant has infringed and continues to infringe at least one or more claims of the '468 Patent, including at least Claim 1. Attached hereto as Exhibit B is an exemplary claim chart detailing evidence that maps each element of Claim 1 of the '468 Patent to an exemplary Accused Product.

Induced Infringement – 35 U.S.C. § 271(b)

28. Plaintiff incorporates the above paragraphs herein by reference, the same as if set

forth herein.

29. Defendant has been and now is indirectly infringing by way of inducing infringement by others (including customers, distributors, and other users), and/or contributing to the infringement by others of the '468 Patent in the State of Texas, in this judicial District, and elsewhere in the United States, by, among other things, making, using, offering for sale, and/or selling, without license or authority, the Accused Products. Users of the Accused Products include, for example, Defendant's customers and other third parties interacting, such as resellers and distributors. Defendant had pre-suit knowledge based upon previous litigation in Defendant's industry. Defendant had post-suit knowledge of the '468 Patent at the time this suit was filed. *See In re Bill of Lading Transmission & Processing Sys. Patent Litig.*, 681 F.3d 1323, 1345 (Fed. Cir. 2012).

30. Defendant knew that the Accused Products infringe the '468 Patent and yet Defendant induced and continues to induce others-including partners, customers, and third parties-to directly infringe at least one claim of the '468 Patent under 35 U.S.C. § 271(b). Defendant took active steps to induce infringement, such as advertising an infringing use, which supports a finding of an intention. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 932 (2005) ("[I]t may be presumed from distribution of an article in commerce that the distributor intended the article to be used to infringe another's patent, and so may justly be held liable for that infringement").

31. For example, Defendant induces its users to use the infringing Accused Products for the treatment of epidural adhesions, actively prompting infringement by directing its customers to operate the catheter device, explaining the various components of the device

including steering mechanism for treating the adhesions. *See, e.g.*, Ex. C¹, D², and E³ (familiarizing the customers with the device components and techniques for using the device).

32. The allegations herein support a finding that Defendant induced or continues to induce infringement of the '468 Patent. *See Power Integrations v. Fairchild Semiconductor*, 843 F.3d 1315, 1335 (Fed. Cir. 2016) (“[W]e have affirmed induced infringement verdicts based on circumstantial evidence of inducement [e.g., advertisements, user manuals] directed to a class of direct infringers [e.g., customers, end users] without requiring hard proof that any individual third-party direct infringer was actually persuaded to infringe by that material.”).

Contributory Infringement – 35 U.S.C. § 271(c)

33. Plaintiff incorporates the above paragraphs herein by reference, the same as if set forth herein.

34. Defendant had pre-suit knowledge based upon previous litigation in Defendant's industry. Defendant had post-suit knowledge when this suit was filed. *See In re Bill of Lading Transmission & Processing Sys. Patent Litig.*, 681 F.3d 1323, 1345 (Fed. Cir. 2012).

35. On information and belief, Defendant's implementation of the accused functionality of the Accused Products has no substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1321 (Fed. Cir. 2009) (holding that the “substantial non-infringing use” element of a contributory infringement claim applies to an infringing feature or component, and that an “infringing feature” of a product does not escape liability simply because the product as a whole has other non-infringing uses). The Accused Product does not allow one to disable the

¹ Available at http://imedicom.co.kr/product_epidural_balloon.php.

² Available at http://imedicom.co.kr/product_epidural_video.php.

³ Available at http://imedicom.co.kr/product_epidural.php.

infringing technology when used.

Willful Infringement

36. Plaintiff incorporates the above paragraphs herein by reference, the same as if set forth herein.

37. Defendant had pre-suit knowledge based upon previous litigation in Defendant's industry. Defendant had post-suit knowledge when this suit was filed. *See In re Bill of Lading Transmission & Processing Sys. Patent Litig.*, 681 F.3d 1323, 1345 (Fed. Cir. 2012).

38. Despite its knowledge of the '468 Patent, Defendant has sold the Accused Product in egregious disregard of Plaintiff's patent rights. Defendant has acted recklessly and engaged in willful, wanton, and deliberately acts of infringement of the '468 Patent, justifying an award to Plaintiff of increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

Plaintiff Suffered Damages

39. Defendant's infringement of the '468 Patent has caused damage to Plaintiff, and Plaintiff is entitled to recover from Defendant the damages sustained as a result of Defendant's wrongful acts in an amount subject to proof at trial pursuant to 35 U.S.C. § 271. Defendant's infringement of Plaintiff's exclusive rights under the '468 Patent will continue to damage Plaintiff causing it irreparable harm for which there is no adequate remedy at law, warranting an injunction from the Court.

REQUEST FOR RELIEF

40. Plaintiff incorporates each of the allegations in the paragraphs above and respectfully asks the Court to:

- (a) enter a judgment that Defendant has directly infringed, contributorily infringed,

and/or induced infringement of one or more claims of each of the '468 Patent;

(b) enter a judgment awarding Plaintiff all damages adequate to compensate it for Defendant's infringement of, direct or contributory, or inducement to infringe, the including all pre-judgment and post-judgment interest at the maximum rate permitted by law;

(c) enter a judgment awarding treble damages pursuant to 35 U.S.C. § 284 for Defendants' willful infringement of the '468 Patent;

(d) issue a preliminary injunction and thereafter a permanent injunction enjoining and restraining Defendant, its directors, officers, agents, servants, employees, and those acting in privity or in concert with them, and their subsidiaries, divisions, successors, and assigns, from further acts of infringement, contributory infringement, or inducement of infringement of the '468 Patent;

(e) enter a judgment requiring Defendant's to pay the costs of this action, including all disbursements, and attorneys' fees as provided by 35 U.S.C. § 285, together with prejudgment interest; and

(f) award Plaintiff all other relief that the Court may deem just and proper.

Dated: October 9, 2021

Respectfully submitted,

By: /s/ Kirk J. Anderson

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