

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NAVILYST MEDICAL, INC.,

Plaintiff,

v.

MERIT MEDICAL SYSTEMS, INC.,

Defendant.

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CIVIL ACTION
NO. 11-12047

COMPLAINT AND JURY DEMAND

Plaintiff Navilyst Medical, Inc. (“Navilyst”), for its Complaint for patent infringement against defendant Merit Medical Systems, Inc. (“Merit”), alleges as follows:

THE PARTIES

1. Plaintiff Navilyst Medical, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located in Marlborough, Massachusetts.

2. Upon information and belief, defendant Merit Medical Systems, Inc. is a corporation organized and existing under the laws of the State of Utah with its principal place of business located in South Jordan, Utah.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.* This Court has jurisdiction over the subject matter of the claims asserted in this action under 28 U.S.C. §§ 1331 and 1338(a).

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400.

FACTUAL BACKGROUND

5. Navilyst is a leading provider of medical devices for medical fluid management, vascular access, and the diagnosis and treatment of non-vascular and vascular disease. Navilyst's breakthrough devices include the NAMIC® Fluid Management products.

6. Navilyst is the owner by assignment of United States Patent No. 5,911,708 ("the '708 patent"), which was duly and legally issued by the United States Patent and Trademark Office on June 15, 1999, for an invention titled "Method and Apparatus for Uninterrupted Delivery of Radiographic Dye." A true and correct copy of the '708 patent is attached hereto as Exhibit A.

7. Navilyst is the owner by assignment of United States Patent No. 5,779,666 ("the '666 patent"), which was duly and legally issued by the United States Patent and Trademark Office on July 14, 1998, for an invention titled "Method and Apparatus for Uninterrupted Delivery of Radiographic Dye." A true and correct copy of the '666 patent is attached hereto as Exhibit B.

8. Navilyst is the owner by assignment of United States Patent No. 5,691,478 ("the '478 patent"), which was duly and legally issued by the United States Patent and Trademark Office on November 25, 1997, for an invention titled "Device and Method for Remote Zeroing of a Biological Fluid Pressure Measurement Device." A true and correct copy of the '478 patent is attached hereto as Exhibit C.

9. The '708, '666, and '478 patents grant Navilyst the exclusive right to make, use, offer for sale, and/or sell the devices and methods claimed therein.

10. Upon information and belief, Merit manufactures and sells medical devices used in diagnostic and interventional cardiology and radiology procedures, including products used to

manage and monitor the administration of contrast and other fluid solutions during diagnostic and therapeutic procedures.

11. Upon information and belief, Merit regularly transacts business in the Commonwealth of Massachusetts and in this judicial district by, among other things, using, offering for sale and selling contrast management systems and components thereof, and related methods that meet the limitations set forth in the claims of the '708, '666, and '478 patents.

12. Upon information and belief, Merit's infringement of the '708, '666, and/or '478 patents has been knowingly and willfully committed.

COUNT ONE - INFRINGEMENT OF THE '708 PATENT

13. Navilyst hereby re-alleges the allegations contained in paragraphs 1 through 12 of the Complaint as though fully set forth herein.

14. The '708 patent was validly issued by the Patent Office and is valid and enforceable.

15. Merit manufactures, imports, uses, sells, and/or offers for sale products or services throughout the United States that infringe one or more claims of the '708 patent literally or under the doctrine of equivalents, including with respect to its contrast management products sold under the trademark Miser®. By its acts, Merit is also inducing others to infringe the '708 patent and contributing to the infringement by others of the '708 patent.

16. Navilyst has been irreparably harmed and monetarily damaged by Merit's infringement of the '708 patent. If Merit's infringement is not permanently enjoined, Navilyst will continue to be irreparably harmed and monetarily damaged.

17. Upon information and belief, Merit has been and is aware of the '708 patent. Merit's infringement has been and continues to be in total disregard of Navilyst's exclusive rights under the '708 patent.

18. Upon information and belief, Merit's infringement is deliberate and willful. This is an exceptional case warranting an award of treble damages to Navilyst under 35 U.S.C. § 284 and an award of its reasonable attorneys' fees and costs for the maintenance of this action under 35 U.S.C. § 285.

COUNT TWO - INFRINGEMENT OF THE '666 PATENT

19. Navilyst hereby re-alleges the allegations contained in paragraphs 1 through 18 of the Complaint as though fully set forth herein.

20. The '666 patent was validly issued by the Patent Office and is valid and enforceable.

21. Merit manufactures, imports, uses, sells, and/or offers for sale products or services throughout the United States that infringe one or more claims of the '666 patent literally or under the doctrine of equivalents, including with respect to its contrast management products sold under the trademark Miser®. By its acts, Merit is also inducing others to infringe the '666 patent and contributing to the infringement by others of the '666 patent.

22. Navilyst has been irreparably harmed and monetarily damaged by Merit's infringement of the '666 patent. If Merit's infringement is not permanently enjoined, Navilyst will continue to be irreparably harmed and monetarily damaged.

23. Upon information and belief, Merit has been and is aware of the '666 patent. Merit's infringement has been and continues to be in total disregard of Navilyst's exclusive rights under the '666 patent.

24. Upon information and belief, Merit's infringement is deliberate and willful. This is an exceptional case warranting an award of treble damages to Navilyst under 35 U.S.C. § 284 and an award of its reasonable attorneys' fees and costs for the maintenance of this action under 35 U.S.C. § 285.

COUNT THREE - INFRINGEMENT OF THE '478 PATENT

25. Navilyst hereby re-alleges the allegations contained in paragraphs 1 through 24 of the Complaint as though fully set forth herein.

26. The '478 patent was validly issued by the Patent Office and is valid and enforceable.

27. Merit manufactures, imports, uses, sells, and/or offers for sale products or services throughout the United States that infringe one or more claims of the '478 patent literally or under the doctrine of equivalents, including, but not limited to, its manifold products known as the Merit TRAM-P (transducer and manifold with pressure line). By its acts, Merit is also inducing others to infringe the '478 patent and contributing to the infringement by others of the '478 patent.

28. Navilyst has been irreparably harmed and monetarily damaged by Merit's infringement of the '478 patent. If Merit's infringement is not permanently enjoined, Navilyst will continue to be irreparably harmed and monetarily damaged.

29. Upon information and belief, Merit has been and is aware of the '478 patent. Merit's infringement has been and continues to be in total disregard of Navilyst's exclusive rights under the '478 patent.

30. Upon information and belief, Merit's infringement is deliberate and willful. This is an exceptional case warranting an award of treble damages to Navilyst under 35 U.S.C. § 284 and an award of its reasonable attorneys' fees and costs for the maintenance of this action under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Navilyst prays that this Court enter judgment as follows:

- A. Judgment that Merit and those in privity therewith have infringed U.S. Patent Nos. 5,911,708, 5,779,666, and 5,691,478;
- B. Judgment that Merit's infringement of U.S. Patent Nos. 5,911,708, 5,779,666, and 5,691,478 was willful;
- C. Award Navilyst compensatory damages and prejudgment interest thereof for Merit's acts of infringement of U.S. Patent Nos. 5,911,708, 5,779,666, and 5,691,478;
- D. Award treble damages for willful infringement of U.S. Patent Nos. 5,911,708, 5,779,666, and 5,691,478;
- E. Permanently enjoin Merit from further infringement of U.S. Patent Nos. 5,911,708, 5,779,666, and 5,691,478;
- F. Judgment that this is an exceptional case under 35 U.S.C. § 285 warranting an award of Navilyst's attorneys' fees; and
- G. Award Navilyst its costs, expenses and such other relief as are deemed just and equitable.

JURY DEMAND

Navilyst demands a trial by jury on all matters and issues triable by a jury.

Dated: November 18, 2011

Respectfully submitted,

NAVILYST MEDICAL, INC.,

By its attorney,

/s/ Lawrence T. Stanley, Jr.

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