

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

PROWESS, INC.
1844 Clayton Road
Concord, California

Plaintiff,

v.

Case No.: _____

RAYSEARCH LABORATORIES, AB
Sveavagen 25
Stockholm 11134
Sweden

and

NUCLETRON CORPORATION
8671 Robert Fulton Drive
Columbia, Maryland

and

**PHILIPS HEALTHCARE
INFORMATICS, INC.**
3000 Minuteman Road
Andover, Massachusetts

Defendants.

* * * * *

**COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES
AND DEMAND FOR JURY TRIAL**

Plaintiff Prowess, Inc. ("Prowess"), by its undersigned attorneys, hereby brings the following Complaint for injunctive relief and monetary damages against Defendants RaySearch Laboratories, AB ("RaySearch"), Nucletron Corporation ("Nucletron"), and Philips Healthcare Informatics, Inc. ("Phillips") (collectively the "Defendants") and, in support thereof, alleges as follows:

PARTIES

1. Plaintiff Prowess is a California corporation with its principal place of business in Concord, California. Prowess is a healthcare technology company engaged in, among other things, the development of software for the optimization of cancer radiation therapy.

2. Defendant RaySearch is a Swedish company with its principal place of business in Stockholm, Sweden. Upon information and belief, RaySearch is also a healthcare technology company involved in the development of (infringing) software for the optimization of cancer radiation therapy.

3. Defendant Nucletron is a Maryland corporation with its principal place of business in Columbia, Maryland. Upon information and belief, Nucletron is the manufacturer of cancer radiation therapy equipment and a licensee of (infringing) software from RaySearch.

4. Defendant Philips Healthcare Informatics is a Delaware Corporation with its principal place of business in Andover, Massachusetts. Upon information and belief, Philips is the manufacturer of cancer radiation therapy equipment and a licensee of (infringing) software from RaySearch.

JURISDICTION AND VENUE

5. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code and specifically alleges infringement under 35 U.S.C. § 271, *et seq.*

6. This Court has exclusive subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court also has subject matter jurisdiction over this case pursuant to 28 U.S.C. 1332(a)(1) as this is a civil action between citizens of different states and countries and the amount in controversy exceeds the sum of \$75,000 exclusive of interest and costs.

8. This Court has personal jurisdiction over Defendant RaySearch because RaySearch has established minimum contacts with the forum by purposely availing itself of the laws and benefits of the forum, and the exercise of jurisdiction over the RaySearch would not offend traditional notions of fair play and substantial justice. On information and belief, RaySearch has voluntarily conducted business in this judicial district by licensing its software for use in equipment that is to be used in this district.

9. This Court has personal jurisdiction over Defendant Nucletron because Nucletron has established minimum contacts with the forum by purposely availing itself of the laws and benefits of the forum, and the exercise of jurisdiction over Defendant Nucletron would not offend traditional notions of fair play and substantial justice. On information and belief, Defendant Nucletron has voluntarily conducted business in this judicial district by offering for sale and selling its equipment, including RaySearch's infringing software, in this district.

10. This Court has personal jurisdiction over Defendant Philips because Philips has established minimum contacts with the forum by purposely availing itself of the laws and benefits of the forum, and the exercise of jurisdiction over Defendant Philips would not offend traditional notions of fair play and substantial justice. On information and belief, Defendant Philips has voluntarily conducted business in this judicial district by offering for sale and selling its equipment, including RaySearch's infringing software, in this district.

11. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and/or 1400 because the Defendants are subject to personal jurisdiction in this judicial district.

FACTS

12. Radiation therapy for cancer treatment consists of “shooting” a beam of radiation at the tumor to impede or destroy the ability of the cancerous cells to reproduce. A risk of radiation therapy is possible collateral damage to adjacent healthy organs and tissue.

13. Accordingly, physicians develop, through the use of computer software, treatment plans that adjust the intensity, shape and angle of the radiation beam so as to optimize its effectiveness in regards to the tumor, while minimizing the possible collateral damage to healthy tissue.

14. Currently, the treatment plans generally use one of three strategies: fixed field beam delivery (“IMRT”), in which a series of radiation beams of different shapes are delivered at fixed angles, or intensity modulated arc therapy (“IMAT”), in which multiple overlapping arcs of radiation beams are utilized to vary treatment intensity. A third strategy, called volumetric-modulated arc therapy (“VMAT”), is very similar to, and evolved from, IMAT. The VMAT delivery technique features simultaneous changes in radiation beam intensity, shape and angle, all while the beam is being delivered.

15. Previously, there were limitations to the IMRT and IMAT approaches. Specifically, for IMRT, the algorithm used to develop the treatment plan did not take into account directly the limitations imposed by the specific equipment being used by the physician. For IMAT, the algorithm used to develop the treatment plan did not take into account the continuous aperture movements while the gantry of the “linac”, which emits the radiation beam, is rotated.

16. On January 9, 2007, U.S. Patent 7,162,008 entitled “Method for the Planning and Delivery of Radiation Therapy” (the ‘008 patent), was duly and legally issued to inventors Matt

A. Earl, David M. Shepard and Xingsheng Yu. A true and correct copy of the '008 patent is attached hereto as Exhibit 1.

17. Prowess holds a license to the '008 patent and has the right, and the consent of the owners, to bring suit to enforce the patent.

18. The '008 patent discloses and claims innovative and valuable improvements in the process of developing treatment plans using IMAT and IMRT. Specifically, the '008 patent discloses algorithms, and accompanying software, that solves the previous limitations with IMRT or IMAT by optimizing the shape, intensity and angle of the radiation beam by, among other things, taking into consideration all of the delivery constraints imposed by the equipment being used.

19. Upon information and belief, Defendant RaySearch, has been and is offering for license certain software, called the "SmartArc" module, that employs algorithms that infringe upon most, if not all, of the claims of the '008 patent. In addition, RaySearch has been contributing to the infringement of the '008 patent by providing its SmartArc module to radiation therapy equipment manufacturers, such as Defendants Nucletron and Philips, which equipment has been used and sold in this district and throughout the United States.

20. Upon information and belief, Defendants Nucletron and Philips have been and are infringing the '008 patent by selling radiation therapy equipment that includes and employs RaySearch's infringing software. These acts of infringement have occurred within this district and elsewhere throughout the United States.

21. Further, Defendants RaySearch, Nucletron and Philips have willfully infringed the '008 patent by continuing their acts of infringement after having been provided notice of the patent by Prowess.

COUNT I – PATENT INFRINGEMENT

All Defendants

22. The allegations of paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

23. In violation of 35 U.S.C. § 271, RaySearch, Nucletron and Philips have infringed and are continuing to infringe, literally and/or under the doctrine of equivalents, the '008 patent by practicing most or all of the claims of '008 patent in their development, licensing or use of the SmartArc module.

24. Prowess has been damaged by the Defendants' infringement and, unless the Defendants obtain licenses to the '008 patent from Prowess or are enjoined by this Court, the Defendants will continue their infringing activity and Prowess will continue to be damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Prowess prays for the following relief against Defendants RaySearch, Nucletron and Philips:

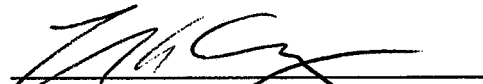
1. The entry of judgment in favor of Prowess and against the Defendants;
2. An award of damages in excess of Thirty Two Million Dollars (\$32,000,00.00) adequate to compensate Prowess for the infringement that has occurred, together with prejudgment interest from the date the infringement began, but in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284;
3. A finding that the Defendants' infringement has been willful and an award of increased damages as provided by 35 U.S.C. § 284;
4. A finding that the Defendants' infringement has been willful and an award of attorney's fees pursuant to 35 U.S.C. § 285;

5. A preliminary and permanent injunction prohibiting the Defendants from further infringement, inducement and/or contributory infringement of the '008 patent; and, such other relief that this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury on all issues so triable.

Respectfully submitted,



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