

1 X-PATENTS, APC  
2 JONATHAN HANGARTNER, Cal. Bar No. 196268  
3 5670 La Jolla Blvd.  
4 La Jolla, CA 92037  
5 Telephone: 858-454-4313  
6 Facsimile: 858-454-4314  
7 [jon@x-patents.com](mailto:jon@x-patents.com)

8 Attorneys for Plaintiff  
9 Ivera Medical Corporation

10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 IVERA MEDICAL CORPORATION,

13 Plaintiff,

14 v.

15 EXCELSIOR MEDICAL  
16 CORPORATION,

17 Defendant.

Case No. '11CV1115H JMA

**COMPLAINT**

**JURY TRIAL DEMANDED**

18 Plaintiff Ivera Medical Corporation (“Ivera”) for its Complaint against Defendant  
19 Excelsior Medical Corporation (“Excelsior”) avers as follows:

20 **PARTIES**

21 1. Plaintiff Ivera is a California corporation that maintains its principal place of  
22 business at 3525 Del Mar Heights Road, Suite 430, San Diego, California, 92130.

23 2. Defendant Excelsior is a corporation that maintains its principal place of  
24 business at 1933 Heck Avenue, Neptune, New Jersey, 07753.

25 **JURISDICTION**

26 3. This Court has personal jurisdiction over Excelsior because, on information  
27 and belief, Excelsior purposefully ships the infringing SwabCap products through  
28

1 established distribution channels into the State of California and the Southern District of  
2 California. On information and belief, Excelsior is engaged in substantial and regular  
3 business in the State of California and the Southern District of California.

4 4. Venue is proper under 28 U.S.C. §§1391(b) and (c) and 1400(b) because  
5 Excelsior offers the infringing products for sale in the Southern District of California and  
6 because Excelsior is subject to personal jurisdiction in the Southern District of California.

7 **BACKGROUND**

8 5. Ivera manufactures, markets, and sells the Curoso<sup>®</sup> Port Protector, a device  
9 that disinfects and protects the entry port on certain types of valves used with intravenous  
10 lines to help reduce bloodstream infections in hospital patients.

11 6. On August 24, 2010, United States Patent No. 7,780,794 B2 (the ‘794  
12 patent), on an invention entitled “Medical Implement Cleaning Device,” was duly and  
13 legally issued by the United States Patent and Trademark Office. A copy of the ‘794  
14 patent is attached hereto as Exhibit A.

15 7. The ‘794 patent has been in force and effect since its issuance. Ivera has  
16 been at all times, and still is, the owner of the entire right, title and interest in and to the  
17 ‘794 patent.

18 8. Excelsior sells throughout the United States a product line it refers to as the  
19 SwabCap<sup>®</sup>.

20 **FIRST CAUSE OF ACTION**

21 **COUNT I**

22 **(INFRINGEMENT OF THE ‘794 PATENT)**

23 9. Ivera realleges and incorporates the previous paragraphs of this Complaint as  
24 though set forth in full herein.

25 10. Excelsior has used, offered for sale, sold, and/or imported into the United  
26 States products, including at least the SwabCap<sup>®</sup>, which literally and under the doctrine of  
27 equivalents infringes one or more claims of the ‘794 patent in violation of 35 U.S.C. §271.  
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1 11. Ivera has been damaged and has suffered irreparable injury due to acts of  
2 infringement by Excelsior and will continue to suffer irreparable injury unless Excelsior's  
3 activities are enjoined.

4 12. Ivera has suffered and will continue to suffer substantial damages by reason  
5 of Excelsior's acts of patent infringement alleged above, and Ivera is entitled to recover  
6 from Excelsior the damages sustained as a result of Excelsior's acts.

7 13. Excelsior has willfully and deliberately infringed the '794 patent in disregard  
8 of Ivera's rights.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Ivera prays that judgment be entered by this Court in its favor and  
11 against Excelsior as follows:

12 A. That Excelsior has infringed the '794 patent;

13 B. Permanently enjoining and restraining Excelsior, its agents, affiliates,  
14 subsidiaries, servants, employees, officers, directors, attorneys and those persons in active  
15 concert with or controlled by Excelsior from further infringing the '794 patent;

16 C. That Excelsior's infringement of the '794 patent was willful;

17 D. For an award of damages adequate to compensate Ivera for the damages it  
18 has suffered as a result of Excelsior's conduct, including pre-judgment interest and a  
19 trebling of such damages due to Excelsior's willful infringement;

20 E. That Excelsior be directed to withdraw from distribution all infringing  
21 products, whether in the possession of Excelsior or its distributors or retailers, and that all  
22 infringing products or materials be impounded or destroyed;

23 F. For monetary damages in an amount according to proof;

24 G. For interest on said damages at the legal rate from and after the date such  
25 damages were incurred;

26 H. That this is an exceptional case and for an award of Ivera's attorney fees and  
27 costs;

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I. For such other relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff Ivera hereby demands a jury trial as to all issues that are so triable.

Dated: May 20, 2011

X-PATENTS, APC

By: /s/Jonathan Hangartner

JONATHAN HANGARTNER

Attorneys for Plaintiff Ivera Medical Corporation

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

**IVERA MEDICAL CORPORATION**

(b) County of Residence of First Listed Plaintiff San Diego, CA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jonathan Hangartner, Esq., X-Patents, APC; 5670 La Jolla Blvd.,  
La Jolla, CA 92037; Tel: 858-454-4313

**DEFENDANTS**

**EXCELSIOR MEDICAL CORPORATION**

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**'11CV1115 H JMA**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | <b>PTF</b>                 | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                 |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fec Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

35 USC 271

Brief description of cause:  
Patent infringement

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Leonard Davis

DOCKET NUMBER 6:11-cv-220 ED Texas

DATE

5-20-11

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_