

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
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SOUTHERN DISTRICT
OF INDIANA
LAURA A. PRIGOS
CLERK

ADVANCE DX, Inc.

Plaintiff,

v.

HEALTHPOINT DIAGNOSTIX, Inc.

Defendants

1:12-cv-0756 TWP-TAB

Civil Action No. _____

COMPLAINT

This is an action by Advance DX, Inc. ("Advance DX") for patent infringement against Healthpoint Diagnostix, Inc. ("Healthpoint") arising under the patent laws of the United States, Title 35 of the United States Code. For its complaint against Defendant, Plaintiff Advance DX alleges:

PARTIES AND JURISDICTION

1. Advance DX is a corporation organized and existing under the laws of Illinois and has a place of business at 345 West Fullerton Parkway, Apt. 2206, Chicago, Illinois 60614.

2. Upon information and belief, Defendant Healthpoint is a company organized and existing under the laws of Illinois, with a principal place of business at 25 Tri State International Drive, Suite 150, Lincolnshire, Illinois 60069-9811.

3. This action involves claims arising under the patent laws of the United States, including 35 U.S.C. §§ 271, 281, 283, 284 and 285.

4. This Court has jurisdiction over the subject matter of this Complaint pursuant to 28 U.S.C. §§ 1331 and 1338.

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

BACKGROUND

6. Advance DX has sold fluid separator collection cards for use in collecting, and separating for testing, biological fluids.

7. Mr. Mark Pankow developed innovations relating to fluid separator collection cards, including the fluid separator collection card sold by Advance DX.

8. At least one of Mr. Pankow's innovations is described and claimed in U.S. Patent No. 8,062,608, a true copy of which is attached hereto as Exhibit A. The innovation includes in one embodiment a card having an upper layer with windows for viewing samples, an absorbant layer, and a non-absorbent layer.

9. On November 22, 2011, the U.S. Patent and Trademark Office legally issued U.S. Patent No. 8,062,608 (hereinafter "the '608 Patent") for Mr. Pankow's innovative collection card design.

10. The '608 Patent has been legally assigned to Advance DX, and the '608 Patent is not expired.

11. Advance DX sells products referred to as "Advance DX 100" serum separator fluid collection cards, which are covered by at least one claim of the '608 Patent.

12. The '608 Patent issued from United States Patent Application Serial No. 12/120,972, filed May 15, 2008, (hereinafter "the '972 Application") and which claims priority to United States Patent Application Serial no. 60/930,526, filed May 17, 2007

13. The United States Patent and Trademark Office published the '972 Application on November 20, 2008.

14. The '608 Patent includes at least one claim that is substantially identical to at least one claim in the published '972 Application (hereinafter "the substantially identical claim").

CAUSES OF ACTION

15. On information and belief, Defendant sells and offers for sale fluid separating collection cards included in the various collection kit products, including but not limited to the "AIC Collection Kit", the "hs-CRP Collection Kit", the "PSA Collection Kit" and the "TSH Collection Kit" (the "Collection Kits").

16. Exhibit B hereto is a depiction of Defendant's fluid separating collection cards that are included in the Collection Kits.

17. Defendant has infringed, and is now infringing one or more claims of the '608 Patent by selling and offering for sale the Collection Kits which include Defendant's fluid separating collection cards.

18. Defendant has sold and offered for sale the Collection Kits embodying the invention at least in the substantially identical claim of the published '972 Application since at least May 15, 2009.

19. Advance DX has given actual notice of the published '972 Application on or about May 15, 2009 in accordance with 35 U.S.C. § 154(d).

20. Defendant's infringement of the '608 Patent is willful and deliberate.


21. Defendant's infringement has deprived Advance DX of sales of its fluid separating collection cards, and will continue to do so unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief in this case:

- a. Issue a declaration adjudging that Healthpoint has infringed U.S. Reissue Patent No. U.S. Patent No. 8,062,608;
- b. Permanently enjoin Healthpoint, as well as its officers, agents, servants, employees, and related companies thereof, from making, using, selling, and/or offering for sale products, systems, or devices, which infringe the '608 Patent;
- c. Award Advance DX monetary damages adequate to compensate Advance DX for infringement of the '608 Patent, including treble the amount of actual damages assessed for Healthpoint's willful infringement, together with costs and prejudgment interest;
- d. Award Advance DX a reasonable royalty under 35 U.S.C. § 154(d)
- e. Upon finding that this case is an exceptional case under 35 U.S.C § 285, award Advance DX its reasonable attorneys' fees;

- f. Grant Advance DX such other and additional relief against Healthpoint as the Court deems just and proper.



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