

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DAVOL, INC.,)
)
Plaintiff,)
)
v.) C.A. No.: _____
)
ATRIUM MEDICAL CORPORATION,) **JURY TRIAL DEMANDED**
)
Defendant.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DAVOL, INC.,)
)
) Plaintiff,)
)
) v.) C.A. No.: _____
)
) ATRIUM MEDICAL CORPORATION,) **JURY TRIAL DEMANDED**
)
) Defendant.)

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Davol, Inc. (“Davol”), for its Complaint against Defendant Atrium Medical Corporation (“Atrium”), hereby alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement pursuant to the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

THE PARTIES

2. Plaintiff Davol is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business at 100 Crossings Blvd., Warwick, Rhode Island, 02886.

3. On information and belief, Defendant Atrium is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business at 5 Wentworth Drive, Hudson, New Hampshire, 03051. On information and belief, Atrium manufactures and sells medical products in the United States and abroad, including in this District.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement arising from Atrium's manufacture, use, sale, and/or offer for sale within the United States, and/or importation into the United States, of hernia repair products, including at least the C-QURTM V-Patch and C-QUR TacShieldTM products, that infringe United States Patent Nos. 7,785,334 ("the '334 patent"), 7,806,905 ("the '905 patent") and/or 7,824,420 ("the '420 patent") (collectively, "patents-in-suit").

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

6. This Court has personal jurisdiction over Atrium, which is incorporated under the laws of the State of Delaware. Venue properly lies in this District under 28 U.S.C. §§ 1391 and 1400(b).

COUNT I - INFRINGEMENT OF THE '334 PATENT

7. Davol incorporates herein by reference the allegations in paragraphs 1 through 6 above as though fully set forth herein.

8. The United States Patent and Trademark Office duly and legally issued the '334 patent, titled "Implantable Prosthesis," on August 31, 2010. A true and correct copy of the '334 patent is attached as Exhibit A.

9. The '334 patent has been assigned to Davol. Davol owns the '334 patent and has all rights to sue and recover for infringement of the '334 patent.

10. The '334 patent is valid and enforceable.

11. On information and belief, Atrium has infringed and continues to infringe the '334 patent by making, using, selling, and/or offering for sale in the United States, and/or importing into the United States, hernia repair products, including at least the C-QURTM V-Patch product.

12. Atrium's infringement is causing damage and irreparable injury to Davol, and Davol will continue to suffer damage and irreparable injury unless and until that infringement is enjoined by this Court.

13. Davol is entitled to injunctive relief and damages in accordance with 35 U.S.C. §§ 271, 281, 283, and 284.

COUNT II - INFRINGEMENT OF THE '905 PATENT

14. Davol incorporates herein by reference the allegations in paragraphs 1 through 6 above as though fully set forth herein.

15. The United States Patent and Trademark Office duly and legally issued the '905 patent, titled "Implantable Prosthesis," on October 5, 2010. A true and correct copy of the '905 patent is attached as Exhibit B.

16. The '905 patent has been assigned to Davol. Davol owns the '905 patent and has all rights to sue and recover for infringement of the '905 patent.

17. The '905 patent is valid and enforceable.

18. On information and belief, Atrium has knowingly induced, and is knowingly inducing, its customers' direct infringement of the '905 patent by, with knowledge of the '905 patent, marketing and distributing hernia repair products, including at least the C-QURTM V-Patch product, with instructions to its customers to use those products to perform the methods claimed in the '905 patent. On information and belief, Atrium's customers have

directly infringed, and are directly infringing, the '905 patent by following Atrium's instructions to use Atrium's hernia repair products, including at least the C-QURTM V-Patch, to practice the methods claimed in the '905 patent. Atrium has knowledge of the '905 patent at least by virtue of this complaint. Furthermore, on information and belief, Atrium had knowledge of the '905 patent before the filing of this suit, as evidenced at least by the disclosure of the '905 patent in a June 4, 2011 Information Disclosure Statement submitted during the prosecution of U.S. Patent Application No. 12/877,919, assigned to Atrium, which names as inventors Atrium officers and employees Anthony Richard Horton, Atrium's Program Manager; Paul Martakos, Atrium's Group Vice President; Steve A. Herweck, Atrium's Chairman, President and Chief Executive Officer; Theodore Karwoski; and Joseph P. Ferraro.

19. Atrium's infringement is causing damage and irreparable injury to Davol, and Davol will continue to suffer damage and irreparable injury unless and until that infringement is enjoined by this Court.

20. Davol is entitled to injunctive relief and damages in accordance with 35 U.S.C. §§ 271, 281, 283, and 284.

COUNT III - INFRINGEMENT OF THE '420 PATENT

21. Davol incorporates herein by reference the allegations in paragraphs 1 through 6 above as though fully set forth herein.

22. The United States Patent and Trademark Office duly and legally issued the '420 patent, titled "Implantable Prosthesis," on November 2, 2010. A true and correct copy of the '420 patent is attached as Exhibit C.

23. The '420 patent has been assigned to Davol. Davol owns the '420 patent and has all rights to sue and recover for infringement of the '420 patent.

24. The '420 patent is valid and enforceable.

25. On information and belief, Atrium has infringed and continues to infringe the '420 patent by making, using, selling, and/or offering for sale in the United States, and/or importing into the United States, hernia repair products, including at least the C-QUR TacShield™ product.

26. Atrium's infringement is causing damage and irreparable injury to Davol, and Davol will continue to suffer damage and irreparable injury unless and until that infringement is enjoined by this Court.

27. Davol is entitled to injunctive relief and damages in accordance with 35 U.S.C. §§ 271, 281, 283, and 284.

PRAYER FOR RELIEF

WHEREFORE, Davol prays for judgment as follows:

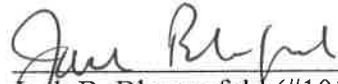
- a. That Atrium has infringed each of the patents-in-suit;
- b. That, in accordance with 35 U.S.C. § 283, Atrium, and all affiliates, employees, agents, officers, directors, attorneys, successors and assigns, and all those acting on behalf of or in active concert or participation with any of them, be preliminarily and permanently enjoined from infringing the patents-in-suit;
- c. For an award of damages sufficient to compensate Davol for Atrium's infringement of the patents-in-suit;
- d. For an award of prejudgment and post-judgment interest;
- e. For a declaration that this case is "exceptional" under 35 U.S.C. § 285, and an award to Davol of its reasonable attorneys' fees, expenses, and costs incurred in this action; and

f. For such other and further relief as this Court shall deem appropriate.

DEMAND FOR JURY TRIAL

Davol demands a jury trial of all issues triable to a jury in this action.

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