

JUDGE DANIELS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

12 CV 6193

COOPERSURGICAL, INC.,

Plaintiff,

v.

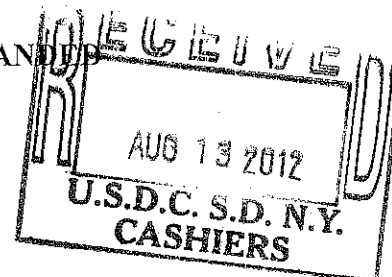
MEDTEK DEVICES, INC.,

Defendant.

Civil Action No. _____

JURY TRIAL DEMAND

COMPLAINT



Plaintiff, CooperSurgical, Inc. ("CSI"), for its Complaint against Defendant, Medtek Devices, Inc. ("Medtek"), alleges as follows:

THE PARTIES

1. Plaintiff CSI is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 75 Corporate Drive, Trumbull, Connecticut 06611.

2. On information and belief, Defendant Medtek is a New York corporation with a place of business at 5900 Genesee Street, Lancaster, New York 14086 and does business in this district under the name Buffalo Filter.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35, United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b). Upon information and belief, Defendant distributes, sells and/or offers its product and services for sale, including the products embodying the inventions of the patents in suit, throughout the United States including this district.

THE PATENTS IN SUIT

5. Plaintiff CSI is the owner of the entire right, title and interest in and to United States Patent No. 7,959,698 (“the ‘698 patent”), attached as Exhibit A, which was duly and legally issued on June 14, 2011.

6. Plaintiff CSI is the owner of the entire right, title and interest in and to United States Patent No. 7,789,946 (“the ‘946 patent”), attached as Exhibit B, which was duly and legally issued on September 7, 2010.

7. Plaintiff CSI is the owner of the entire right, title and interest in and to United States Patent No. 7,258,712 (“the ‘712 patent”), attached as Exhibit C, which was duly and legally issued on August 21, 2007.

8. Plaintiff CSI is the owner of the entire right, title and interest in and to United States Patent No. 6,881,236 (“the ‘236 patent”), attached as Exhibit D, which was duly and legally issued on April 19, 2005.

9. Plaintiff CSI is the owner of the entire right, title and interest in and to United States Patent No. 6,589,316 (“the ‘316 patent”), attached as Exhibit E, which was duly and legally issued on July 8, 2003.

10. Plaintiff CSI is the owner of the entire right, title and interest in and to United States Patent No. 6,110,259 (“the ‘259 patent”), attached as Exhibit F, which was duly and legally issued on August 29, 2000.

11. The '698 patent, the '946 patent, the '712 patent, the '236 patent, the '316 patent and the '259 patent are collectively referred to herein as "the patents in suit."

CAUSE OF ACTION FOR PATENT INFRINGEMENT

12. CSI incorporates and re-alleges paragraphs 1-11 as if fully set forth herein.

13. Defendant has made, used, offered to sell and/or sold products that infringe one or more claims of each of the patents in suit, including Defendant's PlumePort Laparoscopic Plume Filtration Device ("PlumePort Filtration Device").

14. Defendant was notified of its infringement by CSI, through its counsel, by letter dated October 27, 2011.

15. Defendant has been and still is directly infringing, contributing to and/or actively inducing infringement of the patents in suit in this judicial district and elsewhere in the United States by the manufacture, use, sale, offer for sale, distribution and/or importation into the United States of Smoke Evacuation Systems covered by the patents in suit, including, at least the PlumePort Filtration Device.

16. Defendant has been and still is contributing to the direct infringement of the patents in suit by, at least, its customers in the United States through their use of the infringing Smoke Evacuation Systems, including, the PlumePort Filtration Device, that are made and/or adapted for use to directly infringe the patents in suit.

17. Defendant has been and still is actively inducing its customers to directly infringe the patents in suit, by its manufacture, marketing, use, sale, offer for sale, distribution and/or importation into the United States of Smoke Evacuation Systems, including, at least the PlumePort Filtration Device, while having full knowledge of the patents in suit and having an intent to encourage its customers to infringe the patents in suit.

18. Defendant has profited through its infringement of the patents in suit. As a result of Defendant's unlawful infringement, CSI has been irreparably harmed and has suffered damages in an amount not yet determined.

19. Upon information and belief, Defendant's acts of infringement have been deliberate and willful, and without any objectively reasonable defense to infringement, rendering this case exceptional within the meaning of 35 U.S.C. § 285. Such acts entitle CSI to an award of enhanced damages and reasonable attorneys' fees.

20. Upon information and belief, Defendant intends to continue its unlawful infringing activity and CSI will continue to be irreparably harmed and damaged by such infringement, unless Defendant is enjoined by this Court.

REQUEST FOR RELIEF

WHEREFORE, CSI requests the following relief from this Court with respect to Defendant:

- a. Judgment that Defendant has infringed the patents in suit;
- b. Judgment that Defendant's patent infringement has been and continues to be, willful and deliberate;
- c. Judgment that this is an exceptional case pursuant to 35 U.S.C. § 285;
- d. An order preliminarily and permanently enjoining Defendant, its subsidiaries, officers, agents, servants, employees, licensees, distributors, and all other persons acting or attempting to act in active concert or participation with Defendant or acting on its behalf, from further infringement, inducement of infringement and contributory infringement of the patents in suit;

- e. An accounting for the damages arising out of Defendant's infringement of the patents in suit and an order awarding to CSI, to the extent allowable by law, recovery for all damages caused by Defendant's patent infringement;
- f. An order awarding treble the amount of damages to CSI because of the willful, knowing and wanton nature of Defendant's conduct;
- g. An order directing Defendant to pay CSI's costs, expenses, and attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285, as well as Fed.R.Civ.P. 54(d);
- h. An order awarding to CSI pre-judgment and post-judgment interest on the damages caused to CSI by Defendant's patent infringement; and
- i. Any other relief appropriate as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury of all issues triable as of right by a jury in this action.

Respectfully submitted,

FISH & RICHARDSON P.C.

Dated: August 13, 2012

By: Edmond R. Bannon

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