

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

Lecat's Ventriloscope, LLC
1098 Maple St.
Tallmadge, Ohio 44278

Plaintiff,

V.

University of New England
716 Stevens Avenue
Portland, Maine 04103

and

Ryan Eling
23 Chamberlain Ave.
Portland, Maine 04101

Defendants.

CASE NO. : _____

COMPLAINT

Patent Infringement

JURY DEMAND

Plaintiff Lecat’s Ventriloscope, LLC, brings this action for patent infringement against defendants University of New England and Ryan Eling (collectively, “Defendants”), and states as follows:

PARTIES

1. Plaintiff Lecat's Ventriloscope, LLC, is a limited liability company organized and existing under the laws of the State of Ohio, having its principal place of business located at 1098 Maple Street, Tallmadge, Ohio 44278.

2. Upon information and belief, Defendant University of New England is a Maine non-profit company having its principal place of business located at 716 Stevens Avenue, Portland, Maine 04103.

3. Upon information and belief, Defendant Ryan Eling is an individual residing at 23 Chamberlain Ave., Portland, Maine 04101.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq. (for example, 35 U.S.C. § 271, 281, 283, and 285), for infringement of U.S. Patent Number 7,645,141.

5. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1332, and 1338.

6. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400.

7. Upon information and belief, Defendants are incorporated or reside, and regularly transact and conduct business, in this District, and, by itself or through one or more agents acting under its control and direction, have committed, and/or contributed to or induced acts of, infringement in this District.

BACKGROUND OF THE CASE

A. United States Letters Patent 7,645,141

8. Dr. Paul Jacques Charles Lecat (“Lecat”) expended considerable time, effort, and money in developing a unique arrangement for auscultation training, as was disclosed in the application for United States Letters Patent Serial No. 11/523,224 (filed September 19, 2006)(also, “Application ‘224”).

9. Patent Application Serial No. 11/523,224 was allowed by the United States Patent and Trademark Office, and granted United States Letters Patent No. 7,645,141 (also, “Patent ‘141”)(Exhibit 1) on January 12, 2010.

10. Lecat transferred all right title and interest in Patent ‘141 to Lecat’s Ventriloscope, LLC (“Ventriloscope”) in an assignment document.

11. Ventriloscope is the owner of all right, title, and interest in United States Letters Patent No. 7,645,141.

12. Ventriloscope is the sole authorized seller of the inventions claimed by Patent ‘141.

B. Summary of Patent At Issue

13. Auscultation is the act of listening to sounds within the body as a method of diagnosis. A stethoscope is an example of an auscultation device that is used in the medical field to listen to internal sounds in the human body; for example, heart sounds, breathing sounds, intestinal noises, and blood flow in arteries and veins.

14. Using a stethoscope or other auscultation device to diagnosis a patient requires training in detecting and identifying abnormal auditory findings. Simulators and mannequins are often used to train or test students on auscultation devices, such as stethoscopes. Auscultation training devices include a sound generating device to produce sounds consistent with an abnormal physical condition, which students must detect and identify.

15. Patent ‘141 discloses novel devices and methods for auscultation training.

C. Nature of Defendants’ Business and Relationship

16. Upon information and belief, Defendant University of New England (“UNE”) is a Maine based non-profit company that is an educator of healthcare professionals.

17. Upon information and belief, Defendant University of New England's College of Osteopathic Medicine, and/or Westbrook College of Health Professions, offers students auscultation training courses and training in its Clinical Performance Center (also known as "Clinical Simulation Program").

18. Upon information and belief, Defendant Ryan Eling ("Eling") is employed by Defendant UNE; specifically, upon information and belief, Eling is an Operations Manager and Simulation Specialist at the University of New England's College of Osteopathic Medicine, Clinical Simulation Program.

D. Defendants' Willful Infringement Of Plaintiff's Patent

19. Plaintiff Lecat's Ventriloscope, also doing business as LECAT's SIMPLYSIM, sells auscultation training devices covered by the claims of Patent '141 under the federally registered trademark "VENTRILOSCOPE®."

20. Plaintiff's "Ventriloscope®" auscultation training device is packaged in an aluminum carrying case clearly marking the product as protected by United States Patent No. 7,645,141.

21. Defendant UNE, College of Osteopathic Medicine, purchased two patented Ventriloscope® devices sometime in 2011.

22. Defendant Eling, in his capacity as an employee of Defendant UNE, examined a Ventriloscope® device at the 2011 International Meeting on Simulation and Healthcare (IMSH) convention.

23. Upon information and belief, Defendant Eling, in his capacity as an employee of Defendant UNE, subsequently had follow-up conversations with Plaintiff regarding the technical specifications and cost of Plaintiff's Ventriloscope® products, was taught how to implement certain sound "looping" techniques utilized by the Ventriloscope® products, and was provided

with cost quotes corresponding to outstanding cost quotes provided to Defendant UNE's College of Osteopathic Medicine.

24. Upon information and belief, Defendants UNE and Eling knew that Plaintiff's Ventriloscope® devices were patented.

25. Upon information and belief, on or about February 29, 2012, Defendants posted an audiovisual production entitled "The Fake-A-Scope" on the video file-sharing website YouTube under the profile "UNECSP" (See Exhibit 2).

26. In the "Fake-A-Scope" video ("Video"), Defendant Eling introduces himself as the Operations Manager at the University of New England's Clinical Simulation Program; makes liberal use of Defendant UNE's name and logos; and provides his university email address, and the url addresses to the UNE Clinical Simulation Program website and blog, in case viewers have questions.

27. Upon information and belief, the Video was recorded at Defendant UNE's Clinical Simulation Program facilities.

28. The Video shows Defendants manufacturing an auscultation training device—the "Fake-A-Scope"—that infringes at least one apparatus claim of Patent '141.

29. The Video makes specific reference to Defendants' use of a method for simulating auditory findings in an auscultation device that infringes at least one method claim of Patent '141.

30. The Video provides a step-by-step process for manufacturing an auscultation training device that infringes the apparatus and method claims of Patent '141, and specifically induces—indeed, encourages—viewers to manufacture such a device.

31. Upon information and belief, as of the date of the filing of this Complaint, YouTube was advertising that the Video had been viewed by 742 different users.

32. Upon information and belief, the “Comments” section associated with the Video—specifically, the comment from “wfsticht77,” indicating “well done...simple, easy to do and most importantly...useful”—is evidence that Defendants’ conduct has actually induced third party viewers of the Video to manufacture infringing devices, and make infringing use of patented processes, in accordance with the measures taught and encouraged by the Video.

33. Upon information and belief, Defendants entered the Fake-A-Scope video into the GHOSTS 2012 Do-It-Yourself Video Contest, and a link to the Video was accessible by GHOST website visitors.

34. Upon information and belief, GHOSTS is an acronym for “Gathering of Healthcare Simulation Technology Specialists”; GHOSTS holds an annual conference for training of “Sim Techs”—a target market for sales of Plaintiff’s Ventriloscope®.

35. Upon information and belief, the GHOSTS link to Defendants’ Video has induced additional third parties to infringe the apparatus and method claims of Patent ‘141.

36. Plaintiff Ventriloscope did not give Defendants permission to manufacture, use, sell or practice the inventions covered by United States Letters Patent No. 7,645,141.

37. Defendants’ conduct infringed, and/or contributed to or induced the infringement of, Plaintiff Ventriloscope’s patent rights.

38. As a result of Defendants’ competitive activities and infringement, Ventriloscope has suffered and will continue to suffer grievous damage unless and until enjoined by this Court.

FIRST CLAIM FOR RELIEF
(Infringement of U.S. Patent 7,645,141)

39. The allegations of paragraphs 1-38 are incorporated for this Count I as though fully set forth herein.

40. Plaintiff VentriloScope is the owner of all right, title, and interest in and to United States Letters Patent 7,645,141 (Patent ‘141)(Exhibit 1) entitled “Arrangement for Auscultation Training.”

41. Patent ‘141 was duly issued by the United States Patent and Trademark Office, and is valid and enforceable.

42. Upon information and belief, Defendants manufactured and use devices that infringe claims of Patent ‘141.

43. Upon information and belief, Defendants have induced or contributed to third parties’ manufacture and use of devices that infringe claims of Patent ‘141.

44. Upon information and belief, Defendants have willfully infringed, and/or willfully contributed to or induced the infringement of, one or more claims of Patent ‘141 by manufacturing, using, and/or inducing others to manufacture and use, infringing products and methods in the United States.

45. By reason of said acts by Defendants, Plaintiff VentriloScope has been, and will continue to be, seriously damaged and irreparably injured unless Defendants are preliminarily and permanently enjoined by this Court from the actions complained of herein, and thus Plaintiff is without adequate remedy at law.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays for the entry of a judgment by this Court against Defendants:

A. declaring that Defendants have infringed United States Letters Patent No. 7,645,141;

B. ordering that Defendants, their officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with Defendants, be preliminarily and permanently enjoined and restrained from further infringing Plaintiff's United States Letters Patent No. 7,645,141 during its term;

C. awarding damages, to be determined at trial, together with interest, to compensate Plaintiff for the past infringement by Defendants of United States Letters Patent No. 7,645,141;

D. awarding Plaintiff prejudgment interest according to law;

E. finding this to be an exceptional case, and directing that Defendants pay Plaintiff treble damages, the costs of this action, and its reasonable attorneys fees pursuant to 35 U.S.C. §284-285; and

F. for such other relief as this Court deems just and proper.

Dated September 18, 2012.

/s/ Teresa M. Cloutier
Teresa M. Cloutier
Attorney for Lecat's Ventriloscope, LLC

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DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Plaintiff Ventriloscope hereby demands a trial by jury on all issues triable by a jury.

Dated: September 18, 2012

s/Teresa M. Cloutier
Teresa M. Cloutier
Attorney for Lecat's Ventriloscope, LLC

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