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SANTA ANA

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Attorneys for Plaintiff Gaya Limited

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

GAYA LIMITED, COVIDIEN LP, and
COVIDIEN SALES LLC

Plaintiffs,
vs.

APPLIED MEDICAL RESOURCES
CORPORATION,

Defendant.

SACV13-00024 JST (ANx)

COMPLAINT
DEMAND FOR JURY TRIAL

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THE PARTIES

7. Gaya is a company formed under the laws of Ireland, having a registered office and principal place of business at 49 Rockfield Avenue, Perrystown, Dublin 12, Ireland.

8. Covidien LP is a Delaware limited partnership and has a principal place of business at 15 Hampshire Street, Mansfield, Massachusetts 02048.

9. Covidien Sales LLC is a Delaware limited partnership having a principal place of business at 15 Hampshire Street, Mansfield, Massachusetts 02048.

10. Pursuant to an agreement entered into between Gaya and Covidien, Covidien LP is an exclusive licensee of Gaya's inventions related to certain laparoscopic surgical access devices.

11. Pursuant to an agreement between Covidien LP and Covidien Sales LLC, Covidien Sales LLC is an exclusive licensee in the United States of Covidien LP's rights licensed from Gaya.

12. On information and belief, Defendant Applied is a corporation incorporated under the laws of Delaware and has its principal place of business at 22872 Avenida Empresa, Rancho Santa Margarita, California 92677, in Orange County, California. Applied is the record assignee of the patents-in-suit.

FACTUAL BACKGROUND

13. The patents-in-suit are entitled "Surgical Access Apparatus and Method" and are directed to and claim hand assisted surgical access laparoscopic ("HALS") devices and methods for performance of laparoscopic surgeries.

14. U.S. Serial No. 13/421,730 is currently pending in ongoing prosecution in the U.S. Patent and Trademark Office.

15. U.S. Patent No. 8,105,234 issued on January 31, 2012.

16. U.S. Patent No. 8,016,755 issued on September 13, 2011.

1 17. U.S. Patent No. 7,481,765 issued on January 27, 2009.

2 18. U.S. Patent No. 7,473,221 issued on January 6, 2009.

3 19. The patents-in-suit all derive from a family of patent applications
4 claiming priority to Provisional Application No. 60/241,958, filed Oct. 19, 2000.

5 20. On information and belief, the individuals named as co-inventors on
6 the above-listed patents assigned their interest in the patents-in-suit to Defendant
7 Applied.

8 21. On information and belief, Applied was responsible for the preparation
9 and prosecution of the applications before the United States Patent and Trademark
10 Office ("USPTO") that eventually issued as the patents-in-suit.

11 22. Prior to 2000, Applied had no HALS device in the marketplace and, on
12 information and belief, had conducted no HALS related research and development.

13 23. Prior to 2000, Gaya had carried out research and development in the
14 field of HALS access devices. As a result of Gaya's research and development, it
15 had made inventions relating to HALS devices and their use.

16 24. Beginning in September, 1999, Gaya disclosed its confidential
17 information relating to its HALs inventions to Applied. This confidential
18 information included laboratory notebook entries, unpublished and pending patent
19 applications, and other materials recording and describing surgical access devices
20 conceived of and developed by one or more of the following Gaya representatives:
21 Martin Caldwell, Damien Rosney, Donal Bermingham, and Christy Cummins.

22 25. In October, 2000, Applied disclosed the GelPort product to Gaya.
23 However, after examining Applied's GelPort product, Gaya asserted that the
24 GelPort product that Applied claimed it developed, was really Gaya's invention, not
25 Applied's, and was improperly derived from the confidential information Gaya had
26 made available to Applied in the preceding months. In disregard of Gaya's
27 confidential information and innovative contributions mentioned above, Applied
28 launched the GelPort product in the U.S. in June, 2001, and filed and prosecuted

1 patent applications now granted which included patent claims that incorporate the
2 inventions and recited the very features contributed by the Gaya inventors.

3 26. After a protracted period of negotiations, Gaya sued Applied in
4 February, 2006, in Ireland. On Applied's motion, the Irish court stayed that action
5 in favor of a United States arbitration. On July 7, 2006, Applied filed the
6 arbitration with The International Arbitration Tribunal of the International Center
7 for Dispute Resolution. In that arbitration, Gaya counterclaimed that Applied
8 blatantly and intentionally breached obligations owed to Gaya pursuant to
9 agreements between the parties by virtue of Applied's use of confidential
10 information disclosed to it by Gaya in developing the GelPort.

11 27. After conducting an approximately one-week hearing and examining
12 the evidence presented by both parties, including a large number of production
13 documents such as the laboratory notebooks mentioned above and the testimony
14 and cross examinations of numerous witnesses, including several of the inventors
15 named on the face of the above-listed patents, the panel of three arbitrators held that
16 Applied inappropriately benefited from the confidential documents and
17 communications obtained from Gaya, using the same as a "spring board or head
18 start" . . . and therefore violated Irish law and the Secrecy Agreement because, in
19 the Panel's view, Applied used Gaya's information to develop the Gelport device."
20 In particular, the panel held that Gaya contributed the "self sealing detachable
21 valve" to the GelPort device. A true and correct copy of the Award of Arbitrators
22 of the International Arbitration Tribunal of the International Center for Dispute
23 Resolution is attached as Exhibit F.

24 28. Inventorship of the claims of the patents-in-suit was not presented as
25 an issue in the arbitration. Those patents did not issue until 2009, at the earliest,
26 after the arbitration had already concluded. However, the holding of the arbitrators
27 is relevant to the issue of inventorship of the claims of the patents-in-suit insofar as
28 the arbitrators found that Applied incorporated Gaya's confidential information into

1 its commercial GelPort product and several claims of the patents-in-suit read on the
2 GelPort. In effect, the arbitration panel has already adjudicated factual disputes
3 between the parties concerning inventorship as to those claims that embrace the
4 GelPort.

5 29. The subject matter described and claimed in one or more claims of
6 each of the patents-in-suit were the inventions, in whole or part, of Gaya inventors,
7 specifically Martin Caldwell, Damien Rosney, Donal Bermingham, and Christy
8 Cummins. In particular, one or more of these Gaya inventors conceived of a hand
9 access port incorporating an elastomeric material to provide a sleeveless, self-
10 sealing access to the abdomen so as to maintain insufflation pressure. The Gaya
11 inventors also conceived of and/or reduced to practice a hand access port made
12 from a material, such as a gel or a foam. One or more of these inventors conceived
13 of and/or reduced to practice a self-sealing device that could accommodate hands or
14 instruments with varying diameters. One or more of these inventors further
15 conceived of and/or reduced to practice such a device made with flanges to secure
16 the device within an incision in the abdomen. Moreover, as found by the panel of
17 arbitrators, the Gaya inventors made technical contributions to Applied's GelPort
18 HALS product and are properly inventors and should be named on each claim of
19 the patents-in-suit which embrace the GelPort device as either the sole inventive
20 entity or as joint inventors with the presently named inventors. These contributions
21 further require that the Gaya inventors should be named on each claim of the
22 patents-in-suit which embrace these features as either sole or joint inventors.

23 30. The above-identified features are recitations in various claims of the
24 patents-in-suit and are patentably significant features of the claimed inventions
25 contributed by one or more Gaya inventors.

26 31. Martin Caldwell was omitted as an inventor of the patents-in-suit
27 without any deceptive intent on his part.
28

32. Damien Rosney was omitted as an inventor of the patents-in-suit without any deceptive intent on his part.

33. Donal Birmingham was omitted as an inventor of the patents-in-suit without any deceptive intent on his part.

34. Christy Cummins was omitted as an inventor of the patents-in-suit without any deceptive intent on his part.

COUNT I

Complete Substitution of Inventors Pursuant to 35 U.S.C. § 256

35. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1-34 of the Complaint as if those allegations have been fully set forth herein.

36. Messrs. Caldwell, Rosney, Bermingham, and Cummins were the first persons to conceive the subject matter described and claimed in the above listed patents.

37. Messrs. Caldwell, Rosney, Bermingham, and Cummins are the true and only co-inventors of the inventions described and claimed in the above listed patents.

38. Pursuant to 35 U.S.C. § 256, Messrs. Caldwell, Rosney, Bermingham, and Cummins should be substituted for the presently named inventors of the above listed patents.

39. Because Messrs. Caldwell, Rosney, Bermingham, and Cummins are rightfully co-inventors of the claims of the patents-in-suit, this Court should issue an Order directing the Commissioner of Patents to substitute them as the proper inventorship entity on each of the patents-in-suit.

COUNT II

Addition of Co-Inventors Pursuant to 35 U.S.C. § 256

40. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1-39 of the Complaint as if those allegations have been fully set forth herein.

41. Messrs. Caldwell, Rosney, Bermingham, and Cummins conceived subject matter described and claimed in the above listed patents.

42. Messrs. Caldwell, Rosney, Bermingham, and Cummins are co-inventors of the invention described and claimed in the above listed patents.

43. Pursuant to 35 U.S.C. § 256, Messrs. Caldwell, Rosney, Bermingham, and Cummins should be added to the presently named inventors of the above listed patents.

44. Because Messrs. Caldwell, Rosney, Bermingham, and Cummins are rightfully co-inventors of claimed features of one or more claims of the patents-in-suit, this Court should issue an Order directing the Commissioner of Patents to add Messrs. Caldwell, Rosney, Bermingham, and Cummins as co-inventors on each of the patents-in-suit.

COUNT III

Unjust Enrichment

45. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1-44 of the Complaint as if those allegations have been fully set forth herein.

46. Applied has unjustly enjoyed the exclusivity for its GelPort product and freedom from marketplace competition from other HALS devices that might have been manufactured and sold by third party device companies for many years. On information and belief, such exclusivity was unjustly obtained at Gaya's expense by virtue of the patents-in-suit which were filed, prosecuted, and granted naming only Applied employees as inventors, thereby providing Applied with exclusive title and ownership to those patents. Applied solely prosecuted the

1 patents-in-suit to the exclusion of Gaya, which properly had rights of inventorship,
2 and thereby rights of co-ownership in said patents.

3 47. Gaya is rightfully and in accordance with the mandates of the Patent
4 Laws of the United States either the sole owner of all right, title and interest or at
5 least a co-owner of an undivided interest in the patents-in-suit and therefore should
6 have held full and independent right to license and enjoy the benefits of these patent
7 rights including the right to receive royalties for use of the patents-in-suit. Due to
8 the misjoinder and/or non-joinder of Gaya representatives as inventors, Gaya has
9 been denied royalties from Applied, Gaya has been denied potential royalty income
10 from other companies seeking to participate in the HALS market, and Gaya has
11 been denied other financial benefits which would flow from its rights in the patents-
12 in-suit.

13 48. Applied wrongfully and unjustly failed to join Gaya representatives as
14 inventors during the pendency of the patents-in-suit, and engaged in other acts of an
15 inequitable nature to unjustly maintain its exclusive patent position in the HALS
16 market.

17 49. Gaya has not been compensated nor shared in the benefits and
18 enrichment that has been unfairly and unjustly realized by Applied. Applied has
19 been unjustly enriched at Gaya's expense.

20 50. Equity and good conscience require Applied to pay restitution to Gaya.

21
22 **COUNT IV**

23 **Conversion**

24 51. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1-
25 50 of the Complaint as if those allegations have been fully set forth herein.

26 52. Gaya is the assignee of the inventions of Messrs. Caldwell, Rosney,
27 Birmingham, and Cummins relating to surgical access devices and is the rightful
28 owner of those inventions.

1 53. By incorporating the Gaya inventions into claims of Applied's patents-
2 in-suit without naming the proper Gaya inventors as sole inventors or as co-
3 inventors on those patents and applications, Applied has wrongfully converted the
4 inventions and technology developed by Gaya.

5 54. Applied filed for and obtained said patents in its name only, on
6 information and belief, to solely benefit financially from such conversion of Gaya's
7 inventions. Gaya is entitled to an award of damages to compensate Gaya for said
8 conversion.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray that this Court enter judgment:

12 (a) Ordering that the Commissioner of Patents substitute Messrs. Martin
13 Caldwell, Damien Rosney, Donal Bermingham, and Christy Cummins for presently
14 named inventors of U.S. Patent Nos. 7,473,211; 7,481,765; 8,105,234; 8,016,755;
15 and Application Serial No. 13/421,730;

16 (b) Alternatively to (a), ordering that the Commissioner of Patents add
17 Messrs. Caldwell, Rosney, Bermingham, and Cummins as co-inventors of U.S.
18 Patent Nos. 7,473,211; 7,481,765; 8,105,234; 8,016,755; and Application Serial
19 No. 13/421,730;

20 (c) Awarding Gaya damages and all other relief sufficient to compensate for
21 Applied's unjust enrichment;

22 (d) Awarding Gaya damages sufficient to compensate Gaya for the
23 conversion of Gaya's inventions;

24 (e) Awarding Gaya and Covidien their costs and expenses in this action;

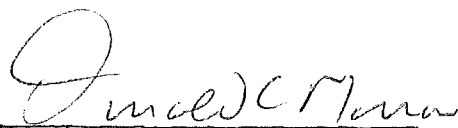
25 (f) Declaring this case to be exceptional and awarding Gaya and Covidien
26 their attorneys' fees; and

27 (g) Awarding such additional and further relief as the Court may deem just
28 and proper.

1
2 Dated:

1/4/2013

By:


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Attorneys for Plaintiff Gaya Limited

DEMAND FOR JURY TRIAL

Plaintiffs Gaya Limited, Covidien LP and Covidien Sales LLC hereby
demand a jury trial on all issues triable to a jury.

Respectfully Submitted,

Dated: 1/4/2013

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