

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

EVM SYSTEMS, LLC,

Plaintiff,

V.

REX MEDICAL, L.P. and
ARGON MEDICAL DEVICES, INC.,

Defendants.

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CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff EVM SYSTEMS, LLC (“Plaintiff”) files this Original Complaint against Defendants REX MEDICAL, L.P. and ARGON MEDICAL DEVICES, INC., alleging as follows:

I. THE PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of Texas, with a principal place of business in Plano, TX.

2. Upon information and belief, REX MEDICAL, L.P. (“REX MEDICAL”) is a limited partnership organized and existing under the laws of the State of Pennsylvania, with its principal place of business located at 1100 E. Hector Street, Suite 245, Conshohocken, PA 19428. REX MEDICAL engages in business in the State of Texas but, upon information and belief, does not maintain a regular place of business in the State or a designated agent for service of process. Therefore, pursuant to § 17.044 of the Tex. Civ. Prac. & Rem. Code, REX MEDICAL has designated the Secretary of State as its agent for service of process and may be served with process through its counsel or by serving the Secretary of State. The Secretary of State may forward service to Defendant REX MEDICAL at its home office address.

3. Upon information and belief, ARGON MEDICAL DEVICES, INC. (“ARGON”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 5600 Tennyson Parkway, Suite 345, Plano, Texas. ARGON may be served with process by serving its registered agent, CT Corporation System located at 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

II. JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35 United States Code. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §1338(a). Venue is proper under 28 U.S.C. §§ 1391(b) and (c).

5. Upon information and belief, Defendants each have minimum contacts with the Tyler Division of the Eastern District of Texas such that this venue is a fair and reasonable one. Defendants have each committed such purposeful acts and/or transactions in Texas that they reasonably knew and/or expected that they could be haled into a court as a future consequence of such activity. Upon information and belief Defendants have transacted and, at the time of the filing of this Complaint, are transacting business within the Tyler Division of the Eastern District of Texas. For these reasons, personal jurisdiction exists and venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

III. PATENT INFRINGEMENT

6. On November 8, 2011, United States Patent No. 8,052,670 B2 (“the ‘670 patent”) was duly and legally issued for a “MEDICAL DEVICE WITH SLOTTED MEMORY METAL

TUBE.” A true and correct copy of the ‘670 patent is attached hereto as Exhibit “A” and made a part hereof.

7. Plaintiff is the owner of all right, title and interest of the ‘670 patent, including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the ‘670 patent. Accordingly, Plaintiff possesses the exclusive right and standing to prosecute the present action for infringement of the ‘670 patent by these Defendants.

8. Upon information and belief, REX MEDICAL manufactures, makes, has made, uses, practices, imports, provides, supplies, distributes, sells and/or offers for sale products and/or systems that infringe one or more claims in the ‘670 patent. REX MEDICAL has infringed and continues to infringe the ‘670 patent by its manufacture, use, sale, importation, and/or offer for sale of vena cava filter including, but not limited to, the Option™ vena cava filter.

9. Upon information and belief, ARGON entered into an exclusive license deal with REX MEDICAL for distribution of the Option™ vena cava filter. *See* attached Exhibit B. ARGON has infringed and continues to infringe the ‘670 by its distribution of the Option™ vena cava filter.

10. As a result of each of the Defendants’ infringing conduct, each Defendant has damaged Plaintiff. Defendants are, thus, each liable to Plaintiff in an amount that adequately compensates Plaintiff for each Defendant’s infringement, which by law in no event can be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

11. Upon information and belief, each Defendant was on notice of the ‘670 patent and of its infringing conduct, and has, respectively, knowingly and willfully infringed the ‘670 patent at least as early as service of the Complaint upon each respective Defendant. Therefore, Plaintiff is entitled to additional damages as permitted by 35 U.S.C. § 284

12. As a consequence of each Defendants' infringement, Plaintiff has been irreparably damaged and such damage will continue without the issuance of an injunction by this Court.

IV. JURY DEMAND

Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

- a. Judgment that one or more claims of the '670 Patent have been infringed, either literally and/or under the doctrine of equivalents, by each Defendant and/or by others to whose infringement each Defendant has contributed and/or by others whose infringement has been induced by each Defendant;
- b. Judgment that Defendants' infringement is willful from the time each Defendant became aware of the infringing nature of its products and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284.
- c. Judgment that each Defendant account for and pay to Plaintiff all damages to and costs incurred by Plaintiff because of each Defendant's infringing activities and other conduct complained of herein;
- d. That Plaintiff be granted pre-judgment and post-judgment interest on the damages caused by each Defendant's infringing activities and other conduct complained of herein;
- e. That the Court declare this an exceptional case and award Plaintiff its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 284;
- f. That each Defendant be permanently enjoined from any further activity or conduct that infringes one or more claims of the '670 Patent; and
- g. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: February 20, 2013.

Respectfully submitted,

/s/Jonathan T. Suder
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