

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MADHAVAN PISHARODI

Plaintiff,

v.

NUVASIVE, INC.,

Defendant.

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CIVIL ACTION NO. 4:13-cv-03786

ORIGINAL COMPLAINT

Plaintiff Madhavan Pisharodi files this Original Complaint against Nuvasive, Inc.
as set forth below:

I. PARTIES

1. Plaintiff Madhavan Pisharodi (“Plaintiff”) is an individual residing in Cameron County, Texas.

2. Upon information and belief, Defendant NuVasive, Inc. (“Defendant”) is a corporation organized and existing under the laws of Delaware, having its corporate headquarters at 7475 Lusk Blvd., San Diego, California 92121. Defendant can be served through its registered agent, National Corporate Research, Ltd., 800 Brazos, Suite 400, Austin, Texas 78701.

II. NATURE OF THIS ACTION

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

III. JURISDICTION AND VENUE

4. This Court has exclusive subject matter jurisdiction over this action under 28 U.S.C. § 1338(a).

5. Defendant is subject to personal jurisdiction by virtue of its contacts with the State of Texas, and with the Southern District of Texas in particular. Defendant voluntarily does business in this district including without limitation Harris and Cameron Counties by manufacturing, selling, or offering to sell products that infringe, by contributing to the infringement of the patent at issue in this action, or by conducting other business within this judicial district.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

IV. FACTS

7. On August 5, 1997, U.S. Patent No. 5,653,762 (“the ‘762 patent”) was duly and legally issued by the U.S. Patent and Trademark Office (the “USPTO”) to Madhavan Pisharodi for an invention relating to a “Method of Stabilizing Adjacent Vertebrae with Rotating, Lockable, Middle-Expanded Intervertebral Disk Stabilizer.” A true and correct copy of the ‘762 patent is attached hereto as Exhibit A. The ‘762 patent is presumed valid pursuant to 35 U.S.C. § 282. Plaintiff is the inventor and owner of the ‘762 patent and has right to bring this suit for infringement of the ‘762 patent.

8. Plaintiff is a physician who specializes in neurosurgery. Throughout his life, Plaintiff has continued to dedicate his time and personal resources into developing new procedures and devices for the advancement of neurosurgery and healthcare as a whole. The ‘762 patent is just one example of Plaintiff’s medical innovation.

9. On information and belief, Defendant is a medical device company focused on developing surgical products and procedures for the spine. Defendant manufactures and markets various medical devices and instruments for use in the spine, including spinal implants. On information and belief, Defendant regularly provides its products and procedures to physicians, surgical centers and hospitals where spine surgery is performed. One such procedure is what Defendant's refer to as the Maximum Access Surgery Transformational Lumbar Interbody Fusion ("MAS TLIF").

10. On information and belief, Defendant has sold, offered to sell, promoted and taught the MAS TLIF to physicians practicing at the Texas Spine Center and the Methodist Hospital, both in Harris County, Texas. Defendant has promoted and offered for sale to Plaintiff devices used to practice one or more claims of the '762 patent. Defendant has also made an offer of sale to Plaintiff.

11. On information and belief, Defendant has had actual knowledge of and been on notice of the '762 patent since at least June 26, 2001. On information and belief, physicians practicing the methods taught by the claims of the '762 patent directly infringe the '762 patent. On information and belief, Defendant specifically intended physicians, its end customers, to infringe the claims of the '762 patent, and knew that physicians who practice the methods taught to them and provided instrumentation and devices to practice such methods would ultimately infringe the claims of the '762 patent. Defendant knew that once it taught the MAS TLIF methods to physicians and provided materials for them to infringe the claims of the '762 patent, the acts committed by the physicians would constitute infringement.

12. On information and belief, Defendant has manufactured, sold, or offered for sale, promoted, or taught products covered by the '762 patent in Cameron County, Texas and Harris County, Texas.

V. PATENT INFRINGEMENT CLAIMS

13. Paragraphs 1-13 are incorporated by reference.

14. Plaintiff as the owner and inventor of the '762 patent, has the exclusive right to bring suit for infringement of the patent.

15. On information and belief, Defendant has contributed to the acts of infringement of the '762 patent, such acts having been committed in the United States. Such acts of infringement have been committed by at least physicians practicing medicine at the Texas Spine Center and Methodist Hospital in Harris County, Texas.

16. By selling, offering to sell, promoting and teaching the use of at least its MAS TLIF procedure and related devices, Defendant has contributed to the infringement and continues to contribute to the infringement of the '762 patent, under 35. U.S.C. § 271. Defendant is selling, offering to sell, promoting and teaching the methods claimed by the '762 patent and selling or offering to sell components and/or materials that are especially made or especially adapted for use in direct infringement of at least one of the methods claimed in the '762 patent, the components not being staple articles suitable for substantial non-infringing use.

17. Defendant's contributory infringement of the '762 patent have caused and will continue to cause Plaintiff irreparable harm for which there is no adequate remedy at law.

18. Upon information and belief, Defendant's infringing activities have been willful and deliberate. Upon information and belief, Defendant was actually on notice of and aware of the '762 patent. Upon information and belief, Defendant willfully committed acts of infringement.

19. As a result of Defendant's infringing activities, Plaintiff has suffered actual damages in an amount to be determined at trial. Additionally, as a result of the willful and deliberate nature of Defendant's infringing activities, Plaintiff is entitled to trebling of its actual damages and is entitled to recover its attorney's fees and costs incurred in prosecuting this action, as provided for in U.S.C. §§ 284-285.

20. Defendant's acts of infringement have caused irreparable harm to Plaintiff for which there is no adequate remedy at law, and will continue to cause irreparable harm to Plaintiff for which there is no adequate remedy at law, and will continue to cause irreparable harm to Plaintiff unless Defendant is preliminarily and permanently enjoined by this Court.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this Honorable Court enter judgment against Defendant, granting Plaintiff the following relief:

- A. a preliminary and permanent injunction enjoining Defendant, its owners, affiliates, officers, directors, managers, agents, servants, employees, trainees, and all persons in active concert participation with it, from continuing to infringe United States Patent No. 5,653,762;
- B. a judgment that United States Patent No. 5,653,762 has been and continues to be indirectly infringed by Defendant;

- C. an award of damages adequate to compensate Plaintiff for Defendant's infringement of United States Patent No. 5,653,762;
- D. a determination of damages to compensate Plaintiff for Defendant's infringement of United States Patent No. 5,653,762;
- E. an award of treble damages based on the willful and deliberate nature of Defendant's infringement;
- F. a determination that this case is "exceptional" under 35 U.S.C. § 285, thereby entitling Plaintiff to an award of its reasonable attorney's fees and costs incurred in prosecuting this action;
- G. an award of prejudgment and post judgment interest on all damages computed; and
- H. such other relief as this Court deems fair and appropriate.

DATED: Dec. 31, 2013

Respectfully Submitted,

By: /s/ Sartaj Bal

Sartaj Bal

Texas Bar No. 24071955

ssb@880mail.com

5315 Cypress Creek Parkway, #B295

Houston, Texas 77069

Telephone: (713) 885 – 6395

Facsimile: (281) 715 – 3231

ATTORNEY-IN-CHARGE FOR

PLAINTIFF MADHAVAN PISHARODI