

FILED

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

2013 DEC 23 P 2:19

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

Daniel S. Gabbay  
4613 40<sup>th</sup> Street North  
Arlington, VA 22207

*Plaintiff,*

v.

AirPal, Inc.  
1488 Limeport Pike  
Coopersburg, PA 18036

*Defendant.*

Civil Action No: 3:13-CV-847  
(JRS)  
JURY TRIAL DEMANDED

**VERIFIED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Dr. Daniel Gabbay ("Dr. Gabbay") files this Complaint against Defendant AirPal ("AirPal") and alleges as follows:

**PARTIES**

1. Plaintiff Dr. Daniel S. Gabbay is a Virginia resident residing at 4613 40<sup>th</sup> Street North, Arlington, VA 22302. Gabbay owns United States Patent Nos. 7,127,758 and 7,383,599.
2. Upon information and belief, Defendant AirPal, Inc. ("AirPal") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business located at 1488 Limeport Pike, Coopersburg, PA 18036. AirPal does business in the Commonwealth of Virginia.

## **JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, U.S.C. § 271 et seq.

4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, AirPal is subject to this Court's general and/or specific personal jurisdiction because it (a) has committed acts of infringement in the Commonwealth of Virginia as alleged below; and/or (b) is engaged in continuous and systematic activities in the Commonwealth of Virginia. Therefore, this Court has personal jurisdiction over AirPal under the Virginia Long-Arm Statute, VA ST § 8.01-328.1 (2003).

6. Venue is proper in this District under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, AirPal has transacted business in this District and has committed and/or induced acts of patent infringement in this District.

## **THE PATENTS-IN-SUIT**

7. On October 31, 2006, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,127,758 (the "'758 Patent") entitled "Active Head/Neck Positioning Device for Endotracheal Intubation," a true copy of which is attached as Exhibit A.

8. Dr. Daniel Gabbay is the inventor and owner of the '758 Patent and possesses all rights to sue for and recover all past, present and future damages for infringement of the '758 Patent.

9. On June 10, 2008, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,383,599 (the "'599 Patent") entitled "Active Head/Neck Positioning Device," a true copy of which is attached as Exhibit B. Collectively the '758 Patent and the '599 Patent are referred to as the patents-in-suit.

10. Dr. Daniel Gabbay is the inventor and owner of the '599 Patent and possesses all rights to sue for and recover all past, present and future damages for infringement of the '599 Patent.

### **BACKGROUND**

11. In 2005, AirPal's predecessor Patient Transfer Systems, Inc. ("PTS") was in the business of manufacturing and selling various medical equipment including patient transfer systems.

12. In 2005, PTS was interested in expanding its product line.

13. Dr. Gabbay owned U.S. Patent Application Serial No. 60/548,901 entitled "Active Head/Neck Positioning Device for Intubation" and PTS desired to exclusively license from Dr. Gabbay all of Dr. Gabbay's interest in the any patents based upon or derived from U.S. Patent Application 60/548,901.

14. On, or about, February 21, 2005, Dr. Gabbay and PTS entered into an exclusive License Agreement.

15. Under the exclusive License Agreement, PTS manufactured, offered for sale, and sold products marked with one or more of Dr. Gabbay's patent numbers.

16. On, or about, December 27, 2012, the Licenses Agreement between Dr. Gabbay and PTS was terminated.

17. Despite the termination of the license agreement between Dr. Gabbay and PTS, PTS and/or its successor AirPal continue to manufacture, offer for sale, and sell products that PTS previously marked with one or more of Dr. Gabbay's patent numbers.

### **CLAIM 1 -- INFRINGEMENT OF U.S. PATENT NOS. 7,127,758 AND 7,383,599**

18. Defendant AirPal has been and is now directly infringing, and/or actively inducing infringement by others, and/or contributing to the infringement by others one or more claims of U.S. Patent No. 7,127,758 and U.S. Patent No. 7,383,599 in this District, and elsewhere in the

United States with, inter alia, its AirPal® Rapid Airway Management Positioner (“RAMP®”) product. This product can be viewed at [http://airpal.com/BUILD152/index.php?option=com\\_content&view=article&id=13&Itemid=55](http://airpal.com/BUILD152/index.php?option=com_content&view=article&id=13&Itemid=55).

The patents have been infringed literally and/or under the doctrine of equivalents.

19. As a direct and proximate consequence of the acts and practices of AirPal infringing, directly and/or indirectly, one or more claims of the ‘758 and ‘599 Patents, Dr. Gabbay has suffered, is suffering, and will continue to suffer injury and damages for which he is entitled to relief under 35 U.S.C. § 284 in an amount to be determined at trial.

20. The limitation of damages provision of 35 U.S.C. § 287(a) is not applicable to Dr. Gabbay, moreover, products bearing one or more of Dr. Gabbay’s patent numbers have been sold in the past.

21. Upon information and belief, AirPal’s infringement of the patents-in-suit has been and continues to be willful and deliberate, making this an exceptional case entitling Gabbay to recover additional damages and reasonable attorneys’ fees pursuant to 35 U.S.C. § 285.

#### **DEMAND FOR JURY TRIAL**

1. Dr. Gabbay, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, Dr. Gabbay requests entry of judgment that:

A. AirPal has infringed the patents-in-suit;

- B. AirPal accounts for and pays to Plaintiff all damages caused by its infringement of the patents-in-suit under 35 U.S.C. § 284, including treble damages for willful infringement, and supplemental damages for any continuing post-verdict infringement up until entry of the final judgment with an accounting as needed;
- C. Plaintiff be granted pre-judgment and post-judgment interest on the damages caused to it by reason of AirPal's patent infringement;
- D. The Court declare this an exceptional case and that Plaintiff be granted reasonable attorneys' fees in accordance with 35 U.S.C. § 285;
- E. Costs be awarded to Plaintiff; and
- F. Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: December 20, 2013

Respectfully submitted,

**MCNEELY, HARE & WAR LLP**

By:



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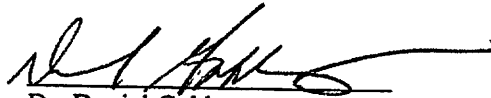
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*Attorneys for Plaintiff Dr. Daniel Gabbay*

**VERIFICATION**

I, Daniel Gabbay, declare under penalty of perjury that that I have read the foregoing Verified Complaint, and that the information stated therein as factual is true and correct, and those factual matters which are stated upon information and belief are believed to be true and correct.

Executed on: December 19, 2013

  
Dr. Daniel Gabbay