

I.

JURISDICTION AND VENUE

1. Plaintiffs file this action against Defendants, Acclarent, Advanced Polymers and ExploraMed for patent infringement under the patent laws of the United States, 35 U.S.C. § 1, *et seq.* and Texas State and common law provisions

2. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1338(a) and 1367.

3. On information and belief, the Defendant Acclarent conducts business in this judicial district, has offered to sell, is presently selling, and has sold infringing products in this judicial district and is subject to personal jurisdiction in this judicial district.

4. On information and belief, the Defendant Advanced Polymers regularly conducts business in this judicial district and is subject to personal jurisdiction in this judicial district.

5. On information and belief, Defendant ExploraMed regularly conducts business in this judicial district and is subject to personal jurisdiction in this judicial district.

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

II.

THE PARTIES

7. Plaintiff Quest Medical, Inc. is a Texas corporation with its principal place of business at One Allentown Parkway, Allen, Texas 75002. Plaintiff Bruce B. Becker is a citizen of California with a principal place of business at 5363 Balboa Blvd., #246, Encino, California 91316.

8. On information and belief, Defendant Acclarent, Inc. is a Delaware corporation with its principal place of business at 1525 Obrien Drive, Suite B, Menlo Park, California 94025. It may be served by serving its registered agent for service of process, William Facteau, 1525 Obrien Drive Suite B, Menlo Park, California 94025.

9. On information and belief, Defendant Advanced Polymers, Inc. is a New Hampshire corporation with its principal place of business at 29 Northwestern Drive, Salem, New Hampshire 03079. It may be served by serving its registered agent for service of process, Tricia L. Albert, 29 Northwestern Drive, Salem, New Hampshire 03079.

10. On information and belief, Defendant ExploraMed II, Inc. is a Delaware corporation with its principal place of business at 2570 W. El Camino Real, Suite 310, Mountain View, California 94040. It may be served by serving its registered agent for service of process, C.T. Corporation System, 818 West Seventh Street, Los Angeles, California 90017. Upon information and belief, ExploraMed II is the corporate parent of, or at least has a controlling interest in, Acclarent.

III.

BACKGROUND

11. Quest is a well known maker of various medical instruments and disposable medical devices, including dilation balloon catheters. Such catheters can be used in surgeries such as sinuplasty to open closed sinus passages. An affiliate of Quest, Atrion Medical Products (“Atrion”) entered into a contract dated February 13, 2003 with Dr. Bruce Becker to facilitate the development of its dilation balloon catheter products. Dr. Becker is a respected physician and

the inventor of certain patented balloon catheters. Quest has taken the position of Atrion in this contract.

12. To further facilitate the development and introduction of dilation balloon catheters, Atrion also entered into a purchase agreement dated April 25, 2002 with defendant Advanced Polymers to supply key components for the Quest dilation balloon catheter. Quest has taken the place of Atrion in this contract. Quest has entered into a course of dealings with Advanced Polymers based on the terms of this purchase agreement.

13. The purchase agreement with Advanced Polymers also included a mutual non-disclosure agreement, wherein Advanced Polymers agreed not to disclose to others any know how and other confidential information provided to it by Quest. Upon information and belief, Quest disclosed a significant amount of know how to Advanced Polymers regarding the specific requirements needed for a balloon catheter device to successfully navigate and dilate a sinus passage.

14. To further Quest's position in the balloon catheter market, it has assisted Dr. Becker in the filing and prosecution of numerous patents for his balloon catheter designs. For instance, on February 8, 2005, United States Patent No. D501,667 (the "'667 Patent") for a Dilation Balloon Catheter issued to Bruce B. Becker. A copy of the '667 Patent is attached hereto as Exhibit A and incorporated by reference herein. Further, Dr. Becker's utility patent application 2004/0064150 (the '150 Application) was published on April 1, 2004. A copy of the '150 Application is attached as Exhibit B.

15. Pursuant to the contract with Dr. Becker, he granted to Quest, the sole, exclusive worldwide right to make, have made, sell, lease and license the product disclosed and claimed in the '667 Patent, the '150 Application, and his related inventions, patents and know-how.

16. Quest now supplies dilation balloon catheters to the medical community for performance of ears, nose and throat medical procedures including a dilation balloon catheters disclosed and claimed in the '667 Patent.

17. Acclarent and its related entity ExploraMed have now entered into direct competition with Quest with a substantially equivalent dilation balloon catheter known as the Relieva catheter. It has demonstrated the Relieva catheter at trade shows and upon information and belief is now selling the Relieva catheter for sinuplasty procedures.

18. Acclarent and ExploraMed are fully aware of Quest and have aggressively taken many predatory actions in order to copy the Quest product. Specifically, Acclarent has approached Dr. Becker on many occasions. It has offered him significant inducements to terminate his contract with Quest and to enter into a similar contract with Acclarent.

19. Acclarent has also approached Advanced Polymers. Indeed, Acclarent has now interfered with Quest's relationship with Advanced Polymers. Upon information and belief, Advanced Polymers will no longer supply Quest with the key components required for Quest to continue supplying its own dilation balloon catheter to physicians. Acclarent's inducement of Advanced Polymers was done with a clear understanding of its negative impact on Quest. Further, Advanced Polymers appears to have disclosed key secrets about the Quest design to

Acclarent, such as inflation pressure. Specifically, the inflation device used by the Relieva product is actually the Quest inflator used with the Quest device to inflate the balloon.

IV.

COUNT #1 – INFRINGEMENT OF THE ‘667 PATENT

20. Plaintiffs re-allege and incorporate by reference the allegations in Paragraphs 1-19 above.

21. On information and belief, during the term of the ‘667 Patent and without authority from Quest, the Defendants Acclarent and/or ExploraMed have made, used, offered to sell and/or sold within the United States or have imported into the United States certain dilation balloon catheters that infringe, alone or in combination the claim of the ‘667 Patent. Specifically, Acclarent’s and/or ExploraMed’s Relieva product line of dilation balloon catheters infringes upon the ‘667 Patent.

COUNT #2 – CONTRIBUTORY INFRINGEMENT OF ‘667 PATENT

22. Plaintiffs re-allege and incorporate by reference the allegations in Paragraphs 1-21 above.

23. On information and belief, during the term of the ‘667 Patent and without authority from Quest, Advance Polymers has contributorily infringed the ‘667 Patent by offering to sell or selling within the United States or importing into the United States certain dilation balloon catheters and components for making same. Such articles comprise a component of a patented apparatus covered by the ‘667 Patent, are known to be especially made or especially

adapted for use in a dilation balloon catheter that would infringe the '667 Patent, and are not staple articles or commodities of commerce suitable for substantial non-infringing uses.

COUNT #3 – WILLFUL INFRINGEMENT OF '667 PATENT

24. Plaintiffs re-allege and incorporate by reference the allegations in Paragraphs 1-23 above.

25. On information and belief, Defendants have had actual or constructive knowledge of the '667 Patent, the '150 Application, and other patents since approximately their date of issue or publication and have pursued their knowing and willful infringement thereof in flagrant disregard of Plaintiffs' rights arising thereunder.

26. Defendants' infringement has caused Plaintiffs to suffer damages and has caused and/or will cause Plaintiffs to suffer irreparable injury for which Plaintiffs have no adequate remedy at law. Because of Defendants' infringement, Plaintiffs have been irreparably harmed and have suffered impairment of the value of their patent rights. Moreover, Plaintiffs will continue to suffer irreparable harm unless Defendants are restrained from infringing the '667 Patent.

COUNT #4 – TORTIOUS INTERFERENCE WITH A BUSINESS CONTRACT

27. Plaintiffs re-allege and incorporate by reference the allegations in Paragraphs 1-26 above.

28. On information and belief, Defendant Acclarent approached Defendant Advanced Polymers and has willfully and intentionally induced Advanced Polymers to exclusively supply Defendant Acclarent with dilation balloon catheter components which are substantially

equivalent to the dilation balloon catheter components that were previously produced by Advanced Polymers for Plaintiffs. Quest can no longer procure these key components from Advanced Polymers.

29. By engaging in these activities, Defendant Advance Polymers breached its business agreement with Plaintiffs to supply dilation balloon catheter components to Plaintiffs and has breached its non-disclosure covenants with Plaintiffs in making and selling Plaintiffs' proprietary dilation balloon catheter components to Defendant Acclarent.

30. As a result, Plaintiffs have suffered actual damages as a result of the Defendants' actions in an amount to be proven at trial.

COUNT #5 – BREACH OF CONTRACT

31. Plaintiffs re-allege and incorporate by reference the allegations in Paragraphs 1-30 above.

32. On or about April 25, 2002, Atrion Medical Products, Inc. and Defendant Advanced Polymers entered into a mutual non-disclosure and confidentiality agreement restricting the dissemination of confidential and proprietary matter exchanged between the parties. Atrion Medical Products, Inc.'s assigned its rights and obligations under the confidentiality and non-disclosure agreement to Plaintiff Quest by assignment.

33. On information and belief, Defendant Advanced Polymer has breached the mutual non-disclosure and confidentiality agreement by sharing Plaintiffs' proprietary dilation balloon catheter designs and related information with Defendant Acclarent which have been incorporated into Defendant Acclarent's dilation balloon catheter products.

34. As are result of said breach, Plaintiffs have suffered actual damages in an amount to be determined at trial.

COUNT #6 – MISAPPROPRIATION OF TRADE SECRETS

35. Plaintiffs re-allege and incorporate by reference the allegations in Paragraphs 1-34 above.

36. In the mutual non-disclosure agreement of April 25, 2002, Defendant Advanced Polymers agreed to maintain the confidentiality of know how provided to it by Atrion Medical Products and its assigns, namely Quest. On information and belief, Advanced Polymers and Acclarent have misappropriated these trade secrets.

37. As are result of said misappropriation, Plaintiffs have suffered actual damages in an amount to be determined at trial.

V.

JURY DEMAND

38. Plaintiffs hereby request and demand a trial by jury.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter judgment, as follows:

A. That the Court declare the '667 Patent is valid, enforceable, and infringed by Defendants.

- B. That the Defendants and all of their officers, agents, affiliates, servants, and employees, and all other persons in active concert or participation with them, be temporarily, preliminarily, and permanently enjoined from infringing, inducing infringement, and/or contributing to the infringement of the '667 Patent by importing, making, using, offering to sell, or selling products which embody the inventions claimed in said patent, or imitations thereof;
- C. That Plaintiffs be awarded under 35 U.S.C. § 284, an amount to be proved at trial, damages adequate to compensate them for Defendants' infringement of the '667 Patent;
- D. That Plaintiffs be awarded any and all damages to compensate them for the Defendants' conduct as set forth herein;
- E. That Plaintiffs be awarded their costs and prejudgment interest on their damages, as provided for by 35 U.S.C. § 284;
- F. That the Court determine this action to be an exceptional case and award Plaintiffs their reasonable attorney fees, as provided for by 35 U.S.C. § 285;
- G. That the Defendants be ordered to make a written report within a reasonable period, to be filed with the Court, detailing the manner of their compliance with the requested injunction; and,
- H. That Plaintiffs be granted such other and further relief as the Court determines is just and proper.

Dated: June 19, 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'DWC', is written over a horizontal line.

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