

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

GIAN BIOLOGICS, LLC,

Plaintiff,

v.

BIOMET INC., AND
BIOMET BIOLOGICS, LLC,

Defendant.

C.A. No. 10-865 LPS

JURY TRIAL DEMANDED

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Gian Biologics LLC (“Gian Biologics”), for its Amended Complaint against Biomet Inc. and Biomet Biologics, LLC, hereby alleges as follows:

Nature of the Case

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.*, to enjoin and obtain damages resulting from Defendants’ unauthorized manufacture, use, sale, and/or offer to sell products and/or systems that infringe one or more claims of United States Patent No. 6,835,353, entitled “Centrifuge Tube Assembly” (“the ‘353 Patent”).

Parties

2. Gian Biologics is a Delaware corporation that owns the ‘353 patent.
3. Biomet, Inc. is an Indiana Corporation with its principal place of business at 56 E.

Bell Dr., Warsaw, IN 46582. Biomet, Inc. is the parent corporation of Biomet Biologics, Inc.

4. Biomet Biologics, LLC is an Indiana Corporation with its principal place of business at 56 E. Bell Dr., Warsaw, IN 46582. Biomet Biologics, LLC is a wholly owned subsidiary of Biomet, Inc.

5. Defendants are engaged in the manufacture and sale of products that infringe the '353 patent.

Jurisdiction and Venue

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States.

7. This Court has personal jurisdiction over Defendants because Defendants have established minimum contacts with the forum state Delaware. Defendants, directly and/or through third parties, offer for sale, sold, purchased, or used infringing products within the state of Delaware. In addition, Defendants directly and/or through their distribution networks, regularly place products within the stream of commerce, with the knowledge and/or understanding that such products will be sold in Delaware. Thus, Defendants have purposefully availed itself of the benefits of the state of Delaware and the exercise of jurisdiction over Defendants would not offend traditional notions of fair play and substantial justice.

8. Defendants transact business in the state of Delaware because, among other things, Defendants manufacture and distribute products that are offered for sale, sold, purchased, and used within the state of Delaware. Defendants have also committed tortious acts of patent infringement in Delaware and are subject to personal jurisdiction in Delaware. Venue is thus proper in this district pursuant to 28 U.S.C. §§ 1391(b), (c), (d) and 1400(b).

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Cause of Action

9. Paragraphs 1 through 8 are incorporated by reference as if fully stated herein.

10. The '353 Patent was duly and legally issued on December 28, 2004 by the United States Patent and Trademark Office. A copy of the '353 Patent is attached hereto as Exhibit A.

11. Among other things, the '353 Patent claims an assembly for holding blood product and for being centrifugally driven to separate the blood product into discrete components, which are retrievable from said assembly through aspiration.

12. The '353 Patent is valid and enforceable.

13. Gian Biologics is the exclusive and current owner of all rights, title, and interest, in the '353 Patent, including the right to bring this suit for injunctive relief and damages.

14. In violation of 35 U.S.C. § 271, Defendants have been infringing and continue to infringe one or more claims of the '353 Patent through at least the acts of making, using, selling, and/or offering for sale infringing products or systems. Defendants' infringing products include, without limitation, their Plasmax™ Concentrator and its Gravitational Platelet Separation Systems including its GPS II™, GPS III™, Clotalyst™, BioCue™, and Marrowstim™ systems (collectively the "Infringing Products"). Upon information and belief, Biomet Biologics, LLC manufactures and sells these Infringing Products. Upon information and belief, Biomet, Inc. sells these Infringing Products. Gian Biologics has suffered damages from Defendants' infringement of the '353 Patent.

15. Unless enjoined by this Court, Defendants will continue their infringement of the '353 Patent and Plaintiff has been and will continue to be seriously and irreparably injured.

16. Defendants' infringement of the '353 Patent is exceptional and entitles Gian Biologics to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

Prayer for Relief

Wherefore Gian Biologics prays:

- a. That this Court enter judgment that Defendants have infringed United States Patent No. 6,835,353;
- b. That this Court enter a preliminary and permanent injunction restraining Defendants, their officers, agents, servants and employees, and each of them and anyone acting in concert therewith, from infringing United States Patent No. 6,835,353;
- c. That Gian Biologics be awarded all damages adequate to compensate it for Defendants' infringement of the '353 patent, such damages to be determined by a jury, and if necessary to adequately compensate Gian Biologics for the infringement, an accounting;
- d. That this case be declared an exceptional case within the meaning of 35 U.S.C. § 285 and that Gian Biologics be awarded attorneys' fees, costs, and expenses incurred in connection with this action; and
- e. That Gian Biologics be awarded such other and further relief as this Court deems just and proper.

Jury Demand

Plaintiff hereby demands a trial by jury of any issue triable by right by a jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: December 22, 2010

/s/Richard K. Herrmann

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