

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NATIONAL BIOLOGICAL
CORPORATION
23700 Mercantile Road
Beachwood, Ohio 44122

Plaintiff,

vs.

THE DAAVLIN MEDICAL PRODUCTS
CORPORATION D/B/A THE DAAVLIN
COMPANY
205 West Bement Street
Bryan, Ohio 43506

Defendant.

Civil Action No. _____

Judge _____

COMPLAINT AND JURY DEMAND

COMPLAINT

Plaintiff National Biological Corporation (sometimes referred to hereinafter as “National Biological”), for its Complaint against Defendant The Daavlin Medical Products Corporation d/b/a The Daavlin Company (sometimes referred to hereinafter as “Daavlin”), alleges as follows:

I. Nature of Claim

1. This is an action for redress of patent infringement by Daavlin arising under the patent laws of the United States, 35 U.S.C. §1 *et. seq.* and seeks damages and injunctive relief as provided in U.S.C. §§ 271 and 281-285.

II. The Parties

2. National Biological is a corporation organized and existing under the laws of the state of Ohio with a principal place of business in Beachwood, Cuyahoga County, Ohio.

3. Daavlin is, upon information and belief, a corporation organized and existing under the laws of Ohio with a principal place of business in Bryan, Williams County, Ohio.

III. Venue and Jurisdiction

4. This case arises under the patent laws of the United States, Title 35 of the United States Code. Subject matter jurisdiction of this Court is conferred by 28 U.S.C. §§1331 and 1338.

5. Venue in this judicial district is proper in accordance with 28 U.S.C. §§1391(b) and (c), 28 U.S.C. §1400(b) and Northern District of Ohio Civ. R. 3.8.

IV. Patents-In-Suit

6. On December 13, 1993, Howard J. Drechsler filed a patent application in the United States Patent and Trademark Office for his invention entitled, "Phototherapeutic Device and Method." This application was assigned Serial No. 08/166,092 (the "'092 Application").

7. On February 11, 1997, U.S. Patent No. 5,601,619 entitled, "Phototherapeutic Device and Method," hereinafter the "'619 Patent," was duly and legally issued from the '092 Application.

8. National Biological is the sole assignee of the '619 Patent in accordance with 35 U.S.C. §261. A copy of the '619 Patent is attached hereto as Exhibit A.

9. On October 8, 1996, Howard J. Drechsler filed a Patent Application in the U.S. Patent and Trademark Office for his invention entitled “Phototherapeutic Device and Method.” This Application was assigned Ser. No. 08/728,267 (the “‘267 Application”).

10. The ‘267 Application was a continuation of Application 08/166,092.

11. On February 5, 2002, United States Patent No. 6,345,215 entitled “Phototherapeutic Device and Method” (the “‘215 Patent”) issued from the ‘267 Application.

12. As issued, the ‘215 Patent contained errors made by the United States Patent and Trademark Office in the language of claim 1.

13. On October 2, 2012, the United States Patent and Trademark Office issued a Certificate of Correction for the ‘215 Patent.

14. The Certificate of Correction for the ‘215 Patent states the corrected text of claim 1 as allowed by the United States Patent and Trademark Office.

15. National Biological is the sole assignee of the ‘215 Patent in accordance with 35 U.S.C. § 261. A copy of the ‘215 Patent along with the Certificate of Correction is attached hereto as Exhibit B.

V. Background Facts

16. National Biological, founded in 1967, is a world leader in the manufacture and distribution of phototherapy equipment for the treatment of skin conditions such as severe or chronic psoriasis, eczema, vitiligo, and others. National Biological phototherapy devices include units for home ultraviolet (UV) phototherapy and for clinical UV phototherapy.

17. National Biological's phototherapy equipment is manufactured at its facility in Cuyahoga County, Ohio, and hundreds of thousands of persons have used National Biological UV phototherapy equipment for treatment of skin conditions.

18. Daavlin was founded in 1981 by David Swanson and its corporate headquarters and manufacturing facility are located in Williams County, Ohio.

19. Daavlin UV phototherapy units are available for home and for clinical use.

20. National Biological and Daavlin are direct competitors in the field of UV phototherapy units.

21. Controls for Daavlin home UV phototherapy units are available with a system marketed by Daavlin as "FlexRx."

22. Daavlin UV phototherapy units, including the Daavlin 3 Series device for clinical use, are available with a "Flex Dosimeter" control having "Smart Touch PC," "Smart Touch SP," and/or "Smart Touch Network" systems.

23. Since at least November 14, 2002, Daavlin has had actual notice of the claims of the '619 Patent.

24. During November and December of 2002, Daavlin conducted a review of the claims of the '619 Patent that included a comparison of the claims to one or more then existing Daavlin products.

FIRST COUNT
INFRINGEMENT OF U.S. PATENT NO. 5,601,619

25. National Biological repeats and incorporates by reference the allegations set forth in paragraphs 1 through 24 above.

26. National Biological is the owner of all rights and title in interest to the ‘619 Patent, including the right to sue for infringement and recover for past infringement and damages.

27. Daavlin UV phototherapy units having the “Flex Dosimeter” control with “Smart Touch SP,” “Smart Touch PC,” and/or “Smart Touch Network” systems infringe at least claim 3 of the ‘619 Patent.

28. Without the authorization, consent, or permission of National Biological, Daavlin has developed, manufactured, marketed, offered for sale, and sold products that infringe the ‘619 Patent in violation of 35 U.S.C. §271(a) including Daavlin UV phototherapy units equipped with Flex Dosimeter controls having “Smart Touch SP,” “Smart Touch PC,” and/or “Smart Touch Network” systems.

29. National Biological has been damaged by Daavlin’s infringement of the ‘619 Patent.

30. Unless enjoined by this Court, Daavlin will continue its infringing activities through the manufacture, marketing, offering for sale, and sale of products that infringe the ‘619 Patent, causing further damages and irreparable harm to National Biological.

31. Upon information and belief, Daavlin has engaged in willful and deliberate infringement of the ‘619 Patent justifying an assessment of treble damages in accordance with 35 U.S.C. § 285.

32. Daavlin’s willful infringement also qualifies this action as an exceptional case in support of an award of reasonable attorneys’ fees, expenses, and costs incurred by National Biological in this action in accordance with 35 U.S.C. § 285.

SECOND COUNT
INFRINGEMENT OF U.S. PATENT NO. 6,345,215

33. National Biological repeats and incorporates by reference the allegations set forth in paragraphs 1 through 32 above.

34. National Biological is the owner of all rights and title in interest to the ‘215 Patent, including the right to sue for infringement and recover for past infringement and damages.

35. Daavlin UV phototherapy units having control systems equipped with the “FlexRx” system infringe at least claim 1 of the ‘215 Patent.

36. Without the authorization, consent, or permission of National Biological, Daavlin has developed, manufactured, marketed, offered for sale, and sold products that infringe the ‘215 Patent in violation of 35 U.S.C. §271(a) including Daavlin’s UV phototherapy units equipped with the “FlexRx” system.

37. National Biological has been damaged by Daavlin’s infringement of the ‘215 Patent.

38. Unless enjoined by this Court, Daavlin will continue its infringing activities through the manufacture, marketing, offering for sale, and sale of products that infringe the ‘215 Patent, causing further damages and irreparable harm to National Biological.

RELIEF REQUESTED

WHEREFORE, National Biological prays that this Court enter judgment as follows:

- (A) That the ‘619 Patent is valid and infringed by Daavlin UV phototherapy units equipped with the Flex Dosimeter controls and the “Smart Touch SP,” “Smart Touch PC,” and/or “Smart Touch Network” systems;
- (B) That the ‘215 Patent is valid and infringed by Daavlin UV phototherapy units equipped with the FlexRx system;
- (C) That Daavlin be held liable for damages not less than a reasonable royalty;
- (D) That Daavlin’s infringement of the ‘619 Patent is wilful and entitles National Biological to treble damages in accordance with 35 U.S.C. § 284;
- (E) That Daavlin, its officers, agents, suppliers, distributors, servants, employees, successors, assigns, and all persons acting in concert or participation with it, be preliminarily and permanently enjoined and restrained from further infringement of the ‘215 and ‘619 Patents identified above;
- (F) That this an exceptional case under 35 U.S.C. § 255 and award National Biological reasonable attorneys’ fees, expenses, and costs incurred in this action;
and

(G) That National Biological receive such further necessary or proper relief as the Court may deem just.

Respectfully submitted,

ULMER & BERNE LLP

Date: November 27, 2012

s/ Jeffrey R. Schaefer

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JURY DEMAND

National Biological Corporation respectfully requests a trial by jury on all issues so triable in this action.

s/ Jeffrey R. Schaefer

Jeffrey R. Schaefer (0061232)

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