

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

ONE STOCKDUQ HOLDINGS, LLC,

Plaintiff,

v.

BECTON, DICKINSON AND COMPANY,

Defendant.

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Civil Action No._____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff One StockDuq Holdings, LLC (“One-SD”), through its counsel of record, and for its Complaint against Defendant Becton, Dickinson and Company (“BD” or “Defendant”) states as follows:

PRELIMINARY STATEMENT

1. This is an infringement action brought by One-SD pursuant to the Patent Laws of the United States, United States Code, Title 35 for damages and to enjoin future infringement.

JURISDICTION

2. This Court has original jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a) because it arises under the Patent Laws of the United States, United States Code, Title 35.

VENUE

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1400(b) because Defendant resides in this judicial district.

PARTIES

4. One-SD is a limited liability company duly organized and existing under the laws of the Commonwealth of Kentucky with its principal place of business located at 9905 Winged Foot Drive, Louisville, Kentucky.

5. BD is a corporation duly organized and existing under the laws of New Jersey with its principal place of business located 1 Becton Drive, Franklin Lakes, New Jersey.

6. BD's operations consist of three worldwide business segments: BD Medical, BD Diagnostics and BD Biosciences. BD Medical produces a broad array of medical devices that are used in a wide range of healthcare settings. BD Medical's principal product lines include needles, syringes and intravenous ("IV") catheters for medication delivery (including safety-engineered and auto-disable devices); prefilled IV flush syringes; syringes and pen needles for the self-injection of insulin and other drugs used in the treatment of diabetes; prefillable drug delivery systems provided to pharmaceutical companies and sold to end-users as drug/device combinations; regional anesthesia needles and trays; and sharps disposal containers. BD is in the business, in part, of making and selling IV catheters, including, but not limited to BD's IV catheters sold under the Nexiva® and Insyte AutoGuard BC trademarks.

7. Defendant advertises, offers for sale, and sells IV catheters, including those sold under the Nexiva® and Insyte AutoGuard BC trademarks, within the jurisdiction of the United States District Court for the Western District of Tennessee.

U.S. PATENT NO. 5,704,914

8. Dr. John E. Stocking ("Stocking") and Dr. Francis Duque ("Duque") are practicing anesthesiologists who invented an IV catheter placement assembly that eliminated the need for

disconnection of placement needles and reconnections of tubing to vascular catheters, which avoids blood spillage and placement needle exposure.

9. On or about February 23, 1996, Stocking and Duque filed an application with the United States Patent & Trademark Office (“USPTO”) for their invention of a “Catheter Placement Assembly,” which the USPTO assigned Application No. 08/605,926.

10. On or about May 20, 1997, Stocking contacted BD to discuss a business relationship involving their new invention which was the subject of Application No. 08/605,926.

11. On or about June 10, 1997, BD responded to that communication, assigned the invention BD File No. OSC/97-111, and requested additional information from Stocking about their invention.

12. On or about June 16, 1997, Stocking responded to BD’s request for additional information about their invention.

13. On or about June 23, 1997, BD acknowledged receipt of that additional information from Stocking.

14. On or about August 29, 1997, BD reported to Stocking that, “The information you supplied regarding this invention has been circulated to our evaluators. We regret to advise you that we have been unable to establish an interest in further evaluation at this time.”

15. On January 6, 1998, U.S. Patent No. 5,704,914 (“the ‘914 patent”) for a “Catheter Placement Assembly” was duly, properly and legally issued by the USPTO to inventors Stocking and Duque.

16. A true and correct copy of the ‘914 patent, which is incorporated herein by this reference, is attached to the Complaint as Exhibit A.

17. By way of assignment, One-SD is the owner of all right, title and interest in the '914 patent.

18. Thereafter, on or about May 8, 1998, Stocking and Duque again contacted BD about their invention and sought a business relationship.

19. On or about May 19, 1998, BD responded acknowledging receipt of the information regarding the invention which is the subject of the '914 patent and assigned it BD File No. OSC/1998-055 "Cathether Placement Assembly – Vascular (U.S. Patent 5,704,914)."

20. On or about July 29, 1998, BD reported to Stocking and Duque, "We have carefully reviewed the nonconfidential information you supplied on this subject and determined that we do not wish to pursue further evaluation at this time."

21. Thereafter, in November 1998, Stocking again contacted BD about their invention and BD requested further information.

22. On or about November 28, 1998, Stocking provided additional information requested by BD and expressed interest in a business relationship.

23. On or about December 29, 1998, BD acknowledged receipt of the information provided by Stocking stating in part, "Currently, several of our Business Teams are reviewing your submission ..."

24. After further communications between BD and Stocking, in or about March, 1999, BD advised Stocking that their invention was not an area of BD interest.

25. On information and belief, subsequently in or about 2006, BD went to market with its IV catheter placement assembly under the BD Nexiva® mark.

26. On information and belief, subsequently in or about 2010, BD went to market with its IV catheter placement assembly under the BD Insyte Autoguard BC mark.

27. On information and belief, BD falsely claimed it conceived and was the inventor of the features of the BD Nexiva® IV catheter and the BD Insyte Autoguard BC IV catheter when, in fact, Stocking and Duque were the inventors.

COUNT I- INFRINGEMENT OF U.S. PATENT NO. 5,704,914

28. One-SD realleges and incorporates by reference the allegations of paragraphs 1-27.

29. BD's IV catheters, including but not limited to its Nexiva® and Insyte AutoGuard BC products, have infringed and continue to infringe at least claim 31 of the '914 patent.

30. Defendant's infringement of the '914 patent has been willful, wanton, egregious, and with disregard of One-SD's patent rights and will continue unabated unless enjoined by this Court.

31. Unless the future occurrence of these actions is enjoined, One-SD will suffer irreparable injury for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, One-SD prays for relief as follows:

- A. An Order requiring that Defendant and its officers, agents, servants, employees, attorneys, privies, and those persons in active concert or participation with it, be permanently enjoined from the continued infringement of the '914 patent;
- B. An award to One-SD pursuant to 35 U.S.C. § 284 of damages, not less than a reasonable royalty, adequate to compensate One-SD for the infringement of its patent rights;
- C. An Order requiring an accounting with respect to BD's infringing activities;
- D. An award to One-SD of prejudgment interest on said award;
- E. A finding that the infringement of the '914 patent was willful;
- F. Trebling of said award pursuant to 35 U.S.C. § 284;

- G. An award to One-SD pursuant to 35 U.S.C. § 285 of its reasonable attorneys' fees incurred in this case;
- H. An award to One-SD of the costs of this action;
- I. Any further relief to which One-SD may appear entitled; and
- J. Trial by jury on all issues so triable.

Dated: December 3, 2012

Respectfully submitted,

s / Joel T. Beres

Joel T. Beres (Kentucky Bar # 84376)
James R. Michels (Tennessee Bar # 21604)
William C. Ferrell, Jr. (Tennessee Bar # 27220)
Melissa Hunter Smith (Tennessee Bar # 26387)
Kevin P. Hartley (Tennessee Bar # 29199)
STITES & HARBISON, PLLC
401 Commerce Street, Suite 800
Nashville, TN 37219-2376
Telephone: (615) 782-2328
Facsimile: (615) 782-2371

Counsel for Plaintiff,
One StockDuq Holdings, LLC.