

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

KARL STORZ GMBH & CO. KG)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	
)	
INTEGRATED MEDICAL SYSTEMS)	
INTERNATIONAL, INC.,)	
)	
Defendant.)	
)	

COMPLAINT FOR INFRINGEMENT OF PATENT

Plaintiff, for its complaint against Defendant, alleges as follows:

The Parties

1. Plaintiff Karl Storz GmbH & Co. KG (“Plaintiff”) is a German limited partnership having a place of business at Mittelstrasse 8, 78532 Tuttlingen, Germany.
2. Upon information and belief, Defendant Integrated Medical Systems International, Inc. (“Defendant”) is a Delaware corporation having a place of business at 1823 27th Avenue South, Birmingham, Alabama, 35209. Defendant’s registered agent for service of process in the State of Alabama is Lee Robinson, 2719 19th Street South, Birmingham, Alabama 35209.

Jurisdiction and Venue

3. This action by Plaintiff is for damages and injunctive relief from patent infringement by Defendants, and arises under the United States Patent Laws, particularly 35 U.S.C. §271 et seq.
4. This Court has subject matter jurisdiction based on 28 U.S.C. § 1331 and 1338(a).
5. Venue is proper and based on 28 U.S.C. §1391(b), 1391(c), and/or 1400(b).
6. On information and belief, Defendant has offered products and/or services, sold products and/or services, and/or supplied products and/or services, including but not limited to, endoscopes and medical instrument care, repair, restoration, and support for healthcare facilities, in the Northern District of Alabama and is subject to personal jurisdiction in this District.

The Patent

7. Plaintiff is the owner, by assignment, of the entire right, title, and interest in and to U.S. Patent No. 7,530,945 (“the ‘945 patent”), entitled “Endoscope and Method for Assembling Components of An Optical System,” which was duly and legally issued by the United States Patent and Trademark Office on May 12, 2009 in the name of the inventors, Jürgen Rudischhauser, Klaus Renner, and Markus Kupferschmid. A copy of the ‘945 patent is attached as Exhibit A.

Acts Giving Rise to this Action

8. Upon information and belief, Defendant has been and still is directly infringing, contributing to the infringement of, and/or inducing the infringement of one or more claims of the '945 patent pursuant to 35 U.S.C. § 271 et. seq. by repairing endoscopes according to the method claimed in the '945 patent.

9. In or before July of 2007, during the pendency of the patent application that would mature into the '945 patent, Plaintiff obtained an endoscope that it had manufactured but that had subsequently been repaired by an entity other than Plaintiff.

10. Based on Plaintiff's inspection of the repaired endoscope, it was apparent that the repaired endoscope had been repaired according to the method claimed in the then-pending patent application that would mature into the '945 patent. At that time, however, Plaintiff did not know who had repaired this endoscope.

11. Attached at Exhibit B are photographs showing the repaired endoscope and optical components removed therefrom contained within a transparent tube of shrunk material.

12. In or around February 2009, Plaintiff determined that the repaired endoscope had been repaired by Defendant. By this time, the patent application that would mature into the '945 patent had been allowed and issuance of the '945 patent was imminent.

13. By letter dated March 12, 2009, Plaintiff notified Defendant of the impending issuance of the '945 patent and its belief that Defendant had infringed the claims of the then-pending patent application. A copy of this letter is attached at Exhibit C.

14. In its letter dated March 12, 2009, Plaintiff requested details of Defendant's methods for endoscope repair that involve shrinking a transparent material around optical components, which would be relevant to the claims of the then-pending application. Plaintiff asked Defendant to confirm in writing that it had ceased performing any endoscope repair method that involves shrinking a transparent material around optical components.

15. Defendant responded to Plaintiff's letter by a letter dated March 26, 2009. In its response, Defendant did not confirm that it had ceased performing any endoscope repair method that involves shrinking a transparent material around optical components. Defendant stated in its March 26, 2009 letter that it had previously employed an endoscope repair process similar to that claimed in the then-pending patent application. A copy of this letter is attached at Exhibit D.

16. By letter dated April 9, 2009, Plaintiff again requested that Defendant certify in writing that none of Defendant's endoscope assembly methods involve

shrinking a material around optical components. A copy of this letter is attached at Exhibit E.

17. Defendant responded by letter dated April 24, and refused to provide a description of its endoscope assembly methods that involve shrinking a material around optical components. Defendant also refused to make the certification requested by Plaintiff in its April 9, 2009 letter. A copy of this letter is attached at Exhibit F.

18. On May 12, 2009, the '945 patent issued. No amendments to the claims of the '945 patent had been made since publication of the patent application that matured into the '945 patent.

19. By letter dated August 10, 2009, Plaintiff notified Defendant of Plaintiff's position that its efforts to determine the process used by Defendant to repair endoscopes using shrunk material constituted "a reasonable effort" under 35 U.S.C. § 295.

20. Also by its letter dated August 10, 2009, Plaintiff invited Defendant to execute a declaration to certify that Defendant will not perform any endoscope repair method in which the positions of optical components are fixed relative to one another by shrinking a transparent material around the components and in which the positions of the components are checked by any means through the shrunk transparent material. A copy of this letter and declaration as sent to Defendant is attached at Exhibit G.

21. The Defendant responded by letter dated August 20, 2009, and stated that it would not execute the declaration sent by Plaintiff on August 10, 2009. A copy of this letter is attached at Exhibit H.

22. Plaintiff has been damaged by loss of sales and customers by Defendant's infringement of the '945 patent, and claims all damages, including but not limited to, lost profits and reasonable royalties, to which it is entitled.

23. Upon information and belief, Defendant's infringement, inducement of infringement, and contributory infringement has been and continues to be willful, making this an exceptional case under 35 U.S.C. § 285 and entitling Plaintiff to attorney's fees under 35 U.S.C. § 285 and treble damages under 35 U.S.C. § 284.

24. The harm to Plaintiff resulting from the infringing acts of Defendant is irreparable, continuing, not fully compensable by money damages, and will continue unless permanently enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. That Defendant be adjudicated and decreed to have infringed, contributed to the infringement of, and/or induced the infringement of the '945 patent.

B. That a preliminary and permanent injunction be entered against Defendant, its officers, agents, servants, employees, and attorneys, and those persons in

active concert or participation with Defendant who receive actual notice of the injunction by personal service or otherwise, from any further infringement of the '945 patent pursuant to 35 U.S.C. § 283;

B. That Plaintiff be awarded its damages, suffered by reason of the infringements by Defendant, together with prejudgment interest;

C. That the damages awarded to Plaintiff be trebled pursuant to 35 U.S.C. § 284 due to the willful acts of infringement complained of herein;

D. That this be declared an exceptional case pursuant to 35 U.S.C. § 285;

E. That Plaintiff be awarded its attorney's fees and costs; and

F. That Plaintiff be awarded any other and further relief that this Court may deem just and proper.

Jury Demand

Plaintiff demands a trial by jury on all claims and issues so triable.

Respectfully submitted,

Dated: 12-21-10



One of the Attorneys for Plaintiff
Karl Storz GmbH & Co. KG

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PLEASE SERVE THE DEFENDANT BY CERTIFIED MAIL AS FOLLOWS:

INTEGRATED MEDICAL SYSTEMS INTERNATIONAL, INC.,
c/o Lee Robinson (registered agent)
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Birmingham, AL 35209