

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CIVIL ACTION NO. 3:12-cv-00796

THE PROCTER & GAMBLE COMPANY
AND CANFIELD SCIENTIFIC,
INCORPORATED,

Plaintiffs,

v.

ENHANCED IMAGE TECHNOLOGIES,
LLC AND PSI CO., LTD.

Defendants.

**COMPLAINT FOR PATENT
INFRINGEMENT**

Plaintiffs The Procter & Gamble Company (“P&G”) and Canfield Scientific, Inc. (“CSI”) bring this action for patent infringement against Defendants Enhanced Image Technologies, LLC (“EIT”) and PSI Co., Ltd. (“PSI”), and allege as follows:

THE PARTIES

1. Plaintiff The Procter & Gamble Company (“P&G”) is a corporation organized and existing under the laws of the State of Ohio, having a regular and established place of business at 1 Procter & Gamble Plaza, Cincinnati, Ohio 45202. P&G is a multinational consumer goods company, specializing in a number of industries, including personal care products.

2. Plaintiff Canfield Scientific, Inc. (“CSI”) is a corporation and existing under the laws of the State of New Jersey, having a regular and established place of business at 253 Passaic Ave., Fairfield, New Jersey 07004. CSI is a global leader in imaging systems, services, and products for scientific research and healthcare applications, including the pharmaceutical, biotechnical, cosmetics, medical, and skin care industries.

3. Upon information and belief, Defendant Enhanced Image Technologies, LLC (“EIT”) is a limited liability company organized and existing under the laws of the State of North Carolina, having a regular and established place of business at 7515 Robin Crest Rd., Suite A, Charlotte, North Carolina 28226.

4. Upon information and belief, Defendant PSI Co., Ltd. (“PSI”) is a Korean corporation having a regular and established place of business at 3F PSI B/D, 122-171, Maehyang-dong, Paldal-gu, Suwon-City, Gyeonggi-do, Korea.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction over this case under 28 U.S.C. §§ 1331 and 1338(a).

6. Personal jurisdiction exists generally over EIT because it has sufficient minimum contacts with the forum as a result of business conducted within the State of North Carolina and, particularly, within the Western District of North Carolina. Personal jurisdiction also exists specifically over EIT because the infringing acts of EIT complained of herein occurred, at least in part, within the State of North Carolina and within the Western District of North Carolina.

7. Personal jurisdiction exists generally over PSI because it has sufficient minimum contacts with the forum as a result of business conducted with at least EIT within the State of North Carolina and, particularly, within the Western District of North Carolina. Personal jurisdiction also exists specifically over PSI because of its conduct in knowingly aiding and abetting the infringing acts of EIT and others complained of herein that occurred, at least in part, within the State of North Carolina and within the Western District of North Carolina. To the

extent PSI's contacts with this forum are alone insufficient to give rise to personal jurisdiction in this forum, PSI is also subject to personal jurisdiction by operation of Fed. R. Civ. P. 4(k)(2).

8. Venue is proper in this Court under 28 U.S.C. §§ 1391(b), (c), and (d), as well as 28 U.S.C. § 1400(b).

THE PATENTS-IN-SUIT

9. On May 27, 2003, U.S. Patent No. 6,571,003 ("the '003 Patent") was duly and legally issued, naming the inventors as Greg Hillebrand, Kukizo Miyamoto, Brian Barford, Joseph Miller, Mark Hayworth, Michael Hilton, Gary Heaton, and Michael Rubush. A copy of the '003 Patent is attached hereto as Exhibit A. The '003 Patent discloses skin imaging and analysis systems and methods.

10. On November 11, 1997, U.S. Patent No. 5,687,259 ("the '259 Patent") was duly and legally issued, naming the inventor as Ray A. Linford. A copy of the '259 patent is attached hereto as Exhibit B. The '259 Patent discloses aesthetic imaging systems and methods.

11. P&G is the owner of all right, title, and interest in and to the '003 Patent, and has rights to sue for infringement of the '003 Patent, and to collect for past, present, and future damages, including against Defendants.

12. CSI is the sole licensee of the '003 Patent and has the right to sue for infringement of the '003 Patent, to collect damages, to enforce rights under the '003 Patent against Defendants, and has standing with P&G to bring the present action.

13. CSI is the owner of the '259 Patent and has the right to sue Defendants for infringement of the '259 Patent, to collect for past, present, and future damages, and to enforce all rights under the '259 Patent against Defendants.

COUNT I
**INFRINGEMENT OF THE '003 PATENT BY DEFENDANTS
ENHANCED IMAGE TECHNOLOGIES, LLC AND PSI CO., LTD.**

14. Plaintiffs incorporate by reference Paragraphs 1 through 9, 11, and 12 in their entirety as if fully set forth herein.

15. Without license or authority, Defendant EIT has within the United States used the inventions claimed in, and has imported, sold and offered to sell, a product embodying and designed to use the inventions claimed in, the '003 Patent, including within this district. The product is used, sold, and offered for sale by EIT under the name Image Pro II.

16. In doing so, the Defendant EIT has infringed, and continues to infringe, the '003 Patent.

17. Defendant EIT and, on information and belief, Defendant PSI, have known of both the '003 Patent and Plaintiffs' claims of infringement since at least on or about November 29, 2012, pursuant to a letter addressed to each.

18. Defendant EIT has indirectly infringed and continues to indirectly infringe at least claim 1 of the '003 Patent by actively and intentionally inducing direct infringement by its customers and others within the United States, and/or intentionally contributing to their direct infringement of the '003 Patent. Defendant EIT has accomplished this indirect infringement by instructing and encouraging those persons, by means of a User Guide and other promotional and instructional literature, among other things, to use the Image Pro II in a manner which infringes the '003 Patent, and/or through its importation, sale and offer for sale of, the Image Pro II product to such persons, where that product has no substantial, non-infringing use.

19. Without license or authority, Defendant PSI has imported, sold and offered to sell in the United States, at least to EIT, a product embodying and designed to use the inventions

claimed in, the '003 Patent, including within this district. The product is the Image Pro II product (on information and belief identified by PSI as the Janus Facial Analysis System).

20. In doing so, the Defendant PSI has infringed, and continues to infringe, the '003 Patent.

21. Defendant PSI has indirectly infringed and continues to indirectly infringe at least claim 1 of the '003 Patent by actively and intentionally inducing direct infringement by EIT and its customers and others within the United States, and/or intentionally contributing to their direct infringement of the '003 Patent. Defendant PSI has accomplished this indirect infringement by instructing and encouraging those persons, by means of a User Guide and other promotional and instructional literature, among other things, to use the Image Pro II/Janus Facial Analysis System in a manner which infringes the '003 Patent, and/or through its importation, sale and offer for sale of, the Image Pro II/Janus Facial Analysis System product to such persons, where that product has no substantial, non-infringing use.

22. Subject to a reasonable opportunity for further investigation or discovery, Defendants will continue to infringe the '003 Patent, unless enjoined by this Court.

23. Subject to a reasonable opportunity for further investigation or discovery, Defendants have been aware of the '003 Patent during the course of their infringing activities. Defendants' ongoing infringement of the '003 Patent has been objectively reckless and, therefore, willful and in deliberate disregard of Plaintiffs' rights in the Patent.

24. As a consequence of the acts of infringement by Defendants, Plaintiffs have been damaged in an amount not yet determined, and Plaintiffs will continue to be irreparably harmed unless and until Defendants are enjoined by an order of this Court from committing further acts of infringement.

COUNT II

INFRINGEMENT OF THE '259 PATENT BY DEFENDANTS ENHANCED IMAGE TECHNOLOGIES, LLC AND PSI CO., LTD.

25. Plaintiffs incorporate by reference Paragraphs 2 through 8, 10 and 13 in their entirety as if fully set forth herein.

26. Without license or authority, Defendant EIT has within the United States used the inventions claimed in, and has imported, sold and offered to sell, a product designed to use the inventions claimed in, the '259 Patent, including within this district. The product is used, sold, and offered for sale by EIT under the name Image Pro II.

27. In doing so, the Defendant EIT has infringed, and continues to infringe, the '259 Patent.

28. Defendant EIT and, on information and belief, Defendant PSI, have known of both the '259 Patent and Plaintiffs' claims of infringement since at least on or about November 29, 2012, pursuant to a letter addressed to each.

29. Defendant EIT has indirectly infringed and continues to indirectly infringe at least claim 1 of the '259 Patent by actively and intentionally inducing direct infringement by its customers and others within the United States, and/or intentionally contributing to their direct infringement of the '259 Patent. Defendant EIT has accomplished this indirect infringement by instructing and encouraging those persons, by means of a User Guide and other promotional and instructional literature, among other things, to use the Image Pro II in a manner which infringes the '003 Patent, and/or through its importation, sale and offer for sale of, the Image Pro II product to such persons, where that product has no substantial, non-infringing use.

30. Without license or authority, Defendant PSI has imported, sold and offered to sell in the United States, at least to EIT, a product designed to use the inventions claimed in, the '259

Patent, including within this district. The product is the Image Pro II product (on information and belief identified by PSI as the Janus Facial Analysis System).

31. In doing so, the Defendant PSI has infringed, and continues to infringe, the ‘259 Patent.

32. Defendant PSI has indirectly infringed and continues to indirectly infringe at least claim 1 of the ‘259 Patent by actively and intentionally inducing direct infringement by EIT and its customers and others within the United States, and/or intentionally contributing to their direct infringement of the ‘259 Patent. Defendant PSI has accomplished this indirect infringement by instructing and encouraging those persons, by means of a User Guide and other promotional and instructional literature, among other things, to use the Image Pro II/Janus Facial Analysis System in a manner which infringes the ‘259 Patent, and/or through its importation, sale and offer for sale of, the Image Pro II/Janus Facial Analysis System product to such persons, where that product has no substantial, non-infringing use.

33. Subject to a reasonable opportunity for further investigation or discovery, Defendants will continue to infringe the ‘259 Patent, unless enjoined by this Court.

34. Subject to a reasonable opportunity for further investigation or discovery, Defendants have been aware of the ‘259 Patent during the course of their infringing activities. Defendants’ ongoing infringement of the ‘259 Patent has been objectively reckless and, therefore, willful and in deliberate disregard of Plaintiffs’ rights in the Patent.

35. As a consequence of the acts of infringement by Defendants, Plaintiffs have been damaged in an amount not yet determined, and Plaintiffs will continue to be irreparably harmed unless and until Defendants are enjoined by an order of this Court from committing further acts of infringement.

36. As a consequence of the acts of infringement by Defendants, CSI has been damaged in an amount not yet determined, and CSI will continue to be irreparably harmed unless and until Defendants are enjoined by an order of this Court from committing further acts of infringement.

REQUESTED RELIEF

WHEREFORE, Plaintiffs P&G and CSI respectfully request that judgment be entered in their favor and against Defendants EIT and PSI, such judgment providing:

1. That Defendants have infringed the respective Patents;
2. That the infringement by Defendants has been, and continues to be, willful;
3. That Plaintiffs be awarded their actual damages resulting from the acts of infringement complained of herein including, without limitation, no less than a reasonable royalty pursuant to 35 U.S.C. § 284, together with interest and costs, and that Plaintiffs' damages be trebled pursuant to 35 U.S.C. § 284 in view of the willful and deliberate nature of the infringement;
4. That Defendants be permanently enjoined from engaging in the aforementioned acts and from otherwise infringing the claims of the Patents;
5. That this case be declared exceptional within the meaning of 35 U.S.C. § 285 and that Plaintiffs be awarded their reasonable attorneys' fees incurred in connection with this case;
6. That all issues of fact be tried by a jury; and
7. For such other or further relief as this Court may deem just and proper under the circumstances.

This the 30th day of November, 2012.

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(Pro Hac Vice Applications Pending)