

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

CareView Communications, Inc.

Plaintiff,

v.

R. P. Kincheloe Company d/b/a Perkins  
Healthcare Technologies

Defendant.

Civil Action No. 6:15-cv-225

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff CareView Communications, Inc. (“CareView”) brings this action against defendant R. P. Kincheloe Company d/b/a Perkins Healthcare Technologies (“Perkins”) and hereby alleges as follows:

**THE PARTIES**

1. CareView is a Texas company having a principal place of business at 405 State Highway 121, Suite B-240, Lewisville, Texas 75067.
2. Perkins is a Texas company having a principal place of business at 700 International Parkway, Suite 100, Richardson, Texas 75081.

**JURISDICTION AND VENUE**

3. This is an action for trademark infringement, and dilution under the United States Trademark (Lanham) Act, 15 U.S.C. § 1051, *et seq.* (as amended); for patent infringement under the patent laws of the United States, 35 U.S.C. § 271 *et seq.*; and for trademark infringement, unfair competition, and unjust enrichment under Texas common law. This Court has supplemental jurisdiction over the state law causes of action pursuant to 28 U.S.C. § 1367.

4. Upon information and belief, Perkins maintains a principal place of business in the State of Texas, does business in the State of Texas and this District, contracts to supply goods or services within the State of Texas and this District, has continuous and systematic business contacts within the State of Texas and this District, derives substantial revenue from interstate commerce from goods used or services rendered in the State of Texas and this District and commits and has committed acts of patent infringement either within the State of Texas and this District, or outside the State of Texas and this District with a reasonable expectation that such acts would have consequences within the State of Texas and this District.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1400(b), and 1404(a).

## **FACTS**

### ***CareView's Technology, Patents, and Trademarks***

6. CareView is a leading provider of products and on-demand services for the healthcare industry, specializing in bedside video monitoring, software tools to improve hospital communications/operations, patient education, and entertainment packages.

7. CareView makes and sells motion detection software and hardware that creates invisible, motion-sensitive borders in and around the objects present within a room (e.g., a hospital bedroom) ("CareView Systems"). The CareView Systems include CareView's Virtual Bed Rails and Virtual Chair Rails products.

8. On November 3, 2009, U.S. Patent No. 7,612,666 (the "666 Patent"), entitled "Video Based Monitoring System," a copy of which is attached hereto as Exhibit A, was duly and legally issued by the United States Patent and Trademark Office ("USPTO") to Wael Badawy as inventor.

9. CareView is the exclusive licensee of the '666 Patent with the sole and exclusive right to enforce the '666 Patent against infringement. This is by virtue of a License Agreement dated September 1, 2011 between the assignee of the '666 Patent, Intelliview Technologies Inc. and Mann Equity, LLC, which agreement was purchased from Mann Equity, LLC by CareView as of the same date.

10. CareView is the owner of U.S. Trademark Registration No. 4,141,362, a copy of which is attached hereto as Exhibit B, for the mark VIRTUAL BED RAILS, which issued May 15, 2012 and is valid and subsisting. CareView owns all right, title, and interest to said registration.

11. CareView uses its trademark, VIRTUAL BED RAILS, to designate the source of the CareView Systems and has used the mark in commerce since at least as early as 2007.

***Perkins' Infringing Technology***

12. Perkins makes, uses, sells, and/or offers to sell a network-based video observation system designed specifically to monitor patients in the medical field, and in particular in healthcare settings such as hospitals (hereinafter referred to as "PatientVision").

13. PatientVision includes at least one camera installed within a room for recording a field of view of the room and designed to transmit data to one or more centralized control stations ("central stations") which process the received video data.

14. The central stations allow operators to create virtual boundaries associated with the video images using preset shapes or freehand drawings. These boundaries are drawn around objects within a room such as beds, chairs, or bedside toilets to mark restricted areas captured by the video cameras.

15. The central stations assign actions to undertake when an occupant of a room breaches a virtual boundary. For example, if an occupant attempts to exit a bed (marked with a virtual boundary), PatientVision triggers an alarm (e.g., a audible alarm, visual alarm, or a text message to a handheld device).

16. PatientVision additionally adjusts the sensitivity of alarms based on historical observations of occupant movement. Specifically, PatientVision “learns” what movements should trigger alarms and which movements should not.

17. PatientVision additionally allows operators to adjust the sensitivity of the motion detecting algorithms and filters persistent movement to avoid triggering alarms for safe movements (e.g., movement on a television).

***Perkins’ Unauthorized Use of CareView’s Trademark***

18. Since at least 2014, Perkins has sold its PatientVision system using product descriptions that are confusingly similar to the VIRTUAL BED RAILS mark.

19. Specifically, in various marketing materials, Perkins has utilized the following phrases (emphasis added) in association with the marketing of its PatientVision system:

a. “**Virtual Bedrails** for Patients with High Fall Risk”

b. “Use preset shapes or freehand drawing to set boundaries (around beds, chairs, bedside toilet) to create **virtual bed rails** and restricted areas.”

c. “Operators use preset shapes or freehand drawing to set boundaries (around beds, chairs, bedside toilet) to create **virtual bed rails** or other restricted areas.”

20. Perkins’ use of CareView’s VIRTUAL BED RAILS mark is in commerce and without the permission or authority of CareView.

21. Perkins' use of the VIRTUAL BED RAILS mark is likely to cause confusion, to cause mistake, or to deceive customers and potential customers of the parties, at least as to the affiliation, connection, or associate of Perkins with CareView, or as to the origin, sponsorship, or approval of Perkins' products by CareView.

22. Perkins' unauthorized use of the VIRTUAL BED RAILS mark falsely indicates to the purchasing public that Perkins, their business, and/or their goods and services originate with CareView, or are affiliated, connected, or associated with CareView, or are sponsored, endorsed, or approved by CareView, or are in some manner related to CareView and/or its Virtual Bed Rails product, when there is no connection whatsoever.

23. Perkins' unauthorized use of the VIRTUAL BED RAILS mark falsely designates the origin of Perkins' products, and falsely and misleadingly describes and represents facts with respect to Perkins and their products.

24. Perkins' unauthorized use of the VIRTUAL BED RAILS mark is likely to dilute the distinctive quality of CareView's Virtual Bed Rails product.

25. Perkins' unauthorized use of the VIRTUAL BED RAILS mark enables them to trade on and receive the benefit of goodwill built up at great labor and expense over many years by CareView, and to gain acceptance for their goods not solely on their own merits, but on the reputation and goodwill of CareView and the VIRTUAL BED RAILS mark.

26. Perkins has been and continues to be unjustly enriched by obtaining a benefit from and taking undue advantage of CareView and its goodwill. Specifically, Perkins have unfairly competed against and taken undue advantage of CareView by trading on and profiting from the goodwill in the VIRTUAL BED RAILS mark developed and owned by CareView,

resulting in Perkins' wrongfully obtaining a monetary and reputational benefit for their own business and products.

27. Perkins' unauthorized use of the VIRTUAL BED RAILS mark removes from CareView the ability to control the nature and quality of products provided under its own mark, and places the valuable reputation and goodwill of CareView in the hands of Perkins, over which CareView has no control.

28. Unless restrained by this Court, these acts of Perkins will continue, and they will continue to cause irreparable injury to CareView and to the public for which there is no adequate remedy at law.

## **COUNT I**

### ***Patent Infringement***

29. CareView re-alleges and incorporates by reference the foregoing allegations as though fully set forth here.

30. Upon information and belief, Perkins has in the past infringed and continues to infringe the '666 Patent, directly and/or by contributory infringement and/or by inducement of infringement, by making, using, selling and/or offering to sell, in this judicial district and elsewhere in the United States, PatientVision which embodies the patented invention of the '666 Patent.

31. Pursuant to 35 U.S.C. § 271(a), Perkins is each liable for direct infringement of the '666 Patent by having made, used, offered to sell, or sold and continuing to make, use, sell and/or offer to sell PatientVision. Perkins' infringement includes, but is not limited to, the manufacture, use, sale, importation and/or offer for sale of PatientVision which embodies the patented invention of the '666 Patent. Perkins has contracted to sell and has sold PatientVision to

various customers such as healthcare providers. Perkins continues to make, use, sell, offer to sell, and/or import PatientVision despite having actual knowledge of the infringement of the '666 Patent communicated by CareView as discussed *supra*.

32. Pursuant to 35 U.S.C. § 271(b), Perkins is liable for inducement of infringement by having, and continuing to, knowingly cause (or intend to cause) the direct infringement of the '666 Patent by users of PatientVision.

33. Pursuant to 35 U.S.C. § 271(c), Perkins is liable for contributory infringement of the '666 Patent by having sold or offered to sell and continuing to sell or offer to sell PatientVision, and the components thereof, which comprise a material component of the invention embodied in the '666 Patent, which is especially made or adapted for use in infringing the '666 Patent, and which is not suitable for any substantial non-infringing use, in order to provide PatientVision to users and having knowledge that the '666 Patent was/is being directly infringed by users.

34. Upon information and belief, Perkins' infringement of the '666 Patent is willful, deliberate, and intentional by continuing its acts of infringement with knowledge of the '666 Patent and thus acting in reckless disregard of CareView's patent rights.

35. As a result of Perkins' acts of infringement of the '666 Patent, CareView has suffered injury to its business and property in an amount to be determined as damages, and will continue to suffer damages in the future.

36. Unless an injunction is issued enjoining Perkins and its officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them from infringing the '666 Patent, CareView will be irreparably harmed.

## **COUNT II**

***Federal Trademark Infringement***

37. CareView re-alleges and incorporates by reference the foregoing allegations as though fully set forth here.

38. The acts of Perkins complained of herein constitute infringement of CareView's federally registered VIRTUAL BED RAILS mark in violation of 15 U.S.C. § 1114.

39. On information and belief, Perkins is imitating the VIRTUAL BED RAILS mark with full knowledge of CareView's rights, and in bad faith with a willful and deliberate intent to trade on the goodwill in CareView's VIRTUAL BED RAILS mark. In view of the willful nature of Perkins' activities, this is an exceptional case within the meaning of 15 U.S.C. § 1117(a).

40. Perkins' conduct has caused and is causing irreparable injury to CareView and, unless enjoined by this Court, will continue both to damage CareView and to deceive the public. CareView has no adequate remedy at law.

**COUNT III**

***Trademark Dilution***

41. CareView re-alleges and incorporates by reference the foregoing allegations as though fully set forth here.

42. As a result of promotion and use of the VIRTUAL BED RAILS mark by CareView for many years, the VIRTUAL BED RAILS mark is well-known and highly distinctive of CareView's products, and uniquely and exclusively associated with CareView. The VIRTUAL BED RAILS mark was well-known long before Perkins commenced their unauthorized use of the VIRTUAL BED RAILS mark as described herein.

43. The acts of Perkins complained of herein constitute a likelihood of dilution of the distinctive quality of the VIRTUAL BED RAILS mark in violation of 15 U.S.C. § 1125(c).



44. Perkins' conduct has caused and is causing irreparable injury to CareView and, unless enjoined by this Court, will continue both to damage CareView and to deceive the public. CareView has no adequate remedy at law.

**COUNT IV**

***Common Law Trademark Infringement***

45. CareView re-alleges and incorporates by reference the foregoing allegations as though fully set forth here.

46. The acts of Perkins complained of herein constitute trademark infringement under the common law of Texas.

47. Perkins' conduct has caused and is causing irreparable injury to CareView and, unless enjoined by this Court, will continue both to damage CareView and to deceive the public. CareView has no adequate remedy at law.

**COUNT V**

***Common Law Unfair Competition***

48. CareView re-alleges and incorporates by reference the foregoing allegations as though fully set forth here.

49. The acts of Perkins complained of herein constitute unfair competition under the common law of Texas.

50. Perkins' conduct has caused and is causing irreparable injury to CareView and, unless enjoined by this Court, will continue both to damage CareView and to deceive the public. CareView has no adequate remedy at law.

**COUNT VI**

***Unjust Enrichment***

51. CareView re-alleges and incorporates by reference the foregoing allegations as though fully set forth here.

52. The acts of Perkins complained of herein constitute unjust enrichment of Perkins at CareView's expense.

**DEMAND FOR JURY TRIAL**

53. CareView demands a trial by jury of any and all causes of action.

**PRAYER FOR RELIEF**

WHEREFORE, CareView prays for judgment and relief as follows:

A. A declaration that Perkins has infringed, is infringing, has induced and is inducing, has contributed and is contributing to the infringement of the '666 Patent;

B. A permanent injunction enjoining Perkins, its officers, agents, servants, employees, affiliates and attorneys, and all those in active concert or participation with them, from further infringing, inducing infringement, and contributing to the infringement of the '666 Patent;

C. A preliminary and permanent injunction enjoining Perkins, its officers, agents, servants, employees, affiliates and attorneys, and all those in active concert or participation with them, from using or seeking to register any mark that is confusingly similar to CareView's VIRTUAL BED RAILS mark and/or likely to dilute the distinctiveness of the VIRTUAL BED RAILS mark;

D. An award of damages adequate to compensate CareView for the infringement of the '666 Patent by Perkins;

E. A declaration that Perkins's continuing infringement of the '666 Patent was and is willful, justifying a trebling of the award of damages under 35 U.S.C. § 284, or such other enhancement of the award of damages that the Court deems appropriate;

F. An award of pre-judgment and post-judgment interest on the damages caused by reason of Perkins's infringement of the '666 Patent;

G. A declaration that this an exceptional case and that CareView be granted its reasonable attorneys' fees in accordance with 35 U.S.C. § 285;

H. An award of costs to CareView; and

I. A grant to CareView of such other and further relief as the Court may deem just and proper.

Dated: March 19, 2015

Respectfully Submitted,

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