

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

EXERGEN CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	JURY TRIAL DEMANDED
)	
MICROLIFE CORPORATION,)	
)	
Defendant.)	
)	

**EXERGEN CORPORATION’S COMPLAINT
FOR PATENT INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Exergen Corporation, for its complaint against defendant, Microlife Corporation, alleges as follows:

PARTIES

1. Plaintiff, Exergen Corporation (“Exergen”), is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and having its principal place of business at 400 Pleasant Street, Watertown, Massachusetts, within this judicial district.

2. Defendant, Microlife Corporation (“Microlife”) is, upon information and belief, a corporation organized under the laws of Taiwan having its principal place of business at 9F, 431 RuiGuang Road, NeiHu, Taipei 114, Taiwan, R.O.C.

JURISDICTION AND VENUE

3. This action is for patent infringement. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Defendant. Defendant has conducted and continues to conduct business in the Commonwealth of Massachusetts. Defendant has

caused and is continuing to cause tortious injury in the Commonwealth of Massachusetts. Defendant, directly or through intermediaries, has transacted and continues to transact business in the United States and the Commonwealth of Massachusetts by: using or causing to be used; making or causing to be made; importing or causing to be imported; offering to sell or causing to be offered for sale; and selling or causing to be sold directly, through intermediaries and as an intermediary, products that infringe the Patent-in-Suit to consumers in the United States, including consumers in the Commonwealth of Massachusetts.

5. Venue in this district is proper under 28 U.S.C. §§ 1391(b) and (c) and 1400(b), as, *inter alia*, Defendant is subject to personal jurisdiction in this district.

FACTUAL BACKGROUND

6. On March 18, 2008, United States Patent No. 7,346,386 (“the ’386 Patent”), entitled “Temporal Artery Temperature Detector,” was lawfully issued.

7. A copy of the ’386 Patent is attached as Exhibit A and incorporated herein.

8. Exergen is the sole owner of the ’386 Patent and all rights of recovery thereunder.

9. The ’386 Patent has not expired and is in full force and effect.

10. Exergen has marked its products in connection with the ’386 patent in compliance with 35 U.S.C. § 287(a).

11. Microlife has indirectly infringed the ’386 Patent by making infringing products, and causing such products to be used, offered for sale, and sold in the United States and in the Commonwealth of Massachusetts, and to be imported into the United States, including infrared forehead thermometers sold in the United States by Kaz USA, Inc. under the name V977, also known as the Vicks Forehead Thermometer, and FHT1000, also known as the Braun Forehead

Thermometer. For example, Microlife indirectly infringes at least claims 1- 4, 22, and 24 of the '386 Patent by such actions.

12. Microlife has induced and continues to induce the infringement of the '386 Patent in the United States.

13. Microlife maintains a relationship with Kaz USA, Inc., which is located in Massachusetts, by manufacturing and supplying infringing thermometers for import, offering for sale, sale, and use of its infringing infrared thermometer products in the United States, and by communicating with Kaz USA, Inc. regarding the infringing infrared thermometer products.

14. Microlife's affiliate, Microlife Intellectual Property GMBH, filed a 510(K) submission for approval to market its infringing infrared thermometer product, known as FR1DM1 in the United States. A copy of the Microlife 510(K) summary is attached as Exhibit B.

15. Microlife Intellectual Property GMBH filed a United States Patent Application to cover Microlife's forehead thermometer, which published on May 2, 2005. Attached as Exhibit C is Microlife's U.S. Patent App. No. 10/802,050.

16. On July 8, 2005, the USPTO issued a final rejection of the broadest infrared forehead thermometer claims in Microlife's US application, on the ground that these claims were obvious and "unpatentable" over Exergen's U.S. Patent No 6,692,685 (the '685 Patent). The narrower claims were rejected as obvious over the '685 Patent in combination with other prior art references. This rejection put Microlife on notice of Exergen's '685 Patent. The '386 Patent-in-Suit is a continuation of the '685 Patent. Microlife acquiesced in the rejection, eventually abandoning its application. Attached as Exhibit D are file excerpts from the USPTO file wrapper for Microlife's U.S. App. No. 10/802,050.

17. Microlife manufactures its infrared forehead thermometer products with the knowledge and intent that they will be imported into and sold in the United States.

18. Upon information and belief, Microlife has been aware of the existence of Exergen's '386 Patent since shortly after the issuance of the '386 Patent on March 18, 2008.

**COUNT I
INFRINGEMENT OF THE '386 PATENT**

19. Exergen incorporates by reference paragraphs 1-20 above as though fully set out herein.

20. On information and belief, Defendant has infringed and continues to infringe, indirectly through contributory and/or induced infringement, one or more claims of the '386 Patent, and manufactures and sells the infringing thermometers with the knowledge and intent that they will be imported into and sold in the United States, and the intent that such thermometers are especially designed in a manner which infringes the '386 Patent.

21. Microlife is a direct competitor of Exergen with respect to the subject matter of the '386 patent.

22. On information and belief, Defendant was aware of the existence of the '386 Patent and its infringement of the '386 Patent has been intentional, deliberate, and willful.

23. By reason of the aforesaid infringement, Exergen is damaged and is entitled to damages adequate to compensate for Defendant's infringement.

24. Defendant's infringement of the '386 Patent has caused and is causing irreparable injury to Exergen, for which Exergen has no adequate remedy at law. Defendant will continue its unauthorized conduct unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Exergen respectfully requests this Court to grant the following relief, and any other relief the Court may deem proper:

1. Enter judgment in favor of Exergen determining that Microlife induces infringement of, and has induced infringement of, the '386 Patent in violation of 35 U.S.C. § 271(b);

2. Enter judgment in favor of Exergen determining that Microlife contributorily infringes, and has contributorily infringed, the '386 Patent in violation of 35 U.S.C. § 271(c);

3. Permanently enjoin Microlife and its officers, agents, divisions, affiliate, subsidiaries, successors, employees, and representatives, and all those controlled by or acting in concert or privity with them from infringing, inducing the infringement, and/or contributing to the infringement of the '386 Patent;

4. Award Exergen damages in an amount to be determined at trial;

5. Award Exergen treble damages for willful infringement pursuant to 35 U.S.C. § 284; and

6. Award such other relief that this Court deems just and proper.

DEMAND FOR JURY TRIAL

Exergen hereby demands a trial by jury.

Date: September 18, 2015

Respectfully submitted,

EXERGEN CORPORATION

By its attorneys,

/s/ Kerry L. Timbers

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