

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

KONINKLIJKE PHILIPS ELECTRONICS N.V.
and PHILIPS ELECTRONICS NORTH
AMERICA CORPORATION,

Plaintiffs/Counterclaim-Defendants,

v.

ZOLL MEDICAL CORPORATION

Defendant/Counterclaim-Plaintiff.

C.A. No. 1:10-cv-11041-NMG

DEFENDANT'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

Defendant ZOLL Medical Corporation ("ZOLL") hereby answers the Amended Complaint of Plaintiffs Koninklijke Philips Electronics N.V. and Philips Electronics North America Corporation (collectively "Philips") as follows. ZOLL denies all allegations that it does not expressly admit below.

NATURE OF ACTION

COMPLAINT PARA. 1: This is an action for patent infringement under 35 U.S.C. § 271, *et seq.*, by Philips against Zoll for infringement of United States Patent Nos. 5,607,454; 5,721,482; 5,735,879; 5,749,905; 5,773,961; 5,800,460; 5,803,927; 5,836,978; 5,879,374; 6,047,212; 6,178,357; 6,304,783; 6,356,785; 6,441,582; and 6,871,093 (the "Patents-in-Suit").

ANSWER: This paragraph does not require a response from ZOLL. To the extent a response is called for, ZOLL denies the allegations of this paragraph.

PARTIES

COMPLAINT PARA. 2: Plaintiff Koninklijke Philips Electronics N.V. is a corporation organized under the laws of the Netherlands with a principal place of business in Eindhoven, the Netherlands.

ANSWER: ZOLL lacks knowledge sufficient to confirm or deny the allegations of this Paragraph, and therefore denies them.

COMPLAINT PARA. 3: Plaintiff Philips Electronics North America Corporation is a corporation organized and existing under the laws of Delaware, with a place of business at 3000 Minuteman Road, Andover, Massachusetts 01810. Philips Electronics North America Corporation is a wholly-owned subsidiary of Philips Holding USA, Inc., which, directly and indirectly, is a wholly-owned subsidiary of Plaintiff Koninklijke Philips Electronics N.V. Philips Electronics North America Corporation is the assignee and owner of the Patents-in-Suit.

ANSWER: ZOLL lacks knowledge sufficient to confirm or deny the allegations of this Paragraph, and therefore denies them.

COMPLAINT PARA. 4: Upon information and belief, Defendant Zoll is a corporation organized under the laws of the Commonwealth of Massachusetts, with a principal place of business at 269 Mill Road, Chelmsford, Massachusetts 01824.

ANSWER: Admitted.

JURISDICTION AND VENUE

COMPLAINT PARA. 5: This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 271, *et seq.*

ANSWER: ZOLL admits that the Philips Complaint purports to bring an action for patent infringement, and that such actions arise under the patent laws of the United States, Title 35 of the United States Code. ZOLL denies the other allegations of this Paragraph.

COMPLAINT PARA. 6: This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338.

ANSWER: Denied, on the ground that, on information and belief, one or both of the plaintiffs lack standing to bring this action with regard to some or all of the patents-in-suit.

COMPLAINT PARA. 7: Upon information and belief, Zoll maintains its principal place of business within Massachusetts and has voluntarily placed automatic external defibrillator products into the stream of commerce, knowing that Massachusetts is the likely destination of a substantial quantity of such products.

ANSWER: Admitted.

COMPLAINT PARA. 8: Upon information and belief, a substantial part of the events giving rise to these claims for patent infringement occurred in Massachusetts and in this judicial district.

ANSWER: ZOLL lacks knowledge sufficient to confirm or deny the allegations of this Paragraph, and therefore denies them.

COMPLAINT PARA. 9: Upon information and belief, Zoll is subject to personal jurisdiction in this district because it is a corporation organized under the laws of the Commonwealth of Massachusetts.

ANSWER: Admitted.

COMPLAINT PARA. 10: Upon information and belief, Zoll is subject to personal jurisdiction in this district because it maintains or has maintained continuous and systematic contacts with Massachusetts and this judicial district.

ANSWER: Admitted.

COMPLAINT PARA. 11: Upon information and belief, Zoll is subject to personal jurisdiction in this district because it purposefully engaged in activities that gave rise to Philips' claims for patent infringement and which were directed to residents of Massachusetts and this judicial district.

ANSWER: Denied.

COMPLAINT PARA. 12: Upon information and belief, Zoll resides in this district for purposes of 28 U.S.C. §§ 1391(c) and 1400(b) because it is subject to personal jurisdiction in this district.

ANSWER: Admitted.

COMPLAINT PARA. 13: Upon information and belief, venue for this civil action in this judicial district is proper under 28 U.S.C. §§ 1391(b), 1391(c), and/or 1400(b), as Zoll is subject to personal jurisdiction in this district.

ANSWER: Admitted.

COUNT 1: ALLEGED INFRINGEMENT OF U.S. PATENT NO. 5,607,454

COMPLAINT PARA. 14: Philips incorporates by reference paragraphs 1-13 as if fully set forth herein.

ANSWER: ZOLL incorporates by reference its answers to paragraphs 1-13 as if fully set forth herein.

COMPLAINT PARA. 15: On March 4, 1997, the United States Patent and Trademark Office (“USPTO”) duly and legally issued United States Patent No. 5,607,454 (“the ’454 patent”), entitled “Electrotherapy Method and Apparatus,” to the listed inventor David Cameron of Seattle, Washington, and other co-inventors in Washington. By assignment from the previous patent owner, Plaintiff Koninklijke Philips Electronics N.V. was the assignee and owner of the ’454 patent, a copy of which is attached as Exhibit A, until August 18, 2010, when it assigned the ’454 patent to Plaintiff Philips Electronics North America Corporation.

ANSWER: ZOLL admits that United States Patent No. 5,607,454 (“the ’454 patent”) is titled “Electrotherapy Method and Apparatus” and on its face lists David Cameron and other individuals in Washington as inventors. ZOLL denies that the ’454 patent was duly and legally issued by the United States Patent and Trademark Office. ZOLL lacks knowledge sufficient to confirm or deny the other allegations of this Paragraph, and therefore denies them.

COMPLAINT PARA. 16: Upon information and belief, Philips and its predecessors, including Heartstream, Inc., Hewlett-Packard Company, and Agilent Technologies, Inc., have continuously marked their products with the ’454 patent number.

ANSWER: Denied.

COMPLAINT PARA. 17: Upon information and belief, Zoll has infringed and continues to infringe the ’454 patent under 35 U.S.C. § 271(a), (b), and/or (c), by making, using, offering for sale, selling, and/or importing in the United States automated external defibrillators, including the AED Plus and AED Pro automated external defibrillators, and by contributing to and/or inducing infringement of the ’454 patent.

ANSWER: Denied.

COMPLAINT PARA. 18: Zoll does not have a license or permission to use the ’454 patent.

ANSWER: Denied. See affirmative defenses 7–9.

COMPLAINT PARA. 19: As a result of Zoll’s infringement of the ’454 patent, Philips has been irreparably injured. Unless such infringing acts are enjoined by this Court, Philips will continue to suffer additional irreparable injury.

ANSWER: Denied.

COMPLAINT PARA. 20: As a result of Zoll’s infringement of the ’454 patent, Philips has suffered, and continues to suffer, damages, in an amount not yet determined, of at least a reasonable royalty and/or lost profits due to loss of sales, profits, and potential sales that Philips would have made but for Zoll’s infringing acts.

ANSWER: Denied.

COMPLAINT PARA. 21: In a letter dated November 17, 2008, Philips provided notice to Zoll of the '454 patent and its infringing conduct.

ANSWER: ZOLL admits that it received a letter from Philips dated November 17, 2008. ZOLL denies the other allegations of this paragraph.

COMPLAINT PARA. 22: Despite knowledge of the '454 patent, Zoll has continued to infringe this patent. Zoll acted with reckless disregard of the '454 patent by continuing to infringe the patent when it knew or should have known that its actions constituted infringement.

ANSWER: Denied.

COUNT 2: ALLEGED INFRINGEMENT OF U.S. PATENT NO. 5,721,482

COMPLAINT PARA. 23: Philips incorporates by reference paragraphs 1-13 as if fully set forth herein.

ANSWER: ZOLL incorporates by reference its answers to paragraphs 1–13 as if fully set forth herein.

COMPLAINT PARA. 24: On February 24, 1998, the USPTO duly and legally issued United States Patent No. 5,721,482 (“the '482 patent”), entitled “Intelligent Battery and Method for Providing an Advance Low Battery Warning for a Battery Powered Device such as a Defibrillator,” to the listed inventor Carl E. Benvegar of McMinnville, Oregon, and other co-inventors in Oregon and Washington. By assignment from the previous patent owner, Plaintiff Koninklijke Philips Electronics N.V. was the assignee and owner of the '482 patent, a copy of which is attached as Exhibit B, until August 18, 2010, when it assigned the '482 patent to Plaintiff Philips Electronics North America Corporation.

ANSWER: ZOLL admits that United States Patent No. 5,721,482 (“the '482 patent”) is titled “Intelligent Battery and Method for Providing an Advance Low Battery Warning for a Battery Powered Device such as a Defibrillator” and on its face lists Carl E. Benvegar of Oregon and other individuals in Washington and Oregon as inventors. ZOLL denies that the '482 patent was duly and legally issued by the United States Patent and Trademark Office. ZOLL lacks knowledge sufficient to confirm or deny the other allegations of this Paragraph, and therefore denies them.

COMPLAINT PARA. 25: Upon information and belief, Zoll has infringed and continues to infringe the '482 patent under 35 U.S.C. § 271(a), (b), and/or (c), by making, using, offering for sale, selling, and/or importing in the United States infringing products, including the Zoll Smart Battery and automated external defibrillators, including the AED Pro automated external defibrillator, and by contributing to and/or inducing infringement of the '482 patent.

ANSWER: Denied.

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