

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

OTICON A/S AND OTICON, INC.,

Plaintiffs,

v.

GN RESOUND A/S AND GN HEARING CARE
CORPORATION,

Defendants.

Case No.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Oticon A/S and Oticon, Inc. (“Plaintiffs”), for its Complaint against Defendants GN ReSound A/S and GN Hearing Care Corporation (“Defendants”) state and allege as follows:

NATURE OF ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 101, *et seq.*

THE PARTIES

2. Plaintiff Oticon A/S is a corporation organized under the laws of Denmark, with a corporate headquarters located at Kongebakken 9, DK-2765 Smørum, Denmark.

3. Plaintiff Oticon, Inc. is a corporation organized under the laws of California, with its principal place of business at 580 Howard Avenue, Somerset, New Jersey, 08873.

4. On information and belief, Defendant GN ReSound A/S is a corporation organized under the laws of Denmark, with a corporate headquarters located at Lautrupbjerg 7, DK-2750 Ballerup, Denmark.

5. On information and belief, Defendant GN Hearing Care Corporation is organized under the laws of California and has its principal place of business located at 8001 E. Bloomington Fwy, Bloomington, Minnesota, 55420.

JURISDICTION AND VENUE

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

7. Venue is proper in this judicial District under 28 U.S.C. §§ 1391(b) and 1400(b). On information and belief, Defendants GN ReSound A/S and GN Hearing Care Corporation have committed infringing acts within this District, including making, selling, offering for sale, using and/or importing infringing devices.

8. Defendant GN Hearing Care Corporation is subject to personal jurisdiction in this District. On information and belief, Defendant GN Hearing Care Corporation maintains its corporate headquarters in this District, regularly conducts business in this District, and has committed infringing acts within this District. On information and belief, Defendant GN Hearing Care Corporation employs over 350 employees in the Bloomington, Minnesota area, and its Bloomington headquarters is the strategic center of Defendant GN Hearing Care's distribution of ReSound products, including the infringing devices, within the United States.

9. Defendant GN ReSound A/S is subject to personal jurisdiction in this District. Defendant GN ReSound A/S owns 100% of the stock of GN U.S. Holdings, Inc., which in turn owns 100% of the stock of Defendant GN Hearing Care Corporation. On information and belief, Defendant GN ReSound A/S operates an established distribution channel for infringing devices, leading to Bloomington, Minnesota, has committed infringing acts within this District, and has directed and continues to direct the infringing acts, including in this District, of Defendant GN Hearing Care Corporation. GN ReSound A/S has previously sought to litigate a patent infringement action in this District, and has argued that it has minimum contacts sufficient to establish personal jurisdiction over GN ReSound A/S in the District of Minnesota.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,300,863

10. Plaintiffs restate and reallege the allegations of paragraphs 1 through 9 as if fully set forth herein.

11. On October 30, 2012, United States Patent No. 8,300,863 (hereinafter referred to as “the ’863 Patent”), entitled HEARING DEVICE AND METHOD FOR A WIRELESS RECEIVING AND/OR SENDING OF DATA, was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’863 Patent is attached hereto as Exhibit A.

12. On October 20, 2014, the United States Patent and Trademark Office issued an Ex Parte Reexamination Certificate for the ’863 patent. A true and correct copy of the Reexamination Certificate for the ’863 Patent is attached hereto as Exhibit B.

13. Plaintiff Oticon A/S is the assignee and owner of all right, title, and interest in and to the ’863 Patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of the ’863 Patent.

14. Plaintiff Oticon, Inc. holds an exclusive license to the ’863 patent, including the rights to import, make, have made, offer to sell, sell, and use products covered by the ’863 patent within the United States, and Plaintiff Oticon A/S has the right to join Plaintiff Oticon, Inc. in actions to enforce the ’863 patent.

15. Without license or authorization, each of the Defendants has been infringing, and continues to infringe, the ’863 Patent by, on information and belief, making, selling, offering for sale, and/or using within the United States, and/or importing into the United States, including within this judicial District, certain hearing devices that embody the inventions claimed in the ’863 Patent. These infringing devices include at least the ReSound Verso VO961-DRW, ReSound Linx LN961-DRW, and all hearing aid devices that employ wireless radio frequency (RF) communication technology materially similar to that employed in these devices. Such acts constitute infringement under at least 35 U.S.C. § 271(a).

16. On information and belief, Defendants have also contributed to infringement under 35 U.S.C. § 271(c), by selling, offering to sell, and/or importing infringing hearing devices and/or components constituting a material part thereof, including at least circuit boards, behind-the-ear portions, receiver-in-ear portions, connecting wires, and/or receiver tubes. On information and belief, Defendants have done so knowing these items were especially made for use in infringing the '863 Patent, and have had knowledge of such infringement and knowledge of the '863 Patent since at least October 21, 2014, the date that Defendant GN ReSound A/S filed two petitions for inter partes review of the '863 Patent. On information and belief, these components are not staple articles of commerce and have no substantial non-infringing uses. On information and belief, these items are utilized by third parties including distributors, retailers, dispensers and/or end-users to sell, make, and/or use infringing products, which actions comprise acts of direct infringement under 35 U.S.C. § 271(a).

17. Defendants also have induced and/or are inducing infringement of the '863 patent under 35 U.S.C. § 271(b), by inducing and encouraging third parties including distributors, retailers, dispensers and/or end-users to sell, make, and/or use infringing products, which actions comprise acts of direct infringement under 35 U.S.C. § 271(a). Such acts of inducement include at least providing information such as product datasheets, user guides, patient brochures and informational videos to distributors, retailers, dispensers and end-users, and/or by providing dispenser referrals, product warranty information and other customer support services to end-users of the infringing hearing aid devices, and providing infringing hearing devices and/or circuit boards, behind-the-ear portions, receiver-in-ear portions, connecting wires, and/or receiver tubes used in practicing the inventions of the '863 Patent. Defendants have known of this infringement and the existence of the '863 patent since at least October 21, 2014, the date that Defendant GN ReSound A/S filed two petitions for inter partes review of the '863 Patent. On information and belief, Defendants sold and/or offered for sale these items, and are continuing to do so, specifically intending to actively encourage third parties to make, use,

and/or sell the infringing devices within the United States in a manner that Defendants know to be infringing.

18. On information and belief, Defendants had knowledge of the '863 patent, including knowledge of the claims as amended in the ex parte reexamination certificate, since at least October 21, 2014. On information and belief, Defendants have acted and/or are continuing to act despite an objectively high likelihood that its actions constituted infringement of a valid patent, and knew or should have known of that objectively high risk at least as of October 21, 2014. Defendants' infringement of the '863 patent has been and continues to be willful and deliberate, in disregard of plaintiff's rights, entitling Plaintiffs to enhanced damages under 35 U.S.C. § 284 and reasonable attorneys' fees and costs.

19. Plaintiffs have been damaged by Defendants' infringing activities. Plaintiffs are entitled to recover from Defendants the damages adequate to compensate for such infringement, in an amount to be determined at trial.

20. Defendants' acts of infringement have caused and will continue to cause irreparable harm to Plaintiffs, entitling Plaintiffs to injunctive relief.

JURY DEMAND

21. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

22. WHEREFORE, Plaintiffs respectfully demand entry of judgment in favor of themselves and against each Defendant as follows:

(a) That this Court adjudge that each Defendant has infringed and is infringing the '863 Patent;

(b) That this Court adjudge that each Defendant has willfully infringed and is willfully infringing the '863 Patent.

(c) That this Court ascertain and award Plaintiffs damages sufficient to compensate them for the above infringement and that the damages so ascertained be awarded to

Plaintiffs with interest, including lost profits, together with interest and costs, and all other damages permitted by 35 U.S.C. § 284, including enhanced damages up to three times the amount of damages found or measured, but in any event no less than a reasonable royalty;

(d) For an accounting for any infringing sales not presented at trial and an award by the Court of additional damages for any such infringing sales;

(e) That this Court issue an injunction prohibiting the making, using, offer for sale, and sale within the United States, and importation into the United States, of any infringing devices by either of the Defendants or any agents or subsidiaries thereof;

(f) That this Court find this case to be exceptional under 35 U.S.C. § 285 and award Plaintiffs their attorneys' fees, costs and expenses in this action; and

(g) That this Court award Plaintiffs such other relief as the Court may deem just and equitable.

Dated: April 21, 2015

FISH & RICHARDSON P.C.

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