

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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

Plaintiffs,

v.

ZOLL LIFECOR CORPORATION,

Defendant.

Civil Action No.

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiffs Koninklijke Philips Electronics N.V. and Philips Electronics North America Corporation (collectively “Philips”) bring this complaint for patent infringement against Defendant Zoll Lifecor Corporation (“Zoll”).

NATURE OF ACTION

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. 5,593,427; 5,607,454; 5,735,879; 5,749,904; 5,749,905; 5,803,927; 5,836,978; and 6,047,212 (the “Patents-in-Suit”).

PARTIES

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.

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. Plaintiff Philips Electronics North America Corporation is the assignee and owner of United States Patent Nos. 5,593,427; 5,607,454; 5,735,879; 5,749,904; 5,749,905; 5,803,927; 5,836,978; and 6,047,212.

4. Upon information and belief, Defendant Zoll Lifecor Corp. is a corporation organized under the laws of Delaware, with a principal place of business at 121 Gamma Drive, Pittsburgh, Pennsylvania 15238.

JURISDICTION AND VENUE

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

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

7. Upon information and belief, Zoll maintains its principal place of business within Pennsylvania and has voluntarily placed wearable defibrillators, including the LifeVest product, into the stream of commerce, knowing that Pennsylvania is the likely destination of a substantial quantity of such products.

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

9. Upon information and belief, Zoll is subject to personal jurisdiction in this district because it maintains or has maintained continuous and systematic contacts with Pennsylvania and this judicial district.

10. 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 Pennsylvania and this judicial district.

11. 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.

12. 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.

COUNT 1: PATENT INFRINGEMENT OF U.S. PATENT NO. 5,593,427

13. Philips incorporates by reference paragraphs 1-12 as if fully set forth herein.

14. On January 14, 1997, the United States Patent and Trademark Office ("USPTO") duly and legally issued United States Patent No. 5,593,427 ("the '427 patent"), entitled "Electrotherapy Method," to the listed inventor Bradford E. Gliner of Bellevue, 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 '427 patent, a copy of which is attached as Exhibit A, until August 18, 2010, when it assigned the '427 patent to Plaintiff Philips Electronics North America Corporation.

15. Upon information and belief, Zoll has infringed and continues to infringe the '427 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 wearable defibrillators, including the LifeVest product, and by contributing to and/or inducing infringement of the '427 patent.

16. Upon information and belief, Zoll has knowingly encouraged and induced third parties through advertisements, instruction manuals and other means to operate the LifeVest product in a manner that infringes the '427 patent—and third parties have so used the LifeVest.

17. Upon information and belief, Zoll has knowingly contributed to the infringement of the '427 patent by providing the LifeVest product to third parties who have used it in an infringing manner.

18. Zoll does not have a license or permission to use the '427 patent.

19. As a result of Zoll's infringement of the '427 patent, Philips has been irreparably injured. Unless such infringing acts are enjoined by this Court, Philips will continue to suffer additional irreparable injury.

20. As a result of Zoll's infringement of the '427 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.

21. In a letter dated November 17, 2008, Philips provided notice to Zoll of the '427 patent and its infringing conduct. The letter was sent to Stephen Korn, who upon information and belief was serving as the Secretary of Zoll Lifecor Corp. at the time.

22. Despite knowledge of the '427 patent, Zoll has continued to infringe this patent. Zoll acted with reckless disregard of the '427 patent by continuing to infringe the patent when it knew or should have known that its actions constituted infringement.

COUNT 2: PATENT INFRINGEMENT OF U.S. PATENT NO. 5,607,454

23. Philips incorporates by reference paragraphs 1-22 as if fully set forth herein.

24. 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 B, until August 18, 2010, when it assigned the ’454 patent to Plaintiff Philips Electronics North America Corporation.

25. 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.

26. 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 wearable defibrillators, including the LifeVest product, and by contributing to and/or inducing infringement of the ’454 patent.

27. Upon information and belief, Zoll has knowingly encouraged and induced third parties through advertisements, instruction manuals and other means to operate the LifeVest product in a manner that infringes the ’454 patent—and third parties have so used the LiveVest.

28. Upon information and belief, Zoll has knowingly contributed to the infringement of the ’454 patent by providing the LifeVest product to third parties who have used it in an infringing manner.

29. Zoll does not have a license or permission to use the ’454 patent.

30. 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.

31. 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.

32. In a letter dated November 17, 2008, Philips provided notice to Zoll of the '454 patent and its infringing conduct. The letter was sent to Stephen Korn, who upon information and belief was serving as the Secretary of Zoll Lifecor Corp. at the time.

33. 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.

COUNT 3: PATENT INFRINGEMENT OF U.S. PATENT NO. 5,735,879

34. Philips incorporates by reference paragraphs 1-33 as if fully set forth herein.

35. On April 7, 1998, the USPTO duly and legally issued United States Patent No. 5,735,879 ("the '879 patent"), entitled "Electrotherapy Method for External Defibrillators," to the listed inventor Bradford E. Gliner of Bellevue, 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 '879 patent, a copy of which is attached as Exhibit C, until August 18, 2010, when it assigned the '879 patent to Plaintiff Philips Electronics North America Corporation.

36. 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 '879 patent number.

37. Upon information and belief, Zoll has infringed and continues to infringe the '879 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 wearable defibrillators, including the LifeVest product, and by contributing to and/or inducing infringement of the '879 patent.

38. Upon information and belief, Zoll has knowingly encouraged and induced third parties through advertisements, instruction manuals and other means to operate the LifeVest product in a manner that infringes the '879 patent—and third parties have so used the LiveVest.

39. Upon information and belief, Zoll has knowingly contributed to the infringement of the '879 patent by providing the LifeVest product to third parties who have used it in an infringing manner.

40. Zoll does not have a license or permission to use the '879 patent.

41. As a result of Zoll's infringement of the '879 patent, Philips has been irreparably injured. Unless such infringing acts are enjoined by this Court, Philips will continue to suffer additional irreparable injury.

42. As a result of Zoll's infringement of the '879 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.

43. In a letter dated November 17, 2008, Philips provided notice to Zoll of the '879 patent and its infringing conduct. The letter was sent to Stephen Korn, who upon information and belief was serving as the Secretary of Zoll Lifecor Corp. at the time.

44. Despite knowledge of the '879 patent, Zoll has continued to infringe this patent. Zoll acted with reckless disregard of the '879 patent by continuing to infringe the patent when it knew or should have known that its actions constituted infringement.

COUNT 4: PATENT INFRINGEMENT OF U.S. PATENT NO. 5,749,904

45. Philips incorporates by reference paragraphs 1-44 as if fully set forth herein.

46. On May 12, 1998, the United States Patent and Trademark Office ("USPTO") duly and legally issued United States Patent No. 5,749,904 ("the '904 patent"), entitled "Electrotherapy Method Utilizing Patient Dependent Electrical Parameters," to the listed inventor Bradford E. Gliner of Bellevue, 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 '904 patent, a copy of which is attached as Exhibit D, until August 18, 2010, when it assigned the '904 patent to Plaintiff Philips Electronics North America Corporation.

47. Upon information and belief, Zoll has infringed and continues to infringe the '904 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 wearable defibrillators, including the LifeVest product, and by contributing to and/or inducing infringement of the '904 patent.

48. Upon information and belief, Zoll has knowingly encouraged and induced third parties through advertisements, instruction manuals and other means to operate the LifeVest product in a manner that infringes the '904 patent—and third parties have so used the LifeVest.

49. Upon information and belief, Zoll has knowingly contributed to the infringement of the '904 patent by providing the LifeVest product to third parties who have used it in an infringing manner.

50. Zoll does not have a license or permission to use the '904 patent.

51. As a result of Zoll's infringement of the '904 patent, Philips has been irreparably injured. Unless such infringing acts are enjoined by this Court, Philips will continue to suffer additional irreparable injury.

52. As a result of Zoll's infringement of the '904 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.

53. In a letter dated November 17, 2008, Philips provided notice to Zoll of the '904 patent and its infringing conduct. The letter was sent to Stephen Korn, who upon information and belief was serving as the Secretary of Zoll Lifecor Corp. at the time.

54. Despite knowledge of the '904 patent, Zoll has continued to infringe this patent. Zoll acted with reckless disregard of the '904 patent by continuing to infringe the patent when it knew or should have known that its actions constituted infringement.

COUNT 5: PATENT INFRINGEMENT OF U.S. PATENT NO. 5,749,905

55. Philips incorporates by reference paragraphs 1-54 as if fully set forth herein.

56. On May 12, 1998, the USPTO duly and legally issued United States Patent No. 5,749,905 ("the '905 patent"), entitled "Electrotherapy Method Utilizing Patient Dependent Electrical Parameters," to the listed inventor Bradford E. Gliner of Bellevue, 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 '905 patent, a copy of which is attached as Exhibit E, until August 18, 2010, when it assigned the '905 patent to Plaintiff Philips Electronics North America Corporation.

57. 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 '905 patent number.

58. Upon information and belief, Zoll has infringed and continues to infringe the '905 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 wearable defibrillators, including the LifeVest product, and by contributing to and/or inducing infringement of the '905 patent.

59. Upon information and belief, Zoll has knowingly encouraged and induced third parties through advertisements, instruction manuals and other means to operate the LifeVest product in a manner that infringes the '905 patent—and third parties have so used the LiveVest.

60. Upon information and belief, Zoll has knowingly contributed to the infringement of the '905 patent by providing the LifeVest product to third parties who have used it in an infringing manner.

61. Zoll does not have a license or permission to use the '905 patent.

62. As a result of Zoll's infringement of the '905 patent, Philips has been irreparably injured. Unless such infringing acts are enjoined by this Court, Philips will continue to suffer additional irreparable injury.

63. As a result of Zoll's infringement of the '905 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.

64. In a letter dated November 17, 2008, Philips provided notice to Zoll of the '905 patent and its infringing conduct. The letter was sent to Stephen Korn, who upon information and belief was serving as the Secretary of Zoll Lifecor Corp. at the time.

65. Despite knowledge of the '905 patent, Zoll has continued to infringe this patent. Zoll acted with reckless disregard of the '905 patent by continuing to infringe the patent when it knew or should have known that its actions constituted infringement.

COUNT 6: PATENT INFRINGEMENT OF U.S. PATENT NO. 5,803,927

66. Philips incorporates by reference paragraphs 1-65 as if fully set forth herein.

67. On September 8, 1998, the USPTO duly and legally issued United States Patent No. 5,803,927 ("the '927 patent"), entitled "Electrotherapy Method and Apparatus for External Defibrillation," 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 '927 patent, a copy of which is attached as Exhibit F, until August 18, 2010, when it assigned the '927 patent to Plaintiff Philips Electronics North America Corporation.

68. 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 '927 patent number.

69. Upon information and belief, Zoll has infringed and continues to infringe the '927 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 wearable defibrillators, including the LifeVest product, and by contributing to and/or inducing infringement of the '927 patent.

70. Upon information and belief, Zoll has knowingly encouraged and induced third parties through advertisements, instruction manuals and other means to operate the LifeVest product in a manner that infringes the '927 patent—and third parties have so used the LiveVest.

71. Upon information and belief, Zoll has knowingly contributed to the infringement of the '927 patent by providing the LifeVest product to third parties who have used it in an infringing manner.

72. Zoll does not have a license or permission to use the '927 patent.

73. As a result of Zoll's infringement of the '927 patent, Philips has been irreparably injured. Unless such infringing acts are enjoined by this Court, Philips will continue to suffer additional irreparable injury.

74. As a result of Zoll's infringement of the '927 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.

75. In a letter dated November 17, 2008, Philips provided notice to Zoll of the '927 patent and its infringing conduct. The letter was sent to Stephen Korn, who upon information and belief was serving as the Secretary of Zoll Lifecor Corp. at the time.

76. Despite knowledge of the '927 patent, Zoll has continued to infringe this patent. Zoll acted with reckless disregard of the '927 patent by continuing to infringe the patent when it knew or should have known that its actions constituted infringement.

COUNT 7: PATENT INFRINGEMENT OF U.S. PATENT NO. 5,836,978

77. Philips incorporates by reference paragraphs 1-76 as if fully set forth herein.

78. On November 17, 1998, the USPTO duly and legally issued United States Patent No. 5,836,978 (“the ’978 patent”), entitled “Electrotherapy Method for Producing a Multiphasic Discharge Based upon a Patient-Dependant Electrical Parameter and Time,” to the listed inventor Bradford E. Gliner of Bellevue, 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 ’978 patent, a copy of which is attached as Exhibit G, until August 18, 2010, when it assigned the ’978 patent to Plaintiff Philips Electronics North America Corporation.

79. Upon information and belief, Zoll has infringed and continues to infringe the ’978 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 wearable defibrillators, including the LifeVest product, and by contributing to and/or inducing infringement of the ’978 patent.

80. Upon information and belief, Zoll has knowingly encouraged and induced third parties through advertisements, instruction manuals and other means to operate the LifeVest product in a manner that infringes the ’978 patent—and third parties have so used the LiveVest.

81. Upon information and belief, Zoll has knowingly contributed to the infringement of the ’978 patent by providing the LifeVest product to third parties who have used it in an infringing manner.

82. Zoll does not have a license or permission to use the ’978 patent.

83. As a result of Zoll’s infringement of the ’978 patent, Philips has been irreparably injured. Unless such infringing acts are enjoined by this Court, Philips will continue to suffer additional irreparable injury.

84. As a result of Zoll's infringement of the '978 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.

85. In a letter dated November 17, 2008, Philips provided notice to Zoll of the '978 patent and its infringing conduct. The letter was sent to Stephen Korn, who upon information and belief was serving as the Secretary of Zoll Lifecor Corp. at the time.

86. Despite knowledge of the '978 patent, Zoll has continued to infringe this patent. Zoll acted with reckless disregard of the '978 patent by continuing to infringe the patent when it knew or should have known that its actions constituted infringement.

COUNT 8: PATENT INFRINGEMENT OF U.S. PATENT NO. 6,047,212

87. Philips incorporates by reference paragraphs 1-86 as if fully set forth herein.

88. On April 4, 2000, the USPTO duly and legally issued United States Patent No. 6,047,212 ("the '212 patent"), entitled "External Defibrillator Capable of Delivering Patient Impedance Compensated Biphasic Waveforms," to the listed inventor Bradford E. Gliner of Bellevue, 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 '212 patent, a copy of which is attached as Exhibit H, until August 18, 2010, when it assigned the '212 patent to Plaintiff Philips Electronics North America Corporation.

89. Upon information and belief, Philips has continuously marked its products with the '212 patent number.

90. Upon information and belief, Zoll has infringed and continues to infringe the '212 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 wearable defibrillators, including the LifeVest product, and by contributing to and/or inducing infringement of the '212 patent.

91. Upon information and belief, Zoll has knowingly encouraged and induced third parties through advertisements, instruction manuals and other means to operate the LifeVest product in a manner that infringes the '212 patent—and third parties have so used the LiveVest.

92. Upon information and belief, Zoll has knowingly contributed to the infringement of the '212 patent by providing the LifeVest product to third parties who have used it in an infringing manner.

93. Zoll does not have a license or permission to use the '212 patent.

94. As a result of Zoll's infringement of the '212 patent, Philips has been irreparably injured. Unless such infringing acts are enjoined by this Court, Philips will continue to suffer additional irreparable injury.

95. As a result of Zoll's infringement of the '212 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.

96. In a letter dated November 17, 2008, Philips provided notice to Zoll of the '212 patent and its infringing conduct. The letter was sent to Stephen Korn, who upon information and belief was serving as the Secretary of Zoll Lifecor Corp. at the time.

97. Despite knowledge of the '212 patent, Zoll has continued to infringe this patent. Zoll acted with reckless disregard of the '212 patent by continuing to infringe the patent when it knew or should have known that its actions constituted infringement.

PRAYER FOR RELIEF

WHEREFORE, Philips respectfully requests the following relief:

- (a) a declaration that Zoll infringes the Patents-in-Suit under 35 U.S.C. § 271(a), (b), and/or (c) and a final judgment incorporating the same;
- (b) equitable relief under 35 U.S.C. § 283, including, but not limited to, an injunction that enjoins Zoll and any of its officers, agents, employees, assigns, representatives, privies, successors, and those acting in concert or participation with them from infringing, contributing to, and/or inducing infringement of Patents-in-Suit;
- (c) an award of damages sufficient to compensate Philips for infringement of Patents-in-Suit by Zoll, together with prejudgment and post-judgment interest under 35 U.S.C. § 284;
- (d) entry of an order compelling Zoll to compensate Philips for any ongoing and/or future infringement of the Patents-in-Suit, in an amount and under terms appropriate under the circumstances;
- (e) a declaration or order finding that Zoll's infringement is willful and/or an order increasing damages under 35 U.S.C. § 284;
- (f) a judgment holding that this is an exceptional case under 35 U.S.C. § 285 and awarding Philips its reasonable attorney fees, costs, and expenses; and
- (g) such other relief deemed just and proper.

JURY DEMAND

Under Rule 38 of the Federal Rules of Civil Procedure, Philips hereby demands trial by jury of all issues so triable by a jury in this action.

Dated: September 21, 2012

Respectfully submitted,

/s/ Lionel M. Lavenue

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CORPORATION

CERTIFICATE OF SERVICE

A copy of the foregoing was electronically filed with the Court this September 21, 2012.

Notice of this filing will be sent by operation of the Court's electronic filing system.

Parties may access this filing through the Court's system.

/s/ Lionel M. Lavenue

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