

**IN THE UNITED STATES COURT
FOR THE NORTHERN DISTRICT OF TEXAS
Dallas Division**

Reaux Medical Industries, LLC	§	
Plaintiff	§	
	§	
v.	§	Civil Action No.
	§	
Stryker Corporation,	§	
Racing Optics, Inc., and,	§	
BioMedical Devices, Inc.	§	Jury Trial Requested
Defendants	§	

PLAINTIFF’S ORIGINAL COMPLAINT

NOW COMES Plaintiff, Reaux Medical Industries, LLC (hereafter referred to as “Reaux” or “Plaintiff”) for its claims against Defendants and alleges as follows:

THE PARTIES

1. Plaintiff, Reaux Medical Industries, LLC, is a Texas Limited Liability Company with a principal place of business at 710 Rock Hill Drive, Red Oak, Texas.
2. Defendant, Stryker Corporation, is a Michigan corporation with a principal place of business at 2825 Airview Boulevard, Kalamazoo, Michigan, and is doing business in the State of Texas directly or indirectly.
3. Racing Optics, Inc. is a California corporation with a principal place of business at 6100 North Hollywood Boulevard, Suite 106, Las Vegas, Nevada (a prior principal place of business at 1218 Puerta Del Sol, San Clemente, California), and is doing business in the State of Texas directly or indirectly and/or causing products or components to enter the stream of commerce that flows into the State of Texas.

4. Defendant BioMedical Devices, Inc. is a California corporation with a principal place of business at 17171 Daimler Avenue, Irvine, California, having stated ownership and control interests in manufacturing and development companies or entities Syntech International at 17171 Daimler Avenue, Irvine, California and Syntech de Baja located in Mexico (collectively referred to as “BioMedical Devices”), all of which are individually and/or collectively doing business in the State of Texas directly or indirectly and/or causing products or components to enter into the stream of commerce that flows into the State of Texas.

JURISDICTION AND VENUE

6. This is an action arising under the United States Patent Laws, Title 35 of the United States Code.

7. The court has personal jurisdiction over Defendants because each Defendant has purposefully availed itself of the benefits of the forum state. The Defendants have conducted and continues to conduct business in the State of Texas, and it is believed in this judicial district, directly or indirectly relating to the controversy at issue.

8. The court has subject matter jurisdiction under 28 U.S.C. §§1331 and 1338. Venue properly lies in the Northern District of Texas, Dallas Division, pursuant to 28 U.S.C. §§1391(b)(c) and §1400(b). Defendants Stryker Corporation and Racing Optics has agreed and acquiesced to personal jurisdiction and venue in the Northern District of Texas with respect to a patent infringement action pending in this Court regarding a related United States Patent.

FACTUAL BACKGROUND

9. Mr. Brian K. Reaux is the sole inventor of the invention described and claimed in United States Patent Number 8,261,375 (hereinafter “the ‘375 Patent”), and Mr. Reaux has assigned all right, title and interest to the ‘375 Patent to the Plaintiff Reaux Medical Industries, LLC.

10. The Reaux ‘375 Patent covers a method of forming a sterile hood that includes steps of (a) providing an air permeable hood formed from a flexible material configured for wearing over a wearer’s head, (b) providing an eye shield formed by laminating at least two layers of flexible material together and then (c) cutting the laminated layers into a desired shape to form the eye shield, and (d) coupling the eye shield to the hood so that the eye shield extends to cover at least a portion of the face of the wearer when wearing the hood, where: (i) the at least two layers comprising a lens and at least one lens protector layer (ii) the lens has a greater thickness than any lens protector layer, (iii) at least a portion of the at least two layers is transparent to allow visual perception through the at least two layers forming the eye shield, (iv) the at least two laminated layers are releasable so that one of the layers may be selectively removed from the other; and; and (v) the hood and eye shield are sterilized or formed from sterile materials for use in a sterile environment.

11. The United States Patent & Trademark Office issued twelve patent claims directed to the above subject matter, including one independent and eleven dependent claims, after being made aware of the prior jury verdict in *Reaux v. Stryker and Racing Optics, Inc.*, Civil Action No. 3:09cv1582 (N.D. Texas), and receiving and reviewing a copy of the Verdict Form completed by the jury.

12. The United States Patent & Trademark Office issued twelve patent claims directed to the above subject matter, including one independent and eleven dependent claims, after receiving and reviewing alleged prior art identified by the Defendants in *Reaux v. Stryker and Racing Optics, Inc.*, Civil Action No. 3:09cv1582 (N.D. Texas), including the so-called Klotz, Diaz, Wilson and Vargas patent references (as well as many other alleged prior art references identified by the Defendants) and information relating to the Racing Optics Windshield Stack and the Stryker T4 device.

13. Defendant Stryker Corporation imports, ships, has manufactured for it and/or sells to customers in this judicial district and elsewhere in the United States product model T5 and Flyte (previously designated T6) togas and hood products with peel-away eye shield options (“Accused Products”), which are products made using the claim steps of the Reaux ‘375 Patent.

14. These infringing Stryker products, Accused Products, are made according to the steps in the claimed invention using the direct acts, assistance, cooperation, and instruction of Defendants Racing Optics, Inc. and BioMedical Devices, and under the supervision, control, and authorization of Defendant Stryker.

15. Defendant Racing Optics has signed contracts and worked with Defendant Stryker to make, have made, and/or produce the Accused Products, which are sold in the United States by Stryker.

16. Defendant BioMedical Devices (by itself and/or through its owned entity Syntech International) has signed contracts and worked with Defendant Stryker to make, have made, and/or produce the Accused Products, which are sold in the United States by Stryker.

17. Defendant Racing Optics and Defendant BioMedical Devices (by itself and/or through its owned entities) have worked together to make, have made, and/or produce the Accused Products, which are sold in the United States by Stryker.

18. A jury verdict was rendered in *Reaux v. Stryker and Racing Optics, Inc.*, Civil Action No. 3:09cv1582 (N.D. Texas), that affirmatively found that Defendant Racing Optics, Inc. had acquired Reaux Medical confidential information relating to a peel-away eye shield on a surgical garment from sources associated with Mr. Brian Reaux, and that Racing Optics had committed trade secret misappropriation by its improper acquisition and use of such confidential information.

19. The Jury Verdict in *Reaux v. Stryker and Racing Optics, Inc.*, Civil Action No. 3:09cv1582 (N.D. Texas) found Racing Optics liable for trade secret misappropriation relating to information identified by Mr. Reaux as his confidential information.

20. The Jury awarded the Plaintiff Reaux Medical hundreds of thousand of dollars in damages as part of the Jury Verdict in *Reaux v. Stryker and Racing Optics, Inc.*, Civil Action No. 3:09cv1582 (N.D. Texas), which found Racing Optics liable for trade secret misappropriation relating to information identified by Mr. Reaux as his confidential information.

21. Relating to his peel-away medical hood and mask, Mr. Reaux filed his initial provisional patent application in 2003 and a counterpart utility patent application in 2004, which predates: (a) any patent filing by any of the Defendants relating to a medical device with a peel-away eye shield, and (b) any production and sale to the public by any Defendants of any medical device with a peel-away eye shield.

COUNT I – INFRINGEMENT OF U.S. PATENT 8,261,375

22. Plaintiff repeats the allegations of paragraphs 1-21 as if fully set forth herein.
23. U.S. Patent No. 8,261,375, entitled “Method of Forming a Protective Covering for the Face and Eyes,” issued on September 11, 2012 (“the ‘375 Patent”).
24. Defendants Stryker, Racing Optics and BioMedical Devices have infringed, and continue to infringe, induce others to infringe, and/or contribute to the infringement of the ‘375 Patent.
25. Defendants infringe the ‘375 Patent, *inter alia*, by importing into the United States, offering to sell, selling products, having product sold by, and/or using products made by (as well as assisting others in such activities) the steps covered by the claims of the Reaux ‘375 Patent, including the Accused Products identified above.
26. Defendants infringe the ‘375 Patent, *inter alia*, by offering to sell or selling within the United States and/or importing into the United States a material or apparatus for use in practicing a patented process, wherein said material or apparatus constitutes a material part of the invention and Defendants knew the material or apparatus was especially made or adapted for use in an infringement of the ‘375 Patent, including (by way of example) materials, components, and apparatus involved with the manufacture and production of the Accused Products identified above.
27. The identified Accused Products are made by the steps claimed in the ‘375 Patent by, in cooperation with, or through the involvement and information provided by one or more of the Defendants, and these Accused Products are imported into and sold in the United States by one or more Defendants.

28. Defendants Racing Optics and BioMedical Devices infringe the '375 Patent by actively inducing and contributing to the infringement of the '375 Patent by others.

29. The activities of the Defendants in having made, making (assisting others with the making) of Accused Products covered by the '375 Patent, importing, offering for sale and/or selling Accused Products made by the method claimed in the '375 Patent constitutes infringement under the United States Patent laws.

30. The Defendants' acts of infringement of the '375 Patent have caused and will continue to cause immediate and irreparable injury to Plaintiff for which Plaintiff is entitled to injunctive relief under 35 U.S.C. § 283. These Defendants will continue to infringe the '375 Patent unless enjoined by this Court.

31. The Defendants acts of infringement of the '375 Patent have caused and will continue to cause injury to Plaintiff for which Plaintiff is entitled to damages and other relief under 35 U.S.C. § 284.

32. The Defendants infringement of the Reaux '375 Patent has been and continues to be willful and deliberate, and in flagrant disregard of Plaintiff's rights under the Reaux '375 Patent for which enhanced damages and attorney fees should be awarded under a willful infringement finding and/or a finding of exceptional case.

33. Plaintiff seeks and requests recovery of its pre-judgment and post-judgment interests as well as Court costs for the infringement of the Reaux '375 Patent.

WHEREFORE, Plaintiff Reaux Medical Industries, LLC prays for judgment as follows:

1. Adjudge U.S. Patent 8,261,375 ("the '375 Patent") to be valid and infringed;

2. Preliminarily and permanently enjoin Defendants, and any other person or entity in concert or participation with the Defendants, from any infringing activity that is covered by the Reaux '375 Patent and federal patent law protection;
3. Award the Plaintiff damages suffered as a result of Defendants' acts of patent infringement;
4. A finding that the infringement was willful and that the damages be increased up to three times the amount found or assessed under 35 U.S.C. § 284;
5. A finding that this case is exceptional and an award Plaintiff attorneys' fees under 35 U.S.C. § 285;
6. Award the Plaintiff pre-judgment and post-judgment interest in the maximum amount allowed by law;
7. Award the Plaintiff costs, expenses, and attorney fees of this action; and,
8. Award the Plaintiff such other and further relief as the Court may deem just.

Jury Demand

Plaintiff hereby demands trial by jury on all issues.

Dated: Sept. 11, 2012

Respectfully submitted,



D. Scott Hemingway
TX Bar No. 09407880
Eugenia S. Hansen
Hemingway & Hansen, LLP
1700 Pacific Avenue
Suite 4800
Dallas, Texas 75201
(214) 292-8301
(214) 292-8999 (fax)
shemingway@hh-iplaw.com