

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

Ergo-Flex Technologies LLC,
a Texas Limited Liability Company,
13622 Poplar Circle, Suite 403
Conroe, Texas 77304

Plaintiff,

vs.

**Progressive Electrical Therapeutic, Inc.,
d/b/a Accuflex Tables**
a Missouri Corporation
116 W. Walnut
Nevada, Missouri 64772

Gary Huddleston
1223 Summit Circle
Osage Beach, Missouri 65065

Defendants.

Case No. _____

Jury Trial Demanded

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Ergo-Flex Technologies LLC brings the following complaint for patent infringement against Defendants Progressive Electrical Therapeutic, Inc., d/b/a Accuflex Tables and Gary Huddleston, who may be collectively referred to as the "Defendants."

NATURE OF THIS ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

THE PARTIES

2. Plaintiff Ergo-Flex Technologies LLC ("Ergo-Flex") is a Texas limited liability company with an address at 13622 Poplar Circle, Suite 403, Conroe, Texas 77304.

3. Defendant Progressive Electrical Therapeutic, Inc., d/b/a Accuflex Tables (“Accuflex”) is a corporation organized and existing under the laws of the State of Missouri with a principal office at 116 W. Walnut, Nevada, Missouri 64772. Accuflex may be served through its registered agent, James A. Novak, at 116 W. Walnut, Nevada, Missouri 64772.

4. Defendant Gary Huddleston (“Huddleston”) is an individual who resides at 1223 Summit Circle, Osage Beach, Missouri 65065, and can be served with process at 1223 Summit Circle, Osage Beach, Missouri 65065 or wherever he may be found.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Accuflex because Accuflex maintains its principal place of business in this judicial district and has committed acts of patent infringement within this judicial district.

7. This Court has personal jurisdiction over Huddleston because he is a resident in this judicial district and, based on information and belief, he has committed acts of patent infringement within this judicial district.

8. Based on information and belief, venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b) because Accuflex is a Missouri corporation with its principal place of business in this judicial district and has committed acts of patent infringement within this judicial district. Further, Huddleston resides in this judicial district.

OPERATIVE FACTS

9. On September 21, 2021, U.S. Patent No. 11,123,253 (“the ‘253 patent”), entitled “Apparatus for Treating Knee Abnormalities,” was duly and legally issued by the U.S. Patent and

Trademark Office to Ergo-Flex Technologies, LLC. A true and correct copy of the '253 patent is attached hereto as **Exhibit 1**.

10. Ergo-Flex is the owner of the '253 patent with all substantive rights thereto, including the sole and exclusive right to enforce the '253 patent against infringers, and to collect damages for all relevant times, including past damages.

11. Defendant Progressive Electrical Therapeutic, Inc., is a Missouri corporation with Gary Huddleston as its sole director and president. On July 23, 2018, Huddleston filed a registration of fictitious name on behalf of Defendant Progressive Electrical Therapeutic, Inc., with the Missouri Secretary of State identifying "Accuflex Tables" as the fictitious name. Recently, Huddleston has begun distributing materials for a product called "The Knee Decompressor." In the User & Setup Manual for The Knee Decompressor, Huddleston identifies a company by the name of "Accuflex Tables & Kneewerx, LLC," but there is nothing to indicate this is an actual legal entity. **Exhibit 2** at 1 and 12. This Manual also gives Huddleston's personal cell phone number and email address as contact information. *Id.* at 1. In a related brochure for The Knee Decompressor, Huddleston's personal cell phone number and email address are also given as contact information. **Exhibit 3** at 1. This brochure refers to "Accuflex Lasers & Kneewerx," but Huddleston is identified as the current owner and developer of The Knee Decompressor. *Id.* at 5. Further, The Knee Decompressor is also advertised on the website www.kneewerx.com. **Exhibit 4**. The website states that an entity called "Accuflex Tables, LLC," owns the rights to the website, but there is nothing to indicate that this is an actual legal entity separate from "Accuflex Tables" as a fictitious name for Progressive Electrical Therapeutic, Inc. *Id.* at 8. This website identifies Huddleston as the owner of "Accuflex Lasers and Kneewerx," provider of The Knee Decompressor. *Id.* The website also provides Huddleston's personal cell phone number and email

address as contact information. *Id.* Therefore, at this point in time, the only actual entity that Huddleston owns related to The Knee Decompressor is Progressive Electrical Therapeutic, Inc. d/b/a Accuflex Tables.

**COUNT I:
INFRINGEMENT OF THE '253 PATENT**

12. Ergo-Flex repeats and incorporates by reference the allegations contained in Paragraphs 1 through 11 as if set forth fully herein.

13. Defendant infringes claims 1-6 and 11 of the '253 patent under 35 U.S.C. §§ 271(a) and 271(b).

14. The Knee Decompressor infringes claims 1-6 and 11 of the '253 patent. **Exhibit 5** provides detailed infringement contentions, claim-by-claim and element-by-element, regarding The Knee Decompressor.

15. The Knee Decompressor includes each and every element of the apparatus of claim 1 of the '253 patent.

16. The Knee Decompressor includes each and every element of the apparatus of claim 2 of the '253 patent.

17. The Knee Decompressor includes each and every element of the apparatus of claim 3 of the '253 patent.

18. The Knee Decompressor includes each and every element of the apparatus of claim 4 of the '253 patent.

19. The Knee Decompressor includes each and every element of the apparatus of claim 5 of the '253 patent.

20. The Knee Decompressor includes each and every element of the apparatus of claim 6 of the '253 patent.

21. The Knee Decompressor includes each and every element of the apparatus of claim 11 of the '253 patent.

22. Apparatus claims 1-6 and 11 of the '253 patent have been and continue to be directly infringed by Defendants and Defendants' customers. Defendants directly infringe these apparatus claims by making, using, selling, and offering for sale The Knee Decompressor. The Knee Decompressor is being sold and offered for sale to customers, who also directly infringe these apparatus claims by using The Knee Decompressor. Further, these apparatus claims are indirectly infringed by Defendants as well. Defendants induce infringement by actively encouraging direct infringement by their customers, knowing that the acts they induce constitute patent infringement. Defendants advertise and demonstrate the use of The Knee Decompressor. Defendants also provide customers with instructions on how to set up and operate The Knee Decompressor. Upon information and belief, Defendants have been aware of the '253 patent, as well as their infringement of the '253 patent. Thus, upon information and belief, Defendants have specifically intended and have known of third-party infringement of the '253 patent by Defendants' customers.

23. Each limitation of each asserted claim is literally present in The Knee Decompressor. Additionally, or alternatively, any differences between the limitations of each asserted claim and The Knee Decompressor are, at most, insubstantial, and therefore, Ergo-Flex reserves its right to assert the doctrine of equivalents.

24. Upon information and belief, Defendants will continue to infringe the '253 patent unless and until they are enjoined by the Court.

25. Upon information and belief, Defendants have infringed and continue to infringe the '253 patent with full knowledge of the '253 patent, and their infringement is willful. Upon

information and belief, Defendants have been aware of the '253 patent, as well as their infringement of the '253 patent. Despite being aware that their actions infringe the '253 patent, Defendants have continued to intentionally or knowingly infringe the '253 patent.

26. Defendants have caused and will continue to cause Ergo-Flex irreparable injury and damage by infringing the '253 patent. Ergo-Flex will suffer irreparable injury, for which it has no adequate remedy at law, unless and until Defendants are enjoined from infringing the '253 patent.

JURY TRIAL DEMAND

27. Pursuant to Federal Rule of Civil Procedure 38, Ergo-Flex hereby demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Ergo-Flex requests that the Court find in its favor and against Accuflex and Huddleston, and that the Court grant Ergo-Flex the following relief:

1. Judgment that one or more of claims 1-6 and 11 of the '253 patent have been infringed, either literally and/or under the doctrine of equivalents, by Accuflex, Huddleston, and/or others whose infringement has been induced by Accuflex and/or Huddleston;

2. Judgment permanently enjoining Accuflex and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, from infringing the '253 patent;

3. Judgment awarding Ergo-Flex its damages in amounts sufficient to compensate it for Accuflex's infringement of the '253 patent, together with prejudgment and postjudgment interest and costs, pursuant to 35 U.S.C. § 284;

4. Judgment awarding Ergo-Flex its damages in amounts sufficient to compensate it for Huddleston's infringement of the '253 patent, together with prejudgment and postjudgment interest and costs, pursuant to 35 U.S.C. § 284;

5. That Accuflex's infringement be found willful from the time that Accuflex became aware of the infringing nature of its activities, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;

6. That Huddleston's infringement be found willful from the time that Huddleston became aware of the infringing nature of his activities, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;

7. That this Court declare this an exceptional case and award Ergo-Flex its reasonable attorney fees, expenses, and costs in accordance with 35 U.S.C. § 285; and

8. That Ergo-Flex be granted such other and further relief as the Court may deem just and proper under the circumstances.

DATED: March 23, 2022

Respectfully submitted,

WAGSTAFF & CARTMELL

/s/ Brian J. Madden

Brian J. Madden MO #40637

bmadden@wcllp.com

4740 Grand Avenue, Suite 300

Kansas City, Missouri 64112

(816) 701-1132

(816) 531-2372 *fax*

TUMEY L.L.P.

Eric M. Adams (Pro Hac Vice pending)

eadams@tumeyllp.com

David K. Wooten (Pro Hac Vice pending)

dwooten@tumeyllp.com

Tod T. Tumey (Pro Hac Vice pending)

ttumey@tumeyllp.com

Cameron S. Leisz (Pro Hac Vice pending)

cleisz@tumeyllp.com

5177 Richmond Avenue, Suite 1188

Houston, Texas 77056

(713) 622-7005

(713) 622-0220 *fax*

ATTORNEYS FOR PLAINTIFF

ERGO-FLEX TECHNOLOGIES LLC