

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NIKOLAI TANKOVICH, MD, PHD,

Plaintiff,

v.

CANDELA CORPORATION,

Defendant.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Nikolai Tankovich, MD, PhD (“Dr. Tankovich”) brings this action against Defendant Candela Corporation (“Candela”) under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, asserting infringement of U.S. Patent No. 10,675,481 (the “481 Patent” or “Asserted Patent”) which relates generally to an improved laser system and method for administering multiple beams of laser energy in tissue treatment applications and, in support thereof, alleges as follows:

I. INTRODUCTION AND BACKGROUND FACTS

1. This case is about more than a patent for a laser skin treatment device – it is a classic David versus Goliath story. Candela, a multi-million-dollar international corporation, took advantage of and betrayed Dr. Tankovich, a prolific inventor in the field of medical laser applications, by deliberately misappropriating Dr. Tankovich’s new and patented laser skin treatment designs.

2. Dr. Tankovich is a recognized innovator, researcher, and educator for laser applications in medicine, cancer vaccines, stem cell therapies, and other medical related disciplines. Dr. Tankovich has more than 100 U.S. and foreign patents issued and pending.

3. The story of this case begins in early 2018, by which time Dr. Tankovich had developed and built a prototype for a new handheld laser skin treatment device, which he called a MultiFrac Fractional Laser. During a chance encounter with Robert Ruck, an old acquaintance and Candela's then-president for the Asia-Pacific region, Dr. Tankovich told Mr. Ruck, in very general terms, about his device. This drew immediate interest from Mr. Ruck, who indicated he would discuss with Candela's senior management team a possible collaboration with Dr. Tankovich.

4. Shortly thereafter, several members of Candela's senior management team, including Mr. Kola Otitoju, Candela's then-Vice President of Business Development, Mr. Ruck, and Shlomo Assa, Candela's then-Chief Technology Officer, all visited Dr. Tankovich's office in San Diego to learn more about skin treatment with Dr. Tankovich's new laser device.

5. After these visits, Mr. Assa requested detailed information about Dr. Tankovich's new laser skin treatment device, including schematics, a bill of materials, and a list of software and parts manufacturers, along with a video instructing how to operate the device.

6. Before providing any of the information requested by Candela, Dr. Tankovich entered into two Mutual Non-Disclosure Agreements with Candela that were effective as of July 31, 2018 (the "NDAs"), one on behalf of Stemedica Cell Technologies, Inc. and one on behalf of Paradigm Medical Technologies Corporation.

7. The NDAs defined Confidential Information to include the information Candela had requested from Dr. Tankovich and recognized that the Confidential Information could include Dr. Tankovich's trade secrets and other proprietary information. The NDAs expressly prevented Candela from using the Confidential Information for any purpose, including for development

purposes, other than exploring the possibility of entering into a business relationship with Dr. Tankovich.

8. After the NDAs were signed, Dr. Tankovich sent Candela the information Mr. Assa had requested, including schematics, a bill of materials, a list of software and parts manufacturers, and a video showing how to operate the laser skin treatment device. Dr. Tankovich treated all of this information as proprietary and as including trade secrets.

9. Several months later, Candela requested a prototype of Dr. Tankovich's laser skin treatment device so that it could continue to test and evaluate the design.

10. Dr. Tankovich's laser skin treatment device embodied additional proprietary and trade secret features, including the ability to control the distance between the laser beams via a combination of a laser scanner and software control and the ability to control the lasers, based on movement of the tip, using software control. Dr. Tankovich only explained the details of these and other technical features of his laser skin treatment device to Candela after entering into the NDAs.

11. In March 2019, Candela provided Dr. Tankovich with a 20-page report summarizing the results of its testing of Dr. Tankovich's laser system. The report was entitled "MultiFrax Laser System for Facial Rejuvenation Preliminary Evaluation" and was authored by Shlomo Assa (hereinafter "Evaluation Report").

12. The Evaluation Report included a section entitled "Executive Summary – Recommendations:" that included the following statements:

What I love about MultiFrx:

2 Single laser diodes operating at 4watts @ 1550nm & 1 watt at 1927nm

Can operate either laser or both at the same time (remedy for slow scanning speeds?).

Battery operated

Small applicator

Simple to operate

Validated and well accepted wavelengths for facial rejuvenation.

Simple GUI.

13. The Evaluation Report also stated:

It is highly advised to be engaged and involved with this product and the future advancements in laser diode and battery technologies for Facial Rejuvenation market segment.

14. The Evaluation Report listed six recommendations for next steps, with the sixth being:

6. Partner with Stemedica for present and future product configurations, bringing interesting opportunities in wider range of other applications using laser diodes and single axis scanning method.

15. The Evaluation Report included a detailed analysis of Dr. Tankovich's laser skin treatment device, including pictures of the device and test results, as well as a bill of materials listing component prices that were provided by Dr. Tankovich.

16. On multiple occasions, Dr. Tankovich informed Candela's employees that he had issued and pending patents for prior laser inventions and that he intended to pursue patent protection for his new laser skin treatment device.

17. Throughout 2018 and early 2019, Candela repeatedly expressed how impressed it was with Dr. Tankovich's design and its interest in working with Dr. Tankovich to promote and distribute his laser skin treatment device.

18. However, after providing the Evaluation Report in March 2019, Candela stopped responding to Dr. Tankovich's follow up emails and other inquiries about the status of their relationship.

19. At no time did Candela inform Dr. Tankovich that it intended to launch its own laser skin treatment device or that it was no longer interested in partnering with him.

20. After Candela fell silent, and to better protect his investments in his laser skin treatment device, on August 20, 2019, Dr. Tankovich applied for a patent covering different aspects of his laser skin treatment device.

21. On June 9, 2020, Dr. Tankovich was awarded U.S. Patent No. 10,675,481 ("481 Patent") for his laser skin treatment device.

22. In January 2021, Candela released the Frax Pro laser skin treatment device (<https://candelamedical.com/products/fraxpro/>), which is substantially a copy of Dr. Tankovich's patented laser skin treatment device. Upon information and belief, the Frax Pro device utilizes many of the same components that were included in the sample laser skin treatment device Dr. Tankovich had previously provided to Candela under the NDAs and includes many of the proprietary and trade secret features disclosed to Candela under the NDAs.

23. Later in 2021, Candela released the Nordlys laser skin treatment device (<https://candelamedical.com/products/nordlys/>), which includes the Frax Pro components.

24. "Accused Products" refer collectively to the Candela Frax Pro and Nordlys laser skin treatment devices.

II. PRIOR PROCEEDINGS

25. Dr. Tankovich filed a prior complaint against Candela Medical, Inc. (“CMI”) in the Central District of California alleging infringement of his ’481 Patent, Case No. 8:21-cv-01955 (“CDCA Lawsuit”).

26. CMI moved to dismiss that complaint on multiple grounds, including a lack of personal jurisdiction over CMI.

27. In the motion to dismiss, CMI stated “[o]ther corporate affiliates of CMI, such as Candela Corporation, are responsible for marketing, offer for sale, and selling products such as the Accused Products.”

28. In the motion to dismiss, CMI also stated “Candela Corporation has always and continues to be a Delaware corporation, with a place of business in Massachusetts.”

29. Dr. Tankovich opposed that motion and sought jurisdictional discovery on the issues raised in the motion to dismiss.

30. Without allowing Dr. Tankovich the opportunity to take jurisdictional discovery, on October 25, 2022, the court granted the motion to dismiss.

III. THE PARTIES

31. Dr. Tankovich is a U.S. citizen and resident of San Diego, California.

32. On information and belief, Candela Corporation is a Delaware corporation with a place of business located at 530 Boston Post Road, Wayland, MA 01778. On information and belief, Candela operates or has operated directly or indirectly as a wholly owned subsidiary of Syneron Medical Ltd., which acquired Candela Corporation in 2011. On information and belief, Syneron Medical Ltd. is an Israeli corporation with its principal place of business located at Tavor Building, Industrial Zone, Yokneam Illit, 20692, Israel.

IV. JURISDICTION AND VENUE

33. The Court has subject matter jurisdiction over Dr. Tankovich's patent infringement claims pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338 (action arising under an Act of Congress relating to patents) because this action arises under the Patent Laws of the United States, Title 35 of the United States Code.

34. The Court has general personal jurisdiction over Candela at least because Candela as a Delaware Corporation maintains continuous, systemic, and substantial contacts with the State of Delaware. Candela maintains a registered agent to receive service of process with The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801. The Court's exercise of personal jurisdiction over Candela is therefore appropriate under applicable law and would not offend traditional notions of fair play and substantial justice.

35. Venue is proper pursuant to 28 U.S.C. § 1400(b) because Candela resides in this judicial district.

V. THE ASSERTED PATENT

36. Dr. Tankovich is the owner of United States Patent No. 10,675,481, (the "'481 Patent" or the "Asserted Patent").

37. The '481 Patent was duly and legally issued by the United States Patent and Trademark Office ("USPTO") on June 9, 2020. A true and correct copy of the '481 Patent is attached hereto as Exhibit 1.

38. Candela is not licensed under the '481 Patent.

VI. THE ACCUSED PRODUCTS

39. Upon information and belief, Candela Corporation operates the website candelamedical.com, which lists at the bottom of the home page "© 2022 Candela Corporation.

This website contains registered and unregistered trademarks, trade-names, service marks and brand names of Candela Corporation and its affiliates. All other trademarks are the property of their respective owners. All rights reserved.” <https://candelamedical.com> (last visited November 3, 2022).

40. The candelamedical.com website markets the two accused products – the Frax Pro system and the Nordlys system. The first statement on the Frax Pro product page explains that the Frax Pro system utilizes two laser diodes with different wavelengths:

WHAT IS FRAX PRO

The Frax Pro system is an advanced diode laser system that delivers highly targeted 1550 nm and 1940 nm wavelengths for dual-depth skin resurfacing.^{1,2} It includes patented SoftCool™ air cooling for patient comfort.^{1,2,4}

<https://candelamedical.com/products/fraxpro/> (last visited November 3, 2022).

41. With respect to the Nordlys system, the website notes that it includes four different technologies, including the exact same 1550 nm and 1940 nm laser diodes that are used in the Frax Pro system:

HOW IT WORKS

The Nordlys system quartet of technologies includes:



SWT® IPL

Unique IPL with narrowband technology defined by dual filters and sub-millisecond pulses for exceptional skin rejuvenation* and vascular treatments, as well as hair removal.¹



Frax 1550™

Non-ablative fractional treatment for skin resurfacing² with SoftCool™ for comfort during treatment.³



Frax 1940™

For shallow resurfacing, reaching the epidermis and superficial dermis (up to 200 μm)³ with SoftCool for comfort during treatment.³



Nd:YAG 1064 nm

Designed to treat vascular lesions, including leg veins and port wine stains. Integrated SoftCool allows greater comfort during and after treatment.^{1,3}

<https://candelamedical.com/products/nordlys/> (last visited November 3, 2022).

42. The Nordlys system includes the same Frax 1550 and Frax 1940 components used in the Frax Pro system and therefore, as shown below, infringes for the same reasons that the Frax Pro system infringes.

VII. COUNT I – INFRINGEMENT OF THE '481 PATENT

43. Dr. Tankovich repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

44. The '481 Patent includes 28 claims.

45. Candela has directly infringed and is directly infringing at least claims 1, 2, 4, 6, 7, 8, and 9 of the '481 Patent by making, importing, using (including for testing or demonstrations), offering for sale, and/or selling the Accused Products in the United States all in violation of 35 U.S.C. § 271(a).

46. Candela has indirectly infringed and is indirectly infringing at least claims 1, 2, 4, 6, 7, 8, and 9 of the '481 Patent by inducing end-users of the Accused Products in the United States to directly infringe in violation of 35 U.S.C. § 271(b).

47. More particularly, without limitation as to other claims, infringement of claims 1, 2, 4, 6, 7, 8, and 9 of the '481 Patent is further demonstrated as shown below.

Claim	Accused Products
1. A laser system for administering two or more beams of laser energy for tissue therapy, comprising:	<p>The preamble of claim 1 is not a limitation, but to the extent it is interpreted to be one, the Accused Products meet it.</p> <p>“The Frax Pro system is an advanced diode laser system that delivers highly targeted 1550 nm and 1940 nm wavelengths for dual-depth skin resurfacing.” (https://candelamedical.com/products/fraxpro/)</p> <p>The Nordlys includes the Frax Pro components, including the Frax 1550 and Frax 1940 that meet this claim</p>

	<p>requirement. (https://candelamedical.com/products/nordlys/)</p>
<p>a) a first laser in optical communication with a first laser scanner that is adapted to distribute a beam from said first laser in a first pattern; and</p>	<p>The Frax Pro's Frax 1550 has a first laser diode that generates a first laser. Upon information and belief, that first laser is in communication with and passes through a first laser scanner that is adapted to distribute a beam from the first laser in a first pattern. (https://candelamedical.com/products/fraxpro/)</p> <p>The Frax Pro's Frax 1940 has a first laser diode that generates a first laser. Upon information and belief that first laser is in communication with and passes through a first laser scanner that is adapted to distribute a beam from the first laser in a first pattern. (https://candelamedical.com/products/fraxpro/)</p> <p>The Nordlys includes the Frax Pro components, including the Frax 1550 and Frax 1940 that meet this claim requirement. (https://candelamedical.com/products/nordlys/)</p>
<p>b) a second laser in optical communication with a second laser scanner that is adapted to distribute a beam from said second laser in a second pattern;</p>	<p>Upon information and belief, the Frax Pro's Frax 1550 has a second laser diode that generates a second laser that is in communication with and passes through a second laser scanner that is adapted to distribute a beam from the second laser in a second pattern. (https://candelamedical.com/products/fraxpro/)</p> <p>Upon information and belief, the Frax Pro's Frax 1940 has a second laser diode that generates a second laser that is in communication with and passes through a second laser scanner that is adapted to distribute a beam from the second laser in a second pattern. (https://candelamedical.com/products/fraxpro/)</p> <p>The Nordlys includes the Frax Pro components, including the Frax 1550 and Frax 1940 that meet this claim requirement. (https://candelamedical.com/products/nordlys/)</p>
<p>c) wherein said first pattern and said second pattern combine to produce overlapping beams and non-overlapping beams.</p>	<p>Upon information and belief, the first pattern and second pattern produced by the Frax 1550 combine to produce overlapping beams and non-overlapping beams. (https://candelamedical.com/products/fraxpro/)</p>

	<p>Upon information and belief, the first pattern and second pattern produced by the Frax 1940 combine to produce overlapping beams and non-overlapping beams. (https://candelamedical.com/products/fraxpro/)</p> <p>The Nordlys includes the Frax Pro components, including the Frax 1550 and Frax 1940 that meet this claim requirement. (https://candelamedical.com/products/nordlys/)</p>
<p>2. The system of claim 1, wherein said lasers are adapted to produce beams having the same wavelength.</p>	<p>Upon information and belief, the Frax 1550 and the Frax 1940 each include multiple lasers that have the same wavelength – about 1550 nm for the Frax 1550 and about 1940 nm for the Frax 1940. (https://candelamedical.com/products/fraxpro/)</p> <p>The Nordlys includes the Frax Pro components, including the Frax 1550 and Frax 1940 that meet this claim requirement. (https://candelamedical.com/products/nordlys/)</p>
<p>4. The system of claim 2 or 3, wherein said same or different wavelengths are selected from about 540 nm, about 700 nm, about 810 nm, about 980 nm, about 1064 nm, about 1440 nm, about 1300 nm, about 1550 nm, about 1927 nm, about 1940 nm, about 2790 nm, and about 2940.</p>	<p>Upon information and belief, the Frax 1550 and the Frax 1940 each include multiple lasers that have the same wavelength – about 1550 nm for the Frax 1550 and about 1940 nm for the Frax 1940. (https://candelamedical.com/products/fraxpro/)</p> <p>The Nordlys includes the Frax Pro components, including the Frax 1550 and Frax 1940 that meet this claim requirement. (https://candelamedical.com/products/nordlys/)</p>
<p>6. The system of claim 1, wherein said lasers are solid-state lasers, laser diode lasers, gas lasers, chemical lasers, dye lasers, metal-vapor lasers, semiconductor lasers, or combinations thereof.</p>	<p>The Frax 1550 and the Frax 1940 each include diode lasers. (https://candelamedical.com/products/fraxpro/)</p> <p><small>The Frax Pro system is an advanced diode laser system that delivers highly targeted 1550 nm and 1940 nm wavelengths for dual-depth skin resurfacing.^{1,2} It includes patented SoftCool™ air cooling for patient comfort.^{1,2*}</small></p> <p>The Nordlys includes the Frax Pro components, including the Frax 1550 and Frax 1940 that meet this claim requirement. (https://candelamedical.com/products/nordlys/)</p>

<p>7. The system of claim 1, wherein said lasers are adapted to emit said beams in the same mode or a different mode.</p>	<p>Upon information and belief, the lasers in each of the Frax 1550 and the Frax 1940 devices can emit laser beams in the same mode, such as a pulse mode. (https://candelamedical.com/products/fraxpro/)</p> <p>✓ Unique non-ablative fractional technology uses a software algorithm to set the parameters. It enables the user to set the pulse duration and the energy independently to control the thermal impact.⁴</p> <p>The Nordlys includes the Frax Pro components, including the Frax 1550 and Frax 1940 that meet this claim requirement. (https://candelamedical.com/products/nordlys/)</p>
<p>8. The system of claim 7, wherein said mode is selected from pulse beam mode and continuous beam mode.</p>	<p>Upon information and belief, the lasers in each of the Frax 1550 and the Frax 1940 devices can emit laser beams in a pulse beam mode. (https://candelamedical.com/products/fraxpro/)</p> <p>✓ Unique non-ablative fractional technology uses a software algorithm to set the parameters. It enables the user to set the pulse duration and the energy independently to control the thermal impact.⁴</p> <p>The Nordlys includes the Frax Pro components, including the Frax 1550 and Frax 1940 that meet this claim requirement. (https://candelamedical.com/products/nordlys/)</p>
<p>9. The system of claim 1, wherein said system comprises a tip.</p>	<p>The Frax 1550 and the Frax 1940 each have a tip as shown in the picture below.</p>

	<p>(https://candelamedical.com/products/fraxpro/)</p>  <p>The Nordlys includes the Frax Pro components, including the Frax 1550 and Frax 1940 that meet this claim requirement.</p> <p>(https://candelamedical.com/products/nordlys/)</p>
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48. As a result of Candela’s infringing conduct, Dr. Tankovich has suffered damages, and Candela is liable to Dr. Tankovich for damages that adequately compensate him for Candela’s infringement in an amount that is no less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

49. Candela had actual notice of the ’481 Patent prior to the filing of this lawsuit.

50. Dr. Tankovich has suffered harm by the infringing activities of Candela and will be irreparably harmed unless those activities are preliminarily and permanently enjoined by this Court. Dr. Tankovich does not have an adequate remedy at law.

51. Dr. Tankovich is entitled to enhanced damages up to treble damages under 35 U.S.C. § 284.

52. In light of Candela's willful infringement, this case should be declared exceptional, and attorneys' fees should be awarded under 35 U.S.C. § 285.

VIII. REQUEST FOR RELIEF

WHEREFORE, Dr. Tankovich respectfully requests that judgment be entered as follows:

- A. Declaring that Candela has directly infringed one or more claims of the '481 Patent;
- B. Declaring that Candela has induced infringement of one or more claims of the '481 Patent;
- C. Declaring that the claims of the '481 Patent are valid and enforceable;
- D. Awarding damages to Dr. Tankovich in an amount to be proven at trial, but in no event less than a reasonable royalty, under 35 U.S.C. § 284;
- E. Declaring that Dr. Tankovich has been irreparably harmed by the activities of Candela and is likely to continue to be irreparably harmed by Candela's continued infringement;
- F. Permanently enjoining Candela and its officers, agents, servants, employees and those persons in active concert or participation with any of them, as well as all successors or assignees of the interests or assets related to the Accused Products from further infringement, direct and indirect, of the Asserted Patent;
- G. Awarding Dr. Tankovich, as appropriate, expenses, costs, and disbursements incurred this action against Candela, including prejudgment and post-judgment interest;
- H. Awarding Dr. Tankovich enhanced damages up to treble damages for Candela's willful acts of infringement under 35 U.S.C. § 284;
- I. Declaring this to be an exceptional case if Candela is found to have willfully infringed, and awarding attorneys' fees under 35 U.S.C. § 285;

J. Awarding Dr. Tankovich such other and further relief as this Court deems just and proper.

IX. DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Dr. Tankovich hereby demands a trial by jury of all issues so triable.

Dated: November 4, 2022

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