

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

MEDISCA PHARMACEUTIQUE, INC., and
MEDISCA, INC.,

Plaintiffs,

v.

FLACKTEK, INC.,
FLACKTEK MANUFACTURING, INC.,
and
FLACKTEK SPEEDMIXER, INC.,

Defendants.

Civil Action No.: 6:23-cv-05113-TMC

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Medisca Pharmaceutique, Inc. and Medisca, Inc. (collectively “Medisca”), by way of Complaint against FlackTek, Inc., FlackTek Manufacturing, Inc., and Flacktek Speedmixer, Inc. (collectively “FlackTek”), allege as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement under the Patent Laws of the United States, 35 U.S.C. § 1 et seq., including 35 U.S.C. § 271, which arises at least from FlackTek’s manufacture, use, importation, sale, and/or offer for sale of certain products that infringe U.S. Patent Nos. U.S. 10,420,705 (“the ’705 patent”) (**Exhibit 1**); U.S. 10,765,600 (“the ’600 patent”) (**Exhibit 2**); U.S. 11,090,224 (“the ’224 patent”) (**Exhibit 3**); U.S. 11,096,864 (“the ’864 patent”) (**Exhibit 4**); U.S. 10,231,903 (“the ’903 patent”) (**Exhibit 5**); and U.S. 10,993,876 (“the ’876 patent”) (**Exhibit 6**) (collectively the “Asserted Patents”). The action further arises from FlackTek inducing or contributing to the infringement of third parties, including the

Professional Compounding Centers of America, known in the industry as “PCCA.” This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

PARTIES

2. Plaintiff Medisca Pharmaceutique, Inc. is a corporation organized and existing under the laws of Canada and having a principal place of business at 6090 Henri Bourassa Blvd W, Saint-Laurent, Quebec H4R 3A6, Canada.

3. Plaintiff Medisca, Inc. is a corporation organized and existing under the laws of the State of New York and having a principal place of business at 661 Route 3, Unit C, Plattsburgh, NY 12901 USA.

4. Upon information and belief, Defendant FlackTek, Inc. is, and at all times relevant hereto was, a corporation organized and existing under the laws of the State of South Carolina, with its principal place of business located at 1708 Highway 11, Landrum, South Carolina 29356.

5. Upon information and belief, Defendant FlackTek Manufacturing, Inc. is, and at all times relevant hereto was, a corporation organized and existing under the laws of the State of South Carolina, with its principal place of business located at 486 S. Pierce Avenue, Suite C, Louisville, Colorado 80027.

6. Upon information and belief, Defendant FlackTek Speedmixer, Inc. is, and at all times relevant hereto was, a corporation organized and existing under the laws of the State of South Carolina, with its principal place of business located at 1708 Highway 11, Landrum, South Carolina 29356.

JURISDICTION AND VENUE

7. This action arises under the Patent Act, 35 U.S.C. § 101 et seq., and this court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over FlackTek and venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400 because each FlackTek entity is a corporation organized and existing under the laws of the State of South Carolina and therefore resides in South Carolina.

9. FlackTek also has committed acts of infringement and has a regular and established place of business in South Carolina. FlackTek has physical offices at 1708 Highway 11, Landrum, South Carolina 29356. Upon information and belief, FlackTek uses, demonstrates, sells, or offers to sell infringing products to third parties in South Carolina. Upon information and belief, FlackTek also provides materials, information, or products from South Carolina that result in induced or contributory infringement by third parties.

FACTUAL BACKGROUND

A. Medisca Provides Pharmaceutical Compounding Solutions

10. Medisca Pharmaceutique, Inc. was founded in 1989 as a small business with a handful of employees. Since then, Medisca Pharmaceutique, Inc. has grown into a globally recognized corporation that provides innovative solutions for the pharmaceutical compounding and medical industry. Medisca, Inc. provides those solutions in the United States. Medisca is a business-to-business company that supplies raw materials for making medications and provides innovative devices and processes for local pharmacies, clinics, cannabis producers, and other medical businesses.

11. The pharmaceutical compounding process typically includes blending or otherwise combining ingredients, such as an active pharmaceutical ingredient (“API”) and pharmaceutically acceptable excipients, diluents, or solvents, to create a medicine product tailored to the needs of individual patients. Pharmacists may provide a compounded drug to a patient when a mass-produced drug is not available or appropriate. For example, a medical

professional may prescribe a compounded drug when a patient has an allergy to a dye used in the mass-produced medication, when the patient requires a non-standard dosage, or when the patient is unable to swallow a tablet or capsule and needs a medication in chewable or liquid form.

B. Medisca Developed Mixing Technologies that Revolutionized Compounding

12. In the past, compounded pharmaceuticals have typically been manufactured with manual mixing, such as with a pestle and mortar. However, manually mixing ingredients can be time-consuming and can be prone to cross-contamination from poorly sterilized equipment used for the mixing. Along with contamination risk, performing manual mixing often results in products that face repeatability and/or quality challenges. Therefore, it can be difficult to obtain compositions having consistent concentrations of API from one composition to another and/or a consistent homogeneous API concentration within one preparation.

13. Some mixing devices have included a mixer with a motor-driven mixing blade that engages a mixing vessel. But bladed mixing devices contact the mixture and can cause high shearing forces. Additionally, many mixing devices entrain air into the mixed composition, which creates variations in the pharmaceutical composition. Variations can be particularly problematic for pharmaceutical dispensing devices that dispense measured doses. Such devices need to dispense consistent amounts of API for a given volume (comparing one dispensed volume to the next for the same device and comparing dispensed volumes across different devices).

14. Additionally, many mixing devices require device-specific containers for mixing, which creates an additional step of decanting the pharmaceutical mixture into a dispensing container. This increases the risk of material loss during the decanting procedure. Device-specific containers also limit the volume and/or mass of materials that can be mixed to the specifications of such containers. Device-specific mixing containers can also require

cumbersome and time-consuming cleaning/sterilization procedures to avoid cross-contamination when reusing the mixing containers.

15. Medisca invested significant time and resources to develop innovative technologies relating to planetary mixers, mixing containers, and mixing processes to overcome these and other issues. Medisca decided to offer its solutions to the marketplace through various product offerings, one of which is the Maz® mixer. This specially configured planetary mixer employs several of the innovative processes and technological solutions developed by Medisca. The Maz mixer has received industry praise and recognition.



16. To protect its investment in these unique processes and solutions, Medisca complemented its product offerings with robust intellectual property protections. These protections included patent filings around the globe on its inventions, including several U.S. patent applications that later issued as the '705 patent, the '600 patent, the '224 patent, the '864 patent, the '903 patent, and the '876 patent; the Asserted Patents. Each of these Asserted Patents is owned by Medisca and claims priority to the same provisional application, No. 62/420,426,

filed on November 10, 2016.¹ Each of the Asserted Patents includes claims to specific novel inventions. Exemplary claims are set forth in Appendices A-F.

17. Simply by way of example, the Asserted Patents disclose a container assembly for use in a planetary mixer. The container assembly may include a jar, a metered-dosage dispenser, and an adapter with specific features to secure the metered-dosage dispenser in the jar. The disclosed assembly operates with the superimposed revolution and rotation movements of a planetary mixer. The Asserted Patents explain that securing a metered dosage dispenser in the mixer via the disclosed adapter device provides various benefits. For example, this arrangement permits mixing directly in the metered dosage dispenser (as opposed to mixing in separate mixing container and then later pouring the compound into the metered dosage dispenser). This avoids or eliminates decanting steps. It also reduces time required for cleaning the container after a compounding procedure to avoid cross-contamination risks that exist when using the same container for various compositions.

18. The Asserted Patents also disclose a novel and unconventional process of preparing a compounded pharmaceutical composition involving heating. The process uses a planetary mixer for preparing a composition with a pharmaceutically acceptable excipient, diluent, or carrier initially in the form of solid or semi-solid particles. The Asserted Patents explain that the process may include dispersing the solid or semi-solid particles at least based on

¹ The '705 patent entitled "Container Assembly" was filed on September 14, 2018, and issued as a patent on September 24, 2019. The '600 patent entitled "Adapter for use in a planetary mixer," was filed on October 24, 2019, and issued as a patent on September 8, 2020. The '224 patent entitled "Adaptor for a dispensing container in a planetary mixer" was filed on July 17, 2020, and issued as a patent on August 17, 2021. The '864 patent entitled "Adapter for a dispensing container in a planetary mixer" was filed on July 17, 2020, and issued as a patent on August 24, 2021. The '903 patent entitled "Pharmaceutical compounding methods and systems" was filed on November 10, 2017, and issued as a patent on March 19, 2019. And the '876 patent entitled "Pharmaceutical compounding methods and systems" was filed on April 1, 2019, and issued as a patent on May 4, 2021.

determined parameters and using superimposed revolution and rotation movements to obtain a melt without requiring the addition of external heat. The melt may incorporate an API. The melt may also be cast into a desired shape, such as a troche.

19. Medisca took affirmative steps to inform the marketplace of the award of patents received by the U.S. Patent Office. In one example, on May 17, 2019, Medisca issued a press release that the '903 patent had issued. Ex. 11. Medisca stated, "MEDISCA, the industry leader in providing high quality compounding solutions and services to healthcare professionals worldwide, was granted US patent No. 10,231,903 for planetary mixers. As of March 19, 2019, MEDISCA has exclusivity around the use of melting in planetary mixing machines with additional patents pending." *Id.* As another example, on January 31, 2020, Medisca issued a further press release regarding its patents to the marketplace. Ex. 12. Medisca stated:

MEDISCA's innovative and ongoing contributions in the field of pharmaceutical compounding is reflected in this additional issued patent in its global patent portfolio. Some of these proprietary improvements and innovations, including U.S. Patents 10,420,705 and 10,231,903, cover uses and functionalities of the MAZ™, the successful brand of a high-performance planetary mixer used in an increasing number of compounding pharmacies worldwide and is available exclusively through MEDISCA.

Id.

C. FlackTek Has Infringed Medisca's Patented Technology

20. FlackTek makes and sells the "SpeedMixer" planetary mixer. FlackTek adapted its SpeedMixer and related products to be used with a variety of applications, including "Compounding and Pharma," "Personal Care & Cosmetics," and "Cannabis." Ex. 7.

21. Upon information and belief, FlackTek makes and sells to third parties, including PCCA, the SpeedMixer, containers for mixing, and a jar and adapter assembly configured to hold a metered-dosage dispenser for use in the SpeedMixer (hereinafter the "Accused Products").

22. PCCA advertises a jar, adapter, and metered-dosage dispenser arrangement on their website as a “TOPI-CLICK® HOLDER, FLACKTEK SPEEDMIXER ® (35-5784).”

TOPI-CLICK® HOLDER, FLACKTEK SPEEDMIXER ® (35-5784)



TOPI-CLICK® HOLDER, FLACKTEK SPEEDMIXER ® (35-5784)



Ex. 8.

23. PCCA states that “[t]his reusable holder allows the user to mix preparations directly in Topi-Click 35 mL applicators with the FlackTek SpeedMixer.” *Id.* It further states, “[t]he user places the Topi-Click applicator in the holder, then places the holder in a FlackTek Max XL container, and then places that container in the SpeedMixer.” *Id.*

24. Upon information and belief, FlackTek has used and tested its mixer and holder assembly with Topi-Click applicators, and FlackTek instructs third parties how to use its mixer and holder with Topi-Click applicators.



FlackTek SpeedMixer Compounding Pharmacy

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See, e.g., <https://www.youtube.com/watch?v=WEI681R6SIc>; see also Ex. 9 (“SpeedMixing also offers the unique ability to mix and de-air directly in a Topi-Click.”).

25. FlackTek also configures its SpeedMixers to perform various compounding processes, including dispersing solid or semi-solid particles at least based on determined parameters and using superimposed revolution and rotation movements to obtain a melt without requiring the addition of external heat. FlackTek advertises this in its webpage describing the SpeedMixer’s configuration for “Compounding and Pharmaceuticals.”

Compounding & Pharmaceuticals

Pharmacists and compounding technicians use the SpeedMixer to easily and repeatably mix, mill, and melt in compounding labs. Common applications include mixing and de-airing topical cream and ointments for pharmaceutically elegant final products, melting and homogenizing gelatin troche bases and soft chew pet treat, and blending powders (such as 1:1000 powder dilutions) while reducing static, making for quick capsule loading. SpeedMixing also offers the unique ability to mix and de-air directly in a Topi-Click.

Ex. 9.

26. FlackTek further describes that the SpeedMixer is configured to use superimposed revolution and rotation movements to melt and blend “without heat needed” in its discussion of “Cannabis.”

Major Advantages:

- Fast purge times – minutes rather than days
- Space savings – eliminates the need for an “oven room”
- Labor Savings
- Higher quality product – Higher terpene retention due lower purge temperatures
 - Distillate Blending with Terpenes & Flavors without heat needed
 - Rapid Winterizing
 - Whipping for budders, badders, waxes.
 - Liquid Extractions
 - Transdermals and Topicals



Ex. 10.

27. On January 8, 2020, Medisca sent a letter via its attorney to Dale R. Flackett, President of FlackTek, noting the issuance of U.S. Patent No. 10,231,903, citing Medisca's press release regarding the patent, and enclosing a copy of the '903 patent itself. *See* Ex. 13. Since each of these Asserted Patents is owned by Medisca and claims priority to the same provisional application no. 62/420,426 filed on November 10, 2016, FlackTek could easily identify each of the Asserted Patents following Medisca's identification of the '903 patent.

28. To this date, FlackTek has not responded to Medisca's January 8, 2020 letter. FlackTek also has not stopped making, using, selling, offering for sale, or importing the Accused Products in an infringing manner, nor did it stop contributing to or inducing third parties to infringe the Asserted Patents.

29. Medisca has been injured by FlackTek's infringement and its inducing and contributing to the infringement of third parties like PCCA, who use, test, sell, offer for sale, or otherwise infringe the Asserted Patents.

CAUSES OF ACTION

COUNT I – Infringement of the '705 Patent

30. Medisca incorporates and realleges the preceding paragraphs.

31. FlackTek has directly infringed and is continuing to directly infringe (literally and/or under the doctrine of equivalents) at least claim 1 of the '705 patent by, without authority, making, using, importing, selling, and/or offering for sale in the United States, products including but not limited to the Accused Products under 35 U.S.C. § 271. For example, on information and belief, FlackTek sells and has sold the Accused Products to pharmaceutical companies and other companies in the health care or compounding industry, including PCCA. On information and belief, FlackTek uses the Accused Devices in the United States for testing, product development, product demonstration, and research purposes.

32. Claim 1 of the '705 patent recites, for example, a container assembly for use in a planetary mixer, a jar with an inner wall, an adapter in contact with the inner wall of the jar, and a dispensing container having a tubular body and a cap. The claim further recites that the adapter is configured to clamp onto the cap of the dispensing container and is free of material along a longitudinal axis of the jar and has a plurality of apertures surrounding the longitudinal axis of the jar.

33. The Accused Products include each of the features of claim 1. An exemplary container assembly of the Accused Products is shown below:

TOPI-CLICK® HOLDER, FLACKTEK SPEEDMIXER ® (35-5784)



TOPI-CLICK® HOLDER, FLACKTEK SPEEDMIXER ® (35-5784)



Ex. 8.

34. An exemplary infringement chart illustrating how FlackTek via the Accused Products infringes at least claim 1 of the '705 patent is provided in **Appendix A**.

35. In addition, FlackTek, in violation of 35 U.S.C. § 271, has and continues to contribute to and/or induce others, including PCCA, to infringe (literally and/or under the doctrine of equivalents) at least claim 1 of the '705 patent.

36. FlackTek acted during the time the '705 patent was in force, intending to cause the infringing acts by customers (including PCCA) and users of the Accused Products. For example, on information and belief, FlackTek sells and has sold the Accused Products to end users, pharmaceutical companies, or other companies in the health care or compounding industry, including PCCA. On information and belief, FlackTek's customers, including PCCA, sell, offer for sale, or use the Accused Devices in an infringing manner the United States.

37. On January 8, 2020, Medisca sent a letter via its attorney to Dale R. Flackett, President of FlackTek, noting the issuance of the '903 patent and citing Medisca's press release regarding the patent. Since each of the Asserted Patents is owned by Medisca and claims priority

to the same provisional application no. 62/420,426 filed on November 10, 2016, FlackTek could easily identify each of the Asserted Patents, including the '705 patent, following Medisca's identification of the '903 patent.

38. Regardless, at least as of the filing date of this Complaint, FlackTek was aware of the '705 patent and knew or was willfully blind to the fact, that the acts, if taken, would constitute infringement of that patent. FlackTek has instructed and continues to instruct customers and users to use the Accused Products in an infringing manner, through instruction videos, manuals, and other information provided on FlackTek's websites, written materials, advertisements, and communications to customers and end users.

39. FlackTek also sells, offers to sell, or imports within the United States its SpeedMixer and the container assembly, including to customers like PCCA, knowing that these are especially made or especially adapted for use in an infringement. The SpeedMixer and the container assembly are not staple articles and have no substantial, non-infringing use, and constitute a material part of the invention.

40. Upon information and belief, FlackTek was aware or should have been aware of the '705 patent prior to the filing of this Complaint, based at least on a reasonable investigation following receipt of the January 8, 2020 letter from Medisca's counsel. Accordingly, FlackTek's acts of infringement have been willful and in disregard for the '705 patent, without any reasonable basis for believing it had a right to engage in the infringing conduct.

41. Medisca has suffered damages because of the infringing activities of FlackTek and will continue to suffer such damages as long as those infringing activities continue.

42. Medisca has no adequate remedy at law. Medisca and FlackTek are competitors and Medisca has been irreparably harmed by FlackTek's infringing conduct and such harm will continue unless FlackTek is enjoined from further infringement by this Court.

COUNT II – Infringement of the '600 Patent

43. Medisca repeats and realleges the preceding paragraphs.

44. FlackTek has directly infringed and is continuing to directly infringe (literally and/or under the doctrine of equivalents) at least claim 15 of the '600 patent by, without authority, making, using, importing, selling, and/or offering for sale in the United States, products including but not limited to the Accused Products under 35 U.S.C. § 271. For example, on information and belief, FlackTek sells and has sold the Accused Products to pharmaceutical companies and other companies in the health care or compounding industry, including PCCA. On information and belief, FlackTek uses the Accused Products in the United States for testing, product development, product demonstration, and research purposes.

45. Claim 15 of the '600 patent recites, for example, a planetary mixer comprising a motor for subjecting a holder to superimposed rotation and revolution movements, and the holder holds a jar containing a dispensing container secured to an adapter. The claim further recites that (i) the adapter maintains the dispensing container spaced from the inner wall of the jar and from the bottom of the jar; (ii) a gap is provided between the top of the jar and the cap of the dispensing container; (iii) a part of the cap of the dispensing container is further from the bottom of the jar than a part of the body of the dispensing container; (iv) the body of the dispensing container crosses the longitudinal axis of the jar; and (v) the dispensing container extends over more than half the diameter of the jar.

46. The Accused Products include each of the features of claim 15. An exemplary mixer and jar assembly are shown below:

PRECISE, POWERFUL, BUILT TO LAST

Utilizing a dual asymmetric centrifugal mechanism, the SpeedMixer spins materials in two different directions simultaneously. These opposing forces homogenize materials faster and more effectively than traditional mixers-- and do so entirely without blades.

Select your desired batch size below:



Ex. 17.

TOPI-CLICK® HOLDER, FLACKTEK SPEEDMIXER ® (35-5784)



TOPI-CLICK® HOLDER, FLACKTEK SPEEDMIXER ® (35-5784)



Ex. 8.

47. An exemplary infringement chart illustrating how FlackTek via the Accused Products infringes at least claim 15 of the '600 patent is provided in **Appendix B**.

48. In addition, FlackTek, in violation of 35 U.S.C. § 271, has and continues to contribute to and/or induce others, including PCCA, to infringe (literally and/or under the doctrine of equivalents) at least claim 15 of the '600 patent.

49. FlackTek acted during the time the '600 patent was in force, intending to cause the infringing acts by customers (including PCCA) and users of the Accused Products. For example, on information and belief, FlackTek sells and has sold the Accused Products to end users, pharmaceutical companies, or other companies in the health care or compounding industry, including PCCA. On information and belief, FlackTek's customers, including PCCA, sell, offer for sale, or use the Accused Devices in an infringing manner the United States.

50. On January 8, 2020, Medisca sent a letter via its attorney to Dale R. Flackett, President of FlackTek, noting the issuance of the '903 patent and citing Medisca's press release regarding the patent. Since each of the Asserted Patents is owned by Medisca and claims priority

to the same provisional application no. 62/420,426 filed on November 10, 2016, FlackTek could easily identify each of the Asserted Patents, including the '600 patent, following Medisca's identification of the '903 patent.

51. Regardless, at least as of the filing date of this Complaint, FlackTek was aware of the '600 patent and knew or was willfully blind to the fact, that the acts, if taken, would constitute infringement of that patent. FlackTek has instructed and continues to instruct customers and users to use the Accused Products in an infringing manner, through instruction videos, manuals, and other information provided on FlackTek's websites, written materials, advertisements, and communications to customers and end users.

52. FlackTek also sells, offers to sell, or imports within the United States its SpeedMixer and the container assembly, including to customers like PCCA, knowing that these are especially made or especially adapted for use in an infringement. The SpeedMixer and the container assembly are not staple articles and have no substantial, non-infringing use, and constitute a material part of the invention.

53. Upon information and belief, FlackTek was aware or should have been aware of the '600 patent prior to the filing of this Complaint, based on a reasonable investigation following receipt of the January 8, 2020 letter from Medisca's counsel. Accordingly, FlackTek's acts of infringement have been willful and in disregard for the '600 patent, without any reasonable basis for believing it had a right to engage in the infringing conduct.

54. Medisca has suffered damages because of the infringing activities of FlackTek and will continue to suffer such damages as long as those infringing activities continue.

55. Medisca has no adequate remedy at law. Medisca and FlackTek are competitors and Medisca has been irreparably harmed by FlackTek's infringing conduct and such harm will continue unless FlackTek is enjoined from further infringement by this Court.

COUNT III – Infringement of the '224 Patent

56. Medisca repeats and realleges the preceding paragraphs.

57. FlackTek has directly infringed and is continuing to directly infringe (literally and/or under the doctrine of equivalents) at least claim 1 of the '224 patent by, without authority, making, using, importing, selling, and/or offering for sale in the United States, products including but not limited to the Accused Products under 35 U.S.C. § 271. For example, on information and belief, FlackTek sells and has sold the Accused Products to pharmaceutical companies and other companies in the health care or compounding industry, including PCCA. On information and belief, FlackTek uses the Accused Products in the United States for testing, product development, product demonstration, and research purposes.

58. Claim 1 of the '224 patent recites, for example, an adapter and dispensing container combination for use with a planetary mixer. The container has a removable cap characterized by a first width dimension measured along a transverse axis. The adapter includes a cavity defining a passageway configured for receiving the narrowed container section, the passageway having a transverse dimension that is less than the first dimension.

59. The Accused Products include each of the features of claim 1. An exemplary adapter and dispensing container combination is shown below:



See, e.g., <https://www.youtube.com/watch?v=WEI681R6SIc>.

TOPI-CLICK® HOLDER, FLACKTEK SPEEDMIXER ® (35-5784)



TOPI-CLICK® HOLDER, FLACKTEK SPEEDMIXER ® (35-5784)



Ex. 8.

60. An exemplary infringement chart illustrating how FlackTek via the Accused Products infringes at least claim 1 of the '224 patent is provided in **Appendix C**.

61. In addition, FlackTek, in violation of 35 U.S.C. § 271, has and continues to contribute to and/or induce others, including PCCA, to infringe (literally and/or under the doctrine of equivalents) at least claim 1 of the '224 patent.

62. FlackTek acted during the time the '224 patent was in force, intending to cause the infringing acts by customers (including PCCA) and users of the Accused Products. For example, on information and belief, FlackTek sells and has sold the Accused Products to end users, pharmaceutical companies, or other companies in the health care or compounding industry, including PCCA. On information and belief, FlackTek's customers, including PCCA, sell, offer for sale, or use the Accused Devices in an infringing manner the United States.

63. On January 8, 2020, Medisca sent a letter via its attorney to Dale R. Flackett, President of FlackTek, noting the issuance of the '903 patent and citing Medisca's press release regarding the patent. Since each of the Asserted Patents is owned by Medisca and claims priority

to the same provisional application no. 62/420,426 filed on November 10, 2016, FlackTek could easily identify each of the Asserted Patents, including the '224 patent, following Medisca's identification of the '903 patent.

64. Regardless, at least as of the filing date of this Complaint, FlackTek was aware of the '224 patent and knew or was willfully blind to the fact, that the acts, if taken, would constitute infringement of that patent. FlackTek has instructed and continues to instruct customers and users to use the Accused Products in an infringing manner, through instruction videos, manuals, and other information provided on FlackTek's websites, written materials, advertisements, and communications to customers and end users.

65. FlackTek also sells, offers to sell, or imports within the United States its SpeedMixer and the container assembly, including to customers like PCCA, knowing that these are especially made or especially adapted for use in an infringement. The SpeedMixer and the container assembly are not staple articles and have no substantial, non-infringing use, and constitute a material part of the invention.

66. Upon information and belief, FlackTek was aware or should have been aware of the '224 patent prior to the filing of this Complaint, based on a reasonable investigation following receipt of the January 8, 2020 letter from Medisca's counsel. Accordingly, FlackTek's acts of infringement have been willful and in disregard for the '224 patent, without any reasonable basis for believing it had a right to engage in the infringing conduct.

67. Medisca has suffered damages because of the infringing activities of FlackTek and will continue to suffer such damages as long as those infringing activities continue.

68. Medisca has no adequate remedy at law. Medisca and FlackTek are competitors and Medisca has been irreparably harmed by FlackTek's infringing conduct and such harm will continue unless FlackTek is enjoined from further infringement by this Court.

COUNT IV – Infringement of the '864 Patent

69. Medisca incorporates and realleges the preceding paragraphs.

70. FlackTek has directly infringed and is continuing to directly infringe (literally and/or under the doctrine of equivalents) at least claim 1 of the '864 patent by, without authority, making, using, importing, selling, and/or offering for sale in the United States, products including but not limited to the Accused Products under 35 U.S.C. § 271. For example, on information and belief, FlackTek sells and has sold the Accused Products to pharmaceutical companies and other companies in the health care or compounding industry, including PCCA. On information and belief, FlackTek uses the Accused Products in the United States for testing, product development, product demonstration, and research purposes.

71. Claim 1 of the '864 patent recites, for example, an adapter and dispensing container combination for use with a planetary mixer. The dispensing container has a dispensing nozzle and a removable cap closing the dispensing nozzle, where the removable cap is characterized by a first width dimension. The adapter includes a cavity for receiving the removable cap, the cavity having a transverse dimension that exceeds the first width dimension. The adapter also has a passageway extending from the cavity for receiving the dispensing container therein, the passageway having a transverse dimension that is less than the first width dimension and less than the second width dimension.

72. The Accused Products include each of the features of claim 1. An exemplary adapter and dispensing container combination is shown below:



See, e.g., <https://www.youtube.com/watch?v=WEI681R6SIc>.

TOPI-CLICK® HOLDER, FLACKTEK SPEEDMIXER ® (35-5784)



TOPI-CLICK® HOLDER, FLACKTEK SPEEDMIXER ® (35-5784)



Ex. 8.

73. An exemplary infringement chart illustrating how FlackTek via the Accused Products infringes at least claim 1 of the '864 patent is provided in **Appendix D**.

74. In addition, FlackTek, in violation of 35 U.S.C. § 271, has and continues to contribute to and/or induce others, including PCCA, to infringe (literally and/or under the doctrine of equivalents) at least claim 1 of the '864 patent.

75. FlackTek acted during the time the '864 patent was in force, intending to cause the infringing acts by customers (including PCCA) and users of the Accused Products. For example, on information and belief, FlackTek sells and has sold the Accused Products to end users, pharmaceutical companies, or other companies in the health care or compounding industry, including PCCA. On information and belief, FlackTek's customers, including PCCA, sell, offer for sale, or use the Accused Devices in an infringing manner the United States.

76. On January 8, 2020, Medisca sent a letter via its attorney to Dale R. Flackett, President of FlackTek, noting the issuance of the '903 patent and citing Medisca's press release regarding the patent. Since each of the Asserted Patents is owned by Medisca and claims priority

to the same provisional application no. 62/420,426 filed on November 10, 2016, FlackTek could easily identify each of the Asserted Patents, including the '864 patent, following Medisca's identification of the '903 patent.

77. Regardless, at least as of the filing date of this Complaint, FlackTek was aware of the '864 patent and knew or was willfully blind to the fact, that the acts, if taken, would constitute infringement of that patent. FlackTek has instructed and continues to instruct customers and users to use the Accused Products in an infringing manner, through instruction videos, manuals, and other information provided on FlackTek's websites, written materials, advertisements, and communications to customers and end users.

78. FlackTek also sells, offers to sell, or imports within the United States its SpeedMixer and the container assembly, including to customers like PCCA, knowing that these are especially made or especially adapted for use in an infringement. The SpeedMixer and the container assembly are not staple articles and have no substantial, non-infringing use, and constitute a material part of the invention.

79. Upon information and belief, FlackTek was aware or should have been aware of the '864 patent prior to the filing of this Complaint, based on a reasonable investigation following receipt of the January 8, 2020 letter from Medisca's counsel. Accordingly, FlackTek's acts of infringement have been willful and in disregard for the '864 patent, without any reasonable basis for believing it had a right to engage in the infringing conduct.

80. Medisca has suffered damages because of the infringing activities of FlackTek and will continue to suffer such damages as long as those infringing activities continue.

81. Medisca has no adequate remedy at law. Medisca and FlackTek are competitors and Medisca has been irreparably harmed by FlackTek's infringing conduct and such harm will continue unless FlackTek is enjoined from further infringement by this Court.

COUNT V – Infringement of the '903 Patent

82. Medisca incorporates and realleges the preceding paragraphs.

83. FlackTek has directly infringed and is continuing directly to infringe (literally and/or under the doctrine of equivalents) at least claim 19 of the '903 patent by, without authority, making, using, importing, selling, and/or offering for sale in the United States, products including but not limited to the Accused Products under 35 U.S.C. § 271. For example, on information and belief, FlackTek sells and has sold the Accused Products to pharmaceutical companies and other companies in the health care or compounding industry, including PCCA. On information and belief, FlackTek uses the Accused Products in the United States for testing, product development, product demonstration, and research purposes.

84. Claim 19 of the '903 patent recites, for example, a compounding method. The method includes providing a container with a plurality of gelatin gum base pieces therein. The method also includes subjecting the container to superimposed revolution and rotation movements, wherein the superimposed revolution and rotation movements are sufficient to melt the plurality of gelatin gum base pieces without addition of external heat, to obtain a pourable liquid composition contained in the container. The method further includes pouring the liquid composition into a mold having a desired shape and cooling the liquid composition to obtain a solid, semi-solid, or chewable composition in said desired shape.

85. FlackTek directly and indirectly infringes at least claim 19 of the '903 patent with, for example, the SpeedMixer (shown below).

PRECISE, POWERFUL, BUILT TO LAST

Utilizing a dual asymmetric centrifugal mechanism, the SpeedMixer spins materials in two different directions simultaneously. These opposing forces homogenize materials faster and more effectively than traditional mixers-- and do so entirely without blades.

Select your desired batch size below:



Ex. 17.

86. An exemplary infringement chart illustrating how FlackTek infringes at least claim 19 of the '903 patent is provided in **Appendix E**.

87. In addition, FlackTek, in violation of 35 U.S.C. § 271, has and continues to contribute to and/or induce others to infringe (literally and/or under the doctrine of equivalents) at least claim 19 of the '903 patent.

88. FlackTek acted during the time the '903 patent was in force, intending to cause the infringing acts by customers and users of the Accused Products. For example, on information and belief, FlackTek sells and has sold the Accused Products to end users, pharmaceutical companies, or other companies in the health care or compounding industry, including PCCA. On information and belief, FlackTek's customers, including PCCA, sell, offer for sale, or use the Accused Devices in an infringing manner the United States.

89. FlackTek was aware of the '903 Patent at least as of January 8, 2020 when Medisca sent a letter via its attorney to Dale R. Flackett, President of FlackTek, noting the

issuance of U.S. Patent No. 10,231,903, citing Medisca's press release regarding the patent, and enclosing a copy of the '903 patent itself.

90. Moreover, at least as of the filing date of this Complaint, FlackTek was aware of the '903 patent and knew or was willfully blind to the fact, that the acts, if taken, would constitute infringement of that patent. FlackTek has instructed and continues to instruct customers and users to use the Accused Products with instruction videos, manuals, and other information provided on FlackTek's websites, written materials, advertisements, and communications to customers and end users.

91. Given its knowledge of the '903 patent, FlackTek's acts of infringement have been willful and in disregard for the '903 patent, without any reasonable basis for believing it had a right to engage in the infringing conduct.

92. Medisca has suffered damages because of the infringing activities of FlackTek and will continue to suffer such damages as long as those infringing activities continue.

93. Medisca has no adequate remedy at law. Medisca and FlackTek are competitors and Medisca has been irreparably harmed by FlackTek's infringing conduct and such harm will continue unless FlackTek is enjoined from further infringement by this Court.

COUNT VI – Infringement of the '876 Patent

94. Medisca incorporates and realleges the preceding paragraphs.

95. FlackTek has directly infringed and is continuing to directly infringe (literally and/or under the doctrine of equivalents) at least claim 13 of the '876 patent by, without authority, making, using, importing, selling, and/or offering for sale in the United States, products including but not limited to the Accused Products under 35 U.S.C. § 271. For example, on information and belief, FlackTek sells and has sold the Accused Products to pharmaceutical

companies and other companies in the health care or compounding industry, including PCCA. On information and belief, FlackTek uses the Accused Products in the United States for testing, product development, product demonstration, and research purposes.

96. The Accused Products perform a compounding method. An example of the Accused Products that perform the compounding method is shown below:

PRECISE, POWERFUL, BUILT TO LAST

Utilizing a dual asymmetric centrifugal mechanism, the SpeedMixer spins materials in two different directions simultaneously. These opposing forces homogenize materials faster and more effectively than traditional mixers-- and do so entirely without blades.

Select your desired batch size below:



Ex. 17.

97. An exemplary infringement chart illustrating how FlackTek infringes at least claim 13 of the '876 patent is provided in **Appendix F**.

98. FlackTek, in violation of 35 U.S.C. § 271, has and continues to contribute to and/or induce others, including PCCA, to infringe (literally and/or under the doctrine of equivalents) at least claim 13 of the '876 patent.

99. FlackTek acted during the time the '876 patent was in force, intending to cause the infringing acts by customers (including PCCA) and users of the Accused Products. For example, on information and belief, FlackTek sells and has sold the Accused Products to end

users, pharmaceutical companies, or other companies in the health care or compounding industry, including PCCA. On information and belief, FlackTek's customers, including PCCA, sell, offer for sale, or use the Accused Devices in an infringing manner the United States.

100. On January 8, 2020, Medisca sent a letter via its attorney to Dale R. Flackett, President of FlackTek, noting the issuance of the '903 patent and citing Medisca's press release regarding the patent. Since each of the Asserted Patents is owned by Medisca and claims priority to the same provisional application no. 62/420,426 filed on November 10, 2016, FlackTek could easily identify each of the Asserted Patents, including the '876 patent, following Medisca's identification of the '903 patent.

101. Regardless, at least as of the filing date of this Complaint, FlackTek was aware of the '876 patent and knew or was willfully blind to the fact, that the acts, if taken, would constitute infringement of that patent. FlackTek has instructed and continues to instruct customers and users to use the Accused Products in an infringing manner, through instruction videos, manuals, and other information provided on FlackTek's websites, written materials, advertisements, and communications to customers and end users.

102. Upon information and belief, FlackTek was aware or should have been aware of the '876 patent prior to filing of this Complaint, based on a reasonable investigation following receipt of the January 8, 2020 letter from Medisca's counsel. Accordingly, FlackTek's acts of infringement have been willful and in disregard for the '876 patent, without any reasonable basis for believing it had a right to engage in the infringing conduct.

103. Medisca has suffered damages because of the infringing activities of FlackTek and will continue to suffer such damages as long as those infringing activities continue.

104. Medisca has no adequate remedy at law. Medisca and FlackTek are competitors and Medisca has been irreparably harmed by FlackTek's infringing conduct and such harm will continue unless FlackTek is enjoined from further infringement by this Court.

PRAYER FOR RELIEF

WHEREFORE, Medisca requests that this Court enter judgment in its favor on each claim for relief set forth above and award it relief including, but not limited to, the following:

- A. A judgement against FlackTek as to infringement of one or more claims of each of the Asserted Patents;
- B. a permanent injunction under 35 U.S.C. § 283, enjoining FlackTek and its officers, directors, agents, servants, affiliates, employees, subsidiaries, parents, licensees, assigns, and customers, and all others acting in concert or participation with them, from further acts of infringing, inducing infringement, and/or contributing to the infringement of the Asserted Patents;
- C. a judgment against FlackTek for money damages sustained as a result of FlackTek's infringement of the Asserted Patents in an amount to be determined at trial as provided under 35 U.S.C. § 284, including lost profits but in no event less than a reasonable royalty, and further including enhanced damages due to, for example, FlackTek's willful infringement of the Asserted Patents;
- D. a finding that this case is an exceptional case under 35 U.S.C. § 285;
- E. an award of reasonable and necessary attorneys' fees and costs incurred in connection with this action; and
- F. such other relief as the Court may deem appropriate.

JURY DEMAND

Medisca requests a trial by jury on all issues raised in this matter where jury trial is allowable by law.

Dated: October 12, 2023

Respectfully submitted,

s/ Jason A. Pittman
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