

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

THERAPYPRIMES LLC

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Plaintiff,

v.

Civil Action No. 6:24-CV-462

**3M COMPANY and
KCI USA, INC.**

JURY DEMANDED

Defendants.

PLAINTIFF’S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff TherapyPrimes LLC (“TherapyPrimes” or “Plaintiff”) files this Complaint for patent infringement against KCI USA, Inc. (“KCI”) and 3M COMPANY (“3M”, and together with KCI, collectively “Defendants”). Plaintiff alleges infringement of United States Patent Nos. 8,512,301 (“301 Patent”) and 9,339,595 (“595 Patent”); collectively, the “Patents-In-Suit.”

PARTIES

1. Plaintiff TherapyPrimes is a limited liability company organized and existing under the laws of Texas with a place of business at 8332 Greenleaf Ridge Way, Conroe, TX 77385.

2. On information and belief, Defendant KCI is a corporation organized and existing under the laws of Delaware with a principal place of business at 12930 W. Interstate 10, San Antonio, Texas 78249.

3. Upon information and belief, Defendant 3M COMPANY is a corporation organized and existing under the laws of Delaware with a place of business at 4501 US-377, Brownwood, Texas 76801.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. Jurisdiction as to these claims is conferred on this Court by 35 U.S.C. §§1331 and 1338(a).

5. This Court has personal jurisdiction over Defendants because, directly or through intermediaries, each has committed acts within the Western District of Texas giving rise to this action and/or has established minimum contacts with the Western District of Texas such that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.

6. Defendants have placed or contributed to placing infringing products into the stream of commerce via an established distribution channel knowing or understanding that such products would be sold and used in the United States, including in the Western District of Texas.

7. This Court has specific personal jurisdiction over Defendants at least in part because Defendants conduct business in this Judicial District. TherapyPrimes's causes of action arise, at least in part, from Defendants' contacts with and activities in the State of Texas and this Judicial District. The exercise of jurisdiction over Defendants would not offend traditional notions of fair play and substantial justice. Defendants, directly and/or through subsidiaries or intermediaries (including distributors, retailers, and others), have committed and continue to commit acts of infringement in this District by, among other things, offering to sell and selling products and/or services that infringe the patents-in-suit, including the accused devices as alleged herein.

8. On information and belief, Defendants also have derived substantial revenues from infringing acts in this Judicial District, including from the sale and use of infringing products including, but not limited to, the products accused of infringement below.

9. On information and belief, KCI maintains a place of business at 12930 W. Interstate 10, San Antonio, TX 78249 and employs authorized sellers and sales representatives that offer and sell products pertinent to this Complaint throughout the State of Texas, including this District and to consumers throughout this District.

10. On information and belief, 3M maintains a place of business at 12930 W. Interstate 10, San Antonio, TX 78249:



11. On information and belief, at its San Antonio facility, 3M employs authorized sellers and sales representatives that offer and sell products pertinent to this Complaint and to consumers throughout this District.

12. On information and belief, 3M also maintains a very substantial place of business at 4501 US-377, Brownwood, Texas 76801.

13. Defendants have established minimum contacts with this forum such that the exercise of jurisdiction over Defendants would not offend traditional notions of fair play and substantial justice.

14. In addition, Defendants have knowingly induced and continue to knowingly induce infringement within this District by advertising, marketing, offering for sale and/or selling devices with infringing functionality within this District, to consumers, customers, manufacturers, distributors, resellers, partners, and/or end users, and providing instructions, user

manuals, advertising, and/or marketing materials which facilitate, direct or encourage the use of infringing functionality with knowledge thereof.

15. Personal jurisdiction also exists specifically over Defendants because Defendants, directly or through affiliates, subsidiaries, agents, or intermediaries, transact business in this State or purposefully directed at this State (including, without limitation, medical supply vendors) by making, importing, offering to sell, selling, and/or having sold infringing products within this State and District or purposefully directed at this State or District.

16. In addition, Defendants, directly or through affiliates, subsidiaries, agents, or intermediaries, place infringing products into the stream of commerce knowing they will be sold and used in Texas, and economically benefits from the retail sale of infringing products in this State.

THE ACCUSED PRODUCTS

17. The Accused Products include the 3M Negative Pressure Wound Therapy Systems, such as the 3M Snap Therapy System.

18. The Accused Products also include, but are not limited to, the products identified in Plaintiff's infringement contentions which will be served in this case.

FACTUAL BACKGROUND

Dr. Feng Ma







19. Dr. Feng Ma received a PhD in Electrical Engineering and a PhD in Astrophysics from the University of Texas at Austin. He has also completed postdoctoral research at the Microelectronics Research Center of the University of Texas. Dr. Ma is named as an inventor on several patents, including the Patents-In-Suit.

20. Dr. Ma is the principal of TherapyPrimes and was a predecessor-in-interest of the Patents-In-Suit.

3M

21. Upon information and belief, 3M sells, *inter alia*, medical products and systems throughout the United States. These include negative pressure wound therapy systems, including, for example, the 3M Snap Therapy System. For example, a brochure involving the Accused Products may be found at <https://multimedia.3m.com/mws/media/21239950/3m-snap-therapy-system-brochure-1r.pdf>. Within its brochure, 3M states that potential customers may learn more about the Accused Products by contacting “your local 3M Account Representative.”

Ordering information

	SKU	Description	Size	Quantity
	SNPA125US	3M™ Snap™ Therapy Cartridge, -125mmHg	60mL	Eaches
	SNPA125US/10	3M™ Snap™ Therapy Cartridge, -125mmHg	60mL	Case of 10
	SNPA125PLUS	3M™ Snap™ Plus Therapy Cartridge, -125mmHg	150mL	Eaches
	SNPA125PLUS/10	3M™ Snap™ Plus Therapy Cartridge, -125mmHg	150mL	Case of 10
	BKTF14X11	3M™ Snap™ Bridge Dressing Kit, Foam	14cm x 11cm	Eaches
	BKTF14X11/10	3M™ Snap™ Bridge Dressing Kit, Foam	14cm x 11cm	Case of 10
	BKTF14X11S	3M™ Snap™ Bridge Dressing Kit with SecurRing™ Hydrocolloid Skin Barrier, Foam	14cm x 11cm	Eaches
	BKTF14X11S/10	3M™ Snap™ Bridge Dressing Kit with SecurRing™ Hydrocolloid Skin Barrier, Foam	14cm x 11cm	Case of 10
	SKTF10X10	3M™ Snap™ Advanced Dressing Kit, Foam	10cm x 10cm	Eaches
	SKTF10X10/10	3M™ Snap™ Advanced Dressing Kit, Foam	10cm x 10cm	Case of 10
	SKTF15X15	3M™ Snap™ Advanced Dressing Kit, Foam	15cm x 15cm	Eaches
	SKTF15X15/10	3M™ Snap™ Advanced Dressing Kit, Foam	15cm x 15cm	Case of 10
	STPAS	3M™ Snap™ Therapy Strap, Small	18" (46cm)	Eaches
	STPAM	3M™ Snap™ Therapy Strap, Medium	21" (53cm)	Eaches
	STPAL	3M™ Snap™ Therapy Strap, Large	24" (61cm)	Eaches
	STPASP	3M™ Snap™ Plus Therapy Strap, Small	18" (46cm)	Eaches
	STPAMP	3M™ Snap™ Plus Therapy Strap, Medium	21" (53cm)	Eaches
	STPALP	3M™ Snap™ Plus Therapy Strap, Large	24" (61cm)	Eaches
	SRNG10	3M™ Snap™ SecurRing™ Hydrocolloid Skin Barrier	2" (5cm) diameter	Case of 10

To learn more about the benefits of Snap Therapy System, contact your local 3M Account Representative, call the 3M Health Care Helpline at 1-800-228-3957, or visit [3M.com/Medical](https://www.3m.com/Medical) for more information.

22. Upon information and belief, the 3M Snap Therapy System marketed by 3M was included among the negative pressure wound therapy technology acquired by ACELITY Inc. and KCI from Spiracur Inc. in 2015. On information and belief, in October 2019, 3M acquired Acelity, Inc. and its KCI subsidiaries, including KCI USA, Inc.

23. Upon information and belief, KCI manufactures and/or imports the Accused Products. A copy of the “Instructions for Use” document for Snap Therapy System may be found at <https://www.acelity.com/-/media/Project/Acelity/Acelity-Base-Sites/shared/PDF/417175a-ifu-snap-plus-cartridge-bis.pdf> . The “Instructions for Use” document states that the Snap Therapy System is “Manufactured For KCI USA, Inc.”



24. Upon information and belief, 3M first became aware of the Patents-In-Suit upon receipt of a letter dated June 26, 2023, which included attached claim charts detailing how certain 3M branded negative pressure wound therapy systems (e.g., the 3M Snap Therapy System) satisfy exemplary claims of the Patents-In-Suit (i.e., claims 1, 2, 5, 6 and 7 of U.S. Patent No. 8,512,301 and claims 1, 15 and 18 of U.S. Patent No. 9,339,595). The June 26, 2023, letter was sent by way of email and UPS. On information and belief, the hard copy of the June 26, 2023, letter sent by way of UPS was received on June 30, 2023.

25. 3M’s Assistant Chief IP Counsel, having an office address of 12930 W I-10, San Antonio, TX 78249, responded to Dr. Ma’s letter on August 23, 2023. The office address of 3M’s Assistant Chief IP Counsel is the same address as that identified above for KCI USA, Inc. On

information and belief, both Defendants became aware of the Patents-In-Suit through Dr. Ma's communication with 3M's Assistant Chief IP Counsel.

26. Upon information and belief, ACELITY Inc. and KCI first became aware of the Patents-In-Suit upon receipt of a letter dated July 10, 2023, which included attached claim charts detailing how certain 3M branded negative pressure wound therapy systems (e.g., the 3M Snap Therapy System) satisfy exemplary claims of the Patents-In-Suit (i.e., claims 1, 2, 5, 6 and 7 of U.S. Patent No. 8,512,301 and claims 1, 15 and 18 of U.S. Patent No. 9,339,595). The July 10, 2023, letter was sent by way of USPS via certified mail. On information and belief, the July 10, 2023, letter was received on July 23, 2023.

27. Despite Dr. Ma's attempt to seek a resolution with 3M and KCI concerning 3M's and KCI's infringement of U.S. Patent Nos. 8,512,301 and 9,339,595, on information and belief, 3M and KCI have continued their ongoing willful infringement of the Patents-In-Suit. As such, TherapyPrimes has been forced to bring this action to seek just compensation for 3M's and KCI's past and ongoing infringement of the Patents-In-Suit.

COUNT I

DEFENDANTS' INFRINGEMENT OF U.S. PATENT NO. 8,512,301

28. On August 20, 2013, United States Patent No. 8,512,301 ("the '301 Patent") entitled "Canned Vacuum" was duly and legally issued after full and fair examination by the United States Patent and Trademark Office. TherapyPrimes is the owner of all right, title, and interest in and to the patent by assignment, with full right to bring suit to enforce the patent, including the right to recover for past infringement damages and the right to recover future royalties, damages, and income. A true copy of the '301 patent is attached as Exhibit 1.

29. Defendants have directly infringed, and is continuing to directly infringe, literally or under the doctrine of equivalents, at least claims 1, 2, 5, 6, and 7 of the '301 patent by importing into the United States, making, using, selling, and/or offering for sale, at least, the Accused Products in violation of 35 U.S.C. § 271(a). An exemplary detailed explanation of Defendants' infringement is attached as Exhibit 2. Exhibit 2 provides information regarding infringement of the '301 patent, and is illustrative and is provided for purposes of satisfying Plaintiff's pleading obligations and should not be construed as limiting. Plaintiff will serve infringement contentions in this case in accord with the Local Rules and schedule entered by the Court.

30. Alternatively, and in addition, Defendants directly infringe through their direct involvement in the activities of their distributors or subsidiaries, including by selling and offering for sale the Accused Products directly to their distributors or subsidiaries and importing the Accused Products into the United States. Upon information and belief, Defendants' conduct activities that constitutes direct infringement. Defendants are vicariously liable for this infringing conduct of their distributors and subsidiaries under both the alter ego and agency theories because, as an example and on information and belief, Defendants have the right and ability to control their distributors' and subsidiaries' infringing acts and receive a direct financial benefit from their infringement.

31. In addition, upon information and belief, since at the least the date when Defendants were on notice of their infringement, Defendants have actively induced, under U.S.C. § 271(b), distributors, customers, subsidiaries, importers, and/or consumers that import, purchase, or sell the Accused Products that include or are made using all of the limitations of one or more claims of the asserted patents, at least as described in the preceding paragraph, to

directly infringe one or more claims of the patents by using, offering for sale, selling, and/or importing the Accused Products. Since at least the notice provided on the above-mentioned date, Defendants do so with knowledge, or with willful blindness of the fact, that the induced acts constitute infringement. Upon information and belief, Defendants intend to cause, and have taken affirmative steps to induce infringement by distributors, importers, customers, subsidiaries, and/or consumers by, *inter alia*, creating advertisements that promote the infringing use of the Accused Products, creating established distribution channels for the Accused Products into and within the United States, manufacturing the Accused Products in conformity with U.S. laws and regulations, distributing or making available instructions or manuals for these products to purchasers and prospective buyers, and/or providing technical support, replacement parts, or services for these products to these purchasers in the United States.

32. In addition, upon information and belief, Defendants have, and continue to, indirectly infringe one or more claims of the '301 patent by contributing to direct infringement. Despite having knowledge of the '301 patent, Defendants have, and continue to, contribute to infringement of the '301 by selling the Accused Products which are a material part of the claimed invention of the '301 Patent. Upon information and belief, there are no substantial non-infringing uses for the Accused Products. Upon information and belief, Defendants have contributed to and continue to contribute to the infringement by another of one or more of the asserted claims of the '301 Patent under 35 U.S.C. §271(c).

COUNT II

DEFENDANTS' INFRINGEMENT OF U.S. PATENT NO. 9,339,595

33. On May 17, 2016, United States Patent No. 9,339,595 (“the '595 Patent”) entitled “Disposable Vacuum Source and Medical Applications Thereof” was duly and legally issued

after full and fair examination by the United States Patent and Trademark Office.

TherapyPrimes is the owner of all right, title, and interest in and to the patent by assignment, with full right to bring suit to enforce the patent, including the right to recover for past infringement damages and the right to recover future royalties, damages, and income. A true copy of the '595 patent is attached as Exhibit 3.

34. Defendants have directly infringed, and is continuing to directly infringe, literally or under the doctrine of equivalents, at least claim 1 of the '595 patent by importing into the United States, making, using, selling, and/or offering for sale, at least, the Accused Products in violation of 35 U.S.C. § 271(a). An exemplary detailed explanation of Defendants' infringement is attached as Exhibit 4. Exhibit 4 provides information regarding infringement of the '595 patent, and is illustrative and is provided for purposes of satisfying Plaintiff's pleading obligations and should not be construed as limiting. Plaintiff will serve infringement contentions in this case in accord with the Local Rules and schedule entered by the Court.

35. Alternatively, and in addition, Defendants directly infringe through their direct involvement in the activities of their distributors or subsidiaries, including by selling and offering for sale the Accused Products directly to their distributors or subsidiaries and importing the Accused Products into the United States. Upon information and belief, Defendants conduct activities that constitutes direct infringement. Defendants are vicariously liable for this infringing conduct of their distributors and subsidiaries under both the alter ego and agency theories because, as an example and on information and belief, Defendants have the right and ability to control their distributors' and subsidiaries' infringing acts and receive a direct financial benefit from their infringement.

36. In addition, upon information and belief, since at the least the date when Defendants were on notice of their infringement, Defendants have actively induced, under U.S.C. § 271(b), distributors, customers, subsidiaries, importers, and/or consumers that import, purchase, or sell the Accused Products that include or are made using all of the limitations of claims 15 and 18 of the '595 patent, at least as described in the preceding paragraph, to directly infringe one or more claims of the patents by using, offering for sale, selling, and/or importing the Accused Products. Since at least the notice provided on the above-mentioned date, Defendants do so with knowledge, or with willful blindness of the fact, that the induced acts constitute infringement. Upon information and belief, Defendants intend to cause, and has taken affirmative steps to induce infringement by distributors, importers, customers, subsidiaries, and/or consumers by, *inter alia*, creating advertisements that promote the infringing use of the Accused Products, creating established distribution channels for the Accused Products into and within the United States, manufacturing the Accused Products in conformity with U.S. laws and regulations, distributing or making available instructions or manuals for these products to purchasers and prospective buyers, and/or providing technical support, replacement parts, or services for these products to these purchasers in the United States.

37. In addition, upon information and belief, Defendants have, and continue to, indirectly infringe at least claim 1 of the '595 patent by contributing to direct infringement. Despite having knowledge of the '595 patent, Defendants have, and continue to, contribute to infringement of the '595 by selling the Accused Products which are a material part of the claimed invention of the '595 Patent. Upon information and belief, there are no substantial non-infringing uses for the Accused Products. Upon information and belief, Defendants have

contributed to and continue to contribute to the infringement by another of one or more of the asserted claims of the '301 Patent under 35 U.S.C. §271(c).

FURTHER ASSERTIONS INVOLVING ALL CLAIMS

38. The Asserted Patents are valid and enforceable.

39. Defendants have had knowledge of the Patents-In-Suit since, at least, June 26, 2023, when Defendants received Dr. Ma's letter and email disclosing each of these patents, and identifying the Accused Products.

40. Alternatively, Defendants have had knowledge of the Patents-In-Suit since, at least, July 10, 2023, when Defendants received Dr. Ma's letter which included claim charts detailing how the Accused Products infringe the Patents-In-Suit.

41. Alternatively, Defendants have had knowledge of the Patents-In-Suit since, at least, the filing date of the original complaint in this action.

42. Defendants' affirmative acts of selling the Accused Products, causing the Accused Products to be sold, advertised, offered for sale, and/or distributed, and providing instruction manuals for the Accused Products have induced and continue to induce Defendants' customers, and/or end-users to use the Accused Products in their normal and customary way to infringe the Patents-In-Suit. For example, it can be reasonably inferred that end-users will use the infringing products, which will cause the end-users to use the elements that are the subject of the claimed invention. Defendants specifically intended and were aware that these normal and customary activities would infringe the Patents-In-Suit. In addition, Defendants provide marketing and/or instructional materials, such as user guides, that specifically teach end-users to use the Accused Products in an infringing manner. By providing such instructions, Defendants know (and have known), or were willfully blind to the probability that their actions have, and

continue to, actively induce infringement. By way of example only, Defendants have induced infringement and continue to induce infringement of, in addition to other claims, at least the specific claims identified above of the Patents-In-Suit by selling in the United States, without Plaintiff's authority, infringing products and providing instructional materials. These actions have induced and continue to induce the direct infringement of the Patents-In-Suit by end-users. Defendants performed acts that constitute induced infringement, and would induce actual infringement, with the knowledge of the Patents-In-Suit and with the knowledge, or willful blindness to the probability, that the induced acts would constitute infringement. Upon information and belief, Defendants specifically intended (and intend) that their actions would result in infringement of at least the specific claims identified above of the Patents-In-Suit, or subjectively believed that their actions would result in infringement of the Asserted Patents but took deliberate actions to avoid learning of those facts, as set forth above. Upon information and belief, Defendants knew of the Patents-In-Suit and knew of their infringement, including by way of this lawsuit as described above.

43. Defendants' infringement has been and continues to be willful and deliberate. Upon information and belief, Defendants deliberately infringed the Patents-In-Suit and acted recklessly and in disregard to the Patents-In-Suit by making, having made, using, importing, and offering for sale products that infringe the Patents-In-Suit. Upon information and belief, the risks of infringement were known to Defendants and/or were so obvious under the circumstances that the infringement risks should have been known. Upon information and belief, Defendants have no reasonable non-infringement theories. Upon information and belief, Defendants have not attempted any design/sourcing change to avoid infringement. Defendants have acted despite an objectively high likelihood that their actions constituted infringement of the Patents-In-Suit.

In addition, this objectively-defined risk was known or should have been known to Defendants. Upon information and belief, Defendants have willfully infringed and/or continue to willfully infringe the Patents-In-Suit. Defendants exhibited egregious behavior beyond typical infringement in that, despite being aware of their infringement, Defendants did not develop any non-infringement theories, did not attempt any design or sourcing change, and did not otherwise cease their infringement.

44. To the extent any marking or notice was required by 35 U.S.C. § 287, Plaintiff has complied with the applicable marking and/or notice requirements of 35 U.S.C. § 287.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all issues so triable.

PRAYER

WHEREFORE, Plaintiff prays for judgment that:

1. Defendants have infringed and continue to infringe, one or more claims of the Patents-In-Suit;
2. Defendants be ordered to pay damages caused to Plaintiff by Defendants' unlawful acts of infringement;
3. Defendants' acts of infringement have been, and are, willful;
4. Plaintiff recover actual damages under 35 U.S.C. § 284;
5. Plaintiff be awarded supplemental damages for any continuing post-verdict infringement up until final judgment;
6. Plaintiff be awarded a compulsory ongoing royalty;
7. Plaintiff be awarded an accounting of damages;

8. Plaintiff be awarded enhanced damages for willful infringement as permitted under the law;
9. A judgment and order requiring Defendants to pay to Plaintiff pre-judgment and post-judgment interest on the damages awarded, including an award of pre-judgment interest, pursuant to 35 U.S.C. § 284, from the date of each act of infringement by Defendants to the day a damages judgment is entered, and a further award of post-judgment interest, pursuant to 28 U.S.C. § 1961, continuing until such judgment is paid, at the maximum rate allowed by law;
10. An award to Plaintiff of the costs of this action and its reasonable attorneys' fees pursuant to 35 U.S.C. §285; and
11. Such other and further relief as the Court deems just and equitable.

DATED: September 9, 2024

Respectfully submitted,

/s/Robert D. Katz

Robert D. Katz

Texas Bar No. 24057936

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