

## Rembrandt Sets Sights On CooperVision Over Lens IP

By **Leigh Kamping-Carder**

Law360, New York (May 3, 2011) -- Rembrandt Vision Technologies Inc. accused CooperVision Inc. in Texas federal court Thursday of infringing a patent that covers soft contact lens technology.

Bala Cynwyd, Pa.-based Rembrandt claims CooperVision infringed the patent by making and selling silicone hydrogel contact lenses, which allow more oxygen to pass through the lenses for better eye health, without a license.

“As a direct and proximate result of CooperVision's infringement ... Rembrandt Vision has been injured and has been caused significant financial damage,” the complaint said.

Rembrandt has had success in the past enforcing the same patent, winning a \$41 million jury verdict against contact lens maker CIBA Vision Corp., a unit of Novartis AG, in 2009.

In the current suit, Rembrandt is seeking a jury trial, along with compensatory and treble damages, a permanent injunction barring CooperVision from continuing to make the product or forcing the company to pay a royalty, an order requiring the defendant to destroy the allegedly infringing products, and other relief.

Representatives for CooperVision and its parent The Cooper Cos. Inc., headquartered in Pleasanton, Calif., did not immediately return requests for comment Tuesday.

CooperVision has known about U.S. Patent Number 5,712,327 — issued in 1998 and titled “Soft gas permeable contact lens having improved clinical performance” — since July 2009, according to the suit.

Developed by a couple who focus on contact lens technology, the '327 patent covers a type of soft contact lens that can be worn for extended periods of time. Rembrandt owns the patent by agreement with the co-inventors, the suit says.

Rembrandt has had other successes with the '327 patent. The U.S. Patent and Trademark Office previously upheld the '327 patent on re-examination, despite a preliminary ruling that the patent was invalid for obviousness.

"The patentability of the claimed invention in the '327 patent is further demonstrated by commercial success, industry recognition and praise, long-felt need and failure of others," the USPTO said in its June 2009 decision.

In the case against CIBA, the jury found the patent was valid and infringed by CIBA's Focus Night and Day lenses and O2Optix lenses but stopped short of finding the infringement to be willful.

About eight months later, the Eastern District of Texas rejected CIBA's inequitable conduct defense and declared the patent enforceable. CIBA was ordered to pay Rembrandt \$47.1 million for infringing the patent, but the parties reached a confidential settlement in April 2009.

Rembrandt settled with Bausch & Lomb Inc., which was also named as a defendant in the suit, in October 2007 under confidential terms.

Rembrandt has also sued Johnson & Johnson Vision Care Inc., claiming the company's Acuvue Advance and Acuvue Oasys contact lenses infringe the '327 patent.

In that case, "extensive discovery has taken place, several depositions have occurred, and this court has construed claim terms that were not previously construed," Rembrandt said in the complaint.

The patent-in-suit is U.S. Patent Number 5,712,327.

Rembrandt is represented in the current suit by Germer & Gertz LLP and Robins Kaplan Miller & Ciresi LLP.

Counsel information for the defendant was not immediately available.

The case is Rembrandt Vision Technologies LP v. CooperVision Inc., case number 2:11-cv-00236, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Pete Brush. Editing by Lisa Uhlman.

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