

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CELLEX, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.
)	
SIEMENS MEDICAL SOLUTIONS USA,)	JURY TRIAL DEMANDED
INC., SIEMENS HEALTHINEERS AG, and)	
SIEMENS HEALTHCARE GMBH,)	
)	
Defendant.)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Cellex, Inc. (“Cellex”) files this Complaint against Defendants Siemens Medical Solutions USA, Inc. (“Siemens Medical”), Siemens Healthineers AG (“Siemens Healthineers”), and Siemens Healthcare GmbH (“Siemens GmbH”) (collectively, “Defendants” or “Siemens”), demands a trial by jury on all issues so triable, and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action arising out of Siemens’ patent infringement of U.S. Design Patent No. D939,105 (“the ’105 patent”). This action arises under the Patent Laws of the United States, 35 U.S.C. §§ 271, 281-285, and 289.

PARTIES

2. Cellex is a corporation organized and existing under the laws of the State of North Carolina, with a principal place of business at 301 Cascade Pointe LN, Cary, North Carolina 27513.

3. Cellex is a biotech company that develops technologies, instruments and assays for the testing of human diseases and conditions, particularly for point-of-care professional healthcare settings.

4. On information and belief, Siemens Medical is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 40 Liberty Boulevard, Malvern, PA 19355.

5. On information and belief, Siemens Healthineers is a corporation organized and existing under the laws of Germany, with its principal place of business at Henkestr. 127 91052 Erlangen, Germany.

6. On information and belief, Siemens GmbH is a corporation organized and existing under the laws of Germany, with its principal place of business at Henkestr. 127, 91052 Erlangen, Germany.

7. On information and belief, Siemens Medical, Siemens Healthineers, and Siemens GmbH manufacture, import, use, offer to sell, and/or sell products and services throughout the United States, including in this District, including those that incorporate infringing technology knowing that they would be sold in this District and elsewhere in the United States.

JURISDICTION AND VENUE

8. This Court has subject-matter jurisdiction over Cellex's patent infringement claims under 28 U.S.C. §§ 1331 and 1338.

9. This Court has personal jurisdiction over Siemens because it regularly conducts business in Delaware and has incurred the liability complained of herein in Delaware by virtue of offers for sale and sales to consumers through an interactive website that redirects consumers to Amazon.com to purchase its products.

10. This Court also has personal jurisdiction over Siemens Medical at least because Siemens Medical is incorporated in this District.

11. This Court also has personal jurisdiction over each Defendant because they each have a continuous, systematic, and substantial presence within this judicial district and they each have purposely availed themselves of the rights and benefits of this forum such that they should reasonably anticipate being haled into court here.

12. On information and belief, Siemens develops, manufactures, markets, imports, offers to sell, and/or sells products and services throughout the United States, including in the State of Delaware.

13. On information and belief, Siemens regularly directs business toward Delaware residents as part of its general business plan, which includes the marketing and sale of products infringing the '105 patent.

14. In particular, on information and belief, Siemens GmbH is the publisher of the website that advertises, markets, and offers for sale the infringing articles. *See* <https://www.clinitest.siemens-healthineers.com/usa>; <https://www.siemens-healthineers.com/how-can-we-help-you>.

15. On information and belief, Siemens Medical is the U.S. entity that is provided as the U.S. contact on the website that advertises, markets, and offers for sale the infringing articles. *See* <https://www.clinitest.siemens-healthineers.com/usa>; <https://www.siemens-healthineers.com/how-can-we-help-you>.

16. On information and belief, Siemens Healthineers is the parent company of Siemens GmbH and Siemens Medical.

17. On information and belief, Siemens Healthineers directs and controls Siemens GmbH and Siemens Medical.

18. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b) at least because Siemens is subject to personal jurisdiction in this District and because Siemens has committed acts of infringement by selling and/or offering to sell infringing products in this judicial district. Siemens Medical is incorporated in this District, and on information and belief, each Siemens defendant regularly directs business toward Delaware residents.

THE '105 PATENT

19. On December 21, 2021, the United States Patent and Trademark Office duly and lawfully issued the '105 patent, entitled "Testing Cassette."

20. The '105 patent was duly assigned to Cellex, which is the assignee of all right, title, and interest in and to the '105 patent and possesses the exclusive right of recovery for past, present, and future infringement. The sole claim of the '105 patent is valid and enforceable.

21. A true and correct copy of the '105 patent is attached hereto as Exhibit A.

COUNT I: INFRINGEMENT OF THE '105 PATENT

22. Cellex re-alleges and incorporates by reference Paragraphs 1-21 above, as if fully set forth herein.

23. The claimed design of the '105 patent is shown in Figures 1-7 of the '105 patent. Representative images are below:

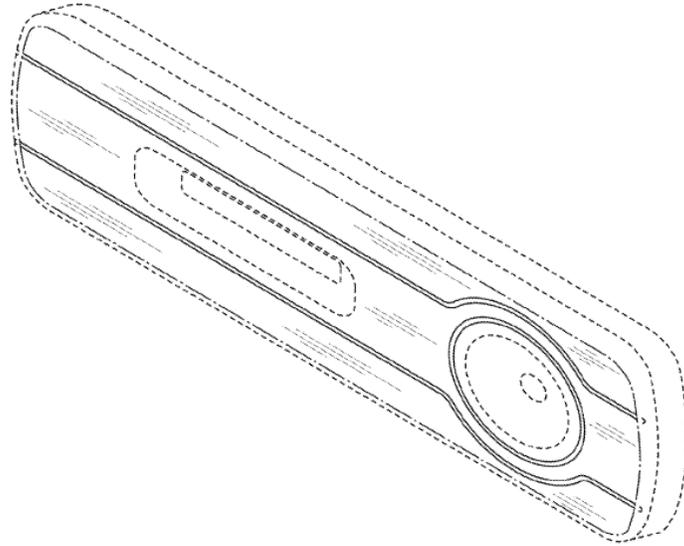


FIG. 1

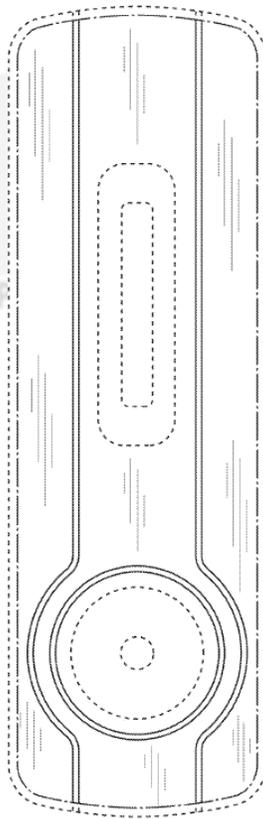


FIG. 2



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24. On information and belief, Siemens has made, used, imported, offered for sale, and/or sold products that infringe the '105 patent, including for example the “CLINITEST® Rapid COVID-19 Antigen Self-Test” (“CLINITEST”) in the United States, including via online retailers. Images of CLINITEST are shown below:

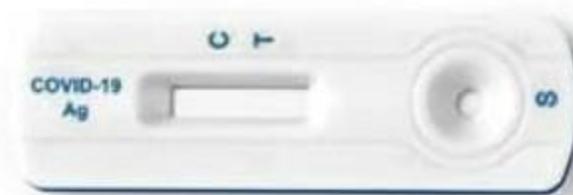


<https://www.clinitest.siemens-healthineers.com/usa>.

Test cassette

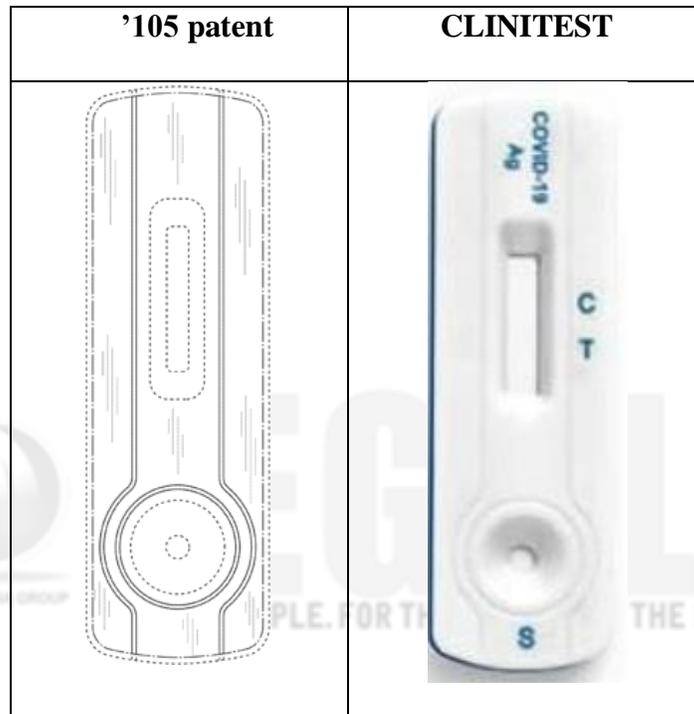


<https://www.clinitest.siemens-healthineers.com/usa>.



<https://www.amazon.com/dp/B09QX4DWCD>.

25. In the eye of the ordinary observer familiar with the relevant prior art, giving such attention as a purchaser usually gives, the claimed design of the '105 patent and the design Siemens' products, including CLINITEST, are substantially the same, such that the ordinary observer would be deceived into believing that the design of Siemens' product is the design claimed in the '105 patent.



26. Siemens has directly infringed the '105 patent by making, using, licensing, offering to sell, selling and/or importing testing cassettes, including but not limited to CLINITEST, having substantially the same ornamental design as the design claimed in the '105 patent, in violation of 35 U.S.C. §§ 271(a) and 289.

27. Siemens has also induced others to infringe the '105 patent by offering to sell, selling and/or importing testing cassettes, including but not limited to CLINITEST, having substantially the same ornamental design as the design claimed in the '105 patent, in violation of 35 U.S.C. §§ 271(b) and 289.

28. Siemens has had actual knowledge of the '105 patent since at least the date on which Siemens received service of the Complaint in this action.

29. Upon information and belief, Siemens made, imported, sold, offered to sell, distributed, and marketed testing cassettes that infringe the '105 patent to end consumers and/or resellers with the intent that these parties will use, market, offer to sell and/or sell the products in the United States in a manner that infringes the '105 patent.

30. Upon information and belief, Siemens knew or should have known that the manufacture, importation, use, marketing, offering to sell, and selling of its products, including CLINITEST, by Siemens or its resellers and/or customers would directly infringe the '105 patent.

31. Upon information and belief, Siemens Healthineers also actively encouraged infringement by Siemens Medical and Siemens GmbH, knowing that the acts they induced constituted patent infringement and their encouraging acts actually resulted in direct patent infringement.

32. Siemens' direct and induced infringement of the '105 patent has caused damage to Cellex.

33. Siemens' direct and induced infringement has also caused irreparable harm to Cellex. Cellex will continue to suffer substantial loss and irreparable injury unless and until Siemens is enjoined from its wrongful actions complained of herein.

PRAYER FOR RELIEF

WHEREFORE, Cellex respectfully requests that this Court enter judgment against Siemens as follows:

- A. An Order that Siemens has infringed and continues to infringe the '105 patent;
- B. An Order directing an accounting to determine Siemens' profits resulting from its

unlawful activities;

C. An Order awarding Cellex compensation for any and all damages, injury or harm pursuant to 35 U.S.C. §§ 284 and 289, together with pre-judgment and post-judgment interest and costs;

D. An Order directing Siemens to pay full restitution and/or disgorgement of all profits, including any lost profits, and benefits that may have been obtained by Siemens as a result of its wrongful conduct pursuant to 35 U.S.C. §§ 284 and 289;

E. An Order awarding Cellex punitive and exemplary damages;

F. A permanent injunction against Siemens, its officers, directors, divisions, employees, agents, servants, parents, subsidiaries, successors, assigns, and all those in privity, concert or participation with them from further infringement, or alternatively, award an ongoing royalty for Siemens's post-verdict infringement, payable on each product or service offered by Siemens that is found to infringe the '105 patent asserted herein, and on all future products and services that are not colorably different from those found to infringe;

G. An Order awarding Cellex its reasonable costs and attorneys' fees, and a Declaration that this case is "exceptional" within the meaning of 35 U.S.C. § 285; and

H. Such other relief, including other monetary and equitable relief, as this Court deems just and proper.

/s/ John W. Shaw

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