

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

SPECTRAL INSTRUMENTS IMAGING,
LLC,

Plaintiff,

v.

SCINTICA INC.,

Defendant.

Civil Action No. 4:22-cv-00043

**COMPLAINT FOR PATENT
INFRINGEMENT AND
DEMAND FOR JURY TRIAL**

Plaintiff Spectral Instruments Imaging, LLC (“Plaintiff” or “Spectral”), for its complaint against Defendant Scintica Inc. (“Defendant” or “Scintica”), hereby alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for the infringement of United States Patent No. 8,901,516 (the “’516 patent” or the “patent-in-suit”) under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, arising from, inter alia, Scintica’s use, importation, offer to sell and/or sale of infringing optical imaging products.

PARTIES

2. Spectral is a limited liability company organized and existing under the laws of Arizona, with its principal place of business at 420 North Bonita Avenue, Tucson, AZ 85745.

3. On information and belief, Scintica is a corporation organized and existing under the laws of Texas, with a principal place of business at 721 Tristar Drive, Webster, TX 77598.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, including 35 U.S.C. §§ 271 and 281.

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338.

6. This Court has personal jurisdiction over Scintica because, on information and belief, Scintica is a corporation organized and existing under the laws of Texas with its principal place of business in the city of Webster in this District.

7. Additionally, on information and belief, this Court has personal jurisdiction over Scintica because it has continuous and systematic contacts with Texas and with this District. For example, Scintica regularly conducts business in Texas and in this District, either directly or through one or more of its affiliates, agents, and/or alter egos, and has purposefully availed itself of the privilege of doing business in Texas and in this District. Scintica also maintains its headquarters in this District through which it has, among other conduct, imported, offered for sale, sold, and advertised infringing products, and has purposefully directed its activities at residents of Texas and this District. Scintica has established sufficient minimum contacts with this District such that it would reasonably and fairly anticipate being called into court here.

8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b) because, *inter alia*, Scintica is a corporation organized and existing under the laws of Texas with a principal place of business in this District.

THE PATENT-IN-SUIT

9. The '516 patent, entitled "Excitation Light Source Assembly," was duly and lawfully issued by the United States Patent and Trademark Office ("USPTO") on December 2, 2014. Spectral owns all rights, title, and interest in the '516 patent. A true and correct copy of the '516 patent is attached hereto as Exhibit A.

FACTUAL BACKGROUND

10. Spectral is an industry leader in the design and manufacture of scientific imaging systems. As a result of its significant investment in research and development, Spectral has developed innovative optical and imaging technology that is used by the world's leading public and private research institutions. One field in which Spectral's innovative technology is used is in the manufacture of fluorescent and bioluminescent molecular imaging devices.

11. Spectral currently offers five models of molecular imaging devices, the LAGO X, LAGO, AMI HTX, AMI HT, and KINO. These devices have a variety of users, ranging from small startup biotechnology companies to major universities and the world's largest, well-known biopharmaceutical companies.

12. Spectral has protected its innovative technology through the United States system of intellectual property rights. Included in Spectral's intellectual property portfolio is the patent-in-suit which covers many of the distinctive and useful features of Spectral's products.

13. Spectral's products incorporating the patented technology in this case are duly marked within the meaning of the Patent Act, as they are accompanied by literature identifying them as covered by at least U.S. Patent No. 8,901,516.

14. Scintica has been, and presently is, selling, offering for sale, and/or importing products that infringe Spectral's '516 patent.

15. Among other products, Scintica currently advertises, offers for sale, and sells the Vilber Newton 7.0 (“Newton”) imaging system on its website (<https://www.scintica.com/products/vilber-imaging/vilber-newton-7>) and through its network of sales professionals.

16. On or about July 26, 2017, Spectral contacted Vilber, the manufacturer of the Newton product line, and drew its attention to various U.S. patents held by Spectral that protect Spectral’s molecular imaging technology. Vilber failed to respond.

17. At the World Molecular Imaging Congress meeting on September 4-7, 2019, representatives from Spectral saw a Newton imaging system on display at Scintica’s conference booth. Scintica informed Spectral that the Newton product was for sale in the United States.

18. On September 15, 2019, Spectral notified Scintica in writing that the Newton system infringed one or more of Spectral’s patents. Despite such notice and having established a line of written communication with both Scintica and Vilber, neither company responded substantively to any of Spectral’s infringement allegations.

19. Scintica has and continues to use, sell, offer to sell, and import Vilber products, including the Newton imaging system (“Vilber Products”), into the United States. Such activities include, but are not limited to, operating the Vilber Products at tradeshow and sales demonstrations, issuing pricing quotations and offering the Vilber Products for sale to customers in the United States, and offering the Vilber Products for sale on Scintica’s website.

20. On or about April 16, 2021, counsel for Spectral contacted both Scintica and Vilber inviting the companies to discuss the scope and extent of the infringing activity and to explore potential licensing of Spectral intellectual property, including Spectral’s ’516 patent. In response, Scintica and Vilber continued their pattern of delay and deflection.

COUNT I
INFRINGEMENT OF THE '516 PATENT

21. Spectral restates, realleges, and incorporates by reference Paragraphs 1-20 as if fully set forth herein.

22. The '516 patent is directed to an excitation light source assembly. Claim 1 of the '516 patent recites:

An excitation light source assembly, comprising:

a housing defining a central opening therein and a plurality of lamp receptacles surrounding the central opening, said housing being mountable to a support structure so that the central opening is aligned with a camera also mounted to the support structure so that a field of view of the camera is unobstructed by said housing;

a light source positioned within each of the plurality of lamp receptacles, wherein at least one of said light sources comprises a narrow-band light source; and

a diffuser positioned within at least some of the plurality of lamp receptacles, each of said diffusers diffusing light produced by each of said light sources; and

a control system operatively connected to each of said light sources said control system operating selected ones of said light sources to provide a desired excitation illumination to an object within the field of view of said camera, the object fluorescing in response to the excitation illumination provided by said light sources.

23. Scintica has willfully infringed and continues to infringe at least claim 1 of the '516 patent, directly and indirectly, literally or under the doctrine of equivalents, by selling, offering for sale, using, and/or importing Vilber Newton products and other imaging products that infringe the '516 patent in the United States.

24. Scintica offers five models of the Newton 7.0 imaging system for sale on its website. On information and belief, each of these five models comprises substantively the same infringing features and components discussed below.

Scintica: Products ▾ Applications ▾ Research Models ▾ Events & Resources ▾ Company ▾ Shop Quote Request

FEATURES	NEWTON 7.0 BT100	NEWTON 7.0 BT500	NEWTON 7.0 FT100	NEWTON 7.0 FT500	NEWTON 7.0 – BIO for Plant Imaging
					
	<i>In vivo / in vitro</i> Optical imaging platform		<i>In vivo / in vitro</i> Optical imaging platform		<i>In vivo / in vitro</i> Optical imaging platform

<https://www.scintica.com/products/vilber-imaging/vilber-newton-7/>.

25. Set forth in the following paragraphs is an illustration of how the Newton imaging system infringes the claims of the '516 patent. This illustration is not intended to be a limitation on the full scope of infringing products or claims. Spectral expects that discovery will reveal additional evidentiary support that Scintica sells, offers to sell, uses, and/or imports Newton and other imaging products that practice at least the above limitations of the '516 patent and Spectral reserves the right to supplement the evidence cited below.

26. The Newton imaging system includes an excitation light source assembly. A non-limiting illustration of the foregoing can be seen in Vilber's marketing video for the Newton:



Vilber Newton 7.0 Marketing Video, <https://www.youtube.com/watch?v=Zw6QxSuUZ24>.

Similar videos marketing and describing the operation and structure of the Newton are available on the Scintica website. See, e.g., Scintica Marketing Video, <https://www.scintica.com/webinar-product-launch-vilbers-newton-7-0-ft-series-in-vivo-3d-optical-tomography-now-accessible-to-everyone/>.

27. The Newton imaging system includes a housing defining a central opening. A non-limiting illustration of the foregoing can be seen from images on Scintica's and Vilber's websites and marketing materials.



See *e.g.*, Ex. B. Similar images and illustrations are available on the Scintica website. See, *e.g.*, <https://www.scintica.com/products/vilber-imaging/vilber-newton-7/>.

28. The Newton product leaflet states that “[e]ach individual light source delivers a precisely defined range of the spectrum.” Ex. B at 2.

29. The Newton imaging system includes a plurality of lamp receptacles. A non-limiting illustration of the foregoing can be seen in Vilber’s product marketing video for the Newton:

Vilber Newton 7.0 Marketing Video, <https://www.youtube.com/watch?v=Zw6QxSuUZ24>.



30. The Newton imaging system includes a central opening that is aligned with a camera that is mounted to the support structure so that the housing does not obstruct the camera’s field of view. A non-limiting example of the foregoing can be seen in Vilber’s marketing video for the Newton:



Vilber Newton 7.0 Marketing Video, <https://www.youtube.com/watch?v=Zw6QxSuUZ24>.

31. The Newton imaging system contains a light source positioned within each of the plurality of lamp receptacles. A non-limiting example of the foregoing can be seen in the marketing video from Scintica for Vilber’s Newton products:



Scintica Newton Marketing Video, <https://www.scintica.com/webinar-product-launch-vilbers-newton-7-0-ft-series-in-vivo-3d-optical-tomography-now-accessible-to-everyone/>.

32. The Newton product leaflet further states that “[e]ach individual light source delivers a precisely defined range of the spectrum,” demonstrating the presence of a light source within each of the plurality of lamp receptacles. Ex. B at 2.

33. The Newton imaging system includes at least one light source that comprises a narrow-band light source. A non-limiting example of the foregoing can be found in the product specification section of Scintica's website:

EXCITATION		
White-Light	Dual EPI-White light LED panels	Dual EPI-White light LED panels
Fluorescence	Upgradeable to Fluorescence	8 Fluorescent channels included 420 / 480 / 520 / 580 / 640 / 680 / 740 / 780nm
EMISSION		
Filter Wheel	10-position Motorized filter wheel	10-position Motorized filter wheel
Emission Filters	4 Narrow Band-pass filters included for the BLI Tomography 500 / 550 / 600 / 650nm	8 Narrow Band-pass filters included for the BLI Tomography 500 / 550 / 600 / 650nm

<https://www.scintica.com/products/vilber-imaging/vilber-newton-7/>.

34. Further, the Vilber product leaflet describing the Newton products states, among other things, “[e]ach individual light source delivers a precisely defined range of the spectrum.” See Ex. B.

35. The Newton imaging system contains a diffuser positioned within at least some of the plurality of lamp receptacles. A non-limiting example of the foregoing can be seen in Scintica's marketing videos for the Newton imaging system:



Scintica Newton Marketing Video, <https://www.scintica.com/webinar-product-launch-vilbers-newton-7-0-ft-series-in-vivo-3d-optical-tomography-now-accessible-to-everyone/>.

36. The Newton imaging system contains a diffuser that actively diffuses light from within a lamp receptacle inside the Newton imaging system. A non-limiting example of the foregoing can be found in Scintica's marketing video:



Scintica Newton Marketing Video, <https://www.scintica.com/webinar-product-launch-vilbers-newton-7-0-ft-series-in-vivo-3d-optical-tomography-now-accessible-to-everyone/>.

37. The Newton imaging device has a control system operatively connected to the imaging system's light sources that operates selected light sources to provide a desired excitation illumination to an object within the field of view of the camera. A non-limiting example of the foregoing can be seen in the Newton product leaflet:



Ex. B at 1; see also <https://www.scintica.com/products/vilber-imaging/vilber-newton-7/>.

38. Further, the control system for the Newton imaging system allows a user to load the machine with an object in the field of view of the Newton system's camera, is operatively connected to the light sources, and operates selected light sources to provide a desired excitation illumination. A non-limiting example of the foregoing can be seen in Vilber's marketing video. See Vilber Newton 7.0 Marketing Video, <https://www.youtube.com/watch?v=Zw6QxSuUZ24>;

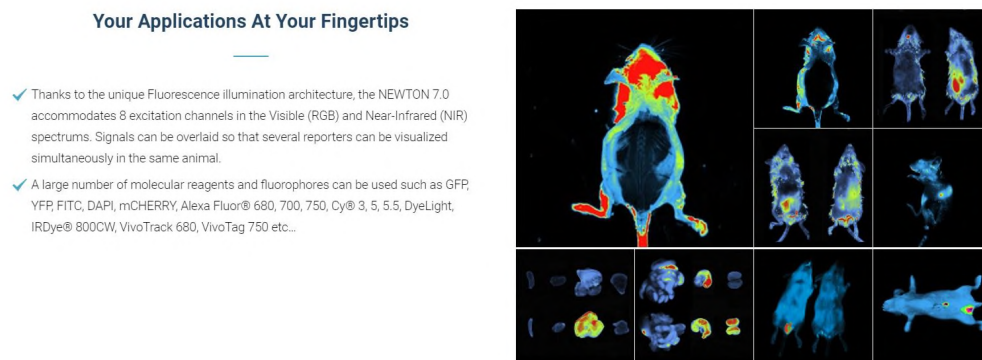


see also <https://www.scintica.com/products/vilber-imaging/vilber-newton-7/>.

39. Additionally, the Newton marketing materials state that the Newton imaging system has an “[i]ntuitive user interface. One click to get the image[,] [a]utoexposure and automatic illumination control.” Ex. B at 4. And, Scintica’s website further states that “Multispectral in vivo imaging is possible by using different luciferase enzyme/substrate pairs or by using different fluorescent dyes. Signals can be overlaid within the same image, up to 3 reporters can be imaged simultaneously.” See <https://www.scintica.com/products/vilber-imaging/vilber-newton-7/>.

40. The Newton marketing materials show objects fluorescing in response to the excitation illumination provided by the light sources within the Newton imaging system.

Ex. B at 1.



41. Objects fluorescing in response to the excitation illumination provided by the light sources can also be seen on Vilber's and Scintica's websites.



See <https://www.vilber.com/newton-7-0/>; see also <https://www.scintica.com/products/vilber-imaging/vilber-newton-7>.

42. On information and belief, Scintica has been aware of the existence of the '516 patent since at least September 2019 and has willfully blinded itself as to the infringing nature of its activity since the issuance of the '516 patent on December 2, 2014.

43. Scintica's infringement has injured Spectral and will continue to cause ongoing injury to Spectral. Spectral is entitled to recover damages adequate to compensate for Scintica's infringement. Because Scintica's infringement has been and continues to be willful and deliberate, the Court should award enhanced damages under 35 U.S.C. § 284 and also find this case exceptional and award attorney's fees under 35 U.S.C. § 285.

44. Spectral has suffered and will continue to suffer irreparable injury as a direct and proximate result of Scintica's infringement for which there is no adequate remedy at law. Unless Scintica is enjoined, Spectral will continue to suffer such irreparable injury.

45. Scintica's infringement has been without authority and/or license from Spectral.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Spectral demands a trial by jury of all issues presented in this complaint that are so triable.

PRAYER FOR RELIEF

WHEREFORE, Spectral respectfully requests the following relief:

1. A judgment that the '516 patent is infringed by Scintica, whether literally or under the doctrine of equivalents;
2. A judgment that Scintica's infringement of the '516 patent has been willful;
3. A judgment and order permanently enjoining Scintica, its officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with it, from further acts of infringement of the '516 Patent pursuant to 35 U.S.C. § 283;
4. A judgment and order requiring Scintica to pay Spectral its damages, costs, expenses, and pre-judgment and post-judgment interest for Scintica's infringement of the '516 Patent as provided under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict or post-judgment infringement with an accounting as needed;
5. A judgment and order requiring Scintica to pay Spectral enhanced damages for willful infringement as provided under 35 U.S.C. § 284;
6. A judgment and order finding this case exceptional and requiring Scintica to pay Spectral its reasonable attorneys' fees and costs incurred in this litigation pursuant to 35 U.S.C. § 285, together with pre-judgment and post-judgment interest thereon; and
7. Awarding Spectral all such other and further relief, in law or equity, as the Court deems just and proper under the circumstances.

Dated: January 6, 2022

Respectfully submitted,

/s/ Dawn M. Jenkins

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