

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

**VIRTUAL IMMERSION
TECHNOLOGIES LLC,**

Plaintiff,

v.

MERCK AND CO., INC.

Defendant.

Civ. No. 6:20-cv-610

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Virtual Immersion Technologies LLC (“VIT” or “Plaintiff”), by and through its attorneys, hereby alleges for its Complaint on personal knowledge as to its own activities and on information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

THE PARTIES

2. Plaintiff Virtual Immersion Technologies LLC is a limited liability company organized under the laws of the State of Texas.

3. VIT is the current assignee of United States Patent No. 6,409,599 (“the ’599 patent” or “the patent-in-suit.”) On June 25, 2002, the United States Patent and Trademark Office duly and legally issued the ’599 patent. The ’599 patent is titled “Interactive Virtual Reality Performance Theater Entertainment System.” The application leading to the ’599 patent

was filed on July 19, 1999. A true and correct copy of the '599 patent is attached hereto as Exhibit A.

4. On or around February 24, 2016, VIT acquired 100% ownership of all right, title and interest in the patent-in-suit, including the right to bring patent enforcement actions for damages accruing prior to February 24, 2016. The assignment to VIT of ownership of the patent-in-suit was recorded with the United States Patent & Trademark Office (“PTO”) on or around August 26, 2016.

5. Defendant Merck and Co., Inc. (“Merck”) is a corporation organized and existing under the laws of New Jersey, with its principal place of business at 2000 Galloping Hill Road Kenilworth, NJ 07033, and on information and belief maintains a regular and established place of business at 1601 Trinity St., Austin, TX 78701.

JURISDICTION AND VENUE

6. 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).

7. Regarding Defendant Merck, venue is proper within this District under 28 U.S.C. § 1400(b) because, on information and belief, Merck maintains a regular and established place of business in this District and has committed infringing acts in this District.

8. Upon information and belief, Merck is subject to this Court’s general and specific personal jurisdiction because it has sufficient minimum contacts within the State of Texas and this District, pursuant to due process and/or the Texas Long-Arm Statute, because Defendant Merck purposefully availed itself of the privileges of conducting business in the State of Texas and in this District, because Merck regularly conducts and solicits business within the State of Texas and within this District, and because Plaintiff’s causes of action arise directly from

Merck's business contacts and other activities in the State of Texas and this District. Having purposefully availed itself of the privilege of conducting business within this District, Merck should reasonably and fairly anticipate being brought into court here.

9. Upon information and belief, Defendant Merck maintains at least one regular and established place of business in this District: at least part or all of a regional office (the "Austin Facility.") The Austin Facility is located at 1601 Trinity St., Austin, TX 78701, within Travis County in this District.

10. Currently, the Austin Facility is publicly associated with Merck. (Source: <https://www.merck.com/about/featured-stories/austin.html> and <https://patch.com/texas/downtownaustin/merck-build-20m-it-hub-austin-creating-600-local-jobs>, last accessed and downloaded July 6, 2020.) Based at least on these facts, the Austin Facility in Austin, Texas is believed to be a regular and established place of business that is associated directly Merck.

11. Merck has committed and continues to commit acts of infringement within the state of Texas, as alleged herein. The Austin Facility has many employees and continues to expand the number of employees. (Source: *See* <https://patch.com/texas/downtownaustin/merck-build-20m-it-hub-austin-creating-600-local-jobs> and <https://jobs.merck.com/us/en/search-results>, last accessed and downloaded July 6, 2020) (listing open job positions at the Austin Facility.)

12. Merck is utilizing virtual reality as a "core driver of innovation, user adoption , and ROI [(return of investment)]" and to "improve our financial performance." (Source: <https://www.merck.com/about/featured-stories/austin.html>, last accessed and downloaded July 6, 2020.) For example, Merck realizes these benefits through the use of VR/AR headsets which has virtual reality functionality. (Source: *See id.*) On information and belief, Merck uses and

develops these virtual reality technologies within the state of Texas and this District. (Source: *See* <https://www.merck.com/about/featured-stories/austin.html>; and <https://www.gdcvault.com/play/1024750/Immersive-Tech-in-Merck>, last accessed and downloaded July 6, 2020.)

13. As previously stated, Defendant currently uses virtual and augmented reality systems. (Source: *see* <https://www.merck.com/about/featured-stories/austin.html>; and <https://www.gdcvault.com/play/1024750/Immersive-Tech-in-Merck>, last accessed and downloaded July 6, 2020.) This technology includes an immersive virtual reality environment where participants and live performers can interact with each other and the environment via input and output devices for the performers and the participants. (*See* VIT's Claim Chart for claim 9 of the '599 patent, Ex. B at 1-10.)

14. As detailed in the paragraphs below, Defendant utilizes a virtual reality system and practice method for participants and performers to interact in an immersive virtual reality environment, which meets all the features of the asserted claim. (*Id.* at 1-10.)

15. The Defendant's method includes providing at least one performer input and output devices in electronic communication with the virtual environment and one or more participant input and output devices in electronic communication with the virtual environment. (*Id.* at 3-7.)

16. Defendant's method provides the virtual environment, which includes a video image of one or more live performers with audio communication between the one or more live performers and one or more participants. (*Id.* at 7-8.)

17. In the Defendant's method, the one or more participants interact with the one or more live performers and the virtual environment resulting in an experience partially controlled by the one or more participants using an input device. (*Id.* at 8-10.)

18. Defendant has derived substantial revenues from its infringing acts, including those of Merck occurring within Texas, including in this District.

19. Merck is subject to the Court's personal jurisdiction at least due to its utilization of the virtual reality system within Texas, including in this District.

20. Merck has committed such purposeful acts or transactions in Texas and this District such that it reasonably should know and expect that it could be haled into court in this State because of such activities.

21. As detailed in the paragraphs below, Merck supports the creation, maintenance and utilization of an immersive virtual reality system and practice method, which permits live performers and participants to interact with each other and the environment in the United States, including those infringing actions of Merck occurring within the state of Texas, including in this District.

22. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

23. Venue is proper in this district under 28 U.S.C. § 1400(b) with respect to Defendant Merck. Defendant Merck maintains a regular and established place of business in this District and has committed infringing acts in this District.

24. For the above reasons, personal jurisdiction exists and venue is proper in this Court for Defendant.

COUNT I

PATENT INFRINGEMENT OF UNITED STATES PATENT NO. 6,409,599

25. Plaintiff incorporates the above paragraphs herein by reference.

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