

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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LIFEPORT SCIENCES LLC,

Plaintiff,

v.

MEDTRONIC, INC. and  
MEDTRONIC VASCULAR, INC.,

Defendant.

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C.A. No. \_\_\_\_\_

Jury Trial Demanded

**COMPLAINT**

1. Plaintiff LifePort Sciences LLC (“LifePort” or “Plaintiff”), for its Complaint against Defendants Medtronic, Inc. (“Medtronic”) and Medtronic Vascular, Inc. (“Medtronic Vascular”) (collectively, “Defendants”) hereby alleges as follows:

**PARTIES**

2. Plaintiff LifePort is a Texas Limited Liability Company with its principal place of business at 6136 Frisco Square Blvd., Suite 385, Frisco, TX 75034.

3. Upon information and belief, Defendant Medtronic is a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business located at 710 Medtronic Parkway, Minneapolis, MN 55432.

4. Upon information and belief, Defendant Medtronic Vascular is a corporation organized and existing under the laws of the Delaware, with a principal place of business located at 3576 Unocal Place, Fountain Grove A, Santa Rosa, CA 95403.

5. Defendants are in the business of developing, manufacturing, and selling medical devices. Such devices include, but are not limited to, endovascular stents, grafts,

and delivery systems.

### **NATURE OF THE ACTION**

6. This is a civil action for the infringement of United States Patent No. 5,562,728 (the “’728 Patent”) (attached as Exhibit A) entitled “Endovascular Grafting Apparatus, System and Method and Devices for Use Therewith,” and United States Patent No. 7,147,662 (the “’662 Patent”) (attached as Exhibit B) entitled “Hook for Attaching to a Corporeal Lumen and Method of Manufacturing,” (collectively, the “Patents-in-Suit”) under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*

7. Plaintiff LifePort is the lawful assignee of all right, title and interest in and to the Patents-in-Suit.

### **JURISDICTION AND VENUE**

8. This Court has original jurisdiction over the subject matter of this Complaint under 28 U.S.C. § 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271, *et seq.*

9. Upon information and belief, Defendants are subject to personal jurisdiction by this Court. Defendants have committed such purposeful acts and/or transactions in the State of Delaware that they reasonably knew and/or expected that they could be haled into a Delaware court as a future consequence of such activity. In addition, the Defendants have committed acts of infringement of one or more of the claims of the Patents-in-Suit in this judicial district. Moreover, Defendant Medtronic Vascular is incorporated in this judicial district.

10. Venue in this district is proper under 28 U.S.C. §§ 1400(b) and 1391(b) and (c), because the Defendants are subject to personal jurisdiction in this district and have committed acts of infringement in this district. Defendants make, use, and/or sell infringing products within the District of Delaware, have a continuing presence within the District of

Delaware, and have the requisite minimum contacts with the District of Delaware such that this venue is a fair and reasonable one. Upon information and belief, Defendants have transacted and, at the time of the filing of this Complaint, are continuing to transact business within the District of Delaware.

### **COUNT I**

#### **(Defendants' Infringement of the '728 Patent)**

11. Paragraphs 1 through 10 are incorporated by reference as if fully restated herein.

12. Plaintiff LifePort is the assignee and lawful owner of all right, title and interest in and to the '728 Patent.

13. Defendants make, use, sell, offer to sell and/or import into the United States for subsequent sale or use products, services, methods or processes that directly and/or indirectly infringe, literally and/or under the doctrine of equivalents, or which employ systems, components and/or processes that make use of systems or processes that directly and/or indirectly infringe, literally and/or under the doctrine of equivalents, one or more of the claims of the '728 Patent. In particular, the Defendants' Endurant® II AAA Stent Graft System is an infringing medical device.

14. Defendants actively, knowingly, and intentionally induced, and continue to actively, knowingly, and intentionally induce, infringement of the '728 Patent by making, using, offering for sale, importing, and selling infringing medical devices, as well as by contracting with others to use, market, sell, offer to sell, and import infringing medical devices, all with knowledge of the '728 Patent and its claims; with knowledge that their customers and end users will use, market, sell, offer to sell, and import infringing medical devices; and with the knowledge and the specific intent to encourage and facilitate those infringing sales and uses of infringing medical devices through the creation and

dissemination of promotional and marketing materials, instructional materials, product manuals, and technical materials.

15. Defendants have also contributed to the infringement by others, including the end users of infringing medical devices, and continue to contribute to infringement by others, by selling, offering to sell, and importing the infringing medical devices into the United States, knowing that those products constitute a material part of the inventions of the '728 Patent, knowing those products to be especially made or adapted to infringe the '728 Patent, and knowing that those products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

16. Defendants have had knowledge of and notice of the '728 Patent and their infringement since at least, and through, the filing and service of the Complaint. Moreover, by way of prosecution of patent applications assigned to one or more of the Defendants, Defendants had notice of the '728 Patent prior to the filing of the Complaint. Despite this knowledge and notice, Defendants continue to commit tortious conduct by way of patent infringement. Accordingly, Defendants have willfully infringed the '728 Patent.

17. Defendants have been and continue to be infringing one or more of the claims of the '728 Patent through the aforesaid acts.

18. Plaintiff is entitled to recover damages adequate to compensate for the infringement, including enhanced damages for Defendants' willful infringement.

## **COUNT II**

### **(Defendants' Infringement of the '662 Patent)**

19. Paragraphs 1 through 18 are incorporated by reference as if fully restated herein.

20. Plaintiff LifePort is the assignee and lawful owner of all right, title and interest in and to the '662 Patent.

21. Defendants make, use, sell, offer to sell and/or import into the United States for subsequent sale or use products, services, methods or processes that directly and/or indirectly infringe, literally and/or under the doctrine of equivalents, or which employ systems, components and/or processes that make use of systems or processes that directly and/or indirectly infringe, literally and/or under the doctrine of equivalents, one or more of the claims of the '662 Patent. In particular, the Defendants' Endurant® II AAA Stent Graft System is an infringing medical device.

22. Defendants actively, knowingly, and intentionally induced, and continue to actively, knowingly, and intentionally induce, infringement of the '662 Patent by making, using, offering for sale, importing, and selling infringing medical devices, as well as by contracting with others to use, market, sell, offer to sell, and import infringing medical devices, all with knowledge of the '662 Patent and its claims; with knowledge that their customers and end users will use, market, sell, offer to sell, and import infringing medical devices; and with the knowledge and the specific intent to encourage and facilitate those infringing sales and uses of infringing medical devices through the creation and dissemination of promotional and marketing materials, instructional materials, product manuals, and technical materials.

23. Defendants have also contributed to the infringement by others, including the end users of infringing medical devices, and continue to contribute to infringement by others, by selling, offering to sell, and importing the infringing medical devices into the United States, knowing that those products constitute a material part of the inventions of the '662 Patent, knowing those products to be especially made or adapted to infringe the '662 Patent, and knowing that those products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

24. Defendants have had knowledge of and notice of the '662 Patent and their

infringement since at least, and through, the filing and service of the Complaint. Despite this knowledge and notice, Defendants continue to commit tortious conduct by way of patent infringement.

25. Defendants have been and continue to be infringing one or more of the claims of the '662 Patent through the aforesaid acts.

26. Plaintiff LifePort is entitled to recover damages adequate to compensate for the infringement.

### **PRAYER FOR RELIEF**

WHEREFORE, LifePort, respectfully requests the following relief:

- a) A judgment that U.S. Patent Nos. United States Patent Nos. 5,562,728 and 7,147,662 are valid and enforceable.
- b) A judgment that Defendants have infringed the '728 Patent;
- c) A judgment that Defendants have infringed the '662 Patent;
- d) A judgment that LifePort be awarded all appropriate damages (including enhanced damages for willful infringement) under 35 U.S.C. § 284 for the Defendants' past infringement, and any continuing or future infringement of the Patents-in-Suit, up until the date such judgment is entered, including pre and post judgment interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary, to adequately compensate LifePort for Defendants' infringement, an accounting:
  - i. that this case be declared exceptional within the meaning of 35 U.S.C. § 285 and that LifePort be awarded its reasonable attorneys' fees against Defendants that it incurs in prosecuting this action
  - ii. that LifePort be awarded costs, and expenses that it incurs in prosecuting this action; and
  - iii. that LifePort be awarded such further relief at law or in equity as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

1. LifePort hereby demands trial by jury on all claims and issues so triable.

DATED: December 28, 2012

Respectfully submitted,

FARNAN LLP

/s/ Brian E. Farnan

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