

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

KARDIAMETRICS, LLC,

Plaintiff,

v.

BOSTON SCIENTIFIC CORPORATION,

Defendant.

C.A. No.

DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Kardiametrics, LLC, for its Complaint against Boston Scientific Corporation (“Defendant”), alleges as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement in violation of the Patent Act of the United States, 35 U.S.C. §§ 1 *et seq.*
2. This Court has original and exclusive subject matter jurisdiction over the patent infringement claims for relief under 28 U.S.C. §§ 1331 and 1338(a).
3. This Court has personal jurisdiction over Defendant because Defendant has transacted and is transacting business in the District of Delaware that includes, but is not limited to, the sale of products that practice the subject matter claimed in the patents involved in this action.
4. Venue is proper in this district under 28 U.S.C. §1391(b-c) and 1400(b) because a substantial part of the events or omissions giving rise to the claims occurred in this District where Defendant has done business and committed infringing acts and continues to do business and to commit infringing acts.

PARTIES

5. Plaintiff Kardiametrics, LLC (“Plaintiff”) is a limited liability company organized under the laws of the State of Delaware.

6. Plaintiff is informed and believes, and on that basis alleges, that Defendant is a corporation organized under the laws of the State of Delaware, with its principal place of business at 1 Boston Scientific Place, Natick, Massachusetts 01760. Plaintiff is further informed and believes, and on that basis alleges, that Defendant is in the business of selling medical devices and that, at all times relevant hereto, Defendant has done and continues to do business in this judicial district, including, but not limited to, selling products to customers located in this judicial district.

FACTS

7. Plaintiff is informed and believes that in 1995, PercuSurge, Inc. (“PercuSurge”) was formed as a private company to develop solutions allowing interventional vascular physicians to capture and remove debris and blood clots, otherwise known as emboli and thrombi that dislodged during artery-clearing procedures such as angioplasty and stent treatments, that might otherwise block downstream vessels and damage those vessels and organs such as the brain and heart.

8. Plaintiff is informed and believes that in December 2000, Medtronic, Inc. acquired PercuSurge for approximately \$225 million in stock at a time when PercuSurge had no product approved for patient use in the United States and eleven issued US patents and approximately twenty-six pending US applications.

9. Plaintiff is informed and believes that on or about June 1, 2001, the U.S Food and Drug Administration (the “FDA”) granted clearance to Medtronic to market the PercuSurge

GuardWire Plus™ Temporary Occlusion and Aspiration System (the “GuardWire”). Plaintiff is further informed and believes that the GuardWire was the first distal embolic protection system to receive FDA approval in the United States.

10. On April 8, 2003, United States Patent No. 6,544,276 entitled “Exchange Method for Emboli Containment” (the “‘276 Patent”) was duly and legally issued to Gholam-Reza Zadno Azizi (“Zadno”) as inventor. A true and correct copy of United States Patent No. 6,544,276 is attached hereto as Exhibit “A” and incorporated herein by this reference.

11. On January 17, 2006, United States Patent No. 6,986,778 entitled “Exchange Method for Emboli Containment” (the “‘778 Patent”) was duly and legally issued to Zadno as inventor. A true and correct copy of United States Patent No. 6,986,778 is attached hereto as Exhibit “B” and incorporated herein by this reference.

12. On or about April 18, 2013, Plaintiff acquired by assignment all right, title and interest in and to the ‘276 Patent. The ‘276 Patent is valid and in force. On or about February 14, 2014, Plaintiff executed an amendment to that assignment.

13. On or about April 18, 2013, Plaintiff acquired by assignment all right, title and interest in and to the ‘778 Patent. The ‘778 Patent is valid and in force. On or about February 14, 2014, Plaintiff executed an amendment to that assignment.

14. Plaintiff is informed and believes that Defendant cited the ‘276 Patent and the ‘778 Patent in Information Disclosure Statements to the United States Patent Office. Plaintiff is informed and believes, and on that basis alleges, that Defendant knew or should have known of the ‘276 and ‘778 Patents.

15. Defendant has been and is now infringing the ‘276 Patent and the ‘778 Patent, in this judicial district and elsewhere, by selling and distributing certain medical devices, including

the FilterWire EZ™ Embolic Protection System; NexStent® Carotid Stent System; NexStent® Carotid Stent; NexStent® Carotid Stent and Delivery System; NexStent® Carotid Stent and Monorail® Delivery System; and the Carotid WALLSTENT® Monorail® Endoprosthesis. For example, when the FilterWire EZ™ Embolic Protection System is used with any of the other identified products, numerous claims of the ‘276 Patent and the ‘778 Patent are infringed. Further, Defendant has been and is now intending to and/or encouraging others to directly infringe the ‘276 Patent and the ‘778 Patent. Specifically, Defendant has been and is now directing end users of the above referenced products, including through written techniques and instructions, to these products alone or in combination to infringe the ‘276 Patent and the ‘778 Patent.

FIRST CLAIM FOR RELIEF
(Infringement of the ‘276 Patent)

16. Plaintiff refers to and incorporates herein by reference paragraphs 1-15.

17. The claims of the ‘276 Patent relate to “medical catheters used in treating saphenous vein grafts, coronary arteries, and other blood vessels, and more particularly, to a method for exchanging catheters during emboli containment in such vessels.”

18. Defendant, by the acts complained of herein, and by making, using, selling, offering for sale, and/or importing in the United States, including in the District of Delaware, instrumentalities embodying the invention, has in the past, does now, and continues to infringe the ‘276 Patent directly, contributorily and/or by inducement, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

19. By reason of the acts of Defendant alleged herein, Plaintiff has suffered damage in an amount to be proved at trial.

20. Further, Defendant threatens to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable injury. It would be difficult to ascertain the amount of compensation that would afford Plaintiff adequate relief for such future and continuing acts, and a multiplicity of judicial proceedings would be required. Plaintiff does not have an adequate remedy at law to compensate it for the injuries threatened.

21. Plaintiff is informed and believes, and on that basis alleges, that the infringement by Defendant is willful, wanton, and deliberate, without license and with full knowledge of the '776 Patent, thereby making this an exceptional case entitling Plaintiff to attorneys' fees and enhanced damages.

SECOND CLAIM FOR RELIEF
(Infringement of the '778 Patent)

22. Plaintiff refers to and incorporates herein by reference paragraphs 1-21.

23. The claims of the '778 Patent relate to "medical catheters used in treating saphenous vein grafts, coronary arteries, and other blood vessels, and more particularly, to a method for exchanging catheters during emboli containment in such vessels."

24. Defendant, by the acts complained of herein, and by making, using, selling, offering for sale, and/or importing in the United States, including in the District of Delaware, instrumentalities embodying the invention, has in the past, do now, and continue to infringe the '778 Patent directly, contributorily and/or by inducement, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

25. By reason of the acts of Defendant alleged herein, Plaintiff has suffered damage in an amount to be proved at trial.

26. Further, Defendant threatens to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable injury. It would be difficult to ascertain the amount of compensation that would afford Plaintiff adequate relief for such future and continuing acts, and a multiplicity of judicial proceedings would be required. Plaintiff does not have an adequate remedy at law to compensate it for the injuries threatened.

27. Plaintiff is informed and believes, and on that basis alleges, that the infringement by Defendant is willful, wanton, and deliberate, without license and with full knowledge of the '778 Patent, thereby making this an exceptional case entitling Plaintiff to attorneys' fees and enhanced damages.

JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- A. For an order finding that the '276 Patent is valid and enforceable;
- B. For an order finding that the '778 Patent is valid and enforceable;
- C. For an order finding that Defendant has infringed the '276 Patent directly, contributorily and/or by inducement, in violation of 35 U.S.C. § 271;
- D. For an order finding that Defendant has infringed the '778 Patent directly, contributorily and/or by inducement, in violation of 35 U.S.C. § 271;
- E. For an order finding that Defendant has willfully infringed the '276 Patent;
- F. For an order finding that Defendant has willfully infringed the '778 Patent;

G. For an order temporarily, preliminarily and permanently enjoining Defendant, its officers, directors, agents, servants, affiliates, employees, subsidiaries, divisions, branches, parents, attorneys, representatives, privies, and all others acting in concert or participation with any of them, from infringing the '276 Patent directly, contributorily and/or by inducement, in violation of 35 U.S.C. § 271;

H. For an order temporarily, preliminarily and permanently enjoining Defendant, its officers, directors, agents, servants, affiliates, employees, subsidiaries, divisions, branches, parents, attorneys, representatives, privies, and all others acting in concert or participation with any of them, from infringing the '778 Patent directly, contributorily and/or by inducement, in violation of 35 U.S.C. § 271;

I. For an order directing Defendant to deliver to Plaintiff for destruction or other disposition all infringing products and systems in its possession;

J. For an order directing Defendant to file with the Court, and serve upon Plaintiff's counsel, within thirty (30) days after entry of the order of injunction, a report setting forth the manner and form in which Defendant has complied with the injunction;

K. For an order awarding Plaintiff general and/or specific damages, including a reasonable royalty and/or lost profits, in amounts to be fixed by the Court in accordance with proof, including enhanced and/or exemplary damages, as appropriate, as well as all of Defendant's profits or gains of any kind from its acts of patent infringement;

L. For an order awarding enhanced damages pursuant to 35 U.S.C. § 284 due to the willful and wanton nature of Defendant's infringement;

M. For an order awarding Plaintiff all of its costs, including its attorneys' fees, incurred in prosecuting this action, including, without limitation, pursuant to 35 U.S.C. § 285 and other applicable law;

N. For an order requiring an accounting of the damages to which Plaintiff is found to be entitled;

O. For an order awarding Plaintiff pre-judgment and post-judgment interest; and

P. For an order awarding Plaintiff such other and further relief as the Court may deem just and proper.

DATED: February 18, 2014

OF COUNSEL:

Stanley M. Gibson
Ryan S. Mauck
Jeffer Mangels Butler & Mitchell LLP
1900 Avenue of the Stars, Seventh Floor
Los Angeles, CA 90067
(310) 203-8080
smg@jmbm.com
rxm@imbm.com

/s/ Kenneth L. Dorsney
Kenneth L. Dorsney (#3726)
MORRIS JAMES LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801-1494
kdorsney@morrisjames.com

*Attorneys for Plaintiff,
Kardiametrics, LLC*