

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

KARDIAMETRICS, LLC ,

Plaintiff,

v.

MERIT MEDICAL SYSTEMS, INC.,

Defendant.

C.A. No.

DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Kardiametrics, LLC, for its Complaint against Merit Medical Systems, Inc. (“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 Merit Medical Systems, Inc. is a corporation organized under the laws of the State of Utah, with its principal place of business at 1600 W. Merit Parkway, South Jordan, Utah 84095. 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, by selling the medical devices listed below 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 October 24, 2000, United States Patent No. 6,135,991 entitled “Aspiration Method” (the “‘991 Patent”) was duly and legally issued to Ketan P. Muni, Gholam-Reza Zadno-Azizi, and Celso Bagaoisan as inventors. A true and correct copy of United States Patent No. 6,135,991 is attached hereto as Exhibit “A” and incorporated herein by this reference.

11. On January 31, 2012, United States Patent Office issued an Ex Parte Reexamination Certificate for the ‘991 Patent confirming the patentability of claims 12-14. Plaintiff is informed and believes that the United States Patent Office did not reexamine claims 1-11 and 15-59.

12. On September 24, 2002, United States Patent No. 6,454,741 entitled “Aspiration Method” (the “‘741 Patent”) was duly and legally issued to Ketan P. Muni, Gholam Reza Zadno-Azizi, and Celso Bagaoisan as inventors. A true and correct copy of United States Patent No. 6,454,741 is attached hereto as Exhibit “B” and incorporated herein by this reference.

13. On July 10, 2012, United States Patent Office issued an Ex Parte Reexamination Certificate for the ‘741 Patent confirming the patentability of claims 47-53. Plaintiff is informed and believes that the United States Patent Office did not reexamine claims 1-46 and 54-68.

14. On or about April 18, 2013, Plaintiff acquired by assignment all right, title and interest in and to the ‘991 Patent. The ‘991 Patent is valid and in force. On or about February 14, 2014, Plaintiff executed an amendment to that assignment.

15. On or about April 18, 2013, Plaintiff acquired by assignment all right, title and interest in and to the '741 Patent. The '741 Patent is valid and in force. On or about February 14, 2014, Plaintiff executed an amendment to that assignment.

16. Defendant has been and is now infringing the '991 Patent, in this judicial district and elsewhere, by selling and distributing certain medical devices including the ASAP® Aspiration Catheter which, individually or in combination, incorporate and/or use subject matter claimed by the '991 Patent. Further, Defendant has been and is now intending to and/or encouraging others to directly infringe the '991 Patent and '741 Patent. Specifically, Defendant has been and is now directing end users of the above referenced products, including through written techniques and instructions, to use these products alone or in combination to infringe the '991 Patent and '741 Patent.

FIRST CLAIM FOR RELIEF
(Infringement of the '991 Patent)

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

18. The claims of the '991 Patent relate to “an improved method for aspirating emboli, thrombi, and other types of particles from the human arterial or venous system, the method being particularly well suited for treating stenoses or occlusions within saphenous vein grafts, coronary arteries, arteries above the aortic arch such as the carotid and cerebral arteries, and similar vessels.”

19. 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 '991 Patent directly, contributorily and/or by inducement, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

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

21. 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.

SECOND CLAIM FOR RELIEF
(Infringement of the '741 Patent)

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

23. The claims of the '741 Patent relate to "an improved method for aspirating emboli, thrombi, and other types of particles from the human arterial or venous system, the method being particularly well suited for treating stenoses or occlusions within saphenous vein grafts, coronary arteries, arteries above the aortic arch such as the carotid and cerebral arteries, and similar 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, does now, and continues to infringe the '741 Patent 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.

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 '991 Patent is valid and enforceable;
- B. For an order finding that the '741 Patent is valid and enforceable;
- C. For an order finding that Defendant has infringed the '991 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 '741 Patent contributorily and/or by inducement, in violation of 35 U.S.C. § 271;
- E. For an order temporarily, preliminarily and permanently enjoining Defendant, their 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 '991 Patent directly, contributorily and/or by inducement, in violation of 35 U.S.C. § 271;
- F. For an order temporarily, preliminarily and permanently enjoining Defendant, their 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 '741 Patent contributorily and/or by inducement, in violation of 35 U.S.C. § 271;

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

H. 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;

I. 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;

J. 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;

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

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

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

DATED: February 18, 2014

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