

CONNELL FOLEY

Liza M. Walsh

Hector D. Ruiz

85 Livingston Ave.

Roseland, NJ 07068

Tel: (973) 535-0500

Fax: (973) 535-9217

lwalsh@connellfoley.com

hruiz@connellfoley.com

VENABLE LLP

Paul F. Strain (*pro hac vice* to be submitted)

Adam R. Hess (*pro hac vice* to be submitted)

Michael B. MacWilliams (*pro hac vice* to be submitted)

Meaghan H. Kent (*pro hac vice* to be submitted)

575 7th Street, N.W.

Washington, D.C. 20004

Tel: (202) 344-4000

Fax: (202) 344-8300

pfstrain@venable.com

arhess@venable.com

mbmacwilliams@venable.com

mhkent@venable.com

Attorneys for Plaintiff Hospira, Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

_____	x	
	:	
HOSPIRA, INC.,	:	Civil Action No.
	:	
	:	
Plaintiff,	:	
	:	
v.	:	COMPLAINT FOR DECLARATORY
	:	JUDGMENT
IVERA MEDICAL CORP. and	:	
BECTON, DICKINSON AND COMPANY,	:	JURY TRIAL DEMANDED
	:	
Defendants.	:	
_____	x	

Plaintiff Hospira, Inc. (“Hospira”), by its undersigned attorneys, as and for its complaint against defendants Ivera Medical Corporation (“Ivera”) and Becton, Dickinson and Company (“BD”), says:

NATURE OF THE ACTION

1. This is an action for declaratory judgment of non-infringement and invalidity of a United States patent pursuant to the Declaratory Judgments Act, 28 U.S.C. §§ 2201-2202, and the United States patent law, 35 U.S.C. § 1 *et seq.*, and for other such relief as the Court deems just and proper.

PARTIES

2. Plaintiff Hospira is a Delaware corporation with its principal place of business in Lake Forest, Illinois.

3. Founded in 2004, Hospira is the world's leading provider of injectable drugs and infusion technologies. Its EffectIV™ cap is a physical disinfectant cap for use in connection with intravenous (IV) fluid line access valves. It creates a physical barrier against external contamination and wear to help protect patients and provide healthcare facilities with an integrated solution for IV disinfection and protection, helping in the fight against IV-related blood stream infections.

4. On information and belief, Defendant Ivera is a California corporation that has alleged its principal place of business is at 3525 Del Mar Heights Road, Suite 430, San Diego, California 92130.

5. On information and belief, Defendant BD is a New Jersey corporation with its principal place of business at 1 Becton Drive, Franklin Lakes, New Jersey 07417.

THE PATENT-IN-SUIT

6. Defendant BD is the registered assignee and owner of United States Patent No. 8,740,864 (“the ‘864 patent”). Entitled “Patient Fluid Line Access Valve Antimicrobial Cap/Cleaner,” the ‘864 patent issued on June 3, 2014.

7. Defendant Ivera is, according to its press releases, the exclusive licensee of the ‘864 patent. *See* Exhibits A, B, C, D.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 because it arises under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*

9. This Court has personal jurisdiction over Defendants by virtue of, *inter alia*, Defendant BD being resident in the state of New Jersey and both Defendants regularly conducting business within the State of New Jersey and this judicial district.

10. Venue is proper in this district under 28 U.S.C. § 1391 because BD resides in this judicial district and because Defendants conduct business in this judicial district.

THE CONTROVERSY

11. Hospira introduced its EffectIV™ cap in 2009. Since then, Defendant Ivera has asserted three patents in two separate infringement actions against Hospira. *See* Case Nos. 11-cv-1246 and 12-cv-1582 (S.D. Cal.).

12. Since Ivera’s inception, it has filed numerous patent infringement suits against Hospira and other competitors in this field, including Catheter Connections, Inc., Excelsior Medical Corporation, and their distributors.¹ Indeed, Ivera frequently initiates litigation the same day that its patents issue or emerge from reexamination. For example, one of its asserted patents – U.S. Patent No. 8,206,514 – issued on June 26, 2012, and that same day, Ivera sued three parties asserting infringement: Plaintiff Hospira, Catheter Connections, Inc. and Excelsior Medical Corporation (S.D. Cal. Case Nos. 12-cv-01581, 12-cv-01582, 12-cv-01587).

¹ *See* Exhibit E (listing of Pacer search results for civil cases filed by Ivera Medical Corporation in federal court).

13. On August 28, 2008, Defendant Ivera issued a press release, entitled “BD (Becton, Dickson and Company) Licenses Intellectual Property to Ivera Medical Corporation,” announcing it had obtained exclusive, global rights to certain BD issued and pending patents, including those that could potentially cause “patent issues” for Ivera’s Curoc Port Protector. *See* Exhibit A.

14. On February 19, 2014, defendant Ivera issued a press release, entitled “Ivera Medical Announces Allowance of Key Patent by USPTO,” to notify its customers and competitors that the Patent Office had allowed the application underlying the ‘864 patent. Consistent with its earlier infringement suits against Hospira, this press release indicates Ivera’s intent to use the ‘864 patent to restrict its competitors’, including Hospira’s, positions in the marketplace. *See* Exhibit B.

15. On April 10, 2014, Ivera issued another press release, entitled “District Court in San Diego Finds in Favor of Ivera; Denies Hospira’s Motion.” In that press release, Ivera again indicated an intent to use the ‘864 patent to exclude its competitors from the marketplace. This press release announced the status of Ivera’s ongoing fluid line access valve cap litigation against Hospira and others, and proclaimed that even in the face of each of the asserted patent claims being found invalid by the Patent Office, Ivera would continue with an aggressive patent assertion program. *See* Exhibit C.

16. On May 1, 2014, Ivera issued another press release, entitled “Ivera Medical Announces Patent Decision from San Diego Court.” Announcing a summary judgment decision invalidating all the patents Ivera had asserted against Hospira in the California actions, Ivera’s CEO yet again indicated Ivera’s intent to rely on the ‘864 patent to stake out its position in the marketplace. *See* Exhibit D.

17. Defendant Ivera's initiation of the California actions against Hospira for infringement of patents that allegedly cover fluid line access valve caps, coupled with Ivera's characterizations of the '864 patent as a "cornerstone" of its "robust portfolio" and the "seminal patent in [the disinfectant cap] space" demonstrates that a substantial dispute exists between the parties over Hospira's right to sell its fluid line access valve cap products free of any infringement claims under the '864 patent. *See* Exhibits B, C, D.

18. The pronouncement of Ivera's CEO that Ivera's strategy of building a portfolio that includes the seminal '864 patent "so that an adverse ruling in one case does not impact the broader strategy [of asserting its patents]" further supports this point. *See* Exhibit D.

19. A definite and concrete, real and substantial, justiciable case or controversy therefore exists between Hospira and Defendants concerning, *inter alia*, the invalidity and non-infringement of the '864 patent which is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

FIRST COUNT

DECLARATORY JUDGMENT OF INVALIDITY OF THE '864 PATENT

20. Hospira repeats the allegations of the foregoing paragraphs as if fully set forth here.

21. The '864 patent is invalid under one or more provisions of the patent law of the United States, including, without limitation, 35 U.S.C. §§ 101, 102, 103, and 112.

22. Accordingly, Hospira seeks a judgment declaring that the claims of the '864 patent are invalid, void and of no legal consequence.

SECOND COUNT

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '864 PATENT

23. Hospira repeats the allegations of the foregoing paragraphs as if fully set forth here.

24. Hospira has not infringed and does not infringe, directly or indirectly, any valid claim of the '864 patent, and has not contributed to or induced and does not contribute to or induce infringement of the '864 patent.

25. Accordingly, Hospira seeks judgment declaring that it does not infringe and has not infringed, directly or indirectly, contributorily or by inducement, any valid claim of the '864 patent.

WHEREFORE, plaintiff Hospira, Inc., requests judgment in its favor and against defendants Ivera Medical Corporation and Becton, Dickinson and Company, as follows:

- a. Declaring that the '864 patent is invalid;
- b. Declaring that Hospira has not infringed and does not infringe the '864 patent and has not contributed to or induced and does not contribute to or induce infringement of the '864 patent;
- c. Awarding to Hospira attorneys' fees under 35 U.S.C. § 285 and costs of suit; and
- d. Awarding such other and further relief as the Court may deem just and appropriate.

DEMAND FOR JURY TRIAL

Hospira respectfully demands trial by jury on all claims so triable.

Dated: June 3, 2014

Respectfully submitted,

s/ Liza M. Walsh

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Hector D. Ruiz

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Roseland, NJ 07068

Tel: (973) 535-0500

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mhkent@venable.com

Attorneys for Plaintiff Hospira, Inc.

LOCAL CIVIL RULE 11.2 CERTIFICATION

Under Local Civil Rule 11.2, the undersigned counsel for Hospira, Inc. hereby certifies that this matter is not the subject of any other action asserted by Hospira, Inc. in any other court, or of any pending arbitration or administrative proceeding.

Dated: June 3, 2014

s/ Liza M. Walsh
Liza M. Walsh

LOCAL CIVIL RULE 201.1 CERTIFICATION

Under Local Civil Rule 201.1, the undersigned counsel for Hospira, Inc. hereby certifies that Hospira, Inc. seeks declaratory relief. This action is, therefore, not appropriate for compulsory arbitration.

Dated: June 3, 2014

s/ Liza M. Walsh
Liza M. Walsh