

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

C. R. BARD, INC. AND BARD
PERIPHERAL VASCULAR, INC.

Plaintiffs,

v.

ANGIODYNAMICS, INC.
Defendant.

C.A. No.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively, “Plaintiffs”) complain and allege as follows against Defendant AngioDynamics, Inc. (“Defendant”):

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.*

2. Plaintiffs have filed this lawsuit to stop Defendant’s unlawful infringement of Plaintiffs’ patented inventions and to obtain damages, and injunction, and other relief.

THE PARTIES

3. C. R. Bard, Inc. is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business located at 730 Central Avenue, Murray Hill, New Jersey, 07974.

4. Bard Peripheral Vascular, Inc. (“BPV”) is a corporation organized and existing under the laws of the State of Arizona with its principal place of business located at 1625 West 3rd Street, Tempe AZ, 85281.

5. Upon information and belief, Defendant is a corporation organized under the laws of the State of Delaware with its principal place of business at 14 Plaza, Latham, NY 12110. Defendant makes, sells, offers for sale, and/or uses medical products, including implantable power-injectable port products throughout the United States, including within this District.

6. BPV is a subsidiary of C. R. Bard, Inc. BPV is an innovator and market leader in vascular access devices.

7. BPV manufactures and distributes implantable power-injectable port products, including PowerPort® products. BPV's innovative PowerPort® ClearVUE® implantable port products were first introduced in 2012. The groundbreaking innovations of the PowerPort® products are covered by the Asserted Patents.

8. BPV competes directly with Defendant in the market for implantable power-injectable port products in the United States.

JURISDICTION AND VENUE

9. This Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

11. This Court has personal jurisdiction over Defendant because, among other reasons, Defendant is incorporated in Delaware and Defendant has conducted and conducts business in this District. Additionally, upon information and belief, Defendant has committed and continues to commit acts of patent infringement in this District, and has harmed and continues to harm Plaintiffs in this District by selling or offering for sale infringing products in this District and by inducing its customers' infringement in this District.

THE PATENTS-IN-SUIT

12. On July 2, 2013, the United States Patent and Trademark Office (the "PTO") duly and legally issued U.S. Patent No. 8,475,417 (the '417 patent"), entitled "Assemblies for Identifying a Power Injectable Access Port." A true and accurate copy of the '417 patent is attached hereto as Exhibit 1.

13. On October 1, 2013, the PTO duly and legally issued U.S. Patent No. 8,545,460 (the '460 patent"), entitled "Infusion Apparatuses and Related Methods." A true and accurate copy of the '460 patent is attached hereto as Exhibit 2.

14. On August 12, 2014, the PTO duly and legally issued U.S. Patent No. 8,805,478 (the '478 patent"), entitled "Methods of Performing a Power Injection Procedure Including Identifying Features of a Subcutaneously Implanted Access Port for Delivery of Contrast Media." A true and accurate copy of the '478 patent is attached hereto as Exhibit 3.

15. C. R. Bard, Inc. is the owner by assignment of the '417 patent, the '460 patent, and the '478 patent (the "Asserted Patents").

16. BPV is the exclusive licensee of the Asserted Patents.

17. Pursuant to 35 U.S.C. § 287(a), Plaintiffs have marked their PowerPort® products with respect to the '417 and '460 patents.

FIRST CAUSE OF ACTION

18. Plaintiffs reallege and incorporate paragraphs 1 – 17 as through fully set forth herein.

19. Defendant has infringed, and continues to infringe, claims 8, 12, and 13 of the '417 patent by making, using, selling, offering for sale within the United States, and/or importing into the United States, implantable power-injectable port products, including its Smart Port® products.

20. Defendant has had constructive notice of the '417 patent by virtue of Plaintiffs' marking of their products, and actual notice at least by the filing of this Complaint. Upon information and belief, Defendant had actual notice of the patent before the filing of the Complaint.

21. Upon information and belief, Defendant has committed and continues to commit all of the above acts of infringement despite its lack of a good-faith belief that the claims of the '417 patent are noninfringed, valid, or unenforceable.

22. Defendant has committed and continues to commit all of the above acts of infringement without license or authorization.

23. As a result of Defendant's infringement of the '417 patent, Plaintiffs have suffered damages and will continue to suffer damages.

24. Defendant's infringement of the '417 patent has been and continues to be willful and deliberate.

25. Under 35 U.S.C. § 283, Plaintiffs are entitled to a permanent injunction against further infringement. Defendant's wrongful conduct has caused and will continue to cause Plaintiffs to suffer irreparable harm resulting from the loss of their lawful patent right to exclude others from making, using, selling, offering to sell, and/or importing Plaintiffs' patented inventions. BPV has suffered harm to goodwill, lost customers, lost market share, tarnishment to brand, and price erosion due to Defendant's low-quality competing implantable power-injectable port products, including its Smart Port® products. Upon information and belief, Defendant will continue to infringe the '417 unless permanently enjoined by this Court.

SECOND CAUSE OF ACTION

26. Plaintiffs reallege and incorporate paragraphs 1 – 25 as through fully set forth herein.

27. Defendant has infringed, and continues to infringe, claims 1, 2, and 4 of the '460 patent by making, using, selling, offering for sale within the United States, and/or importing into the United States, implantable power-injectable port products, including its Smart Port® products.

28. Upon information and belief, Defendant has committed and continues to commit all of the above acts of infringement despite its lack of a good-faith belief that the claims of the '460 patent are noninfringed, valid, or unenforceable.

29. Defendant has had constructive notice of the '460 patent by virtue of Plaintiffs' marking of their products, and actual notice at least by the filing of this Complaint. Upon information and belief, Defendant had actual notice of the patent before the filing of the Complaint.

30. Defendant has committed and continues to commit all of the above acts of infringement without license or authorization.

31. As a result of Defendant's infringement of the '460 patent, Plaintiffs have suffered damages and will continue to suffer damages.

32. Defendant's infringement of the '460 patent has been and continues to be willful and deliberate.

33. Under 35 U.S.C. § 283, Plaintiffs are entitled to a permanent injunction against further infringement. Defendant's wrongful conduct has caused and will continue to cause Plaintiffs to suffer irreparable harm resulting from the loss of their lawful patent right to exclude others from making, using, selling, offering to sell, and/or importing Plaintiffs' patented inventions. BPV has suffered harm to goodwill, lost customers, lost market share, tarnishment to brand, and price erosion due to Defendant's low-quality competing implantable power-injectable port products, including its Smart Port® products. Upon information and belief, Defendant will continue to infringe the '460 unless permanently enjoined by this Court.

THIRD CAUSE OF ACTION

34. Plaintiffs reallege and incorporate paragraphs 1 – 33 as through fully set forth herein.

35. Upon information and belief, Defendant has infringed, and continues to infringe, claims 1, 3, 5, 8, 9, and 11 of the '478 patent by making, using, selling, offering for sale within the United States, and/or importing into the United States, implantable power-injectable port products, including Smart Port® products. Upon information and belief, Defendant became aware of the '478 patent after it issued. Since becoming aware of the patent, Defendant has known that the use of its Smart Port® products infringes the '478 patent.

36. Upon information and belief, Defendant's customers, including radiologists, physicians, nurses, surgeons, medical technicians, and other medical professionals, are infringing claims 1, 3, 5, 8, 9, and 11 of the '478 through their use of Defendant's Smart Port® products.

37. Upon information and belief, Defendant has specifically intended to induce its customers to use the Smart Port® products so as to infringe the '478 patent, including through

activities relating to marketing, advertising, promotion, support, and distribution of the Smart Port® products.

38. For example, Defendant provides information and materials on how to use the Smart Port products for power injection procedures on its website, at <http://www.angiodynamics.com/products/smart-port-ct>.

39. Defendant provides instructions to its customers titled “Guidelines for Health Care Providers” regarding its Smart Port® products. The “Guidelines for Health Care Providers” is available at http://www.angiodynamics.com/uploads/pdf/071310-083617_MLC%20240.pdf and is attached hereto as Exhibit 4. The “Guidelines for Health Care Providers” includes a 14-step “Procedure for Power Injection” that instructs Defendant’s customers on how to use its Smart Port® products for power injection.

40. Defendant actively publicizes other promotional and instructional materials for Smart Port® products through numerous means, including through its website at <http://www.angiodynamics.com/>. Specific examples of these materials can be found on Defendant’s website at http://www.angiodynamics.com/uploads/pdf/020515-100211_MLC%20220_SmartPort-brochure-RevJ-ipad.pdf (attached hereto as Exhibit 5); http://www.angiodynamics.com/uploads/pdf/052014-085404_107102_Rev_D.pdf (English version attached hereto as Exhibit 6).

41. Upon information and belief, Defendant has committed and continues to commit all of the above acts of infringement despite its lack of a good-faith belief that the claims of the ’478 patent are noninfringed, valid, or unenforceable.

42. Defendant has committed and continues to commit all of the above acts of infringement without license or authorization.

43. As a result of Defendant’s infringement of the ’478 patent, Plaintiffs have suffered damages and will continue to suffer damages.

44. Defendant’s infringement of the ’478 patent has been and continues to be willful and deliberate.

45. Under 35 U.S.C. § 283, Plaintiffs are entitled to a permanent injunction against further infringement. Defendant's wrongful conduct has caused and will continue to cause Plaintiffs to suffer irreparable harm resulting from the loss of their lawful patent right to exclude others from making, using, selling, offering to sell, and/or importing Plaintiffs' patented inventions. BPV has suffered harm to goodwill, lost customers, lost market share, tarnishment to brand, and price erosion due to Defendant's low-quality competing implantable power-injectable port products, including Smart Port® products. Upon information and belief, Defendant will continue to infringe the '478 unless permanently enjoined by this Court.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rule of Civil Procedure, Plaintiffs hereby demand trial by jury on all issues raised by the Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that the Court enter judgment in favor of Plaintiffs and prays that the Court grant the following relief to Plaintiffs:

- A. A judgment that Defendant has infringed claims 8, 12, and 13 of the '417 patent;
- B. A judgment that Defendant has infringed claims 1, 2, and 4 of the '460 patent;
- C. A judgment that Defendant has induced infringement of claims 1, 3, 5, 8, 9, and 11 of the '478 patent;
- D. An injunction barring Defendant and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with it, and its parents, subsidiaries, divisions, successors, and assigns, from further acts of infringement of the Asserted Patents;
- E. An award of damages adequate to compensate for Defendant's infringement of the Asserted Patents, including all pre-judgment and post-judgment interest at the maximum rate permitted by law;

- F. An accounting for infringing sales not presented at trial and an award of additional damages for any such infringing sales;
- G. An award of trebled damages under 35 U.S.C. § 284;
- H. A declaration that this case is exceptional under 35 U.S.C. § 285;
- I. An award of Plaintiff's costs and attorneys' fees under 35 U.S.C. § 285; and
- J. Any other remedy to which Plaintiffs may be entitled.

ASHBY & GEDDES

/s/ John G. Day

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