

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

COOK INCORPORATED, )  
 )  
 Plaintiff )  
 v. )  
 )  
 BOSTON SCIENTIFIC CORPORATION, )  
 a Delaware Corporation, )  
 SCIMED LIFE SYSTEMS, INC., )  
 a Minnesota Corporation, and )  
 CORVITA CORP., )  
 a Florida Corporation, )  
 Defendants )

FILED  
SOUTHERN DISTRICT  
OF INDIANA  
LAUREL A. BRIGGS  
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1:03-CV-0751 JDT - TAB

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Cook Incorporated ("Cook"), as and for its complaint against defendants Boston Scientific Corporation ("Boston"), Scimed Life Systems, Inc. ("Scimed") and Corvita Corporation ("Corvita"), states:

NATURE OF THE DISPUTE

1. This is a case under 35 U.S.C. §256 for correction of inventorship in ten of thirteen U.S. Patents in the same patent family ("Goicoechea Patent Family"). The ten patents to be corrected are U. S. Patents 5,609,627; 5,716,365; 5,776,180; 5,800,508; 5,916,263; 5,938,696; 6,051,020; 6,117,167; 6,165,213; and 6,302,906 (PX 1, 4, 6-13). The three additional patents of the Goicoechea Patent Family are U. S. Patents 5,683,450; 5,693,086; and 5,718,724 (PX 2, 3, 5). Cook seeks an order of this Court which corrects each of the ten patents by adding an omitted inventor, Hans Timmermans ("Timmermans"), as a co-inventor.

SCANNED

2. Cook is the current owner, by assignment, of the full ownership interests of the omitted inventor Timmermans, in the aforementioned ten patents. Scimed is a current record owner in the U.S. Patent Office of the aforementioned ten patents stemming from assignments by the co-inventors listed on the face of the patents.

3. This is also a case for Declaratory Judgment of non-infringement, invalidity and/or unenforceability as to all thirteen patents of the Goicoechea Patent Family; and for noninfringement of seven patents, six of which are in the same patent family, and all of which are owned by Corvita ("Corvita Patents"), under 35 U.S.C. §§101, 102, 103, 112 and 256. The six Corvita patents of the same patent family are U.S. Patents 5,632,772; 5,639,278; 5,723,004; 5,855,598; 5,948,018; and 6,165,212 (PX 16-21). The additional Corvita patent is U. S. Patent No. 5,415,664 (PX 15). All of the aforementioned patent exhibits include only the cover page and claims of each patent.

4. The current record owner of the Goicoechea Patent Family, Scimed, and the current record owner of the Corvita Patents, Corvita, are subsidiaries of, and are owned and controlled by, Boston.

#### **JURISDICTION AND VENUE**

5. Plaintiff Cook is a corporation organized and existing under the laws of the State of Indiana, having its principal place of business at 750 N. Daniels Way, Bloomington, Indiana 47404.

6. Defendant Scimed is a corporation organized and existing under the laws of the State of Minnesota, with a principal place of business at One Scimed Place, Maple Grove, Minnesota 55311-1566. On information and belief, Scimed does business in Indiana.

7. Defendant Corvita is a corporation organized and existing under the laws of the State of Florida, with a principal place of business at 8210 NW 27<sup>th</sup> St., Miami, Florida 33122. On information and belief, Corvita does business in Indiana.

8. Defendant Boston is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at One Boston Scientific Place, Natick, Massachusetts 01760. Boston does business in Indiana.

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), 2201, and 2202. The U. S. Patent Law, 35 U.S.C. §256, supports the Addition of Inventorship Counts; and the allegations seeking declaratory judgment are in accordance with the Declaratory Judgment Act 28 U.S.C. §2201, 2202. There is an actual justiciable controversy between the parties which requires a declaration of rights by this Court.

10. Venue is proper in this District under 28 U.S.C. §1391.

### **FACTS**

11. The allegations of paragraphs 1 through 10 are incorporated herein.

#### **A. HANS TIMMERMANS AS A CO-INVENTOR**

12. The Goicoechea Patent Family patents are owned by Scimed, which is owned and controlled by Boston.

13. The Goicoechea Patent Family patents disclose an endoluminal prosthesis for use within the human body in a bifurcated blood vessel, such as the aortic artery in the abdomen, where it bifurcates to common iliac arteries. The prosthesis comprises a stent which carries a prosthetic graft layer of fabric to form what is commonly referred to as a "stent graft", and is used typically to treat a weakened part or aneurysm of the aorta and/or iliac arteries to reduce the

risk of rupture or bursting of the artery wall. When used to treat an aortic aneurysm, it is typically known as an abdominal aortic aneurysm stent graft, or "AAA stent graft".

14. Timmermans has been, and still is, employed at the Dotter Interventional Institute ("Dotter") of the Oregon Health and Science University ("OHSU"), which receives substantial funding from Cook.

15. In 1992, while so employed by Dotter, Timmermans collaborated with Michael D. Dake ("Dake"), a listed co-inventor in five of the issued patents in the Goicoechea Patent Family, and made significant inventive contributions to the conception of subject matter, including the AAA stent graft or parts thereof, disclosed and claimed in the ten patents to be corrected.

16. Timmermans was unaware that patent applications for the Goicoechea Patent Family were subsequently filed in the United States at the time they were filed. Those applications matured into ten patents, which contain one or more patent claims based upon and reciting at least in part the inventive contributions conceived by Timmermans. However, those ten patents do not name Timmermans as a co-inventor.

17. Recently, upon review of the Goicoechea Patent Family patents and their respective patent claims, Timmermans became aware that he should have been named as a coinventor in ten of the Goicoechea Patent Family patents based on his inventive contributions to the inventions claimed in those patent claims.

18. Timmermans has assigned his ownership rights based on his co-inventorship contributions in the ten patents to OHSU, which in turn has assigned those same ownership rights to Cook, the Plaintiff herein.

**B. JUSTICIABLE CONTROVERSY WARRANTING  
DECLARATORY JUDGMENT AS TO THE  
GOICOECHEA PATENT FAMILY PATENTS AND  
THE CORVITA PATENTS**

19. In the 1990's, Cook's Australian subsidiary, William A. Cook Australia Pty. Ltd. ("Cook Australia"), developed, clinically tested, and sold in Australia an AAA endovascular stent graft known as the Cook Zenith AAA (PX 14). The Cook Zenith AAA also was clinically tested and sold in Europe by William Cook Europe ("Cook Europe").

20. Based on the successful clinical studies and sales in Australia and Europe, in the late 1990's Cook initiated in the United States proceedings with the Federal Food and Drug Administration ("FDA") seeking approval to sell the Cook Zenith AAA domestically.

21. In the late 1990's, Cook Europe was sued in Germany by Boston for patent infringement. In that still pending litigation, Boston alleged infringement of its German patent by the Cook Zenith AAA. That German patent claims priority from two European patent applications upon which the U.S. Goicoechea Patent Family is based.

22. Cook has also learned that Scimed, an owned and controlled subsidiary of Boston, sued Medtronic AVE, Inc. ("Medtronic") in February, 2002 for infringement of certain patents of the Goicoechea Patent Family by Medtronic's AAA stent graft products.

23. In that same lawsuit, Corvita Corp., now owned and controlled by Boston, also sued Medtronic for infringement by Medtronic's stent graft products of certain Corvita patents relating to AAA stent grafts.

24. Cook has recently become aware of a Complaint by Boston and Scimed against Cordis Corporation ("Cordis") and Johnson & Johnson ("J & J") in which Boston and Scimed

sued for a declaratory judgment of patent infringement based on the imminent FDA approval for sale in the United States of a coronary stent.

25. Cook has recently acquired information from the FDA leading it to believe that FDA approval of the Zenith AAA is imminent.

26. Based on the Boston lawsuits against the Cook Zenith AAA product in Germany, and the stent graft products of Medtronic, Cook has a reasonable apprehension that Boston will sue Cook in the United States for patent infringement on one or more of the Goicoechea Patent Family patents and the Corvita Patents once it learns of the imminent or actual FDA approval of the Cook Zenith AAA.

27. In view of the litigation tactics by Boston and its owned and controlled companies in the suit against Cordis and J & J, Cook has a reasonable apprehension that Boston will sue Cook even before FDA approval alleging infringement of one or more of the Goicoechea Patent Family patents and one or more of the Corvita Patents if it learns that Cook's FDA approval on the Cook Zenith AAA is imminent.

28. In view of the foregoing, there is a justiciable controversy between Cook, Boston, and its controlled companies Scimed and Corvita, involving the Goicoechea Patent Family patents and the Corvita Patents.

### **C. MINTEC'S AND BOSTON'S FRAUD ON THE U.S. PATENT OFFICE**

#### **i. MinTec's Fraud on the U.S. Patent Office by Excluding Dake as an Inventor During Original Filing**

29. In early 1993, Dake collaborated with key individuals at a company known as MinTec, Inc. ("MinTec"), including Dr. George Goicoechea ("Goicoechea"), Dr. Andrew Cragg

(“Cragg”), and Mr. John Hudson (“Hudson”), who were included in the originally listed coinventors in the first patent application filed in the U.S. for the Goicoechea Patent Family patents. Dr. Claude Mialhe (“Mialhe”) was also listed as a co-inventor, but no indication of his collaboration with Dake appears in the record. This collaboration with the key individuals related to the development of the bifurcated modular stent, and was pursuant to a suggestion by Cragg and/or Goicoechea who thought that Dake might be able to assist in the development of the invention.

30. Cragg identified Dake as a “highly respected interventional radiologist” whom he had known personally and professionally for years, and with whom he had collaborated in certain technical efforts.

31. A critical feature of the bifurcated modular stent is a structure having a main tubular body portion with two leg extensions (a longer leg extension and a shorter leg extension), and a separate smaller tubular piece that fits into the shorter leg extension of the main body (“bifurcated modular stent structure”).

32. This bifurcated modular stent structure was identified as being key to the invention during an interference proceeding at the U.S. Patent Office (Interference No. 104,192 (“the ‘192 Interference”), initiated in 1998) involving a patent application that was part of the Goicoechea Patent Family and a patent application assigned to Medtronic. In this interference, Boston/Scimed argued that a facsimile dated July 1992 from Dake to Timmermans established Dake as the inventor of “the invention” that was defined by the interference counts and corresponded to the bifurcated modular stent structure.

33. Also during the '192 Interference, Boston argued that a facsimile from Cragg to introducer for introducing this stent into a patient, and also showing a note of collaboration between Cragg and Dake, established Cragg and Dake as the inventors of "the invention".

34. On Feb 9, 1994, MinTec filed its first European patent application, and on June 10, 1994 MinTec filed its second European patent application, both directed to various aspects of the bifurcated modular stent. MinTec filed two U.S. patent applications that claimed priority to these European applications. On September 27, 1994, the first U.S. application Serial No. 08/312,881 was filed, and on October 4, 1994, a continuation in part application Serial No. 08/317,763 was filed, which later matured into U.S. Patent No. 5,609,627. MinTec was the owner of these applications by virtue of an assignment by the originally-named inventors.

35. Despite the fact that Dake: a) was acknowledged by those at MinTec as an expert in the field, b) was asked to participate in the MinTec venture because it was thought that he could make a contribution, c) was later acknowledged by the MinTec originally named inventors as having had conversations with key MinTec personnel related to the invention, including conversations indicating collaboration on inventive aspects of the invention, and d) was later relied upon by MinTec's successor Boston/Scimed as being the sole inventor of the modular bifurcated stent structure, the originally named MinTec inventors Goicoechea, Cragg, Hudson & Mialhe later alleged that they were initially unaware of any inventive contribution whatsoever on the part of Dake and had absolutely no recollection of the inventive contributions Dake said he made to them.

36. The original MinTec inventors recognized that they would have to pay Dake a substantial sum of money that they did not want to pay if they were to include him as an inventor



and therefore they deliberately excluded him by fraudulently not listing him as an inventor in express violation of their duty of candor when they filed the original U.S. applications.

ii. **Boston/Scimed/MinTec's Fraud on the U.S. Patent Office Concealing Intentional Exclusion of Dake when Correcting Inventorship**

37. In 1995, Boston/Scimed was negotiating to acquire the assets of MinTec so that it could gain a leadership position in the prospectively lucrative stent-graft market in which it was lagging behind; significantly, these assets included patents and then-pending patent applications of the Goicoechea Patent Family .

38. During an ensuing due diligence investigation for its acquisition of MinTec, Boston/Scimed discovered that Dake, an initially uninvolved inventor, was telling others in the industry that he was the inventor of the bifurcated modular stent.

39. Both Boston/Scimed and MinTec appreciated that patents with incorrectly named inventors are deemed invalid; therefore, the MinTec patent attorneys spent over one hundred hours during five consecutive months investigating inventorship issues related to the Goicoechea Patent Family.

40. 35 U.S.C. §116 permits the correction of inventorship in a pending patent application before the U.S. Patent Office, provided that the incorrect naming of inventors was through error and that the error arose without deceptive intention.

41. The MinTec patent attorneys concluded that Dake should be added as an inventor and sought to correct the inventorship, but recognized that Dake could not be added if deceptive intent were involved in any way. The MinTec patent attorneys further recognized that if deceptive intent were involved, the entire Goicoechea Patent Family could be declared invalid

and/or unenforceable, thereby threatening the Boston/Scimed acquisition deal because MinTec's main assets would be worthless.

42. The MinTec patent attorneys filed papers seeking to correct the inventorship of multiple applications in the Goicoechea Patent Family in the U.S. Patent Office. In order to provide evidence that the exclusion of Dake was without deceptive invention, the MinTec attorneys provided sworn statements from themselves and obtained sworn statements from inventors originally identified on the patent applications, including, Goicoechea, Hudson, Mialhe, and Cragg.

43. Cragg's verified statement of facts during the correction of inventorship states that he had discussed with Dake the possibility of Dake's involvement in a collaborative effort with Goicoechea's venture, but that he had no recollection whatsoever of key inventive aspects communicated to him by Dake.

44. Cragg made this statement despite the fact that, during the later '192 Interference proceedings (1998), Boston/Scimed conveniently produced an early 1993 facsimile from Cragg to Dake illustrating collaboration between Dake and Cragg on technical aspects of the invention, and utilized this facsimile as a foundational document to attempt to establish an early date of inventorship for Dake and Cragg (where such a claim could prove helpful to Boston/Scimed's own interests at the time of the interference).

45. Goicoechea made a similar statement of facts during the correction of inventorship, asserting that he too had no recollection whatsoever of key inventive aspects communicated to him by Dake.

46. Hudson's verified statement of facts indicated that he believed that "all information regarding the invention by Dr. Dake originated with Dr. Cragg." This "misunderstanding" of Hudson was repeated by other initially named inventors in their verified statement of facts. This "misunderstanding" allegedly served as the basis for how Dake's fundamental inventive contribution became a part of the Goicoechea Patent Family applications, while at the same time also allegedly served as the basis for how all originally named inventors came to believe that Dake made no inventive contribution. This was alleged despite a later "realization" that Dake was the sole inventor of the most fundamental structural aspects of the stent-graft itself.

47. Dake's assignment for his inventive contribution was obtained by an \$800,000 payment by MinTec.

48. This \$800,000 in exchange for Dake's contribution represented money that MinTec was willing to pay only after it learned that Dake's exclusion could threaten the Boston/Scimed acquisition.

49. Evidence of the deliberate nature of Dake's original exclusion was fraudulently concealed from the U.S. Patent Office during the correction of inventorship in violation of MinTec's duty of candor because such evidence would serve to invalidate the then-pending applications and thwart the acquisition of MinTec by Boston/Scimed.

iii. **Boston/Scimed/MinTec's Fraud on the U.S. Patent Office in Excluding Timmermans as a Co-inventor**

50. As alleged in paragraphs 11 to 18, Timmermans made an inventive contribution to the bifurcated modular stent structure.

51. During the '192 Interference, Boston/Scimed attorneys contacted Timmermans in order to obtain and authenticate the facsimile from Dake to Timmermans dated July 1992 that showed collaboration between Dake and Timmermans on the bifurcated modular stent structure. A statement made by Timmermans identified that Robert Liddell (an associate of Dake) was sent to Dotter at approximately this time.

52. Despite the fact that the Boston/Scimed attorneys, based on their one-hundred hour/five-month inventorship investigation, knew: a) of the Dake-Timmermans collaboration, b) that, at the time of their collaboration, Dake did not possess the knowledge and ability to make Z-stents that were vital to the design of the modular bifurcated stent-graft, c) that Robert Liddell was sent to Dotter to acquire the knowledge and ability to make Z-stents, and d) that Timmermans made an inventive contribution to the device, the attorneys concealed Timmermans' inventive contribution from the U.S. Patent Office because they also knew of Timmermans loyalty to Dotter and Cook, and knew that Timmermans would not make an assignment to an entity hostile to the interests of either Dotter or Cook.

iv. **Boston/Scimed's Fraud in Concealing Cragg as a Joint Inventor during Interference Proceedings**

53. In an interference proceeding (used to establish the first person to invent), the inventor of the interference subject matter must be properly identified. During the proceedings of the '192 Interference involving, Boston/Scimed (Goicoechea, et al. - inventors) and Medtronic (Fogarty – inventor), Boston/Scimed asserted, in their preliminary statement, that Dake was the sole inventor of the subject matter of the interference and relied on the July 1992 facsimile from Dake to Timmermans as showing an earliest date of conception.

54. The first-to-file (who may or may not be the first-to-invent) in an interference proceeding is known as the “senior party”, and all others involved are known as “junior parties”. There is a significantly greater evidentiary burden placed on junior parties. In the ‘192 Interference, Boston/Scimed’s European priority filing dates for the involved application were earlier than the filing date of Medtronic’s involved application, which enabled Boston/Scimed to be the advantageous senior party.

55. During the interference proceedings, Medtronic challenged the ability of Boston/Scimed to be able to claim priority to their European priority dates because the inventive entity initially alleged by Boston/Scimed (Dake) was not the person, the person’s legal representative, or assignee that filed in the foreign country as required by 35 U.S.C. §119(a) in order to claim foreign priority.

56. Dake had not assigned his rights to Boston/Scimed/MinTec until approximately two years after the 1994 priority filing dates. Ultimately, the U.S. Patent Office Board of Appeals declared that Boston/Scimed was not entitled to its European priority dates, making Medtronic the first to file. This resulted in a redeclaration of the interference with the roles of senior party (now Medtronic) and junior party (now Boston/Scimed) reversed. The decision and resulting redeclaration represented a significant evidentiary disadvantage to Boston/Scimed.

57. Boston/Scimed made an (ultimately futile) attempt to preserve the original senior/junior party relationship by trying to pull in an additional inventive entity (Cragg, whom Boston/Scimed (mistakenly) thought *was* an assignee at the time of the foreign filing) that it believed would permit them to retain their European priority dates. In this attempt, the Boston/Scimed attorneys (who were the original MinTec attorneys prior to the acquisition of

MinTec, and the ones who had spent over one-hundred hours over five months researching the relevant inventorship issues), “discovered” that they had made an error in understanding the inventorship rules, and sought “correction” of the inventorship by filing a Corrected Preliminary Statement.

58. Entry of this Corrected Preliminary Statement was denied by the Board of Appeals. The Board of Appeals stated, in Paper 140, that these actions on the part of Boston/Scimed, reflected, “substantive or substantial culpability on the part of party Cragg [Boston/Scimed]” when denying Boston/Scimed’s motion.

59. Boston/Scimed fraudulently named Dake as the sole inventor of the subject matter in the interference because it believed that this would give it the earliest date of conception (1992, based on the Dake to Timmermans facsimile) thus improving its chances of winning the interference with Medtronic. Once it recognized the peril to its priority claims by having Dake as the sole inventor, and now knowing that Medtronic did not have evidence to show conception prior to its filing date, Boston/Scimed felt free to assert the newly discovered inventorship entity of Dake/Cragg (based on a 1993 facsimile from Cragg to Dake) that it hoped would preserve its priority dates. Boston/Scimed attempted to change the inventorship at this particular time safely knowing that its 1993 facsimile was still earlier than Medtronic’s earliest asserted conception date—a fact that Boston/Scimed did not know at the start of the interference and that discouraged it from initially gambling on the later 1993 Cragg-Dake inventorship date.

60. The 1993 Cragg to Dake facsimile used in the interference (in 1998) was withheld from the U.S. Patent Office in the prior inventorship corrections (in 1995) because it evidenced a collaborative effort between Cragg and Dake in contradiction to the verified statements of facts

submitted by the originally named inventors. However, because Boston/Scimed was desperate to preserve their priority dates in the interference, they produced this facsimile as evidence of early conception by Cragg and Dake.

61. Significant relevant portions of the Petitions to Correct Inventorship during the prosecution of the application involved in the '192 Interference have been redacted from the interference record for reasons that are not explained anywhere in the interference papers.

62. Boston/Scimed lost the '192 Interference in part because it failed to honestly set forth the truth during the interference proceedings.

63. These facts strongly indicate that an incorrect inventive entity and conception date were fraudulently presented to the U.S. Patent Office by Boston/Scimed in order to give it an advantageous position in the interference proceedings.

v. **Boston/Scimed's Fraud Concealing Martin's Evidence of Conception & Due Diligence as Novelty-Defeating Prior Art**

64. In addition to the '192 Interference, a second related interference, Interference No. 104,083 ("the '083 Interference"), was declared by the U.S. Patent Office in 1998 that involved the same Boston/Scimed application and an issued patent, U.S. Patent No. 5,575,817, listing Dr. Eric Martin ("Martin") as the sole inventor.

65. Although Martin's patent identifies a filing date that is later than the priority dates used for the Goicoechea Patent Family applications, Martin submitted some evidence in his preliminary statement indicating his conception of the invention in 1991.

66. Boston/Scimed knew that if Martin was able to show conception of the invention in 1991 coupled with due diligence until filing the application, this showing would have enabled

Martin to be declared the first to invent the inventive subject matter of the interference (in 1991) since the earliest conception date initially alleged by Boston/Scimed was July 1992.

67. Early during the interference proceedings, Boston/Scimed and Martin reached a settlement agreement in which Martin was secretly paid \$3,000,000 in exchange for him not pursuing the interference further. This settlement agreement was belatedly filed with the U.S. Patent Office. Based on this settlement agreement, Martin did not file a response as he was required to do by the U.S. Patent Office Board of Appeals, thereby resulting in a default judgment against him and rendering certain claims of his patent invalid and preserving Boston/Scimed's application.

68. Instead of presenting evidence to the U.S. Patent and Trademark Office of Martin's early conception and due diligence that would properly resolve the interference proceeding and permit Martin's patent to win the interference (thereby allowing Boston/Scimed to legitimately obtain an assignment or license from Martin), Boston/Scimed feared that this scenario could permit Martin's patent to serve as 35 U.S.C. §102(g) prior art to numerous other Goicoechea Patent Family patents and pending applications that were not a part of the interference. Thus Boston/Scimed paid Martin \$3,000,000 in order to fraudulently conceal this evidence that could be harmful to its interests from the U.S. Patent Office and would preserve not only its application involved in the interference, but also its other pending applications and issued patents in the Goicoechea Patent Family.

vi. **Boston/Scimed's Fraud in Claiming Priority to Foreign Patent Applications**

69. 35 U.S.C. §119(a) states that a person may claim priority to an application filed in a foreign country *by that person, his legal representatives, or assigns.*



70. 35 U.S.C. §119(a) does not permit a later inventive entity who had not been a part of the original foreign filing to be added at a later date in order to preserve foreign priority.

71. After Boston/Scimed corrected the inventorship in numerous of the Goicoechea Patent Family applications to add Dake as an inventor, it obtained an assignment from Dake in exchange for \$800,000. This assignment was executed on May 6, 1996, and thus came well after both 1994 filing dates for the two European patent applications to which the entire Goicoechea Patent Family claims priority to.

72. Boston/Scimed knew that the 1996 assignment from Dake did not serve to provide the proper nexus to the applications filed in Europe in 1994 that would permit it to be able to claim foreign priority to these applications. The U.S. Patent Office Board of Appeals made this very clear to Boston/Scimed during the '192 Interference in determining that Boston/Scimed was not entitled to its claim of foreign priority.

73. Despite knowing that it could not legitimately claim foreign priority in its applications, Boston/Scimed continued to knowingly and fraudulently assert its claim to foreign priority to the U.S. Patent Office, despite the determination by the U.S. Patent Office Board of Appeals that it was unable to do so.

### **COUNT I**

#### **CORRECTION OF U.S. PATENT 5,609,627 BY ADDITION OF HANS TIMMERMANS AS CO-INVENTOR**

74. The allegations of paragraphs 1 through 73 are incorporated herein.

75. U.S. Patent 5,609,627 (" '627 patent") (PX 1) issued March 11, 1997, and lists on its face as co-inventors George Goicoechea, John Hudson, and Claude Miahle.

76. Based on Timmermans inventive conceptions and contributions to the preferred embodiment disclosed in the '627 patent and the inventions claimed in one or more claims of the '627 patent, Timmermans is a co-inventor and requests this Court to correct the '627 patent and add his name as a co-inventor pursuant to 35 U.S.C. §256.

**COUNT II**

**CORRECTION OF U. S. PATENT 5,716,365 BY ADDITION  
OF HANS TIMMERMANS AS CO-INVENTOR**

77. The allegations of paragraphs 1 through 73 are incorporated herein.

78. U. S. Patent 5,716,365 ('365 patent) (PX 2) issued February 10, 1998 and lists on its face as co-inventors George Goicoechea, John Hudson, Claude Mialhe, Andrew H. Cragg and Michael D. Dake.

79. Based on Timmermans inventive conceptions and contributions to the preferred embodiment disclosed in the '365 patent and the inventions claimed in one or more claims of the '365 patent, Timmermans is a co-inventor and requests this Court to correct the '365 patent and add his name as a co-inventor pursuant to 35 U.S.C. §256.

**COUNT III**

**CORRECTION OF U. S. PATENT 5,776,180 BY ADDITION  
OF HANS TIMMERMANS AS CO-INVENTOR**

80. The allegations of paragraphs 1 through 73 are incorporated herein.

81. U. S. Patent 5,776,180 ('180 patent) (PX 3) issued July 7, 1998 and lists on its face as inventors George Goicoechea, John Hudson, Claude Mialhe, and Andrew H. Cragg.

82. Based on Timmermans inventive conceptions and contributions to the preferred embodiment disclosed in the '180 patent and the inventions claimed in one or more claims of the

'180 patent, Timmermans is a co-inventor and requests this Court to correct the '180 patent and add his name as a co-inventor pursuant to 35 U.S.C. §256.

**COUNT IV**

**CORRECTION OF U. S. PATENT 5,800,508 BY ADDITION  
OF HANS TIMMERMANS AS CO-INVENTOR**

83. The allegations of paragraphs 1 through 73 are incorporated herein.

84. U. S. Patent 5,800,508 (" '508 patent") (PX 4) issued September 1, 1998 and lists on its face as co-inventors George Goicoechea, John Hudson, and Claude Mialhe.

85. Based on Timmermans inventive conceptions and contributions to the preferred embodiment disclosed in the '508 patent and the inventions claimed in one or more claims of the '508 patent, Timmermans is a co-inventor and requests this Court to correct the '508 patent and add his name as a co-inventor pursuant to 35 U.S.C. §256.

**COUNT V**

**CORRECTION OF U. S. PATENT 5,916,263 BY ADDITION  
OF HANS TIMMERMANS AS CO-INVENTOR**

86. The allegations of paragraphs 1 through 73 are incorporated herein.

87. U. S. Patent 5,916,263 (" '263 patent") (PX 5) issued June 29, 1999 and lists on its face as co-inventors George Goicoechea, John Hudson, Claude Mialhe, Andrew H. Cragg, and Michael D. Dake.

88. Based on Timmermans inventive conceptions and contributions to the preferred embodiment disclosed in the '263 patent and the inventions claimed in one or more claims of the '263 patent, Timmermans is a co-inventor and requests this Court to correct the '263 patent and add his name as a co-inventor pursuant to 35 U.S.C. §256.

**COUNT VI**

**CORRECTION OF U. S. PATENT 5,938,696 BY ADDITION  
OF HANS TIMMERMANS AS CO-INVENTOR**

89. The allegations of paragraphs 1 through 73 are incorporated herein.

90. U. S. Patent 5,938,696 ('696 patent) (PX 6) issued August 17, 1999 and lists on its face as co-inventors George Goicoechea, John Hudson, and Claude Mialhe.

91. Based on Timmermans inventive conceptions and contributions to the preferred embodiment disclosed in the '696 patent and the inventions claimed in one or more claims of the '696 patent, Timmermans is a co-inventor and requests this Court to correct the '696 patent and add his name as a co-inventor pursuant to 35 U.S.C. §256.

**COUNT VII**

**CORRECTION OF U. S. PATENT 6,051,020 BY ADDITION  
OF HANS TIMMERMANS AS CO-INVENTOR**

92. The allegations of paragraphs 1 through 73 are incorporated herein.

93. U. S. Patent 6,051,020 ('020 patent) (PX 7) issued April 18, 2000 and lists on its face as co-inventors George Goicoechea, John Hudson, Claude Mialhe, Andrew H. Cragg and Michael D. Dake.

94. Based on Timmermans inventive conceptions and contributions to the preferred embodiment disclosed in the '020 patent and the inventions claimed in one or more claims of the '020 patent, Timmermans is a co-inventor and requests this Court to correct the '020 patent and add his name as a co-inventor pursuant to 35 U.S.C. §256.

**COUNT VIII**

**CORRECTION OF U. S. PATENT 6,117,167 BY ADDITION  
OF HANS TIMMERMANS AS CO-INVENTOR**

95. The allegations of paragraphs 1 through 73 are incorporated herein.

96. U. S. Patent 6,117,167 ('167 patent) (PX 8) issued September 12, 2000 and lists on its face as co-inventors George Goicoechea, John Hudson, Claude Mialhe, Andrew H. Cragg, and Michael D. Dake.

97. Based on Timmermans inventive conceptions and contributions to the preferred embodiment disclosed in the '167 patent and the inventions claimed in one or more claims of the '167 patent, Timmermans is a co-inventor and requests this Court to correct the '167 patent and add his name as a co-inventor pursuant to 35 U.S.C. §256.

**COUNT IX**

**CORRECTION OF U. S. PATENT 6,165,213 BY ADDITION  
OF HANS TIMMERMANS AS CO-INVENTOR**

98. The allegations of paragraphs 1 through 73 are incorporated herein.

99. U. S. Patent 6,165,213 ('213 patent) (PX 9) issued December 26, 2000 and lists on its face as co-inventors George Goicoechea, John Hudson, and Claude Mialhe.

100. Based on Timmermans inventive conceptions and contributions to the preferred embodiment disclosed in the '213 patent and the inventions claimed in one or more claims of the '213 patent, Timmermans is a co-inventor and requests this Court to correct the '213 patent and add his name as a co-inventor pursuant to 35 U.S.C. §256.

**COUNT X**

**CORRECTION OF U. S. PATENT 6,302,906 BY ADDITION  
OF HANS TIMMERMANS AS CO-INVENTOR**

101. The allegations of paragraphs 1 through 73 are incorporated herein.

102. U. S. Patent 6,302,906 ('906 patent) (PX 10) issued October 16, 2001 and lists on its face as inventors George Goicoechea, John Hudson, Claude Mialhe, Andrew H. Cragg, and Michael D. Dake.

103. Based on Timmermans inventive conceptions and contributions to the preferred embodiment disclosed in the '906 patent and the inventions claimed in one or more claims of the '906 patent, Timmermans is a co-inventor and requests this Court to correct the '906 patent and add his name as a co-inventor pursuant to 35 U.S.C. §256.

**COUNT XI**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 5,609,627**

104. The allegations of paragraphs 1 through 73 are incorporated herein.

105. Cook does not and has not infringed any valid claim of U.S. Patent No. 5,609,627 (" '627 patent") (PX 1).

**COUNT XII**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 5,609,627**

106. The allegations of paragraphs 1 through 73 are incorporated herein.

107. U.S. Patent No. 5,609,627 (" '627 patent") (PX 1) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT XIII**

**DECLARATORY JUDGMENT AS TO  
UNENFORCEABILITY OF U.S. PATENT 5,609,627**

108. The allegations of paragraphs 1 through 73 are incorporated herein.

109. U.S. Patent No. 5,609,627 (" '627 patent") (PX 1) is unenforceable in view of multiple frauds perpetrated on the U.S. Patent Office in connection with the prosecution of the '627 patent and/or its family members.

**COUNT XIV**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 5,683,450**

110. The allegations of paragraphs 1 through 73 are incorporated herein.

111. Cook does not and has not infringed any valid claim of U.S. Patent No. 5,683,450 (" '450 patent") (PX 2).

**COUNT XV**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 5,683,450**

112. The allegations of paragraphs 1 through 73 are incorporated herein.

113. U.S. Patent No. 5,683,450 (" '450 patent") (PX 2) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT XVI**

**DECLARATORY JUDGMENT AS TO  
UNENFORCEABILITY OF U.S. PATENT 5,683,450**

114. The allegations of paragraphs 1 through 73 are incorporated herein.

115. U.S. Patent No. 5,683,450 (" '450 patent") (PX 2) is unenforceable in view of multiple frauds perpetrated on the U.S. Patent Office in connection with the prosecution of the '450 patent and/or its family members.

**COUNT XVII**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 5,693,086**

116. The allegations of paragraphs 1 through 73 are incorporated herein.

117. Cook does not and has not infringed any valid claim of U. S. Patent No. 5,693,086 (" '086 patent") (PX 3).

**COUNT XVIII**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 5,693,086**

118. The allegations of paragraphs 1 through 73 are incorporated herein.

119. U. S. Patent No. 5,693,086 (" '086 patent") (PX 3) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT XIX**

**DECLARATORY JUDGMENT AS TO  
UNENFORCEABILITY OF U.S. PATENT 5,693,086**

120. The allegations of paragraphs 1 through 73 are incorporated herein.

121. U. S. Patent No. 5,693,086 (" '086 patent") (PX 3) is unenforceable in view of multiple frauds perpetrated on the U.S. Patent Office in connection with the prosecution of the '086 patent and/or its family members.



**COUNT XX**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 5,716,365**

122. The allegations of paragraphs 1 through 73 are incorporated herein.

123. Cook does not and has not infringed any valid claim of U.S. Patent No. 5,716,365 (" '365 patent") (PX 4).

**COUNT XXI**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 5,716,365**

124. The allegations of paragraphs 1 through 73 are incorporated herein.

125. U.S. Patent No. 5,716,365 (" '365 patent") (PX 4) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT XXII**

**DECLARATORY JUDGMENT AS TO  
UNENFORCEABILITY OF U.S. PATENT 5,716,365**

126. The allegations of paragraphs 1 through 73 are incorporated herein.

127. U.S. Patent No. 5,716,365 (" '365 patent") (PX 4) is unenforceable in view of multiple frauds perpetrated on the U.S. Patent Office in connection with the prosecution of the '365 patent and/or its family members.

**COUNT XXIII**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 5,718,724**

128. The allegations of paragraphs 1 through 73 are incorporated herein.

129. Cook does not and has not infringed any valid claim of U.S. Patent No. 5,718,724 (" '724 patent") (PX 5).

**COUNT XXIV**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 5,718,724**

130. The allegations of paragraphs 1 through 73 are incorporated herein.

131. U.S. Patent No. 5,718,724 (" '724 patent") (PX 5) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT XXV**

**DECLARATORY JUDGMENT AS TO  
UNENFORCEABILITY OF U.S. PATENT 5,718,724**

132. The allegations of paragraphs 1 through 73 are incorporated herein.

133. U.S. Patent No. 5,718,724 (" '724 patent") (PX 5) is unenforceable in view of multiple frauds perpetrated on the U.S. Patent Office in connection with the prosecution of the '724 patent and/or its family members.

**COUNT XXVI**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 5,776,180**

134. The allegations of paragraphs 1 through 73 are incorporated herein.

135. Cook does not and has not infringed any valid claim of U.S. Patent No. 5,776,180 (" '180 patent") (PX 6).

**COUNT XXVII**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 5,776,180**

136. The allegations of paragraphs 1 through 73 are incorporated herein.

137. U.S. Patent No. 5,776,180 (" '180 patent") (PX 6) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT XXVIII**

**DECLARATORY JUDGMENT AS TO  
UNENFORCEABILITY OF U.S. PATENT 5,776,180**

138. The allegations of paragraphs 1 through 73 are incorporated herein.

139. U.S. Patent No. 5,776,180 (" '180 patent") (PX 6) is unenforceable in view of multiple frauds perpetrated on the U.S. Patent Office in connection with the prosecution of the '180 patent and/or its family members.

**COUNT XXIX**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 5,800,508**

140. The allegations of paragraphs 1 through 73 are incorporated herein.

141. Cook does not and has not infringed any valid claim of U.S. Patent No. 5,800,508 (" '508 patent") (PX 7).

**COUNT XXX**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 5,800,508**

142. The allegations of paragraphs 1 through 73 are incorporated herein.

143. U.S. Patent No. 5,800,508 (" '508 patent") (PX 7) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT XXXI**

**DECLARATORY JUDGMENT AS TO  
UNENFORCEABILITY OF U.S. PATENT 5,800,508**

144. The allegations of paragraphs 1 through 73 are incorporated herein.

145. U.S. Patent No. 5,800,508 (" '508 patent") (PX 7) is unenforceable in view of multiple frauds perpetrated on the U.S. Patent Office in connection with the prosecution of the '508 patent and/or its family members.

**COUNT XXXII**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 5,916,263**

146. The allegations of paragraphs 1 through 73 are incorporated herein.

147. Cook does not and has not infringed any valid claim of U.S. Patent No. 5,916,263 (" '263 patent") (PX 8).

**COUNT XXXIII**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 5,916,263**

148. The allegations of paragraphs 1 through 73 are incorporated herein.

149. U.S. Patent No. 5,916,263 (" '263 patent") (PX 8) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT XXXIV**

**DECLARATORY JUDGMENT AS TO  
UNENFORCEABILITY OF U.S. PATENT 5,916,263**

150. The allegations of paragraphs 1 through 73 are incorporated herein.

151. U.S. Patent No. 5,916,263 (" '263 patent") (PX 8) is unenforceable in view of multiple frauds perpetrated on the U.S. Patent Office in connection with the prosecution of the '263 patent and/or its family members.

**COUNT XXXV**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 5,938,696**

152. The allegations of paragraphs 1 through 73 are incorporated herein.

153. Cook does not and has not infringed any valid claim of U.S. Patent No. 5,938,696 (" '696 patent") (PX9).

**COUNT XXXVI**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 5,938,696**

154. The allegations of paragraphs 1 through 73 are incorporated herein.

155. U.S. Patent No. 5,938,696 (" '696 patent") (PX9) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT XXXVII**

**DECLARATORY JUDGMENT AS TO  
UNENFORCEABILITY OF U.S. PATENT 5,938,696**

156. The allegations of paragraphs 1 through 73 are incorporated herein.

157. U.S. Patent No. 5,938,696 (" '696 patent") (PX9) is unenforceable in view of multiple frauds perpetrated on the U.S. Patent Office in connection with the prosecution of the '696 patent and/or its family members.

**COUNT XXXVIII**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 6,051,020**

158. The allegations of paragraphs 1 through 73 are incorporated herein.

159. Cook does not and has not infringed any valid claim of U.S. Patent No. 6,051,020 (" '020 patent") (PX10).

**COUNT XXXIX**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 6,051,020**

160. The allegations of paragraphs 1 through 73 are incorporated herein.

161. U.S. Patent No. 6,051,020 (" '020 patent") (PX10) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT XL**

**DECLARATORY JUDGMENT AS TO  
UNENFORCEABILITY OF U.S. PATENT 6,051,020**

162. The allegations of paragraphs 1 through 73 are incorporated herein.

163. U.S. Patent No. 6,051,020 (" '020 patent") (PX10) is unenforceable in view of multiple frauds perpetrated on the U.S. Patent Office in connection with the prosecution of the '020 patent and/or its family members.

**COUNT XLI**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 6,117,167**

164. The allegations of paragraphs 1 through 73 are incorporated herein.
165. Cook does not and has not infringed any valid claim of U.S. Patent No. 6,117,167 (" '167 patent") (PX 11).

**COUNT XLII**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 6,117,167**

166. The allegations of paragraphs 1 through 73 are incorporated herein.
167. U.S. Patent No. 6,117,167 (" '167 patent") (PX 11) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT XLIII**

**DECLARATORY JUDGMENT AS TO  
UNENFORCEABILITY OF U.S. PATENT 6,117,167**

168. The allegations of paragraphs 1 through 73 are incorporated herein.
169. U.S. Patent No. 6,117,167 (" '167 patent") (PX 11) is unenforceable in view of multiple frauds perpetrated on the U.S. Patent Office in connection with the prosecution of the '167 patent and/or its family members.

**COUNT XLIV**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 6,165,213**

170. The allegations of paragraphs 1 through 73 are incorporated herein.

171. Cook does not and has not infringed any valid claim of U.S. Patent No. 6,165,213 (" '213 patent") (PX 12).

**COUNT XLV**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 6,165,213**

172. The allegations of paragraphs 1 through 73 are incorporated herein.

173. U.S. Patent No. 6,165,213 (" '213 patent") (PX 12) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT XLVI**

**DECLARATORY JUDGMENT AS TO  
UNENFORCEABILITY OF U.S. PATENT 6,165,213**

174. The allegations of paragraphs 1 through 73 are incorporated herein.

175. U.S. Patent No. 6,165,213 (" '213 patent") (PX 12) is unenforceable in view of multiple frauds perpetrated on the U.S. Patent Office in connection with the prosecution of the '213 patent and/or its family members.

**COUNT XLVII**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 6,302,906**

176. The allegations of paragraphs 1 through 73 are incorporated herein.

177. Cook does not and has not infringed any valid claim of U.S. Patent No. 6,302,906 (" '906 patent") (PX 13).



**COUNT XLVIII**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 6,302,906**

178. The allegations of paragraphs 1 through 73 are incorporated herein.
179. U.S. Patent No. 6,302,906 (" '906 patent") (PX 13) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT XLIX**

**DECLARATORY JUDGMENT AS TO  
UNENFORCEABILITY OF U.S. PATENT 6,302,906**

180. The allegations of paragraphs 1 through 73 are incorporated herein.
181. U.S. Patent No. 6,302,906 (" '906 patent") (PX 13) is unenforceable in view of multiple frauds perpetrated on the U.S. Patent Office in connection with the prosecution of the '906 patent and/or its family members.

**COUNT L**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 5,415,664**

182. The allegations of paragraphs 1 through 73 are incorporated herein.
183. Cook does not and has not infringed any valid claim of U.S. Patent No. 5,415,664 (" '664 patent") (PX 15).

**COUNT LI**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 5,415,664**

184. The allegations of paragraphs 1 through 73 are incorporated herein.

185. U.S. Patent No. 5,415,664 (" '664 patent") (PX 15) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT LII**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 5,632,772**

186. The allegations of paragraphs 1 through 73 are incorporated herein.

187. Cook does not and has not infringed any valid claim of U.S. Patent No. 5,632,772 (" '772 patent") (PX 16).

**COUNT LIII**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 5,632,772**

188. The allegations of paragraphs 1 through 73 are incorporated herein.

189. U.S. Patent No. 5,632,772 (" '772 patent") (PX 16) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT LIV**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 5,639,278**

190. The allegations of paragraphs 1 through 73 are incorporated herein.

191. Cook does not and has not infringed any valid claim of U.S. Patent No. 5,639,278 (" '278 patent") (PX 17).

**COUNT LV**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 5,639,278**

192. The allegations of paragraphs 1 through 73 are incorporated herein.

193. U.S. Patent No. 5,639,278 (" '278 patent") (PX 17) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT LVI**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 5,723,004**

194. The allegations of paragraphs 1 through 73 are incorporated herein.

195. Cook does not and has not infringed any valid claim of U.S. Patent No. 5,723,004 (" '004 patent") (PX 18).

**COUNT LVII**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 5,723,004**

196. The allegations of paragraphs 1 through 73 are incorporated herein.

197. U.S. Patent No. 5,723,004 (" '004 patent") (PX 18) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT LVIII**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 5,855,598**

198. The allegations of paragraphs 1 through 73 are incorporated herein.

199. Cook does not and has not infringed any valid claim of U.S. Patent No. 5,855,598 (" '598 patent") (PX 19).

**COUNT LIX**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 5,855,598**

200. The allegations of paragraphs 1 through 73 are incorporated herein.

201. U.S. Patent No. 5,855,598 (" '598 patent") (PX 19) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT LX**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 5,948,018**

202. The allegations of paragraphs 1 through 73 are incorporated herein.

203. Cook does not and has not infringed any valid claim of U.S. Patent No. 5,948,018 (" '018 patent") (PX 20).

**COUNT LXI**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 5,948,018**

204. The allegations of paragraphs 1 through 73 are incorporated herein.

205. U.S. Patent No. 5,948,018 (" '018 patent") (PX 20) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

**COUNT LXII**

**DECLARATORY JUDGMENT AS TO NONINFRINGEMENT  
OF U.S. PATENT 6,165,212**

206. The allegations of paragraphs 1 through 73 are incorporated herein.

207. Cook does not and has not infringed any valid claim of U.S. Patent No. 6,165,212 (" '212 patent") (PX 21).

**COUNT LXIII**

**DECLARATORY JUDGMENT AS TO INVALIDITY OF  
U.S. PATENT 6,165,212**

208. The allegations of paragraphs 1 through 73 are incorporated herein.

209. U.S. Patent No. 6,165,212 (" '212 patent") (PX 21) is invalid under 35 U.S.C. §§101, 102, 103 and/or 112.

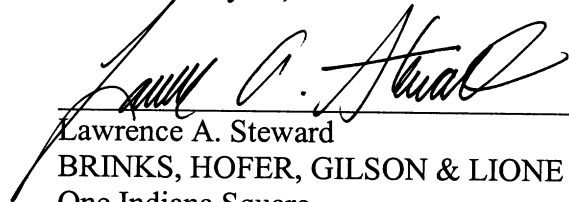
**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Cook Incorporated prays for trial by jury of all matters raised in this cause that are triable by jury, and for entry of judgment in its favor, wherein:

- a) Pursuant to 35 U.S.C. §256, it is ordered that U.S. Patents 5,609,627; 5,716,365; 5,776,180; 5,800,508; 5,916,263; 5,938,696; 6,051,020; 6,117,167; 6,165,213; and 6,302,906 are corrected by adding Hans Timmermans as a co-inventor;
- b) The Court declares that Cook does not infringe any valid claims of U. S. Patents 5,609,627; 5,683,450; 5,693,086; 5,716,365; 5,718,724; 5,776,180; 5,800,508; 5,916,263; 5,938,696; 6,051,020; 6,117,167; 6,165,213; 6,302,906; 5,415,664; 5,632,772; 5,639,278; 5,723,004; 5,885,598; 5,948,018; and 6,165,212;
- c) The Court declares that U. S. Patents 5,609,627; 5,683,450; 5,693,086; 5,716,365; 5,718,724; 5,776,180; 5,800,508; 5,916,263; 5,938,696; 6,051,020; 6,117,167; 6,165,213; 6,302,906; 5,415,664; 5,632,772; 5,639,278; 5,723,004; 5,885,598; 5,948,018; and 6,165,212 are invalid;
- d) The Court declares that U. S. Patents 5,609,627; 5,683,450; 5,693,086; 5,716,365; 5,718,724; 5,776,180; 5,800,508; 5,916,263; 5,938,696; 6,051,020; 6,117,167; 6,165,213; and 6,302,906 are unenforceable by Boston and Scimed for their fraud;

- e) The Court orders that Defendants be ordered to pay Cook's attorneys fees in view of fraud on the Patent Office and other acts which make this an exceptional case in accordance with 35 U.S.C. §285;
- f) The Court orders that Defendants be ordered to pay Cook's costs; and
- g) The Court orders that Cook be granted such other and further relief as the Court may deem just and proper, including the relief prayed for in its Complaint in this matter.

DATED: May 20, 2003



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