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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

COVIDIEN LP	)	CASE NO. ____
	)	
Plaintiff,	)	(related to Case No. C08-03129 MMC)
	)	
v.	)	
	)	<b>COMPLAINT FOR PATENT</b>
BIOLITEC U.S. INC.	)	<b>INFRINGEMENT</b>
	)	
Defendant.	)	<b>DEMAND FOR JURY TRIAL</b>
	)	
	)	
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1 Plaintiff Covidien LP (“Covidien”) alleges for its complaint against Defendant biolitec U.S.  
2 Inc. (“biolitec U.S.”) as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an action for patent infringement arising under the Patent Laws of the United  
5 States, 35 U.S.C. § 1 et seq.

6 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and  
7 1338(a).

8 3. This Court has personal jurisdiction because, on information and belief, biolitec U.S.  
9 does business and has committed infringing activities in the state of California, including within  
10 this district.

11 4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and  
12 1400(b).

13 5. This action involves the same asserted patents and some of the same accused  
14 products as *VNUS Medical Technologies, Inc. v. biolitec, Inc.*, CASE NO. C08-03129 MMC (N.D.  
15 Cal.) (hereinafter “VNUS I”), assigned to the Honorable Maxine M. Chesney.

16  
17 **INTRADISTRICT ASSIGNMENT**

18 6. This case is exempt from intradistrict assignment pursuant to Civil L. R. 3-2(c)  
19 because it is a patent infringement action.

20 **PARTIES**

21 7. Covidien is a Delaware corporation having its principal executive offices at 15  
22 Hampshire Street, Mansfield, MA 02048. Covidien is a successor-in-interest to VNUS Medical  
23 Technologies, Inc. (“VNUS”).

24 8. On information and belief, biolitec U.S. is a Delaware corporation with a place of  
25 business at 515 Shaker Road, East Longmeadow, MA 01028, which is the same address used by  
26 biolitec, Inc.

1 **THE PATENTS**

2 9. Covidien owns all right, title and interest in U.S. Patent No. 6,752,803 entitled  
3 “Method and Apparatus for Applying Energy to Biological Tissue Including the Use of Tumescant  
4 Tissue Compression” (the “’803 patent”).

5 10. Covidien owns all right, title and interest in U.S. Patent No. 6,769,433 entitled  
6 “Expandable Vein Ligator Catheter Having Multiple Electrode Leads, and Method” (the “’433  
7 patent”).

8 11. Covidien owns all right, title and interest in U.S. Patent No. 6,258,084 entitled  
9 “Method for Applying the Energy to Biological Tissue Including the Use of Tumescant Tissue  
10 Compression” (the “’084 patent”).

11 12. Covidien owns all right, title and interest in U.S. Patent No. 7,396,355 entitled  
12 “Method and Apparatus for Applying Energy to Biological Tissue Including the Use of Tumescant  
13 Tissue Compression” (the “’355 patent”).

14 13. Covidien owns all right, title and interest in U.S. Patent No. 7,406,970 entitled  
15 “Method of Using Expandable Vein Ligator Catheter Having Multiple Electrode Leads” (the “’970  
16 patent”).

17 14. Copies of the ’803 patent, the ’433 patent, the ’084 patent, the ’355 patent, and the  
18 ’970 patent (the “patents-in-suit”) are attached hereto as Exhibits 1-5.

19 **VNUS I**

20 15. On June 27, 2008, VNUS brought suit against biolitec, Inc., among others, for direct  
21 and indirect infringement of the patents-in-suit.

22 16. VNUS accused biolitec, Inc. of infringing the patents-in-suit by making, using,  
23 selling, offering to sell and/or instructing users how to use products for endovenous laser treatment,  
24 including the biolitec “ELVeS – Endo Laser Vein System” and “ELVeS PL,” for use in the  
25 treatment of venous reflux disease (e.g., varicose veins).

26 17. On December 8, 2010, a jury found biolitec, Inc. liable for inducing infringement  
27 and contributory infringement, as well as willful infringement of all five patents-in-suit. The jury  
28 awarded VNUS \$9,340,000 in lost profits against biolitec, Inc.



1           28. Covidien has been damaged by biolitec U.S.’s infringing activities and will be  
2 irreparably injured by its continued infringement unless biolitec U.S. is enjoined by this Court.

3           29. On information and belief, Defendant’s infringement of the patents-in-suit has been  
4 and is willful and will continue unless enjoined by this Court.

5           30. On information and belief, biolitec U.S. has actual knowledge of, or should have  
6 known of, the patents-in-suit, based on, but not limited to, the involvement of biolitec, Inc. and Dr.  
7 Neuberger and Mr. Foley in the VNUS I litigation.

8           31. On information and belief, biolitec U.S. has acted in direct and willful disregard of  
9 the patents-in-suit, offering for sale and distributing the “ELVeS – Endo Laser Vein System” and  
10 “ELVeS PL” products, despite the objectively high likelihood that its actions constituted willful  
11 infringement.

12          32. On information and belief, biolitec U.S. knowingly induced infringement and  
13 possessed specific intent to encourage another’s infringement of the patents-in-suit by selling,  
14 offering for sale, and distributing the “ELVeS – Endo Laser Vein System” and “ELVeS PL”  
15 products.

16   **RELIEF REQUESTED**

17          WHEREFORE, Covidien prays that judgment be entered in its favor, that:

18          (a) Defendant has infringed and is infringing the ’803, ’433, ’084, ’355 and ’970  
19 patents;

20          (b) Defendant’s infringement of the ’803, ’433, ’084, ’355 and ’970 patents has been  
21 and is willful;

22          (c) Defendant be preliminarily and permanently enjoined, along with its officers,  
23 directors, agents, employees, attorneys, parents, subsidiaries, and all others acting by or through  
24 Defendant, controlled by Defendant, or acting in concert or participating with Defendant, from  
25 further infringing the ’803, ’433, ’084, ’355 and ’970 patents;

26          (d) Defendant accounts to Covidien for damages adequate to compensate for  
27 Defendant’s infringement of the ’803, ’433, ’084, ’355 and ’970 patents and that such damages be  
28 awarded to Covidien, including prejudgment and post judgment interest;

1 (e) Covidien's damages be trebled as a result of Defendant's willful infringement of the  
2 '803, '433, '084, '355 and '970 patents;

3 (f) This case be adjudged an exceptional case and that the Court award Covidien its  
4 costs, expenses and attorneys' fees incurred in bringing and prosecuting this action; and

5 (g) Covidien be awarded such further and additional relief as the Court deems just and  
6 proper.

7 **DEMAND FOR JURY TRIAL**

8 Covidien hereby demands a trial by jury on its claims for patent infringement.

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10 Dated: February 10, 2014

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF  
COVIDIEN LP

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By: /s/ Matthew B. Lehr

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