

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILING FEE PAID:	
RECEIPT #	31398
AMOUNT	150.-
BY	DSJ
DATE	6/11/01

 Boston Scientific Corporation,
)
)
 Plaintiff,
)
)
 v.
)
)
 Circon Corporation,
)
)
 Defendant.
)

Civil Action No.
01cv10930RWZ

COMPLAINT

Plaintiff Boston Scientific Corporation ("BSC"), by and through its attorneys, complains against Circon Corporation ("Circon"), and alleges as follows:

PARTIES

1. Plaintiff BSC is a corporation organized and existing under the laws of Delaware with a principal place of business in Natick, Massachusetts.
2. Defendant Circon is a corporation organized and existing under the laws of Delaware with a principal place of business in Santa Barbara, California.

JURISDICTION AND VENUE

3. This Court has exclusive subject matter jurisdiction over the instant matter pursuant to 28 U.S.C. §§ 1331 and 1338(a).
4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).
5. On information and belief, this Court has specific and general personal jurisdiction over Circon based upon its numerous and substantial contacts with the Commonwealth of Massachusetts.

DOCKETED (1)

RECEIPT #	_____
AMOUNT \$	150.00
COMMONS ISS.	YES
LOCAL RULE 4.1	_____
WAIVER OF SERV.	_____
MCF ISSUED	_____
AO 120 OR 121	YES
BY DPTY CLK	ES
DATE	6/11/01

BACKGROUND

6. Ureteral stents are used to assist in carrying urine from the kidneys to the bladder. The efficacy of such stents is reliant, in part, upon the maintenance of the ends of the stent in the kidney and bladder, respectively. The hardness and flexibility of the material from which the stent is constructed are relevant to the maintenance of such positioning as well as to patient comfort.

7. Plaintiff BSC manufactures and markets the Polaris™ Dual Durometer Percuflex Ureteral Stent ("Polaris"), a stent designed to combine the benefits, vis-à-vis maintenance of position, of firmer stents with the benefits, vis-à-vis patient comfort, of more flexible stents.

8. United States Patent No. 4,874,360 ("the '360 patent") is directed to a ureteral stent system wherein the ends of the stent are of varying hardness and flexibility. The '360 patent identifies Jay R. Goldberg and Donald V. Hillegass as inventors and Medical Engineering Corporation as the assignee. On information and belief, Circon is now the owner and/or assignee of the '360 patent.

9. On May 29, 2001, Circon, through counsel, sent a letter to BSC asserting that the Polaris may infringe the '360 patent and demanding the immediate withdrawal of all infringing products from the market.

FIRST CAUSE OF ACTION

Declaratory Judgment Of Non-Infringement

10. Plaintiffs repeat the allegations of paragraph 1-9 as if fully set forth herein.

11. By its actions, Circon has created a reasonable apprehension that it will bring suit against BSC alleging that the Polaris infringes the '360 patent.

12. In light of the foregoing actual case or controversy, Plaintiff seeks a declaration, pursuant to 28 U.S.C. § 2201, that the Polaris does not infringe the '360 patent either literally or under the doctrine of equivalents.

REQUEST FOR RELIEF

13. WHEREFORE, Plaintiff BSC seeks the following relief from this Court:
- (a) a declaration that the Polaris does not infringe the '360 patent;
 - (b) preliminary and permanent injunctive relief enjoining Circon from taking any actions or making any statements inconsistent with BSC's right to make, use, offer to sell, and/or sell the Polaris;
 - (c) attorneys fees and other costs of this action; and
 - (d) such other relief as this Court deems proper.

Respectfully submitted,



Dated: May 31, 2001

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