

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

SARIF BIOMEDICAL LLC,  
Plaintiff,

v.

BRAINLAB, INC.; BRAINLAB AG;  
BRAINLAB MEDIZINISCHE  
COMPUTERSYSTEME GMBH; VARIAN  
MEDICAL SYSTEMS, INC.,

Defendants.

C.A. No. 13-846-LPS

**DEMAND FOR JURY TRIAL**

**SECOND AMENDED COMPLAINT**

Plaintiff Sarif Biomedical LLC (“Sarif”) alleges as follows:

**PARTIES**

1. Sarif is a limited liability company organized under the laws of the Delaware, having its principal offices at 719 W. Front Street, Suite 242, Tyler, Texas 75702.

2. On information and belief, Defendant Brainlab, Inc. is a Delaware corporation with its principal place of business located at 3 Westbrook Corporate Center, Suite 400, Westchester, Illinois 60154.

3. On information and belief, Defendant Brainlab AG is a German corporation with its principal place of business at Kapellenstraße 12, 85622 Feldkirchen, Germany that markets and promotes its products in the United States, including in this District.

4. On information and belief, Defendant Brainlab Medizinische Computersysteme GmbH is a German corporation with its principal place of business at Kapellenstraße 12, 85622 Feldkirchen, Germany that markets and promotes its products in the United States, including in this District.

5. On information and belief, Varian Medical Systems, Inc., (“Varian”) is a Delaware Corporation with its principal place of business at 3100 Hansen Way, Palo Alto, California 94304.

6. Brainlab, Inc., Brainlab AG, and Brainlab Medizinische Computersysteme GmbH are collectively referred to as “Brainlab.”

7. Brainlab and Varian are collectively referred to as “Defendants.”

#### JURISDICTION AND VENUE

8. This is an action for patent infringement arising under the patent laws of the United States of America, 35 U.S.C. § 1, *et seq.*, including § 271. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

9. Venue is proper in this District under 28 U.S.C. §§ 1391 (b)-(d) and 1400(b) because Defendants are subject to personal jurisdiction in this District, have committed acts of patent infringement in this District, or have regular and established places of business in this District.

#### COUNT I

##### (Infringement of U.S. Patent No. 5,755,725)

10. Sarif is the owner by assignment of United States Patent No. 5,755,725 (“the ’725 patent”), entitled “Computer-Assisted Microsurgery Methods and Equipment.” The ’725 patent issued on May 26, 1998. A true and correct copy of the ’725 patent is attached hereto as Exhibit A.

11. On information and belief, Varian and Brainlab entered into a partnership agreement to develop installations for computer-assisted microsurgery, including but not limited to the Novalis Tx Radiosurgery and TrueBeam STx platforms. *See, e.g.*, “Varian Medical

Systems and Brainlab Combine TrueBeam™ STx with the Novalis® Radiosurgery Program,” available at <http://investors.varian.com/index.php?s=43&item=749> and <http://www.brainlab.com/press-release/item/varian-brainlab-combine-truebeam-novalis>; “Varian Medical Systems and BrainLAB Join Forces to Introduce Novalis Tx® - The World’s Most Powerful and Versatile Sterotactic Radiosurgery System,” available at <http://investors.varian.com/index.php?s=43&item=544>; “Varian and BrainLAB Announce Rapid Uptake of Powerful and Versatile Radiosurgery Platform,” available at <http://investors.varian.com/index.php?s=43&item=566>. On information and belief, the Novalis Tx Radiosurgery and TrueBeam STx platforms integrate technologies from both Varian and Brainlab, such as Brainlab iPlan® treatment planning and ExacTrac® room-based x-ray imaging technology and Varian’s HD120 MLC multileaf collimator and Eclipse™ treatment planning software.

12. On information and belief, Defendants, as partners, have been and are directly infringing (literally and under the doctrine of equivalents) at least claim 1 of the ’725 patent in this District and throughout the United States by, among other things, making, using, selling, offering to sell, or importing installations for computer-assisted microsurgery, including, but not limited to the Novalis Tx Radiosurgery platform and TrueBeam STx platform.

13. Brainlab has been and is directly infringing (literally and under the doctrine of equivalents) at least claim 1 of the ’725 patent in this District and throughout the United States by, among other things, making, using, selling, offering to sell, or importing installations for computer-assisted microsurgery, including, but not limited to the Vero SBRT.

14. Varian has been and is directly infringing (literally and under the doctrine of equivalents) at least claim 1 of the ’725 patent in this District and throughout the United States

by, among other things, making, using, selling, offering to sell, or importing installations for computer-assisted microsurgery, including, but not limited to the Calypso system.

15. Defendants have had actual knowledge of the '725 patent since at least the filing of the original Complaint in this action.

16. On information and belief, Defendants have induced others and continue to induce others, including but not limited to their customers, to infringe the '725 patent in violation of 35 U.S.C. § 271(b) by taking active steps to encourage and facilitate direct infringement by others with knowledge that infringement, such as, upon information and belief, by making, using, offering for sale, and/or selling installations for computer-assisted microsurgery that when used as intended infringe the '725 patent. Such products include, by way of example and without limitation, the Novalis Tx Radiosurgery platform, TrueBeam STx platform, Vero SBRT, and Calypso system, the use of which is covered by at least claim 1 of the '725 patent. Defendants' customers who use such products directly infringe the claims of the '725 patent. Since at least the filing of the original Complaint in this action, Defendants have had actual knowledge of the '725 patent and have known that such use of such products by their customers constituted direct infringement of the '725 patent. Despite Defendants' actual knowledge of the '725 patent and the knowledge that their customers infringe, Defendants continued to, and still continue to, actively encourage their customers to infringe by, *inter alia*, making, using, offering for sale, and/or selling installations for computer-assisted microsurgery covered under the '725 patent. Defendants further intend that their customers use such products in a manner that infringes the claims of the '725 patent.

17. Defendants' actions of, *inter alia*, making, using, offering for sale, and/or selling such installations for computer-assisted microsurgery that are patented under the '725 patent

constitute an objectively high likelihood of infringement of the '725 patent, which was duly issued by the United States Patent and Trademark Office and is presumed valid. Since at least the filing of the original Complaint, Defendants are aware that there is an objectively high likelihood that their actions constituted, and continue to constitute, infringement of the '725 patent and that the '725 patent is valid. Despite Defendants' knowledge of that risk, on information and belief, Defendants have not made any changes to the relevant operation of their products and have not provided their users and/or customers with instructions on how to avoid infringement of the '725 patent. Instead, Defendants have continued to, and still continue to, among other things, make, use, offer for sale, and/or sell installations for computer-assisted microsurgery under the '725 patent in disregard of Sarif's rights.

18. As a result of Defendants' infringement of the '725 patent, Sarif has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

19. Unless a permanent injunction is issued enjoining Defendants and their agents, servants, employees, attorneys, representatives, affiliates, and all others acting on their behalf from infringing the '725 patent, Sarif will suffer irreparable harm.

#### PRAYER FOR RELIEF

Sarif prays for the following relief:

1. A judgment that Defendants have infringed (either literally or under the doctrine of equivalents), directly or indirectly, one or more claims of the '725 patent;

2. A permanent injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with them, from infringing the '725 patent;

3. An award of damages resulting from Defendants' acts of infringement in accordance with 35 U.S.C. § 284;

4. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Sarif its reasonable attorneys' fees against Defendants;

5. A judgment and order requiring Defendants to provide an accounting and to pay supplemental damages to Sarif, including without limitation, pre-judgment and post-judgment interest; and

6. Any and all other relief to which Sarif may show itself to be entitled.

**DEMAND FOR JURY TRIAL**

Sarif demands a trial by jury on all issues so triable.

May 16, 2014

BAYARD, P.A.

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