

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

B THERAPY LLC,)	
)	
Plaintiff,)	
)	Civil Action No. _____
v.)	
)	JURY TRIAL DEMANDED
VARIAN MEDICAL SYSTEMS, INC.,)	
)	
Defendant.)	
_____)	

COMPLAINT

For its Complaint, Plaintiff B Therapy, LLC ("B Therapy"), by and through the undersigned counsel, alleges as follows:

THE PARTIES

1. B Therapy is a Delaware limited liability company with a place of business located at 1619 Nashville Avenue, New Orleans, Louisiana 70115.
2. Defendant Varian Medical Systems, Inc. is a Delaware corporation with, upon information and belief, a place of business located at 3100 Hansen Way, Palo Alto, California 94304.

JURISDICTION AND VENUE

3. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.*
4. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.
5. Upon information and belief, Defendant conducts substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in

other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in this district.

6. Venue is proper in this district pursuant to §§ 1391(b), (c) and 1400(b).

THE PATENT-IN-SUIT

7. On February 24, 1998, United States Patent No. 5,720,717 (the "'717 patent"), entitled "Intracavitary Catheter For Use In Therapeutic Radiation Procedures," was duly and lawfully issued by the U.S. Patent and Trademark Office. A true and correct copy of the '717 patent is attached hereto as Exhibit A.

8. The inventor of the '717 patent is a radiation oncologist and an active inventor. He has pioneered the development of intracavitary catheters for use in therapeutic radiation procedures. Indeed, the '717 patent has been referenced by over 120 patents or applications.

9. B Therapy is the assignee and owner of the right, title and interest in and to the '717 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,720,717

10. B Therapy repeats and realleges the allegations of paragraphs 1 through 9 as if fully set forth herein.

11. Without license or authorization and in violation of 35 U.S.C. § 271(a), Defendant is liable for infringement of the '717 patent by making, using, importing, offering for sale, and/or selling therapeutic catheters, including, but not limited to Capri applicators, covered by one or more claims of the '717 patent.

12. More specifically and upon information and belief, the Capri applicator includes a therapeutic catheter apparatus which permits insertion of a radiotherapeutic

member through an orifice and into a body cavity. The catheter body is not subject to deformation due to pressure in the orifice. The catheter includes an inflatable balloon member capable of expansive engagement with the body cavity when expanded. *See* Capri Feature Sheet (available at https://www.varian.com/sites/default/files/resource_attachments/CapriApplicatorSetInitialCatalog.pdf (last accessed Jan. 26, 2015)). The catheter includes radiotherapeutic rod receiving members (e.g. treatment lumens) that are operable to receive radiotherapeutic rods. The rods are positioned within the rod receiving members and have a radioactivity level that is prescribed by a physician for treatment of the cancerous tissue. *See id.* The catheter provides manipulation of the body cavity (e.g. lumpectomy cavity) by expansive engagement between the balloon and the body cavity upon inflation of the balloon. *See* CT-Based 3-Dimensional Dose Planning in the Delivery of Vaginal Brachytherapy: New Instrumentation and Technique (available at https://www.varian.com/sites/default/files/resource_attachments/ABS2011Capri-clinical-poster-Patel.pdf (last accessed Jan. 26, 2015)). The balloon is "inflatable with air or saline." Capri Feature Sheet (available at https://www.varian.com/sites/default/files/resource_attachments/CapriApplicatorSetInitialCatalog.pdf (last accessed Jan. 26, 2015)). The Capri applicator includes an inflation tube (e.g., inflation lumen) which permits inflation and deflations of the balloon. *See* CT-Based 3-Dimensional Dose Planning in the Delivery of Vaginal Brachytherapy: New Instrumentation and Technique (available at https://www.varian.com/sites/default/files/resource_attachments/ABS2011Capri-clinical-poster-Patel.pdf (last accessed Jan. 26, 2015)).

13. B Therapy is entitled to recover from Defendant the damages sustained by B Therapy as a result of Defendant's infringement of the '717 patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

B Therapy hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, B Therapy requests that this Court enter judgment against Defendant as follows:

- A. An adjudication that Defendant has infringed the '717 patent;
- B. An award of damages to be paid by Defendant adequate to compensate B Therapy for Defendant's infringement of the '717 patent and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of B Therapy's reasonable attorneys' fees; and
- D. An award to B Therapy of such further relief at law or in equity as the Court deems just and proper.

Dated: January 26, 2015

STAMOULIS & WEINBLATT LLC

/s/ Richard C. Weinblatt

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