

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

_____)	
BOSTON SCIENTIFIC CORPORATION,)	
)	
and)	
)	
BOSTON SCIENTIFIC SCIMED, INC.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	
CARTER SURGICAL, LLC,)	JURY TRIAL DEMANDED
)	
Defendant.)	
_____)	

COMPLAINT

1. Plaintiffs Boston Scientific Corporation (“Boston Scientific”) and Boston Scientific SciMed, Inc. (“SciMed”) (collectively “Plaintiffs”), for their Complaint against Defendant Carter Surgical, LLC (“Carter” or “Defendant”), hereby allege as follows:

PARTIES

2. Plaintiff Boston Scientific is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 300 Boston Scientific Way, Marlborough, Massachusetts 01752.

3. Boston Scientific is the successor to AMS Sales Corporation (“AMS”).

4. Plaintiff SciMed is a corporation organized and existing under the laws of the State of Minnesota with its principal place of business at One SciMed Place, Maple Grove, MN 55311.

5. Defendant Carter is a Virginia LLC, with its principal place of business located at 1545 Standing Ridge Drive, Powhatan, Virginia 23139. Carter is in the business

of distributing medical devices and providing medical services.

NATURE OF THE ACTION

6. This is a civil action for the infringement of United States Patent No. 7,837,091 (the “’091 Patent”) (attached as Exhibit A) entitled “Laser System and Delivery Device Operation Logging Method and Kit,” under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and also for breach of contract under Minnesota law.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over the subject matter of Count I of this Complaint under 28 U.S.C. § 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271, *et seq.* This Court has supplemental jurisdiction over the subject matter of Count II of this complaint under 28 U.S.C. § 1367 because the claims in Count II are so related to claims in Count I that they form part of the same case or controversy under Article III of the United States Constitution.

8. Defendant is subject to personal jurisdiction in the State of Minnesota under the Minnesota Long-Arm statute, Minn. Stat. § 543.19, and due process. Defendant “expressly consent[ed] and submit[ted] to the exclusive jurisdiction of the State and Federal courts located in Minneapolis, MN” in a contract with Boston Scientific’s predecessor in interest, AMS (the “Contract”). The Contract is the subject of Count II and is attached hereto as Exhibit B.

9. Venue in this district is proper under 28 U.S.C. §§ 1400(b) and 1391(b) and (c), because the Defendant is subject to personal jurisdiction in this district and Defendant resides in this district. Additionally, the parties agreed in the Contract to the exclusive venue of the State and Federal courts located in Minneapolis, Minnesota for any legal action or proceeding arising out of or relating to the Contract.

FACTUAL BACKGROUND

10. AMS and Boston Scientific, directly and through their related companies and/or subsidiaries, have been and are developers and manufacturers of medical devices and therapies, including the GreenLight[®] laser system and MoXy[®] liquid-cooled fibers and therapies utilizing them.

11. AMS entered into the Contract with Defendant Carter effective May 8, 2012. The Contract provided to Carter, *inter alia*, a terminable license to practice certain method claims of the '091 Patent that were performed by AMS's proprietary software and associated hardware, forming the GreenLight[®] system.

12. Plaintiff Boston Scientific completed the acquisition of the American Medical Systems male urology portfolio, including AMS, from American Medical Systems Holdings, Inc. and Endo Health Solutions, Inc. in 2015. In 2016, AMS merged into Boston Scientific. Thus, Boston Scientific is the successor in interest to AMS with respect to the agreement between AMS and Carter.

13. On February 24, 2014, the Contract was terminated. At that time, Carter's license to practice the claims of the '091 Patent was terminated, as was Carter's right to use AMS's proprietary software and associated hardware, forming the GreenLight[®] system.

COUNT I

(Carter's Infringement of the '091 Patent)

14. Paragraphs 1 through 13 are incorporated by reference as if fully restated herein.

15. The '091 Patent is a valid, enforceable patent that was issued by the U.S. Patent and Trademark Office on November 10, 2010.

16. Plaintiff SciMed is the lawful assignee of all right, title and interest in and to the '091 Patent.

17. Defendant has directly infringed the '091 Patent by using devices to perform procedures that directly infringe, literally and/or under the doctrine of equivalents, one or more of the method claims of the '091 Patent, including at least Claim 1, as well as by selling and offering to sell devices and/or procedures that directly infringe, literally and/or under the doctrine of equivalents, one or more of the method claims of the '091 Patent. Such devices include the GreenLight[®] XPS laser console and MoXy[®] liquid-cooled fibers. Defendant operates the GreenLight[®] system with a GreenLight[®] console and associated software specifically designed to connect to the MoXy[®] fibers, each having a specific ID, along with a SmartCard, whereby the console's software detects the presence of the SmartCard and reads its data, reads an identifier from the MoXy[®] fiber, matches the two, verifies the SmartCard has space for an event log, and only enables the laser if the matching and verifying succeed and if an event code with time stamp can be verified as successfully written. Defendant has retained one or more GreenLight[®] consoles that were previously subject to the Contract and uses such consoles in conjunction with acquired MoXy[®] fibers and SmartCards in a manner that infringes the claims of the '091 Patent, including at least Claim 1.

18. Defendant actively, knowingly, and intentionally induced, and continues to actively, knowingly, and intentionally induce, infringement of the '091 Patent by offering for sale and selling devices to perform procedures that directly infringe, literally and/or under the doctrine of equivalents, one or more of the method claims of the '091 Patent, all with knowledge of the '091 Patent and its claims; with knowledge that its customers and end users will use, market, sell, and offer to sell devices to directly infringe, literally and/or under the doctrine of equivalents, one or more of the method claims of the '091 Patent; and with the knowledge and the specific intent to encourage and facilitate those infringing acts through the creation and dissemination of promotional and marketing materials, instructional materials, product manuals, and technical materials. Such devices include the GreenLight[®] XPS laser

console and MoXy[®] liquid-cooled fibers.

19. Defendant has no license to engage in the aforementioned acts.

20. Defendant has been and continues to be infringing one or more of the claims of the '091 Patent through the aforesaid acts.

21. Defendant has been on notice of its infringement of the '091 Patent since no later than February 17, 2016, when Boston Scientific sent a letter to Defendant demanding Defendant cease and desist its infringement, and despite this knowledge Defendant continues to commit tortious conduct by way of willful patent infringement.

22. Plaintiff SciMed is entitled to recover damages adequate to compensate for the infringement.

COUNT II

(Breach of Contract)

23. Paragraphs 1 through 22 are incorporated by reference as if fully restated herein.

24. AMS entered into the Contract, entitled "Mobile Provider Distribution Agreement" with Defendant Carter effective May 8, 2012. AMS performed under the contract prior to its termination.

25. Carter was given a license to operate certain software and use certain hardware in conjunction with the GreenLight[®] laser system by the Contract.

26. Carter's license did not exist beyond the terms of the Contract.

27. On December 31, 2014, the Contract was terminated. This termination revoked the license granted to Carter.

28. Contrary to the terms of the Contract and without any license, Carter continued to operate the software and hardware in conjunction with the GreenLight[®] laser system.

29. Plaintiffs have been damaged by Carter's unlicensed use and practice of Claim 1 of the '091 Patent in violation of the terms of the Contract.

30. Plaintiffs are entitled to recover damages for Carter's breach of the Contract.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests the following relief:

- a) A judgment that Carter, has willfully infringed the '091 Patent;
- b) A judgment that SciMed be awarded all appropriate damages under 35 U.S.C. § 284 for Carter's past infringement, and any continuing or future infringement of the '091 Patent, up until the date such judgment is entered, including interest, costs, and disbursements as justified under 35 U.S.C. § 284 and:
 - i. that this case be declared exceptional within the meaning of 35 U.S.C. § 285 and that SciMed be awarded their reasonable attorneys' fees against Carter that it incurs in prosecuting this action
 - ii. that Plaintiffs be awarded costs, and expenses that they incur in prosecuting this action; and
 - iii. that Plaintiffs be awarded such further relief at law or in equity as the Court deems just and proper.
- c) A judgment that Carter has breached the Contract;
- d) A judgment that Boston Scientific be awarded contract damages in expectation of its gain under the Contract, in reliance upon Carter's performance, and in restitution for its performance under the Contract and:
 - i. that Plaintiffs be awarded costs, and expenses that they incur in prosecuting this action; and
 - ii. that Plaintiffs be awarded such further relief at law or in equity as the Court deems just and proper.

DEMAND FOR JURY TRIAL

31. Plaintiffs hereby demand trial by jury on all claims and issues so triable.

DATED: September 9, 2016

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

/s/ Elizabeth Cowan Wright

Elizabeth Cowan Wright (#0387126)

2200 Wells Fargo Center

90 South Seventh Street

Minneapolis, Minnesota 55402-3901

Telephone: (612) 766-7000

Fax: (612) 766-1600

liz.wright@FaegreBD.com

OF COUNSEL:

Kevin M. Flannery -- LEAD ATTORNEY

kevin.flannery@dechert.com

Robert Ashbrook Jr.

robert.ashbrook@dechert.com

DECHERT LLP

Cira Centre 2929 Arch Street

Philadelphia, PA 19104

(215) 994-4000

Attorneys for Plaintiffs

Boston Scientific Corporation and

Boston Scientific SciMed, Inc.