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8 *Attorneys for Plaintiff FlexStent, LLC*

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 FLEXSTENT, LLC, a California
12 Corporation,

13 Plaintiff,

14 v.

15 ABBOTT LABORATORIES, an
16 Illinois Corporation,

17 ABBOTT VASCULAR, INC., a
18 Delaware Corporation,

19 ABBOTT CARDIOVASCULAR
20 SYSTEMS, INC., a California
21 Corporation,

22 ABBOTT VASCULAR SOLUTIONS
23 INC., an Indiana Corporation,

24 Defendants.

Case No. 5:18-cv-02479

Patent Infringement Complaint

Demand for Jury Trial

25
26 **Complaint for Patent Infringement**
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1 Plaintiff FlexStent, LLC (“FlexStent”) files this complaint against Defendants
2 Abbot Laboratories, Abbott Vascular, Inc., Abbott Cardiovascular Systems, Inc., and
3 Abbott Vascular Solutions Inc., alleging infringement of U.S. Patent No. 6,187,035.
4 The accused products are Abbott coronary stents, including stents in the “Xience” line
5 of drug-eluting stents.

6 **Plaintiff FlexStent and the asserted patent.**

7 1. Plaintiff FlexStent, LLC is a limited liability company organized and
8 existing under the laws of the State of California.

9 2. FlexStent is the owner of U.S. Patent No. 6,187,035 entitled “Vascular
10 Stent,” which issued on February 13, 2001, with 3 claims. Defendants have known of
11 the ’035 patent since at least May 25, 2015, when Defendants were notified that they
12 infringed the ’035 Patent. A copy of the ’035 patent is attached to this complaint as
13 Exhibit 1.

14 **Defendants and the accused products.**

15 3. Defendant Abbott Laboratories is an Illinois Corporation. According to
16 Abbott Laboratories’ website, Abbott Laboratories has a significant presence in
17 California, including in Temecula, California. Defendant Abbott Vascular, Inc. is a
18 Delaware Corporation with a principal place of business in California and a place of
19 business in Temecula, California. Defendant Abbott Cardiovascular Systems, Inc.
20 (formerly known as Advanced Cardiovascular Systems, Inc.) is a California
21 Corporation with a principal place of business in California and a place of business in
22 Temecula, California. Abbott Vascular Solutions Inc. (formerly known as Guidant
23 Endovascular Solutions, Inc.) is an Indiana Corporation with a principal business
24 office in California and a place of business in Temecula, California. This complaint
25 refers to the Defendants collectively as “Abbott.”

26 4. Each Defendant has made, offered for sale, sold, and/or used coronary
27 stents that infringe the ’035 patent. These stents include stents that are part of the
28 “Xience” line of drug-eluting stents.

1 5. Defendants are jointly and severally liable for infringing the '035 patent.
2 Defendants' liability arises out of the same transaction, occurrence or series of
3 transactions or occurrences related to the making, using, importing into the United
4 States, offering for sale and selling the same infringing stents, and inducing third
5 parties to do the same. In addition, as a result, this action involves questions of law
6 and fact that are common to all Defendants.

7 **Nature of the action, jurisdiction, and venue.**

8 6. FlexStent asserts claims for patent infringement against Defendants under
9 the patent laws of the United States, including 35 U.S.C. §§ 271 and 281, *et seq.* The
10 Court has original jurisdiction over FlexStent's patent infringement claims under 28
11 U.S.C. §§ 1331 and 1338(a).

12 7. The Court has personal jurisdiction over Defendants. Each Defendant has
13 committed acts of infringement in this district, including manufacturing, offering to
14 sell, selling, and/or using infringing devices in this district.

15 8. Venue is proper in this district under 28 U.S.C. §1400(b). Defendants
16 have committed acts of infringement in this district and have several established places
17 of business in this district, including offices and manufacturing facilities at various
18 addresses in Temecula, CA, including at 42301 Zevo Dr., Temecula, CA 92590; 26531
19 Ynez Rd., Temecula, CA 92591; and 41888 Motor Car Pkwy, Temecula, CA 92591.

20 9. These locations are regular and established places of business of
21 Defendants for purposes of §1400(b) because each (i) is a physical place in the Central
22 District of California (each consisting of a building or a part of a building from which
23 business is conducted); (ii) operates the business of Defendants (e.g., the
24 manufacturing and sale of infringing stents) in a regular, steady, uniform, orderly,
25 settled, fixed, and permanent manner; and (iii) is owned or leased by Defendants
26 and/or has been ratified by Defendants as a place of business.

27 **Claim for Patent Infringement**

1 10. FlexStent incorporates by reference each of the allegations in paragraphs
2 1-9 above and further alleges as follows:

3 11. On February 13, 2001, the United States Patent and Trademark Office
4 issued U.S. Patent No. 6,187,035, entitled “Vascular Stent.” Ex. 1.

5 12. FlexStent is the owner of the ’035 patent with full rights to pursue
6 recovery of royalties for damages for infringement, including full rights to recover past
7 and future damages.

8 13. Each claim of the ’035 patent is valid, enforceable, and patent-eligible.

9 Direct infringement.

10 14. Defendants have directly infringed the claims of the ’035 patent by
11 making, using, offering to sell, and selling the accused products. An example way
12 that an example infringing product (the Medium XIENCE PRIME vascular stent)
13 infringes independent claim 1 is provided below.

14 **“A vascular stent which comprises:”**

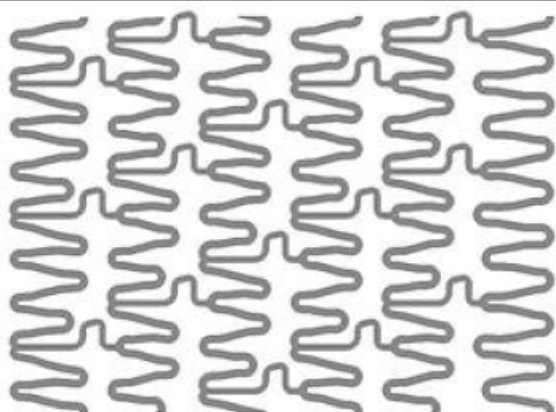
- 15 • Each Medium XIENCE PRIME is a vascular stent meeting the requirements of
16 claim 1. An exemplary device description for the XIENCE PRIME is shown
17 below:

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1 “vertical branches whose width and thickness range 0.09 to 0.12 mm and 0.08 to
 2 0.12 mm, respectively,”

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4 **Medium XIENCE PRIME Stent**

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11 Expansion	Balloon Expandable
12 Material	L-605 Cobalt-Chromium (CoCr) alloy
13 Expansion Diameters (mm)	3.5 and 4.0 (post dilated to 4.5)
14 Lengths (mm)	8, 12, 15, 18, 23, 28, 33 and 38
15 Metal to Artery Ratio (M:A)	13% at 4.0 mm expansion
16 Number of Crests per Ring	9
17 Number of Links per Ring	3
18 Middle Ring Strut Width (inch)	0.0040 for bar arms 0.0040 for U crests, LC, SC 0.0039 - 0.0040 for W crests 0.0030 for links
19 Strut Thickness (inch)	0.0032

- 20
- Each Medium XIENCE PRIME vascular stent comprises vertical branches (depicted above) that have a width of approximately 0.0039-0.0040 inches (0.09906-0.1016 mm) and a thickness of approximately 0.0032 inches (0.08128 mm). See device description above.

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24 **“and horizontal branches having wave form projections, whose width and thickness
 25 range 0.05 to 0.08 mm and 0.08 to 0.12 mm, respectively.”**

- 26
- Each Medium XIENCE PRIME vascular stent comprises horizontal branches having wave form projections (pictured in the device description). See device description above. These horizontal branches have a width of approximately
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1 0.0030 inches (0.0762 mm) and a thickness of approximately 0.0032 inches
2 (0.08128 mm).

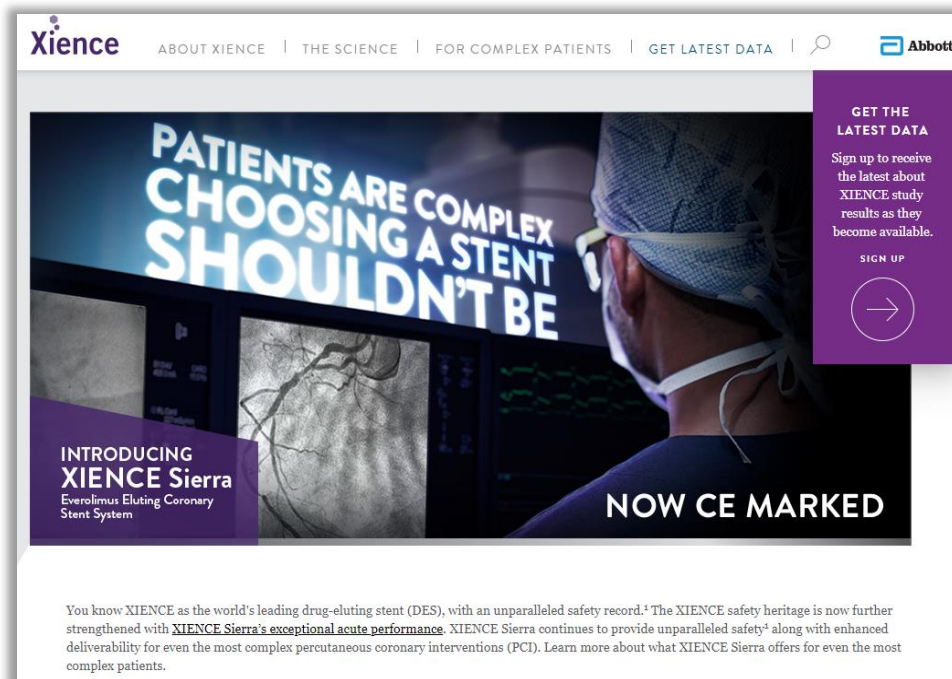
3 Indirect infringement.

4 15. Defendants have also indirectly infringed the '035 patent.

5 16. Defendants have actively induced third parties to infringe the '035 patent.

6 17. Defendants offered to sell and sold their accused products. In doing so,
7 Defendants encouraged resellers and users of the accused products (for example
8 hospitals, doctors, and patients) to offer to sell, sell, and use stents that infringe the
9 '035 patent as shown above.

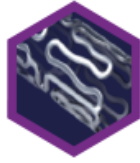
10 18. In addition, Defendants expressly encouraged resellers and users (for
11 example hospitals, doctors, and patients) to offer to sell, sell, and use their infringing
12 stents through their marketing materials. For example:



<https://www.xiencestent.com/>.

Unique Design Behind XIENCE Safety Data

All components of the XIENCE drug-eluting stent are designed for safety as well as efficacy.



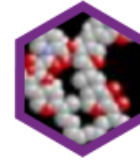
STENT DESIGN

- Flexible stent and delivery system offer more conformability to vessel anatomy²
- Low metal-to-artery ratio reduces injury and/or inflammation³
- Thin struts are designed for rapid healing and reduced thrombogenicity^{4,5}



COATING TECHNOLOGY

- Fluorinated polymer is associated with thromboresistance⁶ and minimal inflammation⁷
- Faster endothelialization and more functional endothelium⁸⁻¹⁰
- Coating offers durability, flexibility and elasticity^{11,12}



DRUG

- Everolimus, patented to reduce restenosis
- Elution rate matches restenosis cascade by optimal coating thickness
- Cytostatic

<https://www.xiencestent.com/science/xience-stent-moa/>.

19. In addition, Defendants' employees and representatives encouraged and instructed resellers and users (for example hospitals and doctors) to offer to sell, sell, and use the accused products.

20. Furthermore, Defendants knew or were willfully blind to the fact that their users and resellers' actions in response to such encouragement and instruction would infringe the '035 patent.

21. Indeed, Defendants were aware of the '035 patent since at least May 25, 2015. On that date, a prior owner of the patent sent a letter to Abbott Laboratories and Abbott Vascular, Inc. informing them of the '035 patent. In addition, the prior owner informed them that "Abbott has been infringing the Portfolio, including the '035 Patent, by making, using, selling, offering for sale and/or importing, for example, the Xience family of stent systems." The prior owner also provided additional materials to Defendants' representatives demonstrating infringement of the patent, and

1 corresponded and met with Defendants' representatives regarding Defendants'
2 infringement of the patents. As a result, Defendants knew and understood that offering
3 to sell, selling, and using their accused products, including according to their
4 encouragement and instructions, would infringe the '035 patent.

5 22. Based on the foregoing, Defendants knew that their resellers and end
6 users' offering for sale, selling, and using of the accused products would infringe the
7 '035 patent, or alternatively were aware that there was a high probability that this
8 would infringe and took deliberate actions to avoid confirming this.

9 23. As a result, Defendants have indirectly infringed the '035 patent, both by
10 inducing their resellers and end users to offer to sell, sell, and use its accused products,
11 and by knowing or being willfully blind to the fact that such actions would infringe the
12 '035 patent.

13 Willful infringement.

14 24. Defendants' infringement of the '035 patent has been knowing, willful,
15 and egregious.

16 25. For the reasons stated in paragraphs 21-22 above, Defendants knew that
17 their accused products infringed the '035 patent, or alternatively took deliberate steps
18 to avoiding confirming this and were therefore willfully blind to these facts. FlexStent
19 incorporates by reference each of the allegations in these paragraphs.

20 26. FlexStent has been damaged by Defendants' infringement of the '035
21 patent and is entitled to reasonable royalty damages and enhanced damages due to
22 Defendants' willful infringement.

23 **Jury demand.**

24 27. FlexStent demands trial by jury of all issues.

25 **Relief requested.**

26 FlexStent prays for the following relief:

27 A. A judgment in favor of FlexStent that Defendants have infringed the
28 asserted '035 patent and that the patent is valid, enforceable, and patent-eligible;

1 B. A judgment and order requiring Defendants to pay FlexStent
2 compensatory damages, costs, expenses, and pre- and post-judgment interest for its
3 infringement of the asserted patent, as provided under 35 U.S.C. § 284;

4 C. A judgment that Defendants have willfully infringed the '035 patent and
5 that FlexStent is entitled to enhanced damages as a result of such willful infringement.

6 D. A finding that this case is exceptional under 35 U.S.C. § 285, at minimum
7 due to Defendants' willful infringement, and an award of FlexStent's reasonable
8 attorney's fees and costs; and

9 E. Any and all other relief to which FlexStent may be entitled.

10
11 Dated: November 26, 2018

Respectfully submitted,

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13 By: /s/ Gregory Dovel

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