

Plaintiff C. R. Bard, Inc. hereby demands a jury trial and alleges the following against Defendant AngioDynamics, Inc.:

PARTIES

1. C. R. Bard, Inc. (“Plaintiff”) is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business located at 730 Central Avenue, Murray Hill, New Jersey 07974.

2. On information and belief, AngioDynamics, Inc. (“Defendant”) is a corporation organized under the laws of the State of Delaware and has its principal place of business at 14 Plaza Drive, Latham, NY 12110. Defendant makes, sells, offers for sale, and/or uses medical products, including implantable port products throughout the United States, including within this District.

JURISDICTION AND VENUE

3. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271, which gives rise to the remedies specified under 35 U.S.C. §§ 281 and 283–285.

4. This Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400.

THE PATENTS-IN-SUIT

6. On May 24, 2011, the United States Patent and Trademark Office (the “PTO”) duly and legally issued U.S. Patent No. 7,947,022 (“the ’022 patent”), entitled “Access Port Identification Systems and Methods.” A true and accurate copy of the ’022 patent is attached hereto as Exhibit 1.

7. On August 31, 2010, the PTO duly and legally issued U.S. Patent No. 7,785,302 (“the ’302 patent”) entitled “Access Port Identification Systems and Methods.” A true and accurate copy of the ’302 patent is attached hereto as Exhibit 2.

8. On June 14, 2011, the PTO duly and legally issued U.S. Patent No. 7,959,615 (“the ’615 patent”) entitled “Access Port Identification Systems and Methods.” A true and accurate copy of the ’615 patent is attached hereto as Exhibit 3.

9. Plaintiff is the owner by assignment of the ’022 patent, the ’302 patent, and the ’615 patent (collectively, “the Asserted Patents”).

FIRST CAUSE OF ACTION

(Patent Infringement of the ’022 Patent)

10. Plaintiff realleges and incorporates paragraphs 1–9 as though fully set forth herein.

11. Defendant has infringed, and continues to infringe, literally or under the doctrine of equivalents, the ’022 patent by making, using, selling, offering for sale within the United States, and/or importing into the United States, products that are covered by one or more claims of the ’022 patent. Such products include implantable port products including, for example, Smart Port port products.

12. In addition to directly infringing the ’022 patent, Defendant has indirectly infringed and continues to indirectly infringe the ’022 patent, including by actively inducing others to directly infringe the ’022 patent in violation of 35 U.S.C. § 271(b).

13. On information and belief, Defendant has, and has had, knowledge of the ’022 patent and of its infringement thereof at least as of July 27, 2011, when the ’022 patent was cited by the United States Patent and Trademark Office Examiner during the prosecution of Design Patent Application No. 29/328079, which identifies Defendant as its assignee. In addition, K&E 23863242.3

Defendant has had knowledge of the '022 patent since no later than January 11, 2012, by virtue of Plaintiff's filing of the Complaint in this action.

14. Despite Defendant's knowledge of the '022 patent, as well as Plaintiff's allegations of infringement, Defendant has actively induced and continues to actively induce others to make, use, sell, and/or offer to sell in the United States, and/or import into the United States, products that are covered by one or more claims of the '022 patent. Such products include implantable port products, including, for example, Smart Port port products.

15. For example, in addition to Defendant's own direct infringement of the '022 patent, Defendant's customers, including radiologists, physicians, nurses, surgeons, medical technicians, and other medical professionals, on information and belief, are directly infringing the '022 patent through their use of products that are covered by one or more claims of the '022 patent, including, for example, the Smart Port port products.

16. On information and belief, Defendant has knowingly induced such infringement of the '022 patent and has done so with specific intent to induce such infringement, including through activities relating to marketing, advertising, promotion, support, and distribution of the Smart Port port products.

17. For example, Defendant provides materials that instruct its customers on how to use the Smart Port port products, including, for example Defendant's "Power Injectable Implantable Port Systems Instructions for Use." The "Instructions for Use" state that Defendant's Smart Port port products are "intended to facilitate frequent blood sampling or the delivery of medications, nutritions [sic], blood products and power injection of contrast media for imaging."

18. Defendant further provides instructions to its customers for implantation of its power ports and “Instructions for Use,” which inform its customers on how to use Defendant’s Smart Port port products for power injection.

19. Moreover, Defendant markets these products to its customers as “identifiable under X-ray or scout scan through visualization of the CT markings located on the bottom of the port.”

20. Defendant actively publicizes such promotional and instructional materials for products including the Smart Port port products through numerous means, including through its website <http://www.angiodynamics.com/>. Specific examples of these materials can be found on Defendant’s website at: <http://www.angiodynamics.com/products/smart-port-ct> (attached hereto as Exhibit 4); http://www.angiodynamics.com/uploads/pdf/081610-124241_Smart%20Port%20IFU.pdf (attached hereto as Exhibit 5); http://www.angiodynamics.com/uploads/pdf/071310-083527_MLC%20220.pdf (attached hereto as Exhibit 6); and http://www.angiodynamics.com/uploads/pdf/071310-083617_MLC%20240.pdf (attached hereto as Exhibit 7).

21. Defendant’s infringement of the ’022 patent has been and continues to be willful and deliberate. Despite Defendant’s knowledge of the ’022 patent and Defendant’s infringement thereof, Defendant has continued making, using, selling, and offering for sale in the United States and/or importing into the United States products that are covered by one or more claims of the ’022 patent. Such products include implantable port products, including, for example, Smart Port port products. Defendant’s willful and deliberate infringement entitles Plaintiff to enhanced damages under 35 U.S.C. § 284.

22. Unless and until enjoined by this Court, Defendant will continue to willfully infringe the '022 patent, both directly and indirectly. Defendant's infringement is causing and will continue to cause Plaintiff irreparable harm, for which there is no adequate remedy at law. Under 35 U.S.C. § 283, Plaintiff is entitled to a permanent injunction against further infringement.

SECOND CAUSE OF ACTION

(Patent Infringement of the '302 Patent)

23. Plaintiff realleges and incorporates paragraphs 1–22 as though fully set forth herein.

24. Defendant has infringed, and continues to infringe, literally or under the doctrine of equivalents, the '302 patent by making, using, selling, offering for sale within the United States, and/or importing into the United States, products that are covered by one or more claims of the '302 patent. Such products include implantable port products including, for example, Smart Port port products.

25. In addition to directly infringing the '302 patent, Defendant has indirectly infringed and continues to indirectly infringe the '302 patent, including by actively inducing others to directly infringe the '302 patent in violation of 35 U.S.C. § 271(b).

26. Defendant has had knowledge of the '302 patent since no later than January 11, 2012, by virtue of Plaintiff's filing of the Complaint in this action.

27. Despite Defendant's knowledge of the '302 patent, as well as Plaintiff's allegations of infringement, Defendant has actively induced and continues to actively induce others to make, use, sell, and/or offer to sell in the United States, and/or import into the United States, products that are covered by one or more claims of the '302 patent. Such products include implantable port products, including, for example, Smart Port port products.

28. For example, in addition to Defendant's own direct infringement of the '302 patent, Defendant's customers, including radiologists, physicians, nurses, surgeons, medical technicians, and other medical professionals, on information and belief, are directly infringing the '302 patent through their use of products that are covered by one or more claims of the '302 patent, including, for example, the Smart Port port products.

29. On information and belief, Defendant has knowingly induced such infringement of the '302 patent and has done so with specific intent to induce such infringement, including through activities relating to marketing, advertising, promotion, support, and distribution of the Smart Port port products.

30. For example, Defendant provides materials that instruct its customers on how to use the Smart Port port products, including, for example Defendant's "Power Injectable Implantable Port Systems Instructions for Use." The "Instructions for Use" state that Defendant's Smart Port port products are "intended to facilitate frequent blood sampling or the delivery of medications, nutritions [sic], blood products and power injection of contrast media for imaging."

31. Defendant further provides instructions to its customers for implantation of its power ports and "Instructions for Use," which inform its customers on how to use Defendant's Smart Port port products for power injection.

32. Moreover, Defendant markets these products to its customers as "identifiable under X-ray or scout scan through visualization of the CT markings located on the bottom of the port."

33. Defendant actively publicizes such promotional and instructional materials for products including the Smart Port port products through numerous means, including through its

website <http://www.angiodynamics.com/>. Specific examples of these materials can be found on Defendant's website at: <http://www.angiodynamics.com/products/smart-port-ct> (attached hereto as Exhibit 4); http://www.angiodynamics.com/uploads/pdf/081610-124241_Smart%20Port%20IFU.pdf (attached hereto as Exhibit 5); http://www.angiodynamics.com/uploads/pdf/071310-083527_MLC%20220.pdf (attached hereto as Exhibit 6); and http://www.angiodynamics.com/uploads/pdf/071310-083617_MLC%20240.pdf (attached hereto as Exhibit 7).

34. Defendant's infringement of the '302 patent has been and continues to be willful and deliberate. Despite Defendant's knowledge of the '302 patent, and Defendant's infringement thereof, Defendant has continued making, using, selling, and offering for sale in the United States and/or importing into the United States products that are covered by one or more claims of the '302 patent. Such products include implantable port products, including, for example, Smart Port port products. Defendant's willful and deliberate infringement entitles Plaintiff to enhanced damages under 35 U.S.C. § 284.

35. Unless and until enjoined by this Court, Defendant will continue to willfully infringe the '302 patent, both directly and indirectly. Defendant's infringement is causing and will continue to cause Plaintiff irreparable harm, for which there is no adequate remedy at law. Under 35 U.S.C. § 283, Plaintiff is entitled to a permanent injunction against further infringement.

THIRD CAUSE OF ACTION

(Patent Infringement of the '615 Patent)

36. Plaintiff realleges and incorporates paragraphs 1–35 as though fully set forth herein.

37. Defendant has infringed, and continues to infringe, literally or under the doctrine of equivalents, the '615 patent by making, using, selling, offering for sale within the United States, and/or importing into the United States, products that are covered by one or more claims of the '615 patent. Such products include implantable port products including, for example, Smart Port port products.

38. In addition to directly infringing the '615 patent, Defendant has indirectly infringed and continues to indirectly infringe the '615 patent, including by actively inducing others to directly infringe the '615 patent in violation of 35 U.S.C. § 271(b).

39. Defendant has had knowledge of the '615 patent since no later than January 11, 2012, by virtue of Plaintiff's filing of the Complaint in this action.

40. Despite Defendant's knowledge of the '615 patent, as well as Plaintiff's allegations of infringement, Defendant has actively induced and continues to actively induce others to make, use, sell, and/or offer to sell in the United States, and/or import into the United States, products that are covered by one or more claims of the '615 patent. Such products include implantable port products, including, for example, Smart Port port products.

41. For example, in addition to Defendant's own direct infringement of the '615 patent, Defendant's customers, including radiologists, physicians, nurses, surgeons, medical technicians, and other medical professionals, on information and belief, are directly infringing the '615 patent through their use of products that are covered by one or more claims of the '615 patent, including, for example, the Smart Port port products.

42. On information and belief, Defendant has knowingly induced such infringement of the '615 patent and has done so with specific intent to induce such infringement, including

through activities relating to marketing, advertising, promotion, support, and distribution of the Smart Port port products.

43. For example, Defendant provides materials that instruct its customers on how to use the Smart Port port products, including, for example Defendant's "Power Injectable Implantable Port Systems Instructions for Use." The "Instructions for Use" state that Defendant's Smart Port port products are "intended to facilitate frequent blood sampling or the delivery of medications, nutritions [sic], blood products and power injection of contrast media for imaging."

44. Defendant further provides instructions to its customers for implantation of its power ports and "Instructions for Use," which inform its customers on how to use Defendant's Smart Port port products for power injection.

45. Moreover, these products that Defendant markets to its customers include concave sides that provide a way to identify Defendant's Smart Port port products.

46. Defendant actively publicizes such promotional and instructional materials for products including the Smart Port port products through numerous means, including through its website <http://www.angiodynamics.com/>. Specific examples of these materials can be found on Defendant's website at: <http://www.angiodynamics.com/products/smart-port-ct> (attached hereto as Exhibit 4); http://www.angiodynamics.com/uploads/pdf/081610-124241_Smart%20Port%20IFU.pdf (attached hereto as Exhibit 5); http://www.angiodynamics.com/uploads/pdf/071310-083527_MLC%20220.pdf (attached hereto as Exhibit 6); and http://www.angiodynamics.com/uploads/pdf/071310-083617_MLC%20240.pdf (attached hereto as Exhibit 7).

47. Defendant's infringement of the '615 patent has been and continues to be willful and deliberate. Despite Defendant's knowledge of the '615 patent, and Defendant's infringement thereof, Defendant has continued making, using, selling, and offering for sale in the United States and/or importing into the United States products that are covered by one or more claims of the '615 patent. Such products include implantable port products, including, for example, Smart Port port products. Defendant's willful and deliberate infringement entitles Plaintiff to enhanced damages under 35 U.S.C. § 284.

48. Unless and until enjoined by this Court, Defendant will continue to willfully infringe the '615 patent, both directly and indirectly. Defendant's infringement is causing and will continue to cause Plaintiff irreparable harm, for which there is no adequate remedy at law. Under 35 U.S.C. § 283, Plaintiff is entitled to a permanent injunction against further infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in favor of Plaintiff and prays that the Court grant the following relief to Plaintiff:

- A. Awarding Plaintiff the relief prayed for in Plaintiff's First Amended Complaint;
- B. Dismissing Defendant's counterclaims with prejudice and denying Defendant the relief requested thereunder;
- C. Ruling that Defendant has directly, indirectly and willfully infringed the '022, '302, and '615 patents;
- D. Permanently enjoining Defendant, its affiliates and subsidiaries, and each of its officers, agents, servants and employees and those acting in privity or concert with it, from directly or indirectly infringing any of the claims of the '022, '302, and '615 patents, and from causing or encouraging others to directly infringe the '022, '302,

- and '615 patents, including without limitation implantable port products, until after the expiration date of the '022, '302, and '615 patents, including any extensions and/or additional periods of exclusivity to which Plaintiff is or becomes entitled;
- E. Awarding damages under 35 U.S.C. § 284 in an amount sufficient to compensate Plaintiff for its damages arising from Defendant's direct and indirect infringement of the '022, '302, and '615 patents, including, but not limited to, lost profits and/or a reasonable royalty, together with pre-judgment and post-judgment interest, and costs;
- F. Awarding an accounting and/or supplemental damages for all damages occurring after any discovery cutoff and through the Court's decision regarding the imposition of a permanent injunction;
- G. Declaring this case to be exceptional within the meaning of 35 U.S.C. § 285 and awarding Plaintiff the attorney fees, costs, and expenses it incurs in this action;
- H. An order awarding treble damages for willful infringement by Defendant, pursuant to 35 U.S.C. § 284;
- I. Awarding Plaintiff such other and further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff Bard hereby demands a trial by jury for all issues so triable.

Dated: September 17, 2012

Respectfully Submitted:

By: /s/ Bryon J. Benevento

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