

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

W.L. GORE & ASSOCIATES, INC., and
GORE ENTERPRISE HOLDINGS, INC.,

Plaintiffs,

v.

MEDTRONIC, INC., MEDTRONIC USA,
INC., and MEDTRONIC VASCULAR
INC.,

Defendants.

Civ. Act. No. 2:10cv441

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs W.L. Gore & Associates, Inc. and Gore Enterprise Holdings, Inc. (collectively, “Gore” or “Plaintiffs”), by their attorneys, Fish & Richardson P.C., for their second amended complaint against Medtronic, Inc., Medtronic USA, Inc., and Medtronic Vascular Inc. (collectively, “Medtronic” or “Defendants”) allege as follows:

Nature of the Action

1. This is an action for infringement of United States Patent No. 5,810,870 (the “’870 patent”) under 35 U.S.C. §§ 271(a) and (g).

The Parties

2. Plaintiff W.L. Gore & Associates, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 555 Paper Mill Road, Newark, Delaware 19711.

3. Plaintiff Gore Enterprise Holdings, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 551 Paper Mill Road, Newark, Delaware 19711.

4. On information and belief, Defendant Medtronic, Inc. is a corporation organized and existing under the laws of the State of Minnesota, with a principal place of business in Minneapolis, Minnesota.

5. On information and belief, Defendant Medtronic USA, Inc. is a corporation organized and existing under the laws of the State of Minnesota, with a principal place of business in Minneapolis, Minnesota.

6. On information and belief, Defendant Medtronic Vascular Inc. is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 3576 Unocal Place, Santa Rosa, California 95403.

Jurisdiction and Venue

7. This action arises under the patent laws of the United States of America, United States Code, Title 35, Section 1, *et seq.* This Court has subject matter jurisdiction over the action under 28 U.S.C. §§ 1331 and 1338.

8. On August 28, 2009, W.L. Gore & Associates, Inc., Medtronic, Inc., Medtronic USA, Inc. and Medtronic Vascular, Inc. entered into a Settlement and License Agreement (“Agreement”) which stipulates that, during the term of the Agreement, any action for patent infringement brought by one of the parties against another of the parties shall be brought in the United States District Court for the Eastern District of Virginia.

10. Based on the facts and causes alleged herein, this Court has personal jurisdiction over defendants Medtronic, Inc., Medtronic USA, Inc., and Medtronic Vascular Inc.

11. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b).

Background

12. The '870 patent, entitled “Intraluminal Stent Graft,” issued on September 22, 1998 to David J. Myers, James D. Lewis, Wayne D. House, and Karl E. Schwarz. A copy of the '870 patent is attached to this complaint as Exhibit A.

13. Gore Enterprise Holdings, Inc. is the owner of all right, title and interest in the '870 patent, including the right to sue, enforce, and recover all damages, past and future, for all infringements.

14. W.L. Gore & Associates, Inc. is the licensee of the '870 patent with rights to practice the '870 patent in the United States.

15. Defendants Medtronic, Inc., Medtronic USA, Inc., and Medtronic Vascular Inc. make, use, sell, offer for sale, and/or import the Talent™ Abdominal Stent Graft and the Talent™ Thoracic Stent Graft.

Count I

16. The allegations of paragraphs 1-15 are incorporated as if fully set forth herein.

17. Upon information and belief, defendants Medtronic, Inc., Medtronic USA, Inc., and Medtronic Vascular Inc. are infringing the '870 patent by making, using, offering to sell, selling, and/or importing the Talent™ Abdominal Stent Graft and the Talent™ Thoracic Stent Graft, all to the injury of Gore.

18. Medtronic's acts of infringement have injured and damaged Gore.

19. Upon information and belief, defendant Medtronic's infringement has been willful and will continue to be willful, making this case exceptional and entitling Gore to increased damages and other relief pursuant to 35 U.S.C. §§ 284 and 285 of the patent statute, to any extent not prohibited by the Agreement.

Prayer for Relief

Wherefore, Gore requests the following relief:

(a) judgment against defendant Medtronic as to infringement of the '870 patent;

(b) judgment against defendant Medtronic for money damages sustained as a result of defendant Medtronic's infringement of the '870 patent and an accounting;

(c) judgment against defendant Medtronic for any increased money damages not prohibited by the Agreement, pursuant to 35 U.S.C. § 284 sustained as a result of defendant Medtronic's willful infringement of the '870 patent;

(d) judgment that this case is an exceptional case within the meaning of 35 U.S.C. § 285, and an award to Gore of any relief not prohibited by the Agreement;

(e) such other relief as this court finds just and proper.

Dated: September 7, 2011

FISH & RICHARDSON P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served September 7, 2011, via the Court's ECF system upon all counsel designated to receive such notices, as identified below:

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