

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

2007 JUL 10 PM 3:54

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY

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DEPUTY

A07CA548 SS

SPECTRANETICS CORPORATION

Plaintiff,

v.

MEDTRONIC, INC., AND
MEDTRONIC VASCULAR,
A FOREIGN CORPORATION

Defendants

CASE NO.

PLAINTIFF'S ORIGINAL COMPLAINT AND JURY DEMAND

Plaintiff Spectranetics Corporation ("Spectranetics"), by and through its attorneys, alleges upon information and belief the following:

PARTIES

1. Plaintiff Spectranetics is a corporation formed under the laws of the State of Delaware with its principal place of business at 96 Talamine Court, Colorado Springs, Colorado 80907.

2. On information and belief, Defendant Medtronic, Inc., is a Minnesota corporation with its principal place of business at 710 Medtronic Pkwy, Minneapolis, Minnesota 55432.

3. On information and belief, Defendant Medtronic Vascular, Inc., is a Delaware corporation with its principal place of business at 3576 Unocal Place, Santa Rosa, California 95403.

4. On information and belief, Defendants Medtronic, Inc., and Medtronic Vascular, Inc., (collectively "Defendants") are engaged in the manufacturing, distribution and sale of medical equipment, including the Export® XT 6F Aspiration Catheter.

NATURE OF ACTION

5. This is an action by Plaintiff against Defendants for patent infringement pursuant to 35 U.S.C. § 101, *et seq.*

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338.

7. Venue is proper in this judicial district under 28 U.S.C. § 1391 and 1400(b).

FIRST CLAIM FOR RELIEF
(Patent Infringement --35 U.S.C. § 271)

8. On July 19, 1995, United States Letters Patent No. 5,476,450 entitled "Apparatus and Method for Aspirating Intravascular, Pulmonary and Cardiac Obstructions" was duly and legally issued to Joseph M. Ruggio (the "'450 patent"). A true and correct copy of the '450 patent is attached as **Exhibit A** to this Complaint and Jury Demand and is incorporated herein by reference.

9. By assignment, Plaintiff now owns all right, title and interest in and to the '450 patent, including but not limited to, the right to enforce the patent and to collect damages for past and future infringements.

10. The '450 Patent discloses methods and apparatus for aspirating substances partially or completely occluding blood vessels or chambers of the human heart using a catheter.

11. Defendants are making, using, selling and/or offering to sell products that infringe the '450 patent through their construction and sale of aspiration catheters, including the Export® XT 6F Aspiration Catheter, to various purchasers in the United States, including purchasers residing in this judicial district.

12. Defendants have directly, indirectly, contributorily, and/or by inducement, literally or under the doctrine of equivalents, infringed and continue to infringe the '450 patent by their use, sale, and/or offer for sale of products, including the Export® XT 6F Aspiration Catheter, within this judicial district and elsewhere in the United States, that infringe one or more claims of the '450 patent. Defendants are liable for their infringement of the '450 patent pursuant to 35 U.S.C. § 271.

13. Defendants' actions in infringing the '450 patent have been, and still are, willful, deliberate and/or in conscious disregard to the rights of Plaintiff and/or its predecessor in-interest, making this an exceptional case within the meaning of 35 U.S.C. § 285.

14. Defendants' infringement of the '450 patent has caused and continues to cause irreparable injury to Plaintiff in an amount to be proven at trial. The infringement of the '450 patent by Defendants will continue unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- A. Declaring Defendants have infringed United States Patent No. 5,476,450;
- B. Permanently enjoining Defendants, their officers, agents, subsidiaries and employees, and those in privity or in active concert with them, from further activities that constitute infringement, contributory infringement and/or inducing infringement of United States Patent No. 5,476,450;
- C. Awarding a reasonable royalty and other damages arising from Defendants' infringement of United States Patent No. 5,476,450 including treble damages, to Plaintiff, together with prejudgment and post-judgment interest, in an amount according to proof;

D. This case be declared an "exceptional case" within the meaning of 35 U.S.C. § 285 and awarding treble damages and reasonable attorneys' fees to Plaintiff; and

E. Awarding Plaintiff such other costs and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury of all issues.

DATED this 10th of July, 2007.

Respectfully submitted,

~~CLARK~~, THOMAS & WINTERS

By. 

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-and-

TOWNSEND AND TOWNSEND AND CREW LLP

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(303) 571-4321 (fax)

**ATTORNEYS FOR PLAINTIFF
SPECTRANETICS CORPORATION**

RECEIVED

JUL 10 2007

CIVIL COVER SHEET

JS 44 (Rev. 11/04)

CLERK, U.S. DISTRICT COURT

The JS 44 civil cover sheet information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Spectranetics Corporation

(b) County of Residence of First Listed Plaintiff El Paso
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mark T. Mitchell, Mark A. Mayfield, Clark, Thomas & Winters, P.C., P.O. Box 1148, Austin, Texas 78767; (512) 472-8800

DEFENDANTS

Medtronic, Inc., and Medtronic Vascular, A Foreign Corporation

County of Residence of First Listed Defendant Hennepin
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

A0701548 SS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

35 USC 271
Brief description of cause:
infringement of patent

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7-10-07

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO82
(Rev. 4/90)

ORIGINAL

406947

RECEIPT FOR PAYMENT
UNITED STATES DISTRICT COURT
 for the
WESTERN DISTRICT OF TEXAS
 at Austin

RECEIVED FROM

Clark Thomas Winters
P.O. Box 1148
Austin Tx 78767

Fund	
6855XX	Deposit Funds
604700	Registry Funds
	General and Special Funds
508800	Immigration Fees
085000	Attorney Admission Fees
086900	Filing Fees
322340	Sale of Publications
322350	Copy Fees
322360	Miscellaneous Fees
143500	Interest
322380	Recoveries of Court Costs
322386	Restitution to U.S. Government
121000	Conscience Fund
129900	Gifts
504100	Crime Victims Fund
613300	Unclaimed Monies
510000	Civil Filing Fee (1/2)
510100	Registry Fee

ACCOUNT	AMOUNT
086900	600.00
510000	190.00
086400	100.00
TOTAL	350.00
Case Number or Other Reference	
1:07-cv-548	

New Case
Spectranetics Corp.
v. Medtronic Inc

\$ Checks and drafts are accepted subject to collection and full credit will only be given when the check or draft has been accepted by the financial institution on which it was drawn.

DATE	Cash	Check	M.O.	Credit
7-10-07		X		

DEPUTY CLERK:

Ratz C

7-11-07