

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NANOVIBRONIX, INC., )  
601 Chestnut Street )  
Cedarhurst, New York 11516 )  
Plaintiff, )  
v. )  
DAN WEISS, )  
8 Penales Street )  
Zichron-Yaakov, Israel 30900 )  
Defendant. )

Civil Action: \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff, Nanovibronix, Inc. (Plaintiff), by and through its attorneys Clark & Brody, for its complaint against Defendant Dan Weiss (Defendant) alleges as follows:

**I. The Parties**

1. Plaintiff, a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 601 Chestnut Street, Cedarhurst, New York 11516, is engaged in the marketing of medical devices.

2. On information and belief, Defendant is a citizen of Israel residing at 8 Penales Street, Zichron-Yaakov, Israel 30900.

**II. Jurisdiction and Venue**

3. This is an action for Declaratory Judgment of Patent Invalidation, Unenforceability and Non-Infringement; and for Violation of the Antitrust Laws of the United States.

4. Subject matter jurisdiction is premised upon 28 U.S.C. §§ 1331, 1337, and 1338. Personal jurisdiction is premised on 35 U.S.C. § 293.

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

**COUNT I**

**III. Declaratory Judgment of Patent Invalidity,  
Unenforceability and Non-Infringement**

6. Plaintiff seeks a Declaratory Judgment to settle an actual controversy between the parties hereto with respect to the validity, unenforceability and infringement of U.S. Patent No. 6,428,491 ('491 Patent). This claim arises under the Patent Laws of the United States, 35 U.S.C. § 101 et seq. and the Federal Declaratory Judgment Act, Title 28 U.S.C. Section 2201 et seq. Plaintiff seeks a final judgment declaring the '491 Patent invalid, unenforceable and not infringed by Plaintiff.

7. Defendant has asserted under oath that he is the true and original inventor of the inventions disclosed and claimed in the '491 Patent.

8. On information and belief, Defendant is presently the sole owner of the '491 Patent. On information and belief, Defendant, who does not reside in the United States, has not made a written designation of a person residing in the United States on whom process or notice of proceedings affecting the '491 Patent or rights thereunder may be served pursuant to 35 U.S.C. § 293.

9. Defendant has asserted and to the present, continues to maintain that the '491 Patent covers certain technology pertaining to the application of ultrasonic energy to catheters ('491 Technology) and that medical devices such as those offered and/or to be offered for sale in the U.S. by Plaintiff which incorporate said '491 Technology infringe the '491 Patent.

10. The aforesaid Plaintiff's medical devices do not infringe any valid claim or claims of the '491 Patent.

11. On information and belief, the '491 Patent is invalid and unenforceable, inter alia, for Defendant's failure to comply with the requirements of Title 35 U.S.C. 101 et seq. Without limitation, on information and belief, the '491 Patent is invalid because Defendant, the alleged inventor therein, did not himself invent the subject matter patented.

12. The '491 Patent was not duly and legally issued. Inter alia, on information and belief, Defendant was not the first inventor of the subject matter of the '491 Patent (35 U.S.C. § 102) and the patent does not comply with the statutory requirements with respect to sufficiency of disclosure. (35 U.S.C. § 112).

13. On information and belief, the '491 Patent is invalid and unenforceable because Defendant engaged in fraud upon the U.S. Patent and Trademark Office in the procurement of said patent in the submission of fraudulent and misleading affidavits to induce the U.S. Patent and Trademark Office to allow Defendant's Application Serial No. 09/471,364 and issue the '491 Patent.

14. An actual and justiciable controversy exists between Plaintiff and Defendant with respect to the '491 Patent, the validity, enforceability and infringement thereof.

## COUNT II

### IV. Violation of Antitrust Laws

15. This claim arises under the Sherman Act, 15 U.S.C. §§ 1 and/or 2.

16. As averred hereinabove, the '491 Patent is invalid and unenforceable because, inter alia, Defendant procured the '491 Patent from the U.S. Patent and Trademark Office fraudulently.

17. Beginning at a time, believed by Plaintiff to have been in 2002 and continuing thereafter, Defendant and others engaged in an unlawful combination and conspiracy in restraint of the United States foreign and interstate trade and commerce in medical devices which utilize the application of ultrasonic energy to catheters and have engaged in a conspiracy to unlawfully monopolize or attempt to monopolize such trade or commerce or parts thereof.

18. In the implementation of such combination and conspiracy, by meetings and communications among their principals, agents and attorneys, Defendant and his co-conspirators combined and conspired to exclude all others, including Plaintiff, from engaging in trade and commerce in medical devices which utilize the application of ultrasonic energy to catheters by means of the '491 Patent, which patent was procured by Defendant through fraud on the U.S. Patent and Trademark Office and which fraudulent conduct was known to Defendant and his co-conspirators. Defendant is dangerously likely to succeed in his efforts to monopolize the relevant market for the aforesaid medical devices.

19. Upon information and belief, Defendant and those in combination and conspiracy with him have maintained, asserted, prosecuted and/or filed patents and/or patent applications corresponding to the '491 Patent in Israel and other countries foreign to the United States. Defendant and those in combination and conspiracy with him have maintained, asserted, prosecuted and/or filed such patents and/or patent applications with knowledge that the patents and/or patent applications are invalid, which acts constitute part of a worldwide effort on the part of Defendant and those in combination and

conspiracy with him to wrongfully restrain trade and commerce throughout the world in medical devices which utilize the application of ultrasonic energy to catheters.

20. Upon information and belief, Defendant and those in combination and conspiracy with him will continue to engage in illegal acts to monopolize or attempt to monopolize trade or commerce in medical devices which utilize the application of ultrasonic energy to catheters in the United States and throughout the world by means of the invalid and unenforceable '491 Patent and its similarly invalid foreign counterparts unless preliminarily and permanently enjoined by this Court from such illegal acts.

21. The aforesaid acts of Defendant in violation of the Antitrust Laws have caused and are continuing to cause irreparable injury and damage to Plaintiff and will continue unless preliminarily and permanently enjoined by the Court. Plaintiff lacks an adequate remedy at law.

WHEREFORE, Plaintiff respectfully prays for judgment:

- (a) Declaring that:
  - (i) United States Letters Patent 6,428,491 is invalid and unenforceable and that Plaintiff has not infringed any valid claim of said patent;
  - (ii) United States Letters Patent 6,428,491 was procured fraudulently from the United States Patent and Trademark Office;
  - (iii) Defendant and those in combination and conspiracy with him acted in unlawful restraint of trade and commerce in medical devices which utilize the application of ultrasonic energy to catheters both within the United States and worldwide; and

(iv) Plaintiff has been damaged directly through Defendant's unlawful acts as aforesaid;

(b) Preliminarily and permanently enjoining and restraining Defendant his agents, servants, successors, assigns and all persons in active concert or participation with him, from doing, abiding, causing or abetting any of the following:

(i) Directly or indirectly asserting or exploiting for commercial gain U.S. Patent No. 6,428,491, or the technology and/or know how which relates to U.S. Patent No. 6,428,491;

(ii) Acting in unlawful restraint of trade and commerce with respect to medical devices which utilize the application of ultrasonic energy to catheters;

(c) That Plaintiff's damages be trebled;

(d) That the action at bar is an exceptional case and that Plaintiff be awarded its costs and reasonable attorneys' fees;

(e) That Plaintiff be awarded such punitive damages which shall be sufficient to deter any further willful unlawful conduct on the part of Defendant; and

(f) Awarding Plaintiff such other and further relief as the Court deems just and proper.

Plaintiff demands a jury trial on all issues so triable.

Dated: September 13, 2004

CLARK & BRODY



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