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 MEDTRONIC, INC., MEDTRONIC USA, INC.,  
 8 AND MEDTRONIC VASCULAR, INC.

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

MEDTRONIC, INC., a Minnesota  
 corporation, MEDTRONIC USA, INC., a  
 Minnesota corporation, and MEDTRONIC  
 VASCULAR, INC., a Delaware corporation,

Plaintiffs,

v.

W.L. GORE & ASSOCIATES, INC., a  
 Delaware corporation,

Defendant.

Case No. C06-04455 JSW

**AMENDED COMPLAINT FOR PATENT  
 INFRINGEMENT**

1 Plaintiffs, Medtronic, Inc., Medtronic USA, Inc., and Medtronic Vascular, Inc.  
2 (collectively “Plaintiffs”), by and for their Amended Complaint against defendant, W.L Gore &  
3 Associates, Inc. (“Gore”) allege as follows:

4 **I.**

5 **NATURE OF THE CASE**

6 1. This is a case to enforce patents against infringement. Plaintiffs hold the rights to  
7 U.S. Patent Nos. 4,886,062, 6,656,219, 6,923,828, 5,067,957, 5,190,546, and 6,306,141  
8 (collectively, the “patents-in-suit.”) The United States patent laws grant the holder of a patent the  
9 right to exclude infringers from making, using or selling the invention claimed in a patent, and to  
10 recover damages for the infringer’s violations of these rights, and to recover treble damages where  
11 the infringer has willfully infringed the patent. Plaintiffs are suing Gore for infringing their patents,  
12 and doing so willfully. Plaintiffs seek to recover damages for Gore’s infringement, including treble  
13 damages for willful infringement, as well as injunctive relief to end Gore’s further infringement.

14 **II.**

15 **THE PARTIES**

16 2. Medtronic, Inc. (“INC”) is a Minnesota Corporation, having its principal place of  
17 business in Minneapolis, Minnesota.

18 3. Medtronic USA, Inc. (“USA”) is a Minnesota corporation with its principal place of  
19 business in Minneapolis, Minnesota.

20 4. Medtronic Vascular, Inc. (“VASCULAR”) is a Delaware corporation with a  
21 principal place of business in Santa Rosa, California, within this judicial district.

22 5. Plaintiffs develop, manufacture and sell medical devices, including endoprosthesis  
23 devices and related products. Vascular and USA have contractual rights to sue for damages and to  
24 exclude others from practicing the inventions claimed in the patents-in-suit.

25 6. Upon information and belief, Gore is a Delaware corporation. Gore develops,  
26 manufactures and sells medical devices, including at least the EXCLUDER<sup>®</sup>, TAG<sup>®</sup>, VIABAHN<sup>®</sup>,  
27 VIABIL<sup>®</sup>, VIATORR<sup>®</sup>, and HELEX<sup>®</sup> endoprosthetic product lines. Gore is doing business within  
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1 this judicial district by offering for sale and selling such endoprosthesis devices. Gore has a place  
2 of business at 1327 Orleans Drive, Sunnyvale, California, 94089.

3 **III.**

4 **JURISDICTION AND VENUE**

5 7. This is an action for patent infringement arising under the patent laws of the United  
6 States of America, Title 35 § 271 of the United States Code.

7 8. This Court has subject matter jurisdiction over this case under 28 U.S.C. §§ 1331  
8 and 1338(a).

9 9. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b)  
10 because, upon information and belief, Gore has, among other things, committed infringing acts in  
11 this district and generally does business in this district.

12 **INTRADISTRICT ASSIGNMENT**

13 10. This patent action is in an excepted category for Local Rule 3-2(c), Assignment of a  
14 Division, and will be assigned on a district wide basis.

15 **IV.**

16 **CLAIMS FOR RELIEF**

17 **COUNT I**

18 **(Patent Infringement of U.S. Patent 4,886,062)**

19 11. Plaintiffs hereby incorporate by reference paragraphs 1-10 of this Complaint.

20 12. U.S. Patent No. 4,886,062 (the "'062 Patent"), entitled "Intravascular Radially  
21 Expandable Stent and Method of Implant," duly and legally issued on December 12, 1989, to  
22 Dominik M. Wiktor (attached as Exhibit A), with INC as the named assignee.

23 13. INC is the current assignee of the rights under the '062 Patent.

24 14. On information and belief, Gore has been, and is currently infringing, directly and/or  
25 through acts of contributory infringement or inducement, one or more claims of the '062 Patent by,  
26 among other things, making, using, selling and/or offering for sale, certain medical devices,  
27 including the EXCLUDER<sup>®</sup>, TAG<sup>®</sup>, VIABAHN<sup>®</sup>, VIABIL<sup>®</sup>, and VIATORR<sup>®</sup> endoprosthesis  
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1 product lines within the territorial boundaries of the United States, including this district, that  
2 embody and/or practice the inventions claimed in the '062 Patent.

3 15. On information and belief, Gore's infringement of the '062 Patent has been and is  
4 willful, and will continue unless enjoined by this Court. Plaintiffs have suffered, and will continue  
5 to suffer, irreparable harm as a result of this willful infringement. Remedies available at law are  
6 inadequate to compensate Plaintiffs for the irreparable harm they have suffered and will continue to  
7 suffer. In considering the balance of hardships between Plaintiffs and Gore, a remedy in equity is  
8 warranted. Furthermore, the public interest would not be disserved by a permanent injunction.  
9 Plaintiffs are entitled to a permanent injunction against further infringement pursuant to 35 U.S.C.  
10 § 283, and treble damages for willful infringement pursuant to 35 U.S.C. § 284.

## 11 COUNT II

### 12 **(Patent Infringement of U.S. Patent 6,656,219)**

13 16. Plaintiffs hereby incorporate by reference paragraphs 1-15 of this Complaint.

14 17. U.S. Patent No. 6,656,219 (the "'219 Patent"), entitled "Intravascular Stent," duly  
15 and legally issued on December 2, 2003, to Dominik M. Wiktor (attached as Exhibit B).

16 18. INC is the current assignee of the rights under the '219 Patent.

17 19. On information and belief, Gore has been, and is currently infringing, directly and/or  
18 through acts of contributory infringement or inducement, one or more claims of the '219 Patent by,  
19 among other things, making, using, selling and/or offering for sale, certain medical devices,  
20 including the EXCLUDER<sup>®</sup>, TAG<sup>®</sup>, VIABAHN<sup>®</sup>, VIABIL<sup>®</sup>, and VIATORR<sup>®</sup>, endoprosthetic  
21 product lines, within the territorial boundaries of the United States, including this district, that  
22 embody and/or practice the inventions claimed in the '219 Patent.

23 20. On information and belief, Gore's infringement of the '219 Patent has been and is  
24 willful, and will continue unless enjoined by this Court. Plaintiffs have suffered, and will continue  
25 to suffer, irreparable harm as a result of this willful infringement. Remedies available at law are  
26 inadequate to compensate Plaintiffs for the irreparable harm they have suffered and will continue to  
27 suffer. In considering the balance of hardships between Plaintiffs and Gore, a remedy in equity is  
28 warranted. Furthermore, the public interest would not be disserved by a permanent injunction.

1 Plaintiffs are entitled to a permanent injunction against further infringement pursuant to 35 U.S.C.  
2 § 283, and treble damages for willful infringement pursuant to 35 U.S.C. § 284.

3 **COUNT III**

4 **(Patent Infringement of U.S. Patent 6,923,828)**

5 21. Plaintiffs hereby incorporate by reference paragraphs 1-20 of this Complaint.

6 22. U.S. Patent No. 6,923,828 (the “’828 Patent”), entitled “Intravascular Stent,” duly  
7 and legally issued on August 2, 2005, to Dominik M. Wiktor (attached as Exhibit C) with INC as  
8 the assignee.

9 23. INC is the current assignee of the rights under the ’828 Patent.

10 24. On information and belief, Gore has been, and is currently infringing, directly and/or  
11 through acts of contributory infringement or inducement, one or more claims of the ’828 Patent by,  
12 among other things, making, using, selling and/or offering for sale, certain medical devices,  
13 including the EXCLUDER<sup>®</sup>, TAG<sup>®</sup>, VIABAHN<sup>®</sup>, and VIATORR<sup>®</sup> endoprosthetic product lines,  
14 within the territorial boundaries of the United States, including this district, that embody and/or  
15 practice the inventions claimed in the ’828 Patent.

16 25. On information and belief, Gore’s infringement of the ’828 Patent has been and is  
17 willful, and will continue unless enjoined by this Court. Plaintiffs have suffered, and will continue  
18 to suffer, irreparable harm as a result of this willful infringement. Remedies available at law are  
19 inadequate to compensate Plaintiffs for the irreparable harm they have suffered and will continue to  
20 suffer. In considering the balance of hardships between Plaintiffs and Gore, a remedy in equity is  
21 warranted. Furthermore, the public interest would not be disserved by a permanent injunction.  
22 Plaintiffs are entitled to a permanent injunction against further infringement pursuant to 35 U.S.C.  
23 § 283, and treble damages for willful infringement pursuant to 35 U.S.C. § 284.

24 **COUNT IV**

25 **(Patent Infringement of U.S. Patent 5,067,957)**

26 26. Plaintiffs hereby incorporate by reference paragraphs 1-25 of this Complaint.

27 27. U.S. Patent No. 5,067,957 (the “’957 Patent”), entitled “Method Of Inserting  
28 Medical Devices Incorporating SIM Alloy Elements” duly and legally issued on November 26,

1 1991 to James E. Jervis (attached as Exhibit D), with Raychem Corporation as the originally named  
2 assignee.

3 28. INC is the current assignee of the rights under the '957 Patent.

4 29. On information and belief, Gore has been, and is currently infringing, directly and/or  
5 through acts of contributory infringement or inducement, one or more claims of the '957 Patent by,  
6 among other things, making, using, selling and/or offering for sale, certain medical devices,  
7 including the EXCLUDER<sup>®</sup>, TAG<sup>®</sup>, VIABAHN<sup>®</sup>, VIABIL<sup>®</sup>, VIATORR<sup>®</sup>, and HELEX<sup>®</sup>  
8 endoprosthetic product lines, within the territorial boundaries of the United States, including this  
9 district, including this district, that embody and/or practice the inventions claimed in the '957  
10 Patent.

11 30. On information and belief, Gore's infringement of the '957 Patent has been and is  
12 willful, and will continue unless enjoined by this Court. Plaintiffs have suffered, and will continue  
13 to suffer, irreparable harm as a result of this willful infringement. Remedies available at law are  
14 inadequate to compensate Plaintiffs for the irreparable harm they have suffered and will continue to  
15 suffer. In considering the balance of hardships between Plaintiffs and Gore, a remedy in equity is  
16 warranted. Furthermore, the public interest would not be disserved by a permanent injunction.  
17 Plaintiffs are entitled to a permanent injunction against further infringement pursuant to 35 U.S.C.  
18 § 283, and treble damages for willful infringement pursuant to 35 U.S.C. § 284. Plaintiffs have  
19 complied with the notice provisions of 35 U.S.C. § 287 with respect to the '957 patent.

20 **COUNT V**

21 **(Patent Infringement of U.S. Patent 5,190,546)**

22 31. Plaintiffs hereby incorporate by reference paragraphs 1-30 of this Complaint.

23 32. U.S. Patent No. 5,190,546 (the "'546 Patent"), entitled "Medical Devices  
24 Incorporating SIM Alloy Elements," duly and legally issued on March 2, 1993, to James E. Jervis  
25 (attached as Exhibit E), with INC as the named assignee.

26 33. INC is the current assignee of the rights under the '546 Patent.

27 34. On information and belief, Gore has been, and is currently infringing, directly and/or  
28 through acts of contributory infringement or inducement, at least claim 27 of the '546 Patent by,

1 among other things, making, using, selling and/or offering for sale, certain medical devices,  
2 including the HELEX<sup>®</sup> endoprosthetic product line, within the territorial boundaries of the United  
3 States, including this district, that embody and/or practice the inventions claimed in the '546 Patent.

4 35. On information and belief, Gore's infringement of the '546 Patent has been and is  
5 willful, and will continue unless enjoined by this Court. Plaintiffs have suffered, and will continue  
6 to suffer, irreparable harm as a result of this willful infringement. Remedies available at law are  
7 inadequate to compensate Plaintiffs for the irreparable harm they have suffered and will continue to  
8 suffer. In considering the balance of hardships between Plaintiffs and Gore, a remedy in equity is  
9 warranted. Furthermore, the public interest would not be disserved by a permanent injunction.  
10 Plaintiffs are entitled to a permanent injunction against further infringement pursuant to 35 U.S.C.  
11 § 283, and treble damages for willful infringement pursuant to 35 U.S.C. § 284.

#### 12 COUNT VI

#### 13 **(Patent Infringement of U.S. Patent 6,306,141)**

14 36. Plaintiffs hereby incorporate by reference paragraphs 1-35 of this Complaint.

15 37. U.S. Patent No. 6,306,141 (the "'141 Patent"), entitled "Medical Devices  
16 Incorporating SIM Alloy Elements," duly and legally issued on October 23, 2001, to James E.  
17 Jervis (attached as Exhibit F), with INC as the named assignee.

18 38. INC is the current assignee of the rights under the '141 Patent.

19 39. On information and belief, Gore has been, and is currently infringing, directly and/or  
20 through acts of contributory infringement or inducement, one or more claims of the '141 Patent by,  
21 among other things, making, using, selling and/or offering for sale, certain medical devices,  
22 including the EXCLUDER<sup>®</sup>, TAG<sup>®</sup>, VIABAHN<sup>®</sup>, VIABIL<sup>®</sup>, VIATORR<sup>®</sup>, and HELEX<sup>®</sup>  
23 endoprosthetic product lines, within the territorial boundaries of the United States, including this  
24 district, that embody and/or practice the inventions claimed in the '141 Patent.

25 40. On information and belief, Gore's infringement of the '141 Patent has been and is  
26 willful, and will continue unless enjoined by this Court. Plaintiffs have suffered, and will continue  
27 to suffer, irreparable harm as a result of this willful infringement. Remedies available at law are  
28 inadequate to compensate Plaintiffs for the irreparable harm they have suffered and will continue to

1 suffer. In considering the balance of hardships between Plaintiffs and Gore, a remedy in equity is  
2 warranted. Furthermore, the public interest would not be disserved by a permanent injunction.  
3 Plaintiffs are entitled to a permanent injunction against further infringement pursuant to 35 U.S.C.  
4 § 283, and treble damages for willful infringement pursuant to 35 U.S.C. § 284. Plaintiffs have  
5 complied with the notice provisions of 35 U.S.C. § 287 with respect to the '141 patent.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for relief as follows:

8 1. That Gore be adjudged to have infringed, directly and/or through acts of  
9 contributory infringement, and or to have induced infringement under 35 U.S.C. § 271 of the  
10 4,886,062, 6,656,219, 6,923,828, 5,067,957, 5,190,546, and 6,306,141 patents by, among other  
11 things, making, using, selling and/or offering for sale, certain medical devices, including the  
12 EXCLUDER<sup>®</sup>, TAG<sup>®</sup>, VIABAHN<sup>®</sup>, VIABIL<sup>®</sup>, VIATORR<sup>®</sup>, and HELEX<sup>®</sup> endoprosthesis  
13 product lines, within the territorial boundaries of the United States;

14 2. That Gore, its officers, agents, servants, employees, attorneys, and those persons in  
15 active concert or participation with any of them, be preliminarily and permanently enjoined and  
16 restrained under 35 U.S.C. § 283 from infringing in any manner the patents-in-suit;

17 3. That Gore be ordered to pay Plaintiffs an award of damages pursuant to 35 U.S.C. §  
18 284 to adequately compensate Plaintiffs for Gore's direct, contributory and/or inducement of  
19 infringement of the patents-in-suit;

20 4. That the award of damages to Plaintiffs be trebled pursuant to 35 U.S.C. § 284 for  
21 Gore's willful infringement of the patents-in-suit;

22 5. That this case is an exceptional case and award Plaintiffs their reasonable attorneys'  
23 fees pursuant to 35 U.S.C. § 285;

24 6. For an assessment of pre-judgment and post-judgment interest and costs against  
25 Gore, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284; and  
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1           7.       That Plaintiffs be awarded such other and further relief as this Court may deem just  
2 and proper.

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Dated:     February 8, 2007

Respectfully submitted,

DECHERT LLP

By: /s/ Noemi C. Espinosa  
James J. Elacqua  
Noemi C. Espinosa  
Ellen J. Wang

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

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