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Attorneys for Plaintiff/Counterdefendant
 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THE REGENTS OF THE UNIVERSITY OF
 CALIFORNIA,

Plaintiff,

v.

MICRO THERAPEUTICS, INC., a Delaware
 corporation, DENDRON GmbH, a German
 corporation, and ev3 INC., a Delaware
 corporation,

Defendants,

MICRO THERAPEUTICS, INC., a Delaware
 corporation, and DENDRON GmbH, a German
 corporation,

Third Party Plaintiffs,

v.

BOSTON SCIENTIFIC CORPORATION,
 a Delaware corporation, and TARGET
 THERAPEUTICS, INC. a Delaware corporation,

Third Party Defendants.

Case No. C 03 05669 JW (RS)

**FIRST AMENDED COMPLAINT
 (JURY TRIAL DEMANDED)**

1 Plaintiff The Regents of The University of California (“The Regents”) hereby avers for its
 2 Complaint against defendants Micro Therapeutics, Inc., ev3 Inc., and Dendron GmbH as follows:

3 **PARTIES**

4 1. Plaintiff The Regents is a public, non-profit educational corporation organized and
 5 existing under the laws of the State of California, with central administrative offices located at
 6 1111 Franklin Street, 12th Floor, Oakland, California.

7 2. On information and belief, defendant Micro Therapeutics, Inc. (“MTI”) is a
 8 corporation organized and existing under the laws of the State of Delaware, with its principal
 9 place of business at 2 Goodyear, Irvine, California 92618. On information and belief, MTI
 10 develops, manufactures, markets and distributes worldwide medical devices for the treatment of
 11 neuro and peripheral vascular diseases.

12 3. On information and belief, Defendant ev3 Inc. (“ev3”) is a corporation organized
 13 and existing under the laws of the State of Delaware, with its principal place of business at 4600
 14 Nathan Lane North, Plymouth, Minnesota 55442. On information and belief, ev3 develops,
 15 manufactures, markets and distributes worldwide medical devices for the treatment of neuro and
 16 peripheral vascular diseases through a direct sales force and in certain other international markets
 17 through distributors.

18 4. On information and belief, Defendant ev3 was formed as ev3 LLC in or about
 19 September 2003 to hold the ownership interest of two companies: ev3 Endovascular, Inc. and
 20 Micro Investment, LLC, a holding company that owned the controlling interest of Defendant
 21 MTI. The Regents is informed and believes, and thereupon avers, that Defendant ev3 was formed
 22 as a subsidiary of ev3 LLC on or about January 28, 2005. On or about June 21, 2005, ev3 LLC
 23 was merged with and into Defendant ev3, which then became the holding company for all ev3
 24 LLC’s subsidiaries.

25 5. On or about January 6, 2006, Defendant ev3 acquired the outstanding shares of
 26 MTI that ev3 did not already own through the merger of ev3’s wholly owned subsidiary, Micro
 27 Investment LLC, with and into MTI. The Regents is informed and believes, and thereupon avers,
 28 that MTI is now a wholly owned subsidiary of ev3 and is doing business as “ev3 Neurovascular.”

1 As reported in ev3's Form 10-Q for the quarterly period ended July 2, 2006, "[a]ll significant
2 intercompany accounts and transactions have been eliminated in consolidation."

3 6. On information and belief, defendant Dendron GmbH ("Dendron" collectively
4 with MTI and ev3 "Defendants") is a corporation organized and existing in Germany, with its
5 principal place of business in Bochum, Germany. The Regents is informed and believes that MTI
6 acquired Dendron in or about October 2002.

7 7. Defendants develop, manufacture, market and distribute worldwide the Sapphire,
8 NXT and Nexus line of detachable coil delivery systems, which are used in the treatment of brain
9 aneurysms.

10 **SUBJECT MATTER JURISDICTION**

11 8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
12 §§ 1331 and 1338. This action includes a claim for patent infringement arising under the patent
13 laws of the United States, Title 35 of the United States Code.

14 **VENUE**

15 9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400 in that The
16 Regents has its principal places of business, and thus resides in, the Northern District of
17 California, and a substantial part of the events giving rise to this action occurred in this judicial
18 district.

19 **FIRST CLAIM FOR RELIEF** 20 **(Infringement of U.S. Patent No. 5,122,136)**

21 10. This claim is made under the provisions of the patent laws of the United States,
22 35 U.S.C. §§ 271 *et seq.* The Regents incorporates by references the averments of paragraphs 1 –
23 9.

24 11. On June 16, 1992, the United States Patent and Trademark Office duly and legally
25 issued U.S. Patent No. 5,122,136 ("the 136 Patent"), entitled "Endovascular Electrolytically
26 Detachable Guidewire Tip for the Electroformation of Thrombus in Arteries, Veins and
27 Aneurysms, Vascular Malformations and Arteriovenous Fistulas," to Guido Gugliemi and Ivan
28

1 Sepetka. The Regents is the owner, by valid assignment, of all rights, title and interest in the '136
2 Patent.

3 12. Upon information and belief, Defendants have been, and currently are, directly and
4 indirectly infringing the '136 Patent by manufacturing, using, importing, exporting, marketing,
5 selling, reselling, offering for sale, and/or inducing others to use, or contributing to the
6 infringement by others by supplying one or more of the Sapphire, NXT and Nexus products,
7 alone or in combination with the detachment systems, detachment cables and/or microcatheters.

8 13. Defendants' acts of infringement are willful as Defendants knew or should have
9 known of the '136 Patent and that their activities infringed the '136 Patent.

10 14. Plaintiff's exclusive licensee, Target Therapeutics, Inc., and/or its parent company,
11 Boston Scientific, has placed the required statutory notice pursuant to 35 U.S.C. § 287(a) on all
12 patented devices sold by and under the '136 Patent.

13 15. As a direct and proximate consequence of Defendants' infringement of the '136
14 Patent, The Regents has suffered and will continue to suffer irreparable injury and damages in an
15 amount not yet determined for which The Regents is entitled to relief. Pursuant to 35 U.S.C. § 284,
16 The Regents is entitled to damages for infringement and to be enhanced up to treble damages.

17 **SECOND CLAIM FOR RELIEF**
18 **(Infringement of U.S. Patent No. 5,855,578)**

19 16. This claim is made under the provisions of the patent laws of the United States,
20 35 U.S.C. §§ 271 *et seq.* The Regents incorporates by reference the averments of paragraphs 1 –9
21 above.

22 17. On January 5, 1999, the United States Patent and Trademark Office duly and legally
23 issued U.S. Patent No. 5,855,578 ("the '578 Patent") entitled "Endovascular Electrolytically
24 Detachable Wire and Tip for the Formation of Thrombus in Arteries, Veins and Aneurysms,
25 Vascular Malformations and Arteriovenous Fistulas," issued to Guido Gugliemi and Ivan Sepetka.
26 The Regents is the owner, by valid assignment, of all right, title and interest in the '578 Patent.

27 18. Upon information and belief, Defendants have been, and currently are, directly and
28 indirectly infringing the '578 Patent by manufacturing, using, importing, exporting, marketing,

1 selling, reselling, offering for sale, and/or inducing others to use, or contributing to the
2 infringement by others by supplying one or more of the Sapphire, NXT and Nexus products, alone
3 or in combination with the detachment systems, detachment cables and/or microcatheters.

4 19. Defendants' acts of infringement are willful as Defendants knew or should have
5 known of the '578 Patent and that their activities infringed the '578 Patent.

6 20. Plaintiff's exclusive licensee, Boston Scientific, has placed the required statutory
7 notice pursuant to 35 U.S.C. § 287(a) on all patented devices sold by and under the '578 Patent.

8 21. As a direct and proximate consequence of Defendants' infringement of the '578
9 Patent, The Regents has suffered and will continue to suffer irreparable injury and damages in an
10 amount not yet determined for which The Regents is entitled to relief. Pursuant to 35 U.S.C. § 284,
11 The Regents is entitled to damages for infringement and to be enhanced up to treble damages.

12 **THIRD CLAIM FOR RELIEF**
13 **(Infringement of U.S. Patent No. 6,066,133)**

14 22. This claim is made under the provisions of the patent laws of the United States,
15 35 U.S.C. §§ 271 *et seq.* The Regents incorporates by reference the averments of paragraphs 1 – 9.

16 23. On May 23, 2000, the United States Patent and Trademark Office duly and legally
17 issued U.S. Patent No. 6,066,133 ("the '133 Patent") entitled "Endovascular Electrolytically
18 Detachable Wire and Tip for the Formation of Thrombus in Arteries, Veins and Aneurysms,
19 Vascular Malformations and Arteriovenous Fistulas," issued to Guido Gugliemi and Ivan Sepetka.
20 The Regents is the owner, by valid assignment, of all right, title and interest in the '133 Patent.

21 24. Upon information and belief, Defendants have been, and currently are, directly and
22 indirectly infringing the '133 Patent by manufacturing, using, importing, exporting, marketing,
23 selling, reselling, offering for sale, and/or inducing others to use, or contributing to the
24 infringement by others by supplying one or more of the Sapphire, NXT and Nexus products, alone
25 or in combination with the detachment systems, detachment cables and/or microcatheters.

26 25. Defendants' acts of infringement are willful as Defendants knew or should have
27 known of the '133 Patent and that their activities infringed the '133 Patent.
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26. Plaintiff's exclusive licensee, Target Therapeutics, Inc., and/or its parent company, Boston Scientific, has placed the required statutory notice pursuant to 35 U.S.C. § 287(a) on all patented devices sold by and under the '133 Patent.

27. As a direct and proximate consequence of Defendants' infringement of the '133 Patent, The Regents has suffered and will continue to suffer irreparable injury and damages in an amount not yet determined for which The Regents is entitled to relief. Pursuant to 35 U.S.C. § 284, The Regents is entitled to damages for infringement and to be enhanced up to treble damages.

FOURTH CLAIM FOR RELIEF
(Infringement of U.S. Patent No. 5,976,126)

28. This claim is made under the provisions of the patent laws of the United States, 35 U.S.C. §§ 271 *et seq.* The Regents incorporates by reference the averments of paragraphs 1 – 9 above.

29. On November 2, 1999, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,976,126 ("the '126 Patent") entitled "Endovascular Electrolytically Detachable Wire and Tip for the Formation of Thrombus in Arteries, Veins and Aneurysms, Vascular Malformations and Arteriovenous Fistulas," issued to Guido Gugliemi. The Regents is the owner, by valid assignment, of all right, title and interest in the '126 Patent.

30. Upon information and belief, Defendants have been, and currently are, directly and indirectly infringing the '126 Patent by manufacturing, using, importing, exporting, marketing, selling, reselling, offering for sale, and/or inducing others to use, or contributing to the infringement by others by supplying one or more of the Sapphire, NXT and Nexus products, alone or in combination with the detachment systems, detachment cables and/or microcatheters.

31. Defendants' acts of infringement are willful as Defendants knew or should have known of the '126 Patent and that their activities infringed the '126 Patent.

32. Plaintiff's exclusive licensee, Target Therapeutics, Inc., and/or its parent company, Boston Scientific, has placed the required statutory notice pursuant to 35 U.S.C. § 287(a) on all patented devices sold by and under the '126 Patent.

FIFTH CLAIM FOR RELIEF
(Infringement of U.S. Patent No. 5,947,962)

1 amount not yet determined for which The Regents is entitled to relief. Pursuant to 35 U.S.C. § 284,
2 The Regents is entitled to damages for infringement and to be enhanced up to treble damages.

3 **SIXTH CLAIM FOR RELIEF**
4 **(Infringement of U.S. Patent No. 5,947,963)**

5 40. This claim is made under the provisions of the patent laws of the United States,
6 35 U.S.C. §§ 271 *et seq.* The Regents incorporates by reference the averments of paragraphs 1 – 9
7 above.

8 41. On September 7, 1999, the United States Patent and Trademark Office duly and
9 legally issued U.S. Patent No. 5,947,963 (“the ‘963 Patent”) entitled “Endovascular
10 Electrolytically Detachable Wire and Tip for the Formation of Thrombus in Arteries, Veins and
11 Aneurysms, Vascular Malformations and Arteriovenous Fistulas,” issued to Guido Gugliemi.
12 The Regents is the owner, by valid assignment, of all right, title and interest in the ‘963 Patent.

13 42. Upon information and belief, Defendants have been, and currently are, directly and
14 indirectly infringing the ‘963 Patent by manufacturing, using, importing, exporting, marketing,
15 selling, reselling, offering for sale, and/or inducing others to use, or contributing to the
16 infringement by others by supplying one or more of the Sapphire, NXT and Nexus products,
17 alone or in combination with the detachment systems, detachment cables and/or microcatheters.

18 43. Defendants’ acts of infringement are willful as Defendants knew or should have
19 known of the ‘963 Patent and that their activities infringed the ‘963 Patent.

20 44. Plaintiff’s exclusive licensee, Target Therapeutics, Inc., and/or its parent company,
21 Boston Scientific, has placed the required statutory notice pursuant to 35 U.S.C. § 287(a) on all
22 patented devices sold by and under the ‘963 Patent.

23 45. As a direct and proximate consequence of Defendants’ infringement of the ‘963
24 Patent, The Regents has suffered and will continue to suffer irreparable injury and damages in an
25 amount not yet determined for which The Regents is entitled to relief. Pursuant to 35 U.S.C. § 284,
26 The Regents is entitled to damages for infringement and to be enhanced up to treble damages.
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SEVENTH CLAIM FOR RELIEF
(Infringement of U.S. Patent No. 5,925,037)

46. This claim is made under the provisions of the patent laws of the United States, 35 U.S.C. §§ 271 *et seq.* The Regents incorporates by reference the averments of paragraphs 1 – 9 above.

47. On July 20, 1999, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,925,037 (“the ‘037 Patent”) entitled “Endovascular Electrolytically Detachable Wire and Tip for the Formation of Thrombus in Arteries, Veins and Aneurysms, Vascular Malformations and Arteriovenous Fistulas,” issued to Guido Gugliemi and Ivan Sepetka. The Regents is the owner, by valid assignment, of all right, title and interest in the ‘037 Patent.

48. Upon information and belief, Defendants have been, and currently are, directly and indirectly infringing the ‘037 Patent by manufacturing, using, importing, exporting, marketing, selling, reselling, offering for sale, and/or inducing others to use, or contributing to the infringement by others by supplying one or more of the Sapphire, NXT and Nexus products, alone or in combination with the detachment systems, detachment cables and/or microcatheters.

49. Defendants’ acts of infringement are willful as Defendants knew or should have known of the ‘037 Patent and that their activities infringed the ‘037 Patent.

50. Plaintiff’s exclusive licensee, Target Therapeutics, Inc., and/or its parent company, Boston Scientific, has placed the required statutory notice pursuant to 35 U.S.C. § 287(a) on all patented devices sold by and under the ‘037 Patent.

51. As a direct and proximate consequence of Defendants’ infringement of the ‘037 Patent, The Regents has suffered and will continue to suffer irreparable injury and damages in an amount not yet determined for which The Regents is entitled to relief. Pursuant to 35 U.S.C. § 284, The Regents is entitled to damages for infringement and to be enhanced up to treble damages.

PRAYER FOR RELIEF

WHEREFORE, The Regents requests entry of judgment in its favor and against MTI, Dendron and ev3 as follows:

A. For entry of a judgment declaring that Defendants MTI, Dendron and ev3 have directly and/or indirectly infringed one or more claims of the '136 Patent, the '578 Patent, the '133 Patent, the '126 Patent, the '962 Patent, the '963 Patent, and the '037 Patent,.

B. For preliminary and permanent injunctive relief restraining and enjoining Defendants, and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from any further infringement of the '136 Patent, the '578 Patent, the '133 Patent, the '126 Patent, the '962 Patent, the '963 Patent, and the '037 Patent.

C. For damages to compensate The Regents for Defendants' infringement, pursuant to 35 U.S.C. § 284, said damages to be enhanced up to trebled damages because of Defendants' willful infringement;

D. For an award of pre-judgment and post-judgment interest and costs to The Regents in accordance with 35 U.S.C. § 284;

E. For an award of The Regents' reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and

F. For such other and further relief as the Court may deem just and fair.

DATED: May 17, 2007

FENWICK & WEST LLP

By: /s/Henry Z. Carbajal III

Henry Z. Carbajal III

Attorneys for Plaintiff and Counterdefendant

Attorneys for Plaintiff/Counterdefendant

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable raised herein.

DATED: May 17, 2007

FENWICK & WEST LLP

By: /s/Henry Z. Carbajal III

Henry Z. Carbajal III

Attorneys for Plaintiff and Counterdefendant

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THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

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