

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TEXAS
3 TYLER DIVISION

4 DR. SHAUN L.W. SAMUELS,
5 Plaintiff,
6 v.
7 BOSTON SCIENTIFIC
8 CORPORATION,
9 Defendant.

CASE NO. 6:06 CV 26
PATENT CASE

JURY

10
11 **SECOND AMENDED COMPLAINT**

12 Plaintiff Dr. Shaun L.W. Samuels ("Dr. Samuels") for his Second Amended Complaint
13 against Defendant Boston Scientific, avers as follows:

14 **NATURE OF THE ACTION**

15 1. This is a patent infringement action with related claims of trade secret
16 misappropriation, unfair competition, breach of confidence and unjust enrichment in which plaintiff
17 seeks compensatory and exemplary damages, a reasonable royalty and declaratory and injunctive
18 relief.

19
20 **JURISDICTION AND VENUE**

21 2. This action arises under the United States patent laws, 35 U.S.C. §§271 and 281-285
22 and the state laws of California.

23 3. This Court has original jurisdiction over the subject matter of this action pursuant to
24 28 U.S.C. §§1331, 1338(a) and (b), and 2201-2202.

25 4. Venue is proper in this district under 28 U.S.C. §§1391(b) and (c) and 1400(b).
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PARTIES

5. Dr. Samuels is a doctor of medicine currently residing at 1111 Brickell Bay Drive, Apt. 611, Miami, Florida 33131.

6. On information and belief, Boston Scientific Corporation is a corporation organized and existing under the laws of the State of Delaware, conducts business throughout the United States including this judicial district, and has its corporate headquarters at One Boston Scientific Place, Natick, MA 01760-1537.

FACTUAL ALLEGATIONS

7. Dr. Samuels has been an investigator and inventor in the field of interventional radiology.

8. He currently holds six United States Letters Patents for innovations in intraluminal medical devices based on his revolutionary inflatable cuff technology.

9. Dr. Samuels's inflatable cuff technology is particularly useful for the repair of abdominal aortic aneurysms ("AAA"), a weakening and swelling of the abdominal section of the body's largest artery.

10. AAA has a mortality rate of more than 50% if left untreated.

11. Because approximately one of every 250 people over the age of 50 dies of rupture of an AAA, it is a leading cause of death in the United States.

12. The first of Dr. Samuels's patents, U.S. Patent No. 5,423,851, issued June 13, 1995, is directed to an AAA stent-graft employing inflatable cuffs having barbs.

13. On June 6, 1997, Dr. Samuels filed a second patent application in the United States Patent and Trademark Office, Ser. No. 08/870,745, directed to an AAA stent-graft which employs improved cuffs having inflatable protrusions in the form of circumferential ridges.

1 14. In November 1997, Dr. Samuels and his business partner, Peter Yorke (“Yorke”),
2 formulated a confidential business plan for the development and commercialization through a
3 proposed new company to be named EndoVention of various medical devices, including AAA stent-
4 grafts, which utilize his revolutionary inflatable cuff technology. The business plan described
5 devices based on Samuels’s inflatable cuff technology, including an AAA stent-graft, and contained
6 plans and other information relating to commercialization of Dr. Samuels’s ideas.
7

8 15. In late 1997, Dr. Samuels made disclosure of the confidential business plan to Dr.
9 Michael Dake, his colleague and mentor in the Division of Cardiovascular/Interventional Radiology
10 at Stanford University, with the understanding that it was confidential and being disclosed for the
11 sole purpose of enabling Dr. Dake to decide whether to affiliate with Dr. Samuels and serve on the
12 Scientific Advisory Board (“SAB”) for Dr. Samuels’s venture.
13

14 16. At a meeting with Dr. Samuels and Yorke in or about December 1997, Dr. Dake
15 agreed to affiliate with Dr. Samuels and serve on the SAB of Dr. Samuels’s business venture.
16

17 17. Dr. Samuels discussed with Dr. Dake the fact that other colleagues in the radiology
18 group at Stanford were involved in another start-up venture, which later became TriVascular, Inc.
19 (hereinafter “TriVascular”), for the same purpose of developing and marketing an AAA stent-graft,
20 but with the understanding that it employed a different approach involving CAD/CAM modeling.
21

22 18. Dr. Samuels sought assurances from Dr. Dake that he would not become a member of
23 the SAB of, or serve as an advisor in any capacity to, the rival TriVascular group because his
24 involvement with more than one start-up company developing a proprietary AAA stent-graft would
25 create an obvious conflict of interest, cause confusion among potential investors, and otherwise be
26 injurious to Dr. Samuels and his business venture.
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19. Dr. Dake acknowledged and agreed that serving on the SAB of the rival start-up AAA stent-graft venture would create a conflict of interest injurious to Dr. Samuels and be improper, and stated that he would not affiliate with or assist TriVascular in any way.

20. After receiving Dr. Dake's assurances, Dr. Samuels continued to meet with Dr. Dake to further discuss his business venture.

21. In the course of their discussions, Dr. Samuels disclosed to Dr. Dake in confidence his concept of an AAA stent-graft that used cuffs with inflatable circumferential ridges that was the subject of his secretly pending patent application as well as other trade secret and confidential information related to his concepts and the status and progress of the proposed EndoVention company.

22. On information and belief, TriVascular was formed in January 1998.

23. Despite pledging not to do so and unbeknownst to Dr. Samuels, Dr. Dake joined TriVascular's Board of Directors.

24. Dr. Dake did not inform Dr. Samuels of his affiliation with TriVascular.

25. By serving on the Board of Directors of the rival TriVascular, Dr. Dake placed himself in a direct conflict of interest in violation of his commitment, duties and obligations to Dr. Samuels. His affiliation with TriVascular also enabled TriVascular to make use of trade secret and confidential information disclosed to him by Dr. Samuels in confidence.

26. On information and belief, Dr. Dake improperly disclosed to other TriVascular personnel the trade secret and confidential information belonging to Dr. Samuels, including but not limited to Dr. Samuels's concept of an AAA stent-graft using cuffs with inflatable ridges, in violation of his duty and obligation to Dr. Samuels to maintain the information in secrecy and confidence.

1 27. On information and belief, other TriVascular personnel knew that Dr. Dake was a
2 member of the SAB of Dr. Samuels's venture, and that in such capacity, Dr. Dake was in possession
3 of trade secret and confidential information belonging to Dr. Samuels and that Dr. Dake had a duty
4 and obligation of confidentiality and secrecy to Dr. Samuels.

5 28. In 1997, Dr. Samuels also provided his business plan to and disclosed trade secret and
6 confidential information about his planned AAA stent-graft to Steve Weiss, a venture capitalist who
7 had worked closely with and mentored Yorke, and Dr. Mahmood Razavi, a colleague of Dr.
8 Samuels's at Stanford. Dr. Samuels enjoyed a confidential relationship with Weiss and Dr. Razavi,
9 as well as Dr. Dake, by virtue of the close professional and collegial associations between them and
10 the mentoring roles that Weiss played to Yorke and Dr. Dake played to Dr. Samuels. Like Dr. Dake,
11 Weiss and Dr. Razavi understood that they had received Dr. Samuels's trade secret and confidential
12 information in confidence and should not use them in the course of affiliating with a rival venture
13 attempting to develop its own stent-graft technology.

14 29. On information and belief, Weiss, who became Chairman of the Board of Directors of
15 TriVascular, and/or Dr. Razavi, who was a co-founder of TriVascular, improperly disclosed to other
16 TriVascular personnel trade secret and confidential information belonging to Dr. Samuels in
17 violation of their obligations to Dr. Samuels to maintain the information in secrecy and confidence.

18 30. On information and belief, TriVascular used the trade secret and confidential
19 information that Dake, Weiss and/or Razavi acquired from Dr. Samuels for its benefit and to the
20 detriment of Dr. Samuels and his venture knowing, or having reason to know, that the information
21 should not have been used.

1 31. On February 9, 1998, TriVascular filed a provisional patent application for an AAA
2 stent-graft that, on information and belief, was influenced by Samuels's trade secret and confidential
3 information. The application named Michael V. Chobotov, TriVascular's CEO, as sole inventor.

4 32. On August 14, 1998, TriVascular claimed priority to the provisional application in a
5 patent application that later, on May 28, 2002, issued as U.S. Patent No. 6, 395,019 B2.

6 33. On information and belief, TriVascular made improper use of Dr. Samuels's trade
7 secret and confidential information, including but not limited to by filing the aforesaid patent
8 applications, to secure funding for its rival business venture and preempt Dr. Samuels. Having
9 access to the plans and information set forth in Dr. Samuels's business plan aided TriVascular in
10 pursuing its own funding and preempting Dr. Samuels.
11

12 34. On information and belief, venture capital groups would not invest in rival business
13 ventures based on the same technology and, mistakenly believing that TriVascular was the innovator
14 of the inflatable cuff technology, either chose to finance TriVascular, chose not to finance
15 EndoVention, or chose to finance neither given the presence of two similar technologies emerging
16 from the same setting. As a consequence, Dr. Samuels was unable to obtain financing from venture
17 capital sources for the commercialization of his AAA stent-graft and was unable to form his
18 company or develop a prototype.
19

20 35. TriVascular developed an AAA stent-graft now called the Enovus,TM which, on
21 information and belief, incorporated the trade secret and confidential information Dr. Samuels
22 provided to Dr. Dake, Weiss and/or Dr. Razavi in confidence, including but not limited to Dr.
23 Samuels's inflatable ridge cuff approach.
24

1 36. In December 2002, Boston Scientific provided substantial funding for the Enovus™
2 AAA stent-graft and, at the same time, obtained exclusive international distribution rights and an
3 exclusive option to acquire TriVascular.

4 37. In April 2005, Boston Scientific exercised its option and purchased TriVascular.

5 38. Boston Scientific owns all of TriVascular's stock and, on information and belief,
6 directs and controls all of its activities and conducts business by and through TriVascular as its alter
7 ego and/or agent.

8 39. On information and belief, Boston Scientific is responsible for any and all activity
9 with respect to the Enovus™ AAA stent-graft and may have been since as early as January 2003,
10 when it began funding TriVascular.

11 40. In light of the facts alleged herein, any activity hereinafter alleged as being that of
12 Boston Scientific was carried out by Boston Scientific either in its own name or by and through its
13 wholly-owned TriVascular subsidiary as its alter ego and/or agent, and any activity hereinafter
14 alleged as being that of TriVascular was carried out by, for and on behalf of Boston Scientific.

15 41. TriVascular originally filed and Boston Scientific is prosecuting an investigational
16 device exemption ("IDE") with the United States Food and Drug Administration ("FDA") with the
17 intent and goal of obtaining FDA approval to market the Enovus AAA stent-graft.

18 42. Patients are currently being recruited for Phase II clinical trials of the Enovus AAA
19 stent-graft in the United States, and the surgical arm of the trials began in December 2005.

20 43. Boston Scientific is also seeking approval to market the Enovus™ AAA stent-graft in
21 Europe.

22 44. Boston Scientific has publicly represented that regulatory approval for sale in Europe
23 of the Enovus™ AAA stent-graft is imminent.

45. On information and belief, Boston Scientific has undertaken substantial activity to commercialize the Enovus™ AAA stent-graft, including expansion of workforce and facilities to manufacture the product in the United States.

46. On information and belief, AAA stent-grafts have been manufactured in the United States, some of which may be intended for distribution and sale in Europe if and when regulatory approval is obtained there.

47. On information and belief, Boston Scientific has earned revenues in the United States from the Enovus[™] AAA stent-graft, without obtaining FDA approval, by charging prices for use of the stent-graft in U.S. clinical trials that are higher than necessary to recover costs.

48. On information and belief, TriVascular and/or Boston Scientific have made and/or sold EnovusTM AAA stent-grafts and/or its predecessors for uses and purposes other than the development and submission of information related to obtaining regulatory approval to market the device.

49. On information and belief, the fact that Boston Scientific is developing and seeking regulatory approval to market an AAA stent-graft based on inflatable cuffs has adversely affected the licensing value of Dr. Samuels's patented technology.

50. Further, on information and belief, the “first mover” advantage secured by Boston Scientific by virtue of Dr. Samuels’s misappropriated trade secret and confidential information diminishes Dr. Samuels’s ability to find corporate partners to develop his AAA stent-graft designs.

CLAIMS FOR RELIEF

I. FIRST CLAIM FOR RELIEF: INFRINGEMENT OF THE '575 PATENT (35 U.S.C. § 271(a), (b) and (c))

51. Dr. Samuels hereby incorporates the allegations set forth in Paragraphs 1 through 50 above as if fully set forth herein.

1 52. The United States Patent and Trademark Office granted a letters patent to Dr.
2 Samuels on his June 1997 patent application directed to an AAA stent-graft having cuffs with
3 inflatable ridges. U.S. Patent No. 6,007,575, entitled "Inflatable Intraluminal Stent And Method For
4 Affixing Same Within The Human Body," was duly and legally issued on December 28, 1999 to Dr.
5 Samuels as sole inventor (hereinafter "the '575 patent"). A copy of the '575 patent is attached as
6 Exhibit A.
7

8 53. Dr. Samuels is the lawful owner of all right, title and interest in and to the '575
9 patent, including the right to sue and to recover for past infringement thereof.

10 54. The Enovus[™] AAA stent-graft uses, incorporates and embodies the inventions
11 claimed in the '575 patent, and is covered by one or more claims of the patent. Consequently, the
12 manufacture, use, offer for sale, sale and/or importation of the Enovus[™] AAA stent-graft constitutes
13 direct infringement of the '575 patent.
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15 55. On information and belief, Boston Scientific has made, used, offered for sale and/or
16 sold the Enovus[™] AAA stent-graft in the United States. It has therefore directly infringed the
17 '575 patent in violation of 35 U.S.C. § 271(a), and actively induced infringement by users of the
18 device in violation of 35 U.S.C. § 271(b).
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20 56. On information and belief, Boston Scientific is also liable as a direct infringer of the
21 '575 patent under 35 U.S.C. § 271(a) because it has used TriVascular as its alter ego and/or agent to
22 manufacture, use, offer for sale and/or sell the infringing Enovus[™] AAA stent-graft in the United
23 States.

24 57. Additionally, on information and belief, Boston Scientific is further liable as an active
25 inducer of infringement of the '575 patent under 35 U.S.C. § 271(b) because it has knowingly
26 encouraged, aided and abetted the manufacture, use, offer for sale and/or sale of the infringing
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1 Enovus AAA stent-graft in the U. S. and encouraged others to use the infringing EnovusTM product
2 by promoting its advantages.

3 58. Boston Scientific is not entitled to the infringement exemption set forth in 35 U.S.C.
4 § 271(e)(1) because, *inter alia*, on information and belief, (a) it may have manufactured the EnovusTM
5 AAA stent-graft in the United States for sale in Europe, (b) it is charging in excess of its costs for
6 use of the devices in the U.S. in ongoing clinical tests, and (c) EnovusTM AAA stent-grafts and/or its
7 predecessors were produced and/or sold for uses and purposes other than the development and
8 submission of information related to obtaining regulatory approval to market the device.
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10 59. On information and belief, Boston Scientific has willfully undertaken and carried out
11 the aforesaid infringing activity with knowledge of the '575 patent and in total disregard of Dr.
12 Samuels's lawful rights under the '575 patent, rendering this case "exceptional" under 35 U.S.C. §
13 285.
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15 60. The aforesaid infringing activity has damaged Dr. Samuels and, unless enjoined, will
16 continue to cause him irreparable harm for which he has no adequate remedy at law.

17 **II. SECOND CLAIM FOR RELIEF: THREATENED INFRINGEMENT OF THE**
18 **'575 PATENT**

19 61. Dr. Samuels hereby incorporates the allegations set forth in Paragraphs 1 through 60
20 above as if fully set forth herein.

21 62. In the event the aforesaid activities to date with respect to the EnovusTM AAA stent-
22 graft fall within the infringement exemption set forth in 35 U.S.C. § 271(e)(1), those activities create
23 a threat of imminent infringement and active inducement of infringement of Dr. Samuels's '575
24 patent such that there exists an actual and justiciable controversy.
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26 63. Boston Scientific is systematically attempting to meet the applicable regulatory
27 requirements to market the EnovusTM AAA stent-graft in the U.S. and Europe.
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1 64. Dr. Samuels has undertaken acts sufficient to create a reasonable apprehension on the
2 part of Boston Scientific that an infringement suit would be forthcoming. Yet Boston Scientific has
3 nevertheless continued to engage in substantial activity directed towards infringing and actively
4 inducing infringement of the `575 patent.

5 65. Dr. Samuels requires and requests a declaratory judgment pursuant to 28 U.S.C.
6 § 2201 that, absent the exemption of 35 U.S.C. § 271(e)(1), the manufacture, use, sale and/or offer
7 for sale of the EnovusTM AAA stent-graft constitutes infringement of Dr. Samuels's `575 patent.

8 66. Dr. Samuels will suffer irreparable harm for which he has no adequate remedy at law
9 unless the aforesaid infringing activities are enjoined pursuant to 28 U.S.C. § 2202.

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11 **III. THIRD CLAIM FOR RELIEF: MISAPPROPRIATION OF TRADE**
12 **SECRETS (Cal. Civ. Code § 3426)**

13 67. Dr. Samuels hereby incorporates the allegations set forth in Paragraphs 1 through 66
14 above as if fully set forth herein.

15 68. The information misappropriated from Dr. Samuels as above-alleged constituted trade
16 secrets within the meaning of § 3426 of the California Civil Code in that the information derived
17 independent economic value from not being generally known, and Dr. Samuels exercised reasonable
18 care under the circumstances to maintain secret its secrecy.

19 69. Boston Scientific knew, or had reason to know, when it invested in the Enovus AAA
20 stent-graft and acquired the international distribution right to the product and the option to acquire
21 TriVascular, that its EnovusTM AAA stent-graft was developed based on Dr. Samuels's trade secret
22 information disclosed in confidence to people who owed a duty to Dr. Samuels to maintain its
23 secrecy and limit its use, but who later affiliated with TriVascular, because reasonable due diligence
24 and investigation would have informed Boston Scientific of that fact.
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1 70. In addition, prior to this lawsuit, Plaintiff notified Boston Scientific that the Enovus[™]
2 AAA stent-graft was developed based on Dr. Samuels's trade secret information disclosed in
3 confidence to people who owed a duty to Dr. Samuels to maintain its secrecy and limit its use, but
4 who later affiliated with TriVascular.

5 71. Boston Scientific also knows, or has reason to know, that its Enovus[™] AAA stent-
6 graft was developed based on information disclosed in confidence to people who owed a duty to Dr.
7 Samuels to maintain its secrecy and limit its use, but who later affiliated with TriVascular, by virtue
8 of Boston Scientific's alter ego relationship with TriVascular.

9 72. Boston Scientific is therefore liable under Cal. Civ. Code § 3426 for trade secret
10 misappropriation.

11 73. Dr. Samuels has suffered and will continue to suffer irreparable injury as a direct and
12 proximate result of the above-alleged trade secret misappropriation.

13 74. Boston Scientific has been unjustly enriched by the aforesaid trade secret
14 misappropriation.

15 75. Pursuant to Cal. Civ. Code § 3426.3, Dr. Samuels is entitled to recover damages to
16 compensate him for the loss he has suffered and for the unjust enrichment reaped by Boston
17 Scientific as a result of the trade secret misappropriation.

18 76. Dr. Samuels is also entitled to exemplary damages pursuant to Cal. Civ. Code
19 § 3426.3 by reason of the willful and malicious nature of the trade secret misappropriation.

20 77. Dr. Samuels is further entitled to an injunction pursuant to Cal. Civ. Code § 3426.2 to
21 eliminate commercial advantage that will be derived from the trade secret misappropriation.

22 78. To the extent Dr. Samuels cannot prove damages or unjust enrichment, and/or
23 entitlement to an injunction, he is entitled to a reasonable royalty pursuant to Cal. Civ. Code § 3426.

**IV. FOURTH CLAIM FOR RELIEF: UNFAIR COMPETITION (CAL. CIV. CODE
§ 17200 et seq.)**

79. Dr. Samuels hereby incorporates the allegations set forth in Paragraphs 1 through 78 above as if fully set forth herein.

80. Boston Scientific has engaged in unfair competition in violation of § 17200 et seq. of the California Business and Professions Code, as a consequence of which it has unfairly profited and benefited at Dr. Samuels's expense.

81. Dr. Samuels requires and is entitled to an injunction, disgorgement of Boston Scientific's profits and restitution pursuant to § 17203 of the California Business and Professions Code.

V. FIFTH CLAIM FOR RELIEF: BREACH OF CONFIDENCE

82. Dr. Samuels hereby incorporates the allegations set forth in Paragraphs 1 through 81 above as if fully set forth herein.

83. In 1997-98, Dr. Samuels enjoyed confidential relationships with Dr. Dake, Weiss and Dr. Razavi, and disclosed information to them, in confidence, about his proposed AAA stent-graft and the plans and other information contained in his business plan relating to commercialization of his invention.

84. Dr. Dake, Weiss and Dr. Razavi received Dr. Samuels's confidential information in confidence and understood it was to be kept confidential and not to be used to further the ends of a rival venture.

85. TriVascular breached Dr. Samuels's confidence when it made use of his confidential information, acquired from Dr. Samuels by people who later became TriVascular's officers and/or board members.

1 86. Boston Scientific knew, or had reason to know, when it invested in the Enovus AAA
2 stent-graft and acquired the international distribution right to the product and the option to acquire
3 TriVascular, that its Enovus[™] AAA stent-graft was developed based on Dr. Samuels's confidential
4 information disclosed in confidence to people who owed a duty to Dr. Samuels to maintain its
5 secrecy and limit its use, but who later affiliated with TriVascular, because reasonable due diligence
6 and investigation would have informed Boston Scientific of that fact.

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8 87. In addition, prior to this lawsuit, Plaintiff notified Boston Scientific that the Enovus[™]
9 AAA stent-graft was developed based on Dr. Samuels's confidential information disclosed in
10 confidence to people who owed a duty to Dr. Samuels to maintain its secrecy and limit its use, but
11 who later affiliated with TriVascular.

12 88. Boston Scientific also knows, or has reason to know, that its Enovus[™] AAA stent-
13 graft was developed based on confidential information disclosed in confidence to people who owed a
14 duty to Dr. Samuels to maintain its secrecy and limit its use, but who later affiliated with
15 TriVascular, by virtue of Boston Scientific's alter ego relationship with TriVascular.

16
17 89. Boston Scientific is therefore liable for beach of confidence.

18 90. Dr. Samuels has been injured as a direct and proximate result of Boston Scientific's
19 breach of confidence.

20 91. Dr. Samuels is entitled to recover damages to compensate him for the loss he has
21 suffered as a result of Boston Scientific's breach of confidence.

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23 **V. SIXTH CLAIM FOR RELIEF: UNJUST ENRICHMENT**

24 92. Dr. Samuels hereby incorporates the allegations set forth in Paragraphs 1 through 91
25 above as if fully set forth herein.

1 93. TriVascular received a benefit at Dr. Samuels's expense when it wrongfully acquired
2 his trade secrets and/or confidential information and used them to design, develop and pursue
3 commercialization of its EnovusTM AAA stent-graft.

4 94. Boston Scientific received a benefit at Dr. Samuels's expense when it acquired
5 TriVascular and its EnovusTM AAA stent-graft, designed, developed and commercialized using trade
6 secrets and/or confidential information from Dr. Samuels.

7 95. Boston Scientific knew, or had reason to know, when it invested in the Enovus AAA
8 stent-graft and acquired the international distribution right to the product and the option to acquire
9 TriVascular, that its EnovusTM AAA stent-graft was developed based on trade secrets and/or
10 confidential information wrongfully acquired from Dr. Samuels, because reasonable due diligence
11 and investigation would have informed Boston Scientific of that fact.

12 96. In addition, prior to this lawsuit, Plaintiff notified Boston Scientific that the EnovusTM
13 AAA stent-graft was developed based on trade secret and/or confidential information wrongfully
14 acquired from Dr. Samuels.

15 97. Boston Scientific is also liable for unjust enrichment based on its alter ego
16 relationship with TriVascular.

17 98. Because the EnovusTM AAA stent-graft is derived from trade secret and/or
18 confidential information wrongfully acquired from Dr. Samuels, it would be unjust for Boston
19 Scientific to retain any benefit from it.

20 99. Dr. Samuels has been injured as a direct and proximate result of Boston Scientific's
21 unjust enrichment.

22 100. Boston Scientific is therefore liable to Dr. Samuels for unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Dr. Samuels prays for judgment as follows:

A. Adjudging that Boston Scientific has infringed and actively induced infringement of the '575 patent, and that such infringement and active inducement of infringement have been willful;

B. Declaring and adjudging that the manufacture, use, sale, and/or offer for sale of the EnovusTM AAA stent-graft will constitute infringement and active inducement of infringement of the '575 patent;

C. Adjudging that Boston Scientific has misappropriated Dr. Samuels's trade secrets in violation of § 3426 of the California Civil Code, and that the misappropriation was willful and malicious;

D. Adjudging that Boston Scientific has engaged in unfair competition injurious to Dr. Samuels in violation of § 17200 et seq. of the California Business and Professions Code;

E. Adjudging that Boston Scientific has engaged in breach of confidence;

F. Adjudging that Boston Scientific has been unjustly enriched at Dr. Samuels's expense and is liable for unjust enrichment;

G. Enjoining Boston Scientific, its officers, directors, employees, attorneys, agents, representatives, parents, subsidiaries, affiliates and all other persons acting in concert, participation or privity with it, and its successors and assigns, from infringing, contributorily infringing and/or inducing others to infringe the '575 patent;

H. Enjoining Boston Scientific, its officers, directors, employees, attorneys, agents, representatives, parents, subsidiaries, affiliates and all other persons acting in concert, participation or privity with them, and its successors and assigns, from continuing to use and/or derive commercial advantage from Dr. Samuels's trade secret and/or confidential information;

1 I. Awarding Dr. Samuels damages adequate to compensate him for infringement of his
2 '575 patent, increased threefold for willfulness, together with interest and costs, pursuant to 35
3 U.S.C. § 284;

4 J. Awarding Dr. Samuels damages to compensate him for the loss he has sustained and
5 for the unjust enrichment resulting from the misappropriation of his trade secrets pursuant to Cal.
6 Civ. Code § 3426.3;

8 K. Awarding Dr. Samuels a reasonable royalty for use of his trade secrets pursuant to
9 Cal. Civ. Code §§ 3426.2 and 3426.3;

10 L. Awarding Dr. Samuels exemplary damages as provided by Cal. Civ. Code § 3426.3
11 because of the willful and malicious nature of the trade secret misappropriation;

12 M. Ordering Boston Scientific to disgorge all profits gained and make full restitution to
13 Dr. Samuels by reason of its unfair competition pursuant to § 17203 of California Business and
14 Professions Code;

16 N. Awarding Dr. Samuels all compensatory, exemplary and other damages allowed by
17 law for Boston Scientific's breach of confidence;

18 O. Awarding Dr. Samuels all compensatory, exemplary and other damages and other
19 relief allowed in law or equity for Boston Scientific's unjust enrichment;

20 P. Awarding Dr. Samuels exemplary damages in all instances allowed by law;

21 Q. Adjudging this to be an exceptional case and awarding Dr. Samuels his attorney fees
22 pursuant to 35 U.S.C. § 285; and

24 R. Awarding Dr. Samuels such other and further relief as this Court may deem just and
25 proper.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). All other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by certified mail, return receipt requested, on this 11th day of May, 2006.

/s/
Martin J. Siegel