

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

CARDIAC PACEMAKERS, INC., )  
GUIDANT SALES CORPORATION, )  
ANNA MIROWSKI and )  
MIROWSKI FAMILY VENTURES, LLC, )

Plaintiffs, )

v. )

ST. JUDE MEDICAL, INC., and )  
PACESETTER, INC. )

Defendants. )

Civil Action No. 1:96-CV-1718-DFH/TAB

**TRIAL BY JURY DEMANDED**

**SECOND AMENDED AND SUPPLEMENTAL COMPLAINT  
OF CARDIAC PACEMAKERS, INC., GUIDANT SALES CORPORATION,  
ANNA MIROWSKI, AND MIROWSKI FAMILY VENTURES, L.L.C.**

Plaintiffs Cardiac Pacemakers, Inc. (“CPI”), Guidant Sales Corporation (“GSC”), Anna Mirowski, and Mirowski Family Ventures, L.L.C. (“MFV”) for their Complaint against Defendants St. Jude Medical, Inc. (“STJM”) and Pacesetter, Inc. (“Pacesetter”) allege as follows:

**BRIEF DESCRIPTION OF THE CASE**

1. Plaintiffs CPI, GSC, Anna Mirowski, and MFV (collectively, “Plaintiffs”) bring this action against STJM and Pacesetter (collectively, “Defendants”) for patent infringement of claim 4 of U.S. Patent No. 4,407,288 (“the ‘288 patent”). The ‘288 patent relates to implantable cardiac defibrillators (“ICD’s”) that provide tiered therapy. The inventions in the ‘288 patent were invented by Dr. Mieczyslaw Mirowski, Dr. Morton Mower, Marlin Heilman, Alois Langer, and Steve Kolenik.

2. This action is on remand from the United States Court of Appeals for the Federal Circuit. The Federal Circuit “reinstate[d] the jury verdict of validity” and remanded “for a new trial on infringement and reassessment of damages.” *Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc.*, 381 F.3d 1371, 1374 (Fed. Cir. 2004).

3. On remand, Plaintiffs seek damages for Defendants’ unlicensed manufacture, use, sale, and offer for sale of Defendants’ infringing ICD’s in the United States. Defendants’ infringing ICD’s provide tiered therapy, meaning that, in response to detection of a particular arrhythmia, the ICDs apply multiple modes of therapy in the order of increasing aggressiveness. For example, upon detection of a tachycardia, the accused ICDs will first pace the heart and, if pacing is unsuccessful, apply a cardioversion or defibrillation shock to the heart.

4. Defendants’ infringing ICD’s include, but are not limited to, the Cadet (e.g., model numbers V-115 and V-145), Aurora (e.g., model numbers V-175, V-180, V-185, V-186, and V-190), Photon (e.g., model numbers V-230 and DR V-230HV), Atlas and Atlas + (e.g., model numbers DR V-240, and VR V-199), Sentry (e.g., model number 4310), Angstrom II and Angstrom MD (e.g., model numbers V-180 and V-190), Aegis (e.g., model numbers V-100 and V-110), Contour (e.g., model numbers V-145, V-145AC, V-145B, V-145C, V-145D, MD V-175, MD 175AC, MD V-175B, MD V-175C, and MD V-175D), Contour II (e.g., model numbers V-185, V-185AC, V-185B, V-185C, and V-185D), Epic and Epic + (e.g., model numbers + DR V-236, DR V-235, + VR V-196, and VR V-197), and Photon micro (e.g., model numbers DR V-232, DR V-194, Profile (e.g., model numbers V-186F and V-186HV3) ICD’s (collectively, “the accused ICD’s”).

5. At the first trial in this patent infringement action, Defendants did not dispute that the devices accused of infringement at trial perform each step of claim 4 except “determining a condition of the heart from among a plurality of conditions of the heart.”

### **THE PARTIES**

6. Plaintiff CPI is a Minnesota corporation having its principal place of business in St. Paul, Minnesota. CPI is a wholly-owned subsidiary of Guidant Corporation. CPI designs, develops, manufactures, and markets ICD’s that provide tiered therapy. CPI is the exclusive licensee of the ‘288 patent.

7. Plaintiff GSC is an Indiana corporation having its principal place of business in Indianapolis, Indiana. GSC sells the ICD’s manufactured by CPI. GSC is a wholly-owned subsidiary of CPI.

8. Plaintiff Anna Mirowski was the wife of Dr. Mieczyslaw Mirowski and owner of U.S. Patent No. 4,407,288.

9. Plaintiff MFV, the successor in interest to Anna Mirowski, is a limited liability company organized and existing under the laws of the state of Maryland. MFV acquired ownership of the ‘288 patent from Anna Mirowski in September 2001.

10. Defendant STJM is a Minnesota corporation having its principal place of business in St. Paul, Minnesota.

11. Defendant Pacesetter is a Delaware corporation having its principal place of business in Sylmar, California. Pacesetter is a wholly owned subsidiary of STJM. Pacesetter has engaged in the manufacture and sale of the accused ICD’s.

**JURISDICTION AND VENUE**

12. This is an action for patent infringement arising under the patent laws of the United States, Title 35 U.S.C. § 1 et seq. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a). Venue and personal jurisdiction are proper in this district.

**COUNT I - PATENT INFRINGEMENT**

13. Plaintiffs reallege and incorporate by reference each and every allegation in paragraphs 1 through 12 as though set forth herein in full.

14. On October 4, 1983, United States Patent No. 4,407,288 entitled “Implantable Heart Stimulator and Stimulation Method,” was duly and legally issued. This patent was licensed exclusively to Eli Lilly and Company (“Lilly”) in 1985. In 1994, Lilly licensed certain exclusive and sole rights to CPI. CPI acquired, among other rights, the exclusive right to sue for past patent infringement and collect damages for any such infringement of the ‘288 patent. The ‘288 patent expired on December 23, 2003.

15. Defendants infringed claim 4 of the ‘288 patent by making, selling, offering for sale and/or using the accused ICD’s. The accused ICD’s infringe claim 4 either literally or under the doctrine of equivalents.

16. As a result of Defendants’ infringement of the ‘288 patent, Plaintiffs have been damaged in an amount not yet determined.

**DEMAND FOR JURY TRIAL AND REQUEST FOR RELIEF**

17. Trial by jury is demanded for each issue so triable in this Second Amended and Supplemental Complaint.

WHEREFORE, plaintiffs request this Court to order Defendants to pay to Plaintiffs damages, plus interest, to which Plaintiffs are entitled under 35 U.S.C. § 284 and for other proper and just relief.

Respectfully submitted,

Date: March 14, 2005

s/John R. Schaibley, III

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### **CERTIFICATE OF SERVICE**

I hereby certify that on March 14, 2005, a copy of the foregoing Second Amended and Supplemental Complaint of Cardiac Pacemakers, Inc., Guidant Sales Corporation, Anna Mirowski, and Mirowski Family Ventures, L.L.C. was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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I further certify that on March 14, 2005, a copy of the foregoing was mailed by first class mail, postage prepaid and properly addressed to the following:

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