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Wyeth and Cordis Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

WYETH)
)
and)
)
CORDIS CORPORATION)
)
Plaintiffs,)
)
vs.)
)
)
MEDTRONIC, INC.,)
MEDTRONIC VASCULAR, INC., and)
MEDTRONIC USA, INC.)
)
and)
)
ABBOTT LABORATORIES and ABBOTT)
CARDIOVASCULAR SYSTEMS, INC.)
)

Defendants.

Civil Action No. 3:08-cv-01021-JAP-TJB

**SECOND AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

Document Filed Electronically

Plaintiffs Wyeth and Cordis Corporation (collectively "Plaintiffs"), by their
attorneys, allege as follows:

THE PARTIES

1. Plaintiff Wyeth, Five Giralda Farms, Madison, New Jersey is a Delaware Corporation with a place of business in Madison, New Jersey. Wyeth is a global leader in developing pharmaceutical drugs and treatments, and has developed and continues to develop innovative treatments across a wide range of therapeutic areas.

2. Plaintiff Cordis Corporation ("Cordis"), 33 Technology Drive, Warren, New Jersey, is a Florida corporation with a principal place of business in Warren, New Jersey. Cordis also has facilities in Clark, New Jersey. Cordis is a pioneer in developing invasive treatments for vascular disease, including the CYPHER[®] drug-eluting stent, a drug/device combination for the treatment of coronary artery disease.

3. Upon information and belief, Defendant Medtronic, Inc., is a corporation organized and existing under the laws of the State of Minnesota, with a principal place of business at 710 Medtronic Parkway, Minneapolis, Minnesota 55432. Upon information and belief, Defendant Medtronic Vascular, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 3576 Unocal Place, Santa Rosa, California 95403. Upon information and belief, Defendant Medtronic USA, Inc. is a corporation is a corporation organized and existing under the laws of the State of Minnesota, with a principal place of business at 710 Medtronic Parkway, Minneapolis, Minnesota 55432. Medtronic, Inc., Medtronic Vascular, Inc., and Medtronic USA, Inc. will be collectively referred to herein as "Medtronic."

4. Upon information and belief, Defendant Abbott Laboratories, 100 Abbott Park Road, North Chicago, IL 60064, is an Illinois corporation with a principal place of business in Illinois. Upon information and belief, Defendant Abbott Cardiovascular Systems, Inc. is a

corporation organized under the laws of the State of California and has a principal place of business at 3200 Lakeside Drive, Santa Clara, California. Upon information and belief, Abbott Cardiovascular Systems is a subsidiary of Abbott Laboratories. Abbott Laboratories and Abbott Cardiovascular Systems, Inc. will be collectively referred to herein as "Abbott."

JURISDICTION AND VENUE

5. This action arises under the Patent Laws of the United States (35 U.S.C. § 1, *et seq.*).

6. This Court has subject matter jurisdiction over Plaintiffs' patent infringement claims under 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Medtronic. On information and belief, Medtronic has systematic and continuous contacts in this judicial District, regularly transacts business within this judicial District, and regularly avails itself of the benefits of this judicial District. For example, Medtronic is registered to do business in New Jersey, and has facilities located in this District, including in Mount Arlington, Eatontown, Fairfield, and East Rutherford, New Jersey. On information and belief, Medtronic also has numerous employees in this District, derives substantial revenues from its business operations and sales in this district, and pays taxes in New Jersey based on revenue generated in this District. On information and belief, Medtronic also sells and distributes medical devices in this District, including vascular devices.

8. This Court has personal jurisdiction over Abbott. On information and belief, Abbott has systematic and continuous contacts in this judicial District, regularly transacts business within this judicial District, and regularly avails itself of the benefits of this judicial District. For example, Abbott is registered to do business in New Jersey, and has facilities located in this District, including in East Windsor, Cranbury, South Brunswick, Edison, Whippany, and

Parsippany, New Jersey. On information and belief, Abbott also has numerous employees in this District, derives substantial revenues from its business operations and sales in this district, and pays taxes in New Jersey based on revenue generated in this District. On information and belief, Abbott also sells and distributes medical devices in this District, including vascular devices.

9. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

FACTUAL ALLEGATIONS

10. On May 12, 1994, the United States Patent and Trademark Office ("USPTO") duly and legally issued United States Patent No. 5,516,781, entitled "Method of Treating Restenosis with Rapamycin" (the "'781 patent"). The '781 patent issued to Morris et al. Wyeth is the owner of the '781 patent. Wyeth has granted Cordis an exclusive license to practice the '781 patent in the field of percutaneous transluminal procedures in humans.

11. On October 8, 1996, the USPTO duly and legally issued United States Patent No. 5,563,146, entitled "Method of Treating Hyperproliferative Vascular Disease" (the "'146 patent"). The '146 patent issued to Morris et al. Wyeth is the owner of the '146 patent. Wyeth has granted Cordis an exclusive license to practice the '146 patent in the field of percutaneous transluminal procedures in humans.

12. On September 9, 1997, the USPTO duly and legally issued United States Patent No. 5,665,728, entitled "Method of Treating Hyperproliferative Vascular Disease" (the "'728 patent"). The '728 patent issued to Morris et al. Wyeth is the owner of the '728 patent. Wyeth has granted Cordis an exclusive license to practice the '728 patent in the field of percutaneous transluminal procedures in humans.

13. Medtronic is the manufacturer of a drug-eluting stent named the Medtronic Endeavor Zotarolimus-Eluting Coronary Stent System (the "Endeavor stent"). Medtronic has manufactured thousands of Endeavor stents in the United States for sale in the United States, Europe and Asia. In July 2005, Medtronic received CE Mark approval for the commercial sale of the Endeavor stent in European Union member countries. On February 1, 2008, Medtronic received approval from the United States Food and Drug Administration ("FDA") for the commercial sale of the Endeavor stent in the United States. Medtronic is offering for sale and/or selling the Endeavor stent in the United States. The Endeavor stent competes directly with Cordis's CYPHER stent, reducing Cordis's market share, impairing customer good will, and causing irreparable harm to Cordis.

14. Abbott supplies to Medtronic the drug zotarolimus used in the Endeavor stent with knowledge that the drug will be used in the Endeavor stent.

15. Medtronic has been and is inducing infringement of the claims of the '781, '146, and '728 patents. Medical personnel directly infringe these claims by implanting the Endeavor stent into patients to treat and prevent restenosis resulting from percutaneous transluminal coronary angioplasty. On information and belief, Medtronic intends and has intended for medical personnel to use the Endeavor stent in procedures for treating and preventing restenosis resulting from percutaneous transluminal coronary angioplasty and knows, knew or should have known that the performance of those procedures will infringe the claims of the '781, '146, and '728 patents.

16. Medtronic has been and is contributing to the infringement of the claims of the '781, '146, and '728 patents. Medical personnel directly infringe these claims by implanting the Endeavor stent into patients to treat and prevent restenosis resulting from percutaneous

transluminal coronary angioplasty. The Endeavor stent constitutes a material part of the invention and, on information and belief, Medtronic knows and knew that the Endeavor stent is especially made or especially adapted for use in an infringement of the '781, '146, and '728 patents and that the Endeavor stent is not a staple article or commodity of commerce suitable for substantial noninfringing use.

17. Abbott has been and is inducing infringement of the claims of the '781, '146, and '728 patents by supplying to Medtronic the drug zotarolimus used in the Endeavor stent with knowledge that the drug will be used in the Endeavor stent. Medical personnel directly infringe these claims by implanting the Endeavor stent into patients to treat and prevent restenosis resulting from percutaneous transluminal coronary angioplasty. On information and belief, Abbott intends and has intended for the zotarolimus in the Endeavor stent be used in procedures for treating and preventing restenosis resulting from percutaneous transluminal coronary angioplasty and knows, knew or should have known that the performance of those procedures will infringe the claims of the '781, '146, and '728 patents.

18. Abbott has been and is contributing to the infringement of the claims of the '781, '146, and '728 patents by supplying to Medtronic the drug zotarolimus used in the Endeavor stent. Medical personnel directly infringe these claims by implanting the Endeavor stent into patients to treat and prevent restenosis resulting from percutaneous transluminal coronary angioplasty. The zotarolimus constitutes a material part of the invention and, on information and belief, Abbott knows and knew that the zotarolimus is especially made or especially adapted for use in an infringement of the '781, '146, and '728 patents and that the zotarolimus is not a staple article or commodity of commerce suitable for substantial noninfringing use.

COUNT I: INFRINGEMENT OF THE '781 PATENT BY MEDTRONIC

19. Plaintiffs reallege paragraphs 1-18 above as if fully set forth herein.

20. Medtronic is contributorily infringing and/or inducing infringement of the '781 patent in violation of 35 U.S.C. § 271, by, including but not limited to, making, using, importing, selling and/or offering to sell the Endeavor stent in the United States for use by physicians in coronary angioplasty procedures.

21. Medtronic had and has actual notice of the '781 patent, and is infringing the '781 patent with knowledge of Cordis's patent rights. Medtronic's actions are willful and deliberate.

COUNT II: INFRINGEMENT OF THE '146 PATENT BY MEDTRONIC

22. Plaintiffs reallege paragraphs 1-18 above as if fully set forth herein.

23. Medtronic is contributorily infringing and/or inducing infringement of the '146 patent in violation of 35 U.S.C. § 271, by, including but not limited to, making, using, importing, selling and/or offering to sell the Endeavor stent in the United States for use by physicians in coronary angioplasty procedures.

24. Medtronic had and has actual notice of the '146 patent, and is infringing the '146 patent with knowledge of Cordis's patent rights. Medtronic's actions are willful and deliberate.

COUNT III: INFRINGEMENT OF THE '728 PATENT BY MEDTRONIC

25. Plaintiffs reallege paragraphs 1-18 above as if fully set forth herein.

26. Medtronic is contributorily infringing and/or inducing infringement of the '728 patent in violation of 35 U.S.C. § 271, by, including but not limited to, making, using,

importing, selling and/or offering to sell the Endeavor stent in the United States for use by physicians in coronary angioplasty procedures.

27. Medtronic had and has actual notice of the '728 patent, and is infringing the '728 patent with knowledge of Cordis's patent rights. Medtronic's actions are willful and deliberate.

COUNT IV: INFRINGEMENT OF THE '781 PATENT BY ABBOTT

28. Plaintiffs reallege paragraphs 1-18 above as if fully set forth herein.

29. Abbott is contributorily infringing and/or inducing infringement of the '781 patent in violation of 35 U.S.C. § 271 by supplying to Medtronic the drug zotarolimus used in the Endeavor stent for treating and preventing restenosis resulting from percutaneous transluminal coronary angioplasty.

30. Abbott had and has actual notice of the '781 patent and is infringing the '781 patent with knowledge of Cordis's patent rights. Abbott's actions are willful and deliberate.

COUNT V: INFRINGEMENT OF THE '146 PATENT BY MEDTRONIC

31. Plaintiffs reallege paragraphs 1-18 above as if fully set forth herein.

32. Abbott is contributorily infringing and/or inducing infringement of the '146 patent in violation of 35 U.S.C. § 271 by supplying to Medtronic the drug zotarolimus used in the Endeavor stent for treating and preventing restenosis resulting from percutaneous transluminal coronary angioplasty.

33. Abbott had and has actual notice of the '146 patent and is infringing the '146 patent with knowledge of Cordis's patent rights. Abbott's actions are willful and deliberate.

COUNT VI: INFRINGEMENT OF THE '728 PATENT BY MEDTRONIC

34. Plaintiffs reallege paragraphs 1-18 above as if fully set forth herein.

35. Abbott is contributorily infringing and/or inducing infringement of the '728 patent in violation of 35 U.S.C. § 271 by supplying to Medtronic the drug zotarolimus used in the Endeavor stent for treating and preventing restenosis resulting from percutaneous transluminal coronary angioplasty.

36. Abbott had and has actual notice of the '728 patent and is infringing the '728 patent with knowledge of Cordis's patent rights. Abbott's actions are willful and deliberate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. For judgment in favor of Plaintiffs that Medtronic is contributorily infringing and/or inducing infringement of the '781, '146, and '728 patents;
2. For judgment in favor of Plaintiffs that Abbott is contributorily infringing and/or inducing infringement of the '781, '146, and '728 patents;
3. For a preliminary and permanent injunction pursuant to 35 U.S.C. § 283 prohibiting Medtronic from making, using, selling, or offering for sale the infringing products in the United States;
4. For an award of damages for Medtronic's infringement of the '781, '146, and '728 patents, together with interest (both pre-and post-judgment), costs, and disbursements as fixed by this Court under 35 U.S.C. § 284;
5. For an award of damages for Abbott's infringement of the '781, '146, and '728 patents, together with interest (both pre-and post-judgment), costs, and disbursements as fixed by this Court under 35 U.S.C. § 284;

6. For a determination that Medtronic's infringement is willful, and an award of treble the amount of damages and losses sustained by Plaintiffs as a result of Medtronic's infringement, under 35 U.S.C. § 284;

7. For a determination that Abbott's infringement is willful, and an award of treble the amount of damages and losses sustained by Plaintiffs as a result of Abbott's infringement, under 35 U.S.C. § 284;

8. For a determination that this is an exceptional case within the meaning of 35 U.S.C. § 285, and an award to Plaintiffs of their reasonable attorneys' fees; and

9. For such other and further relief in law or in equity to which Plaintiffs may be justly entitled.

DEMAND FOR JURY TRIAL

Cordis demands a trial by jury of any and all issues triable of right before a jury.

Dated: May 3, 2011

By:

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ATTORNEYS FOR PLAINTIFF CORDIS
CORPORATION

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

I hereby certify that the matter in controversy is related to the following actions presently pending before this Court:

Cordis v. Abbott Laboratories and Abbott Cardiovascular Systems
Civil Action No. 07-2265 (JAP)

Cordis v. Abbott Laboratories and Abbott Cardiovascular Systems
Civil Action No. 07-2477 (JAP)

Cordis v. Abbott Laboratories and Abbott Cardiovascular Systems
Civil Action No. 07-2728 (JAP)

Wyeth and Cordis v. Abbott Laboratories and Abbott Cardiovascular Systems
Civil Action No. 07-5636 (JAP)

Wyeth and Cordis v. Abbott Laboratories, Abbott Cardiovascular Systems,
Boston Scientific and Boston Scientific Scimed, Inc.
Civil Action No. 08-230 (JAP)

Dated: May 3, 2011

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