

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

2006 OCT 16 PM 4:52
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

COOK BIOTECH INCORPORATED,)
and COOK MEDICAL INCORPORATED,)

Plaintiff,)

v.)

SYNOVIS LIFE TECHNOLOGIES, INC.,)

Defendant.)

1:06-cv-1517-RLY-WTL

Civil Action No. _____

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, Cook Biotech Incorporated (herein referred to as “Cook Biotech”), and Cook Medical Incorporated (herein referred to as “Cook Medical”) for their Complaint for Declaratory Judgment against Synovis Life Technologies, Inc. (herein referred to as “Synovis”), aver as follows:

PARTIES

1. Plaintiff Cook Biotech is an Indiana corporation having a principal place of business at 1425 Innovation Place, West Lafayette, IN 47906.
2. Plaintiff Cook Medical is an Indiana corporation having a principal place of business at 1025 W. Acuff Road, Bloomington, IN 47404.
3. Upon information and belief, Defendant Synovis is a Minnesota corporation having a principal place of business at 2575 University Avenue W., St. Paul, Minnesota 55114.

JURISDICTION AND VENUE

4. This is an action for declaratory judgment. This action arises under the Federal Declaratory Judgments Act, Title 28, United States Code, §§2201 and 2202.

5. Jurisdiction herein is also based upon the patent laws of the United States, 35 U.S.C. §101, *et seq.*; the Judiciary and Judicial Procedure Act, 28 U.S.C. §§1331, 1332 and 1338 and 2201-2202; and for the other claims set forth herein under the principles of pendant or ancillary jurisdiction.

5. Venue is proper under 28 U.S.C. §1391(b).

6. Personal jurisdiction exists because Synovis does business in this judicial district.

7. The accusations and actions by Synovis have given rise to a case of actual controversy within the jurisdiction of this Court, pursuant to 28 U.S.C. §§2201-2202.

8. Cook Biotech and Cook Medical demand relief as set forth hereinafter.

STATEMENT OF FACTS

9. Upon information and belief, Synovis, formerly known as Bio-Vascular Inc., allegedly owns United States Patent No. 5,752,965 (hereinafter “the ‘965 patent”).

10. Cook Biotech manufactures a medical product known as the Surgisis® SLR™. The Surgisis® SLR™ product is supplied to Cook Medical, and Cook Medical supplies that product to medical care providers.

11. On August 17, 2006, Synovis filed a cause of action in the District of Minnesota, the complaint named Cook Group, Inc. as the sole defendant.

12. In paragraph 17 of the Synovis complaint, Synovis alleges that the Surgisis® SLR™ medical product infringes the ‘965 patent.

13. Attached as Exhibit B to Synovis' Minnesota Complaint is a printout of Cook Medical's website offering the Surgisis® SLR™ medical products.

14. Synovis' Complaint was not served on Cook Biotech or Cook Medical.

15. Cook Group, Inc. does not make, use, offer to sell, or sell the Surgisis® SLR™ medical product.

16. Cook Biotech and Cook Medical have an apprehension that Synovis will also sue them for patent infringement.

**DECLARATORY JUDGMENT OF PATENT
NON-INFRINGEMENT, INVALIDITY AND/OR UNENFORCEABILITY**

17. Cook Biotech and Cook Medical incorporate the allegations contained in paragraphs 1-16 above as if set forth fully herein.

18. Cook Biotech and Cook Medical request a declaration that Cook Biotech and Cook Medical, through making, using, selling, and/or offering for sale of the Surgisis® SLR™ medical product in the United States has not and will not infringe, in any manner, the '965 patent.

19. Cook Biotech and Cook Medical request a declaration that Cook Biotech and Cook Medical have not infringed in any manner and will not infringe in any manner any valid patent rights of Synovis by the making, using, selling and/or offering for sale in the United States of the Surgisis® SLR™ medical product.

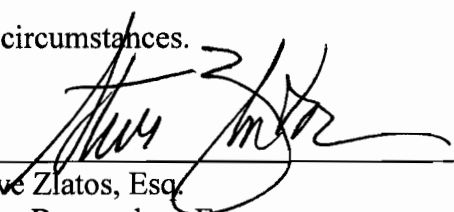
20. Cook Biotech and Cook Medical request a declaration that all of the claims of the '965 patent are invalid and/or unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Cook Biotech and Cook Medical pray that the Court enter an order:

1. Declaring that Cook Biotech and Cook Medical do not infringe the '965 patent (infringement defined under 35 U.S.C. §271 to include direct infringement, contributory infringement, and/or active inducement of infringement);
2. Declaring that the claims of the '965 patent are invalid.
3. Declaring that the '965 patent is unenforceable.
4. All other relief appropriate in the circumstances.

Dated: October 17, 2006



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