

C06-04409 BZ

JS 44 - CAND (Rev. 11/04)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I.(a) PLAINTIFFS

Medison America, Inc.

DEFENDANTS

Volumetrics Medical Imaging, LLC

E-FILED DR

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

Orange, California

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Heidi L. Keefe, White & Case LLP, 3000 El Camino Real, 5 Palo Alto Sq., Palo Alto, CA 94306

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding
☐ Removed from State Court
☐ Remanded from Appellate Court
☐ Reinstated or Reopened
☐ Transferred from Another district (specify)
☐ Multidistrict Litigation
☐ Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 161 Medicare Act <input type="checkbox"/> 162 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 163 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 160 Other Contract <input type="checkbox"/> 166 Contract Product Liability <input type="checkbox"/> 166 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employee Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 645 Airline Regs. <input type="checkbox"/> 650 Occupational Safety/Health <input type="checkbox"/> 655 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Right Relations <input type="checkbox"/> 730 Labor/Right Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 761 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 185 <input type="checkbox"/> 423 Withdrawal 28 USC 167 PROPERTY RIGHTS <input type="checkbox"/> 830 Copyrights <input checked="" type="checkbox"/> 835 Patent #14 <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 801 HSA (1395f) <input type="checkbox"/> 802 Black Lung (923) <input type="checkbox"/> 803 DIWC/DRWW (408(g)) <input type="checkbox"/> 804 SSI Title XVI <input type="checkbox"/> 805 RSI (408(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7605	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commercial CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 510 Selective Service <input type="checkbox"/> 550 Securities/Commodities/Exchange <input type="checkbox"/> 575 Customer Challenge 12 USC 5410 <input type="checkbox"/> 591 Agricultural Acts <input type="checkbox"/> 592 Economic Stabilization Act <input type="checkbox"/> 593 Environmental Matters <input type="checkbox"/> 594 Energy Allocation Act <input type="checkbox"/> 595 Freedom of Information Act <input type="checkbox"/> 596 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 599 Constitutionality of State Statutes <input type="checkbox"/> 600 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 250 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Other Civil Rights <input type="checkbox"/> 446 Amer w/ disab - Empl <input type="checkbox"/> 448 Amer w/ disab - Other <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV	PRISONER PETITIONS <input type="checkbox"/> 610 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 630 General <input type="checkbox"/> 635 Death Penalty <input type="checkbox"/> 640 Mandamus & Other <input type="checkbox"/> 645 Civil Rights <input type="checkbox"/> 646 Prison Condition		

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Declaratory Judgment re U.S. Patent Nos. 4,596,145; 4,694,434; 5,546,807; 6,241,675; 6,276,211; 6,545,678.

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ ☐ CHECK YES only if demanded in complaint: UNDER F.R.C.P. 23 JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

7/18/06

Heidi L. Keefe

**E-FILING
ADR****Filed**

JUL 18 2006

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

Sm

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7 Attorneys for Plaintiff
 8 Medison America, Inc.

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

C06-04409 BZ

11 MEDISON AMERICA, INC., a California
 12 Corporation,

13 Plaintiff,

14 v.

15 VOLUMETRICS MEDICAL IMAGING,
 16 L.L.C., a Delaware Company,

17 Defendant.

Case No. _____

COMPLAINT OF PLAINTIFF
 MEDISON AMERICA, INC. FOR
 DECLARATORY JUDGMENT

DEMAND FOR JURY TRIAL

1
Ch**PARTIES**

21 1. Plaintiff Medison America, Inc. is a California corporation with its principal place of
 22 business at 11075 Knott Avenue, Cypress, California 90630.

23 2. Upon information and belief, defendant Volumetrics Medical Imaging, L.L.C. is a
 24 Delaware limited liability company with its principal place of business at 500 Emerson Street, Palo
 25 Alto, CA 94301.

26 //

SM
#14

Fees Pd.

SI

JURISDICTION AND VENUE

3. This is an action for declaratory judgment of noninfringement, invalidity and/or unenforceability arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

4. This Court has personal jurisdiction over defendant Volumetrics Medical Imaging, L.L.C. based upon its presence and conduct in this Judicial District.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1400(b) because defendant Volumetrics Medical Imaging, L.L.C. is subject to personal jurisdiction in this Judicial District and has regularly conducted business in this Judicial District.

PATENTS IN SUIT

6. U.S. Patent No. 4,596,145 ("the '145 patent") (a true and correct copy of which is attached hereto as Exhibit 1), entitled "Acoustic Orthoscopic Imaging System," was issued on June 24, 1986.

7. U.S. Patent No. 4,694,434 ("the '434 patent") (a true and correct copy of which is attached hereto as Exhibit 2), entitled "Three-Dimensional Imaging System," was issued on September 15, 1987.

8. U.S. Patent No. 5,546,807 ("the '807 patent") (a true and correct copy of which is attached hereto as Exhibit 3), entitled "High Speed Volumetric Ultrasound Imaging System," was issued on August 20, 1996.

9. U.S. Patent No. 6,276,211 ("the '211 patent") (a true and correct copy of which is attached hereto as Exhibit 4), entitled "Methods And Systems For Selective Processing Of Transmit Ultrasound Beams To Display Views Of Selected Slices Of A Volume," was issued on August 21, 2001.

10. The '145 patent, the '434 patent, the '807 patent, and the '211 patent are collectively referred to as "the patents in suit."

11. Upon information and belief, based on assignment records of the United States Patent and Trademark Office, and Volumetrics Medical Imaging, L.L.C.'s own interrogatory responses

1 verified under oath, Volumetrics Medical Imaging, L.L.C. was first assigned the patents in suit on
2 December 19, 2005, and had no ownership interest in the patents in suit before that time.

3 **NOTICE OF PENDENCY OF OTHER ACTION OR PROCEEDING (L.R. 3-13)**

4 12. On October 27, 2005, Volumetrics Medical Imaging, L.L.C. filed a complaint against
5 Medison America, Inc., GE Medical Systems, Inc., GE Medical Systems, L.L.C., GE Healthcare
6 Ltd., Toshiba America Medical Systems, Inc., and Siemens Medical Solutions USA., Inc. alleging
7 infringement as to Medison America, Inc. of the patents in suit to which Medison America, Inc.
8 herein seeks declaratory judgment. *Volumetrics Medical Imaging, L.L.C. v. GE Healthcare Ltd., et*
9 *al.*, Civil Action No. 1:05CV00955-NCT-RAE (M.D.N.C.)

10 13. Upon information and belief, Volumetrics Medical Imaging, L.L.C. lacked standing
11 to file the foregoing action in the Middle District of North Carolina because it held no enforceable
12 rights in the patents in suit at the time the action was filed on October 27, 2005. As noted above,
13 upon information and belief, Volumetrics Medical Imaging, L.L.C. had no ownership interest in the
14 patents in suit until December 19, 2005. Accordingly, Medison America, Inc. will move to dismiss
15 the case in the Middle District of North Carolina for lack of jurisdiction.

16 **INTRADISTRICT ASSIGNMENT**

17 14. Under Civil Local Rules 3-2(c) and 3-5, this action, being a declaratory judgment
18 action based on underlying patent claims, is appropriate for assignment on a district-wide basis.

19 **FIRST CLAIM FOR RELIEF**
20 **(For Declaratory Judgment of Non-Infringement of the '145, '434, '807, and '211 Patents)**

21 15. Medison America, Inc. repeats and re-alleges the allegations of the preceding
22 paragraphs in this complaint as if fully set forth herein.

23 16. Upon information and belief, there exists an actual controversy as to infringement by
24 Medison America, Inc. of any claim of the '145, '434, '807, and '211 patents. Volumetrics Medical
25 Imaging, L.L.C. has previously filed suit against Medison America, Inc., alleging infringement of
26 these patents at a time when it did not own these patents. Although that action will be subject to
27 Medison America, Inc.'s motion to dismiss, Medison America, Inc. has a reasonable apprehension
28

1 that it will be sued again by Volumetrics Medical Imaging, L.L.C. now that it has acquired
2 ownership of the patents.

3 17. Contrary to Volumetrics Medical Imaging, L.L.C.'s allegations, Medison America,
4 Inc. is not infringing, and has not infringed, directly, by inducement, contributorily, or in any way,
5 any claim of the '145, '434, '807, and '211 patents. Accordingly, Medison America, Inc. requests a
6 judicial determination of its rights, duties and obligations regarding the '145, '434, '807, and '211
7 patents.

8 18. To resolve the legal and factual questions raised by Volumetrics Medical Imaging,
9 L.L.C., and to afford relief from the uncertainty and controversy that Volumetrics Medical Imaging,
10 L.L.C.'s accusations have precipitated, Medison America, Inc. is entitled to a declaratory judgment
11 that it does not infringe any claim of the '145, '434, '807, and '211 patents.

12 **SECOND CLAIM FOR RELIEF**

13 **(For Declaratory Judgment of Invalidity and/or**
14 **Unenforceability of the '145, '434, '807, and '211 Patents)**

15 19. Medison America, Inc. repeats and re-alleges the allegations of the preceding
16 paragraphs in this complaint as if fully set forth herein.

17 20. There exists an actual controversy as to the validity and/or enforceability of the '145,
18 '434, '807, and '211 patents. Accordingly, Medison America, Inc. requests a judicial determination
19 of its rights, duties and obligations regarding the validity and/or enforceability of the '145, '434,
20 '807, and '211 patents.

21 21. The claims of the '145, '434, '807, and '211 patents are invalid and/or unenforceable
22 for failure to comply with one or more sections of Title 35 of the United States Code, including,
23 without limitation, 35 U.S.C. §§ 101, 102, 103 and/or 112.

24 22. To resolve the legal and factual questions raised by Volumetrics Medical Imaging,
25 L.L.C., and to afford relief from the uncertainty and controversy that Volumetrics Medical Imaging,
26 L.L.C.'s accusations have precipitated, Medison America, Inc. is entitled to a declaratory judgment
27 that the claims of the '145, '434, '807, and '211 patents are invalid and/or unenforceable.
28

PRAYER FOR RELIEF

WHEREFORE, Medison America, Inc. prays for judgment and relief as follows:

- (i) A declaration that Medison America, Inc. does not infringe any claim of U.S. Patent Nos. 4,596,145, 4,694,434, 5,546,807, and 6,276,211;
- (ii) A declaration that U.S. Patent Nos. 4,596,145, 4,694,434, 5,546,807, and 6,276,211 are invalid and/or unenforceable;
- (iii) An award to Medison America, Inc. of its attorneys' fees pursuant to 35 U.S.C. §285 because this is an exceptional case; and
- (iv) Such additional relief as the Court may deem appropriate and just under the circumstances.

This the 18th day of July, 2006.

WHITE & CASE LLP

Heidi L. Keefe

By: 

Attorneys for Plaintiff Medison America, Inc.

OF COUNSEL:

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DEMAND FOR JURY TRIAL

Medison America, Inc. demands a trial by jury on all issues so triable.

This the 18th day of July, 2006.

WHITE & CASE LLP

Heidi L. Keefe

By: 

Attorneys for Plaintiff Medison America, Inc.

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that the following listed persons, associations of persons, firm, partnerships, corporations (including parent corporations) or other entities may (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

1. Medison Co., Ltd. (a Korean company).

This the 18th day of July, 2006.

WHITE & CASE LLP

Heidi L. Keefe

By: 

Attorneys for Plaintiff Medison America, Inc.