

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION**

SCICO TEC GmbH,

Plaintiff

v.

BOSTON SCIENTIFIC CORPORATION  
and BOSTON SCIENTIFIC SCIMED, INC.,

Defendants.

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Case: 9:07-cv-00076 (RHC)

**JURY TRIAL DEMANDED**

**FIRST AMENDED COMPLAINT AND DECLARATORY JUDGMENT  
OF OWNERSHIP IN U.S. PATENT NO. 5,102,403**

Plaintiff SciCo Tec GmbH (“SCT”), for its First Amended Complaint against Defendants Boston Scientific Corporation and Boston Scientific Scimed, Inc. (collectively “BSC”) states as follows:

**INTRODUCTION**

This is an action against BSC for patent infringement under the Patent Laws of the United States, 35 U.S.C. § 101 *et seq.*, for infringing United States Patent No. 5,102,403 (hereinafter “the ‘403 patent”) entitled “Therapeutic Medical Instrument for Insertion into Body,” which is generally related to catheters.

**PARTIES**

1. Plaintiff SCT is German corporation having a place of business at Tölzer Str. 5, 82031, Grünwald, Germany. SCT is the assignee of the ‘403 patent and holds the right to recover damages for past, present, and future infringement of the ‘403 patent and the right to seek injunctive relief for infringement of the ‘403 patent.

2. Defendant Boston Scientific Corporation is a corporation existing under the laws of Delaware with its headquarters at One Boston Scientific Place, Natick, Massachusetts 01760-1537.

3. Defendant Boston Scientific Scimed, Inc. is a corporation existing under the laws of Minnesota with its headquarters at 1 Scimed Pl., Maple Grove, Minnesota 55311-1566.

### **JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281–285.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over BSC. BSC is transacting business in the Eastern District of Texas that includes, but is not limited to, the manufacture, use, sale, offer for sale, or importation into the United States of products that practice the subject matter claimed in the patent involved in this action.

7. Venue is proper in this District under the provisions of 28 U.S.C. §§ 1391(c) and 1400(b) in that BSC has done business in this District, has committed acts of patent infringement within this District, and continues to commit acts of infringement in this District, all of which entitle SCT to relief.

### **COUNT I**

#### **INFRINGEMENT OF UNITED STATES PATENT NO. 5,102,403**

8. SCT restates and realleges the allegations set forth in paragraphs 1 through 7 and incorporates them by reference.

9. On April 7, 1992, the United States Patent and Trademark Office (“USPTO”), after full and fair examination, duly and legally issued United States Patent No. 5,102,403 entitled “Therapeutic Medical Instrument for Insertion into Body” (“the ‘403 patent”). A true and correct copy of the ‘403 patent is attached as **Exhibit A**.

10. Dr. Eckhard U. Alt was the inventor and original owner of all rights, title and interest in and to U.S. Patent No. 5,102,403.

11. Dr. Eckhard U. Alt assigned all of his rights, title and interest in and to U.S. Patent No. 5,102,403 to Medical Concepts, Inc.

12. Medical Concepts, Inc. assigned all its rights, title and interest in and to U.S. Patent No. 5,102,403 to SCT.

13. SCT is the owner by assignment of the ‘403 patent, and it continues to hold all rights and interest in and to the ‘403 patent, including all rights to sue for past, present and future infringement.

14. BSC has manufactured and sold in the U.S. catheter products such as the Monorail line of products, including without limitation the Monorail™ Liberté™ Coronary Stent System, the Monorail™ Maverick<sup>2</sup>™ Balloon Catheter, the Monorail® Cutting Balloon Ultra<sup>2</sup>™ Device, the Monorail™ Flextome™ Cutting Balloon® Device, the Monorail™ Flextome Cutting Balloon® Dilation Device, the Monorail™ Maverick® XL Balloon Catheter, the Monorail™ NC Balloon Catheter, the Monorail™ Quantum™ Maverick™ Balloon Catheter, the Monorail™ Express<sup>2</sup>™ Coronary Stent System, the Monorail™ Express Coronary Stent System, and the Monorail™ TAXUS® Express<sup>2</sup> Paclitaxel-Eluting Coronary Stent System.

15. By the manufacture and/or sale of catheter products such as the Monorail line of products, including without limitation the Monorail™ Liberté™ Coronary Stent System, the

Monorail™ Maverick<sup>2</sup>™ Balloon Catheter, the Monorail® Cutting Balloon Ultra<sup>2</sup>™ Device, the Monorail™ Flextome™ Cutting Balloon® Device, the Monorail™ Flextome Cutting Balloon® Dilatation Device, the Monorail™ Maverick® XL Balloon Catheter, the Monorail™ NC Balloon Catheter, the Monorail™ Quantum™ Maverick™ Balloon Catheter, the Monorail™ Express<sup>2</sup>™ Coronary Stent System, the Monorail™ Express Coronary Stent System, and the Monorail™ TAXUS® Express<sup>2</sup> Paclitaxel-Eluting Coronary Stent System, BSC has infringed and is infringing one or more claims of the '403 patent in violation of 35 U.S.C. §§ 271(a), (b), (c), and/or (f), literally and/or by the doctrine of equivalents, by performing, without authority, one or more of the following acts: (a) making, using, offering to sell, or selling within this District and elsewhere in the United States the invention of one or more claims of the '403 patent; (b) importing into the United States the invention of one or more claims of the '403 patent; (c) inducing infringement of one or more claims of the '403 patent; and (d) contributing to infringement of one or more of the claims of the '403 patent.

16. BSC had an option to acquire patent rights in the '403 patent through an Option Agreement with SCT and declined to exercise said option.

17. Upon information and belief, BSC had knowledge of the '403 patent at least as early as the date that SCT notified BSC of its infringement of the '403 patent. Nevertheless, BSC has not ceased its infringing activities. BSC's infringement of the '403 patent has been and continues to be willful and deliberate and will continue unless enjoined by this Court.

18. BSC has willfully infringed the '403 patent in violation of 35 U.S.C. §§ 271(a), (b), (c), and/or (f).

19. BSC's infringement of the '403 patent has caused injury to SCT, and will continue to do so unless enjoined by this Court, thereby entitling SCT to all remedies available under the Patent Laws of the United States, including 35 U.S.C. §§ 283–285.

## COUNT II

### **DECLARATORY JUDGMENT OF OWNERSHIP IN U.S. PATENT NO. 5,102,403**

20. SCT restates and realleges the allegations set forth in paragraphs 1 through 19 and incorporates them by reference.

21. On October 31, 2006, BSC filed with the United States Patent and Trademark Office an assignment "recording form cover sheet" including an attached document containing a patent schedule that listed the '403 patent (herein attached as **Exhibit B**).

22. The assignment by Medical Concepts, Inc. of all its rights, title and interest in and to the '403 patent to SCT recorded on August 15, 2003 is the last assignment of the '403 patent.

23. BSC does not own any rights in the '403 patent.

24. SCT owns all rights, title, and interest in the '403 patent.

### **JURY TRIAL DEMANDED**

25. SCT demands a trial by jury on all issues.

### **PRAYER FOR RELIEF**

WHEREFORE, SCT prays for the following relief:

- a. a declaration that BSC has no rights in and to the '403 patent;
- b. a declaration that SCT is the rightful owner of any and all rights in and to the '403 patent;

- c. a judgment and order requiring BSC to file a “corrective assignment recordal” to remove U.S. Patent No. 5,102,403 from the “recordation form cover sheet” recorded October 31, 2006 at reel/frame 018463/0254;
- d. a judgment that BSC has infringed the ‘403 patent, directly and/or indirectly;
- e. a judgment and order permanently enjoining BSC, its directors, officers, employees, agents, parents, subsidiaries, affiliates, or all persons in active concert or participation with them from further infringement, contributory infringement, and/or inducing infringement of the ‘403 patent;
- f. a judgment and order requiring BSC to pay SCT damages under 35 U.S.C. § 284, including enhanced damages pursuant to 35 U.S.C. § 284;
- g. a judgment and order requiring BSC to pay prejudgment interest, pursuant to 35 U.S.C. § 284, and post-judgment interest, pursuant to 28 U.S.C. § 1961, on the damages awarded to SCT;
- h. a judgment and order finding this to be an exceptional case and requiring BSC to pay the costs of this action (including all disbursements) and attorneys’ fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and
- i. for such other costs and further relief as the Court may deem just and proper.

Dated: May 10, 2007

Respectfully submitted,

By: /s/ David J. Healey

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