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Attorneys for Plaintiffs  
Wyeth and Cordis Corporation

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

WYETH	)	
	)	
and	)	Civil Action No. 3:08-CV-00230-JAP-TJB
	)	
CORDIS CORPORATION	)	
	)	<b>SECOND AMENDED COMPLAINT AND</b>
Plaintiffs,	)	<b>DEMAND FOR JURY TRIAL</b>
	)	
vs.	)	<i>Document Filed Electronically</i>
	)	
ABBOTT LABORATORIES, ABBOTT	)	
CARDIOVASCULAR SYSTEMS, INC., and	)	
ABBOTT LABORATORIES INC.	)	
	)	
and	)	
	)	
BOSTON SCIENTIFIC CORPORATION and	)	
BOSTON SCIENTIFIC SCIMED, INC.,	)	
	)	
Defendants.	)	

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<sup>®</sup> drug-eluting stent, a drug/device combination for the treatment of coronary artery disease.

3. 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, Defendant Abbott Laboratories Inc. is a corporation organized under the laws of the State of Delaware and has a principal place of business at 100 Abbott Park Road, North Chicago, IL 60064. Upon information and belief, Abbott Cardiovascular Systems, Inc. and Abbott Laboratories Inc. are subsidiaries of Abbott Laboratories. Abbott Laboratories, Abbott Cardiovascular Systems, Inc. and Abbott Laboratories Inc. will be collectively referred to herein as "Abbott."

4. Upon information and belief, Defendant Boston Scientific Corporation, One Boston Scientific Place, Natick, Massachusetts 01760, is a Delaware corporation with a

principal place of business in Massachusetts. Upon information and belief, Defendant Boston Scientific Scimed, Inc. is a corporation organized under the laws of Minnesota and has a principal place of business at One Scimed Place, Maple Grove, Minnesota 55311. Upon information and belief, Boston Scientific Scimed, Inc. is a subsidiary of Boston Scientific Corporation. Boston Scientific Corporation and Boston Scientific Scimed, Inc. will be collectively referred to herein as "BSC."

### **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 the causes of action asserted herein pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

7. 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.

8. This Court has personal jurisdiction over BSC. On information and belief, BSC 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. On information and belief, BSC also sells and distributes medical devices in this District, including vascular devices. Upon information and belief, BSC derives substantial revenues from sales in this district.

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. Abbott is the manufacturer of a drug-eluting stent named XIENCE V Everolimus Eluting Coronary Stent System ("XIENCE V stent"). Abbott has manufactured thousands of XIENCE V products in the United States for sale in Europe and Asia. Abbott launched the XIENCE V stent in Europe and the Asia Pacific regions in 2006.

13. Abbott has been and is infringing the claims of the '781 and '146 patents by, including but not limited to, making and/or using the XIENCE V stent in the United States

for sale in Europe and Asia for use by physicians in coronary angioplasty procedures, and making and/or selling the XIENCE V stent to BSC for resale under the Promus name.

14. Abbott has publicly announced that it has sought approval from the United States Food and Drug Administration to sell the XIENCE V stent in the United States. Abbott has also publicly announced that, assuming it receives regulatory approval, it plans to launch the XIENCE V stent in the United States in the first half of 2008. Upon its launch in the United States, the XIENCE V stent will compete directly with Cordis's CYPHER stent, reducing Cordis's market share and causing irreparable harm to Cordis.

15. Pursuant to an agreement between BSC and Abbott, BSC is presently selling the Promus drug-eluting coronary stent in Europe and other countries outside the United States. The Promus stent is a private-label version of the Abbott Xience V drug-eluting stent which is manufactured for BSC by Abbott in the United States.

16. The Promus stent received CE Mark approval in October 2006, which allows BSC to distribute the Promus stent in Europe. Since that time, on information and belief, BSC has been taking title to the Promus stent from Abbott in the United States and exporting those stents to the European market.

17. BSC has previously stated that it intends to begin selling its Promus stent in the United States in 2008. On November 29, 2007, a committee of advisors to the FDA voted to recommend approval of the Abbott Xience V stent, which is the same stent as the Promus stent. BSC has stated that it believes that FDA approval of the Promus stent is imminent, and that it intends to begin selling the Promus stent in the United States upon FDA approval.

18. Upon sale of the Promus stent in the United States, BSC will be infringing the '781 and '146 patents, including but not limited to selling the Promus stent in the United States for use by physicians in coronary angioplasty procedures.

19. Upon the launch of the Promus stent in the United States, the Promus stent will compete directly with Cordis's CYPHER stent, reducing Cordis's market share and causing irreparable harm to Cordis.

20. BSC's announced intention to sell the Promus stent upon FDA approval has created a present actual and substantial controversy between Plaintiffs and BSC concerning the threatened infringement of the '781 and '146 patents.

**COUNT I: INFRINGEMENT OF THE '781 PATENT BY ABBOTT**

21. Plaintiffs reallege paragraphs 1-21 above as if fully set forth herein.

22. Abbott is directly infringing, 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 and/or using the XIENCE V stent in the United States for sale in Europe and Asia for use by physicians in coronary angioplasty procedures, and making and/or selling the XIENCE V to BSC for resale under the Promus name.

23. 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 II: INFRINGEMENT OF THE '146 PATENT BY ABBOTT**

24. Plaintiffs reallege paragraphs 1-21 above as if fully set forth herein.

25. Abbott is directly infringing, 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 and/or using the XIENCE V stent in the United States for sale in Europe and Asia for use

by physicians in coronary angioplasty procedures, and making and/or selling the XIENCE V to BSC for resale under the Promus name.

26. Abbott had and has actual notice of the '146 patent, and is infringing the '781 patent with knowledge of Cordis's patent rights. Abbott's actions are willful and deliberate.

**COUNT III: DECLARATORY JUDGMENT OF INFRINGEMENT OF THE '781 PATENT AGAINST BSC**

27. Plaintiffs reallege paragraphs 1-21 above as if fully set forth herein.

28. Upon sale of the Promus stent in the United States, BSC will be directly infringing, contributorily infringing, and/or inducing infringement of the '781 patent in violation of 35 U.S.C. § 271, by, including but not limited to, selling the Promus stent in the United States for use by physicians in coronary angioplasty procedures.

29. BSC has engaged in concrete steps taken with the intent to conduct infringing activity. An actual and justiciable controversy exists between Plaintiffs and BSC regarding infringement of the '781 patent.

30. BSC had and has actual notice of the '781 patent. Upon sale of the Promus stent in the United States, BSC will be infringing the '781 patent with knowledge of Cordis's patent rights. BSC's actions are willful and deliberate.

**COUNT IV: DECLARATORY JUDGMENT OF INFRINGEMENT OF THE '146 PATENT AGAINST BSC**

31. Plaintiffs reallege paragraphs 1-215 above as if fully set forth herein.

32. Upon sale of the Promus stent in the United States, BSC will be directly infringing, contributorily infringing, and/or inducing infringement of the '146 patent in violation of 35 U.S.C. § 271, by, including but not limited to, selling the Promus stent in the United States for use by physicians in coronary angioplasty procedures.

33. BSC has engaged in concrete steps taken with the intent to conduct infringing activity. An actual and justiciable controversy exists between Plaintiffs and BSC regarding infringement of the '146 patent.

34. BSC had and has actual notice of the '146 patent. Upon sale of the Promus stent in the United States, BSC will be infringing the '146 patent with knowledge of Cordis's patent rights. BSC's actions are willful and deliberate.

**PRAYER FOR RELIEF**

WHEREFORE, Cordis prays for the following relief:

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



6. For a declaratory judgment in favor of Plaintiffs that the '781 and '146 patents are not invalid;

7. For an injunction pursuant to 35 U.S.C. § 283 prohibiting BSC from making, using, selling, importing or offering for sale the Promus stent in the United States;

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**

Plaintiffs demand a trial by jury of any and all issues triable of right before a jury.

Dated: March 22, 2011.

By:

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ATTORNEYS FOR PLAINTIFFS WYETH  
AND 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 Corporation v. Abbott Laboratories  
Civil Action No. 07-2265 (JAP)

Cordis Corporation v. Abbott Laboratories  
Civil Action No. 07-2477 (JAP)

Cordis Corporation v. Abbott Laboratories  
Civil Action No. 07-2728 (JAP)

Cordis Corporation v. Abbott Laboratories  
Civil Action No. 07-5636 (JAP)

Wyeth and Cordis Corporation v. Boston Scientific Corporation, et al  
Civil Action No. 08-0522 (JAP)

Dated: March 22, 2011

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