

Donald A. Robinson
Keith J. Miller
ROBINSON WETTRE & MILLER LLC
2 Penn Plaza East, 11th Floor
Newark, NJ 07105
(973) 690-5400

David T. Pritikin
William H. Baumgartner, Jr.
Russell E. Cass
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
(312) 853-7000

Attorneys for Plaintiffs
Wyeth and Cordis Corporation

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

WYETH)
)
and)
)
CORDIS CORPORATION)
)
Plaintiffs,)
)
vs.)
)
BOSTON SCIENTIFIC CORPORATION and)
BOSTON SCIENTIFIC SCIMED, INC.,)
)
Defendants. _____)

Civil Action No.

**COMPLAINT FOR DECLARATORY
JUDGMENT 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 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

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

5. This Court has subject matter jurisdiction over the causes of action asserted herein pursuant to 28 U.S.C. §§ 1331 and 1338(a), 2201 and 2202.

6. 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.

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

FACTUAL ALLEGATIONS

8. Pursuant to an agreement between BSC and Abbott Laboratories (“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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. Upon sale of the Promus stent in the United States, BSC will be infringing the '781, '146, and '728 patents, including but not limited to selling the Promus stent in the United States for use by physicians in coronary angioplasty procedures.

15. 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.

16. 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, '146, and '728 patents.

COUNT I: INFRINGEMENT OF THE '781 PATENT

17. Plaintiffs reallege paragraphs 1-16 above as if fully set forth herein.

18. 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.

19. 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.

20. 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 II: INFRINGEMENT OF THE '146 PATENT

21. Plaintiffs reallege paragraphs 1-20 above as if fully set forth herein.

22. 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.

23. 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.

24. 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.

COUNT III: INFRINGEMENT OF THE '728 PATENT

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

26. Upon sale of the Promus stent in the United States, BSC will be directly infringing, contributorily infringing, and/or inducing infringement of the '728 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.

27. 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 '728 patent.

28. BSC had and has actual notice of the '728 patent. Upon sale of the Promus stent in the United States, BSC will be infringing the '728 patent with knowledge of Cordis's patent rights. BSC's actions are willful and deliberate.

PRAYER FOR RELIEF

WHEREFORE, Cordis prays that the Court enter judgment as follows::

1. For a declaratory judgment in favor of Plaintiffs that BSC is directly infringing, contributorily infringing, and/or inducing infringement of the '781, '146, and '728 patents;

2. For a declaratory judgment in favor of Plaintiffs that the '781, '146, and '728 patents are not invalid;

3. 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;

4. 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

5. 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 on all issues so triable.

Dated: January 28, 2008.

By:

s/Donald A. Robinson
Donald A. Robinson
Keith J. Miller
ROBINSON WETTRE & MILLER LLC
2 Penn Plaza East, 11th Floor
Newark, NJ 07105
(973) 690-5400
-and-

David T. Pritikin
William H. Baumgartner, Jr.
Russell E. Cass
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000

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. Abbott Laboratories
Civil Action No. 08-0230 (JAP)

Dated: January 28, 2008.

By:

s/Donald A. Robinson
Donald A. Robinson
Keith J. Miller
ROBINSON WETTRE & MILLER LLC
2 Penn Plaza East, 11th Floor
Newark, NJ 07105
(973) 690-5400
-and-

David T. Pritikin
William H. Baumgartner, Jr.
Russell E. Cass
SIDLEY AUSTIN LLP
One South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000

ATTORNEYS FOR PLAINTIFFS WYETH
AND CORDIS CORPORATION