

MATTHEW D. POWERS (Bar No. 104795)
STEVEN S. CHERENSKY (Bar No. 168275)
WEIL, GOTSHAL & MANGES LLP
Silicon Valley Office
201 Redwood Shores Parkway
Redwood Shores, CA 94065-1175
Telephone: (650) 802-3000
Facsimile: (650) 802-3100

Attorneys for Plaintiff
RITA MEDICAL SYSTEMS, INC.

ORIGINAL FILED

AUG 27 2001

Richard W. Wicking
Clerk, U.S. District Court
Northern District of California
San Jose

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADR

RITA MEDICAL SYSTEMS, INC.,

CV-01-3267-BZ
Case No.

Plaintiff,

v.

RADIO THERAPEUTICS CORPORATION,

Defendant.

RITA MEDICAL SYSTEMS, INC.'S
COMPLAINT FOR INFRINGEMENT
OF U.S. PATENT NOS. 6,071,280,
5,935,123, 5,728,143, 5,683,384,
5,672,174, and 5,672,173.

JURY TRIAL DEMANDED

Plaintiff RITA Medical Systems, Inc. ("RITA Medical"), by and for its Complaint
against defendant Radio Therapeutics Corporation ("Radio Therapeutics"), alleges as follows:

JURISDICTION & VENUE

1. This is an action for patent infringement arising under the patent laws of
the United States, Title 35 of the United States Code. The Court has subject matter jurisdiction
over this action pursuant to 28 U.S.C. § 1338(a). Venue lies in this judicial district pursuant to 28
U.S. C. §§ 1391 and 1400(b).

PARTIES

2. Plaintiff RITA Medical is a corporation organized and existing under the
laws of the State of Delaware with its principal place of business at 967 Shoreline Boulevard,
Mountain View, California 94043.

1 3. Defendant Radio Therapeutics is a privately-held corporation organized
2 and existing under the laws of the State of California with its principal place of business at 1308
3 Borregas Avenue, Sunnyvale, California 94089.

4 **COUNT ONE**

5 4. RITA Medical hereby realleges and incorporates by reference the
6 allegations of paragraphs 1 through 3 of this Complaint as if fully set forth herein.

7 5. RITA Medical is the owner of all right, title and interest in United States
8 Patent No. 6,071,280 (“the ‘280 patent”) entitled “Multiple Electrode Ablation Apparatus,” duly
9 and legally issued on June 6, 2000. A true and correct copy of the ‘280 patent is attached hereto
10 as Exhibit A.

11 6. Radio Therapeutics, in violation of 35 U.S.C. § 271, has been and is
12 infringing the ‘280 patent directly, by inducement, and/or contributorily by, among other things,
13 making, using, importing, selling, and/or offering for sale in the United States, without license or
14 authorization, radiofrequency ablation products embodying the patented apparatuses.

15 7. Radio Therapeutics’ infringement of the ‘280 patent has been and is
16 willful, and will continue unless enjoined by this Court. RITA Medical has suffered, and will
17 continue to suffer, irreparable injury as a result of Radio Therapeutics’ infringement. Pursuant to
18 35 U.S.C. § 284, RITA Medical is entitled to damages for infringement and treble damages.
19 Pursuant to 35 U.S.C. § 283, RITA Medical is entitled to a preliminary and permanent injunction
20 against further infringement.

21 8. This case is exceptional and, therefore, RITA Medical is entitled to
22 attorneys’ fees pursuant to 35 U.S.C. § 285.

23 **COUNT TWO**

24 9. RITA Medical hereby realleges and incorporates by reference the
25 allegations of paragraphs 1 through 8 of this Complaint as if fully set forth herein.

26 10. RITA Medical is the owner of all right, title and interest in United States
27 Patent No. 5,935,123 (“the ‘123 patent”), entitled “RF Treatment Apparatus,” duly and legally
28 issued on August 10, 1999. A true and correct copy of the ‘123 patent is attached hereto as

1 Exhibit B.

2 11. Radio Therapeutics, in violation of 35 U.S.C. § 271, has been and is
3 infringing the '123 patent directly, by inducement, and/or contributorily by, among other things,
4 making, using, importing, selling, and/or offering for sale in the United States, without license or
5 authorization, radiofrequency ablation products embodying the patented apparatuses.

6 12. Radio Therapeutics' infringement of the '123 patent has been and is
7 willful, and will continue unless enjoined by this Court. RITA Medical has suffered, and will
8 continue to suffer, irreparable injury as a result of Radio Therapeutics' infringement. Pursuant to
9 35 U.S.C. § 284, RITA Medical is entitled to damages for infringement and treble damages.
10 Pursuant to 35 U.S.C. § 283, RITA Medical is entitled to a preliminary and permanent injunction
11 against further infringement.

12 13. This case is exceptional and, therefore, RITA Medical is entitled to
13 attorneys' fees pursuant to 35 U.S.C. § 285.

14 **COUNT THREE**

15 14. RITA Medical hereby realleges and incorporates by reference the
16 allegations of paragraphs 1 through 13 of this Complaint as if fully set forth herein.

17 15. RITA Medical is the owner of all right, title and interest in United States
18 Patent No. 5,728,143 ("the '143 patent"), entitled "Multiple Antenna Ablation Apparatus and
19 Method," duly and legally issued on March 17, 1998. A true and correct copy of the '143 patent
20 is attached hereto as Exhibit C.

21 16. Radio Therapeutics, in violation of 35 U.S.C. § 271, has been and is
22 infringing the '143 patent directly, by inducement, and/or contributorily by, among other things,
23 making, using, importing, selling, and/or offering for sale in the United States, without license or
24 authorization, radiofrequency ablation products embodying the patented apparatuses.

25 17. Radio Therapeutics' infringement of the '143 patent has been and is
26 willful, and will continue unless enjoined by this Court. RITA Medical has suffered, and will
27 continue to suffer, irreparable injury as a result of Radio Therapeutics' infringement. Pursuant to
28 35 U.S.C. § 284, RITA Medical is entitled to damages for infringement and treble damages.

1 Pursuant to 35 U.S.C. § 283, RITA Medical is entitled to a preliminary and permanent injunction
2 against further infringement.

3 18. This case is exceptional and, therefore, RITA Medical is entitled to
4 attorneys' fees pursuant to 35 U.S.C. § 285.

5 **COUNT FOUR**

6 19. RITA Medical hereby realleges and incorporates by reference the
7 allegations of paragraphs 1 through 18 of this Complaint as if fully set forth herein.

8 20. RITA Medical is the owner of all right, title and interest in United States
9 Patent No. 5,683,384 ("the '384 patent"), entitled "Multiple Antenna Ablation Apparatus," duly
10 and legally issued on November 4, 1997. A true and correct copy of the '384 patent is attached
11 hereto as Exhibit D.

12 21. Radio Therapeutics, in violation of 35 U.S.C. § 271, has been and is
13 infringing the '384 patent directly, by inducement, and/or contributorily by, among other things,
14 making, using, importing, selling, and/or offering for sale in the United States, without license or
15 authorization, radiofrequency ablation products embodying the patented apparatuses.

16 22. Radio Therapeutics' infringement of the '384 patent has been and is
17 willful, and will continue unless enjoined by this Court. RITA Medical has suffered, and will
18 continue to suffer, irreparable injury as a result of Radio Therapeutics' infringement. Pursuant to
19 35 U.S.C. § 284, RITA Medical is entitled to damages for infringement and treble damages.
20 Pursuant to 35 U.S.C. § 283, RITA Medical is entitled to a preliminary and permanent injunction
21 against further infringement.

22 23. This case is exceptional and, therefore, RITA Medical is entitled to
23 attorneys' fees pursuant to 35 U.S.C. § 285.

24 **COUNT FIVE**

25 24. RITA Medical hereby realleges and incorporates by reference the
26 allegations of paragraphs 1 through 23 of this Complaint as if fully set forth herein.

27 25. RITA Medical is the owner of all right, title and interest in United States
28 Patent No. 5,672,174 ("the '174 patent"), entitled "Multiple Antenna Ablation Apparatus and

1 Method,” duly and legally issued on September 30, 1997. A true and correct copy of the ‘174
2 patent is attached hereto as Exhibit E.

3 26. Radio Therapeutics, in violation of 35 U.S.C. § 271, has been and is
4 infringing the ‘174 patent directly, by inducement, and/or contributorily by, among other things,
5 making, using, importing, selling, and/or offering for sale in the United States, without license or
6 authorization, radiofrequency ablation products embodying the patented apparatuses.

7 27. Radio Therapeutics’ infringement of the ‘174 patent has been and is
8 willful, and will continue unless enjoined by this Court. RITA Medical has suffered, and will
9 continue to suffer, irreparable injury as a result of Radio Therapeutics’ infringement. Pursuant to
10 35 U.S.C. § 284, RITA Medical is entitled to damages for infringement and treble damages.
11 Pursuant to 35 U.S.C. § 283, RITA Medical is entitled to a preliminary and permanent injunction
12 against further infringement.

13 28. This case is exceptional and, therefore, RITA Medical is entitled to
14 attorneys’ fees pursuant to 35 U.S.C. § 285.

15 **COUNT SIX**

16 29. RITA Medical hereby realleges and incorporates by reference the
17 allegations of paragraphs 1 through 28 of this Complaint as if fully set forth herein.

18 30. RITA Medical is the owner of all right, title and interest in United States
19 Patent No. 5,672,173 (“the ‘173 patent”), entitled “Multiple Antenna Ablation Apparatus and
20 Method,” duly and legally issued on September 30, 1997. A true and correct copy of the ‘173
21 patent is attached hereto as Exhibit F.

22 31. Radio Therapeutics, in violation of 35 U.S.C. § 271, has been and is
23 infringing the ‘173 patent directly, by inducement, and/or contributorily by, among other things,
24 making, using, importing, selling, and/or offering for sale in the United States, without license or
25 authorization, radiofrequency ablation products embodying the patented apparatuses.

26 32. Radio Therapeutics’ infringement of the ‘173 patent has been and is
27 willful, and will continue unless enjoined by this Court. RITA Medical has suffered, and will
28 continue to suffer, irreparable injury as a result of Radio Therapeutics’ infringement. Pursuant to

1 35 U.S.C. § 284, RITA Medical is entitled to damages for infringement and treble damages.
2 Pursuant to 35 U.S.C. § 283, RITA Medical is entitled to a preliminary and permanent injunction
3 against further infringement.

4 33. This case is exceptional and, therefore, RITA Medical is entitled to
5 attorneys' fees pursuant to 35 U.S.C. § 285.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, RITA Medical prays for relief as follows:

8 A. That Radio Therapeutics be adjudged to have infringed the '280, '123,
9 '143, '384, '174, and '173 patents;

10 B. That Radio Therapeutics, its officers, agents, servants, employees,
11 attorneys, and those persons in active concert or participation with any of them, be preliminarily
12 and permanently restrained and enjoined from directly or indirectly infringing the '280, '123,
13 '143, '384, '174, and '173 patents;

14 C. An accounting for damages by virtue of Radio Therapeutics' infringement
15 of the '280, '123, '143, '384, '174, and '173 patents;


16 D. An award of damages to compensate RITA Medical for Radio
17 Therapeutics' infringement, pursuant to 35 U.S.C. § 284, said damages to be trebled because of
18 Radio Therapeutics' willful infringement;

19 E. An assessment of pre-judgment and post-judgment interest and costs
20 against Radio Therapeutics, together with an award of such interest and costs, in accordance with
21 35 U.S.C. § 284;

22 F. That Radio Therapeutics be directed to pay RITA Medical's attorneys' fees
23 incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285; and

1 G. That RITA Medical have such other and further relief as this Court may
2 deem just and proper.

3 MATTHEW D. POWERS
4 STEVEN S. CHERENSKY
5 WEIL, GOTSHAL & MANGES LLP

6 By 
7 Matthew D. Powers
8 Attorneys for RITA Medical Systems, Inc.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY DEMAND

Plaintiff RITA Medical hereby demands a jury trial for this action.

Dated: August 27, 2001

MATTHEW D. POWERS
STEVEN S. CHERENSKY
WEIL, GOTSHAL & MANGES LLP

By 
Matthew D. Powers
Attorneys for RITA Medical Systems, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF SERVICE

I am a citizen of the United States, more than 18 years old, and not a party to this action. My place of employment and business address is 2882 Sand Hill Road, Suite 280, Menlo Park, California. On August 27, 2001 I caused a copy of the **RITA MEDICAL SYSTEMS, INC.'S COMPLAINT FOR INFRINGEMENT OF U.S. PATENT NOS. 6,071,280, 5,935,123, 5,728,143, 5,683,384, 5,672,174, AND 5,672,173.**

BY MAIL I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. The above document was placed in a sealed envelope with first-class postage thereon fully prepaid, and placed for collection and mailing on that date following ordinary business practices.

BY FACSIMILE The facsimile machine used to serve the above document on said party or parties produced a record showing that the facsimile transmission was completed successfully.

BY OVERNIGHT COURIER SERVICE I am readily familiar with the business practice at my place of business for collection and processing of correspondence for deposit with an overnight delivery service. Correspondence placed for collection and processing is either delivered to a courier or driver authorized by said overnight delivery service to receive documents or deposited by an employee or agent of this firm in a box or other facility regularly maintained by said overnight delivery service that same day in the ordinary course of business.

Executed on August 27, 2001, at Menlo Park, California. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Judi Tallett