

defenses were objectively reckless (ECF 909, entered on June 29, 2012); and the Court's denial of Varian's Rule 50(b) motion on the ground that there was a legally sufficient evidentiary basis for the jury's finding that Varian's defenses were subjectively reckless (ECF 909, entered on June 29, 2012);

- the Order granting Plaintiff's Motion to Adopt-in-Part and Modify-in-Part the Special Master's Report and Recommendation on claim construction and denying Varian's Objections to and Motion to Modify-in-Part the Special Master's Report and Recommendation (ECF 303, entered on May 16, 2011);
- the Court's Order Re: Doc. Nos. 363, 364 and 403, which granted Plaintiff's Motion for Partial Summary Judgment that Varian infringed certain claims of the patent in suit, denied Varian's Motions for Summary Judgment, granted Plaintiff's motion to strike certain of Varian's noninfringement contentions and supporting evidence and argument, and stated that Varian's non-treatment RPM systems infringed under the doctrine of equivalents and that Varian's design-around would infringe literally and under the doctrine of equivalents (ECF 425, entered on December 21, 2011, and supplemented in ECF 432, entered on December 30, 2011);
- the Court's Order awarding an on-going royalty and granting Plaintiff's motion for enhanced damages, attorneys fees, and prejudgment interest (ECF 870, entered on April 26, 2012);
- the Court's denial of Varian's objection (ECF 446 at 11-12) to the Court telling the jury that Varian's infringement was objectively reckless (ECF 459, entered on January 12, 2012);
- prohibiting Varian from introducing evidence of the patents that it had obtained on its accused RPM product (ECF 459 at 2(f), entered on January 12, 2012);
- instructing the jurors on January 26, 2012, that, when deciding the objective prong of willful infringement, they had to focus on Varian's conduct before it was sued (Trial Tr. at 96-97);
- instructing the jurors on January 26, 2012, that, when deciding the "subjective prong" of willful infringement, they could consider many different factors, which included certain *Read v. Portec* factors that should only be considered by the Court after a jury's willfulness finding (Trial Tr. at 97-98);
- the Court's denial of Varian's objection (ECF 446 at 9-10) to Plaintiff admitting Varian's privilege log into evidence (ECF 459, entered on January 12, 2012);
- prohibiting Varian from introducing evidence that it independently developed its accused RPM product and did not copy the Plaintiff's patent in suit (ECF 459 at 2(e), entered on January 12, 2012);

- prohibiting Varian from introducing evidence that the inventors repeatedly failed to make an embodiment of the patent in suit that actually could treat a real patient's cancer in a clinical setting (ECF 459 at 2(d), entered on January 12, 2012);
- allowing only portions of the re-examination file that favored the Plaintiff to be admitted into evidence (ECF 494, entered on January 19, 2012, and ECF 514, entered on January 24, 2012);
- refusing to allow Varian to call Plaintiff's expert, Dr. Siochi, to the stand in the invalidity phase of the trial or to introduce his deposition transcript at that trial (ECF 820, entered on April 13, 2012, and ECF 841, entered on April 16, 2012);
- denying Varian's Motion in Limine (ECF 567) to exclude sales of Clinac and Trilogy linear accelerators from the royalty base and to exclude evidence or argument concerning linear accelerator sales (ECF 594 at 2, entered on February 10, 2012);
- the Court's denial of Varian's objection (ECF 626) to having the jury assign separate royalty rates for sales of components of a claimed combination, i.e., the combination of Varian's RPM and Varian's linear accelerators (text order, entered on February 15, 2012).
- the Court's order sustaining Plaintiff's objections to Varian's exhibits in Order on Stipulation and Joint Statement of Remaining Objections Regarding Varian's Exhibit List (ECF 495, entered on January 19, 2012);
- the Court's order overruling Varian's objections in Order on Stipulation and Joint Statement of Remaining Objections Regarding Objections Concerning Deposition Testimony to be Offered at Trial (ECF 496, entered January 19, 2012);
- the Court's order sustaining Plaintiff's objections, overruling Varian's objection, and denying Varian's request for judicial notice in Order on Amended Stipulations of Fact (ECF 503, entered on January 23, 2012);
- the Court's order overruling Varian's objections to preliminary jury instructions (ECF 504, entered on January 23, 2012);
- the Court's Memorandum Order re: Plaintiff's Motion to Exclude Evidence Referred to in Defendant's Opening Statement and for Curative Instruction (ECF 521, entered January 24, 2012);
- the Court's order overruling Varian's objections and sustaining Plaintiff's Objections in Order of Court re: Parties' Objections to Exhibits for Damages Portion of Trial (ECF 624, entered February 14, 2012);

- the Court's denial of Varian's objections to final jury instructions (ECF 645, entered February 21, 2012);
- the Court's order granting Plaintiff's Motion for Summary Judgment on Laches (ECF 732, entered March 19, 2012);
- the Court's order on Objections to Preliminary Jury Instructions, Final Jury Instructions, and Verdict Slip (ECF 771, entered April 2, 2012);
- the Court's order regarding the Parties' Objections to Exhibits for Invalidity Portion of Trial (ECF 774, entered April 2, 2012);
- the Court's order granting partial summary judgment to Plaintiff on the issue of non-enablement (ECF 790, entered April 9, 2012); and
- the Court's order granting partial summary judgment to Plaintiff on the issue of indefiniteness (ECF 859, entered on April 23, 2012).

An electronic payment for \$455, representing the \$450 fee for docketing a case on appeal required by 28 U.S.C. § 1913 and the \$5 fee for filing a notice of appeal required by 28 U.S.C. § 1917, was submitted to the District Court on July 27, 2012, with the Court's paper copy of this Notice of Appeal.

Dated: July 30, 2012

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **AMENDED NOTICE OF APPEAL** was electronically filed and is available for viewing and downloading from the ECF system and was sent to all counsel of record this 30th day of July, 2012, via electronic service, addressed as follows:

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