

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA**

**WORLD WIDE MEDICAL
TECHNOLOGIES, LLC; ADVANCED CARE
MEDICAL, INC.; and BRACHYSCIENCES,
INC.**

Case No. 4:11-cv-00614/RS-CAS

Plaintiffs

v.

**BEST MEDICAL INTERNATIONAL, INC.
(Va.) and BRACHYTHERAPY SERVICES,
INC.,**

Defendants

**THIRD AMENDED COMPLAINT
AS TO "BEST DEFENDANTS"**

Plaintiffs, WORLD WIDE MEDICAL TECHNOLOGIES, LLC; ADVANCED CARE MEDICAL, INC.; and BRACHYSCIENCES, INC., pursuant to this Court Order of July 9, 2012 (Doc 105) and the provisions of Rule 15, Fed.R.Civ.P., hereby file this Third Amended Complaint as to Defendants BEST MEDICAL INTERNATIONAL, INC. (Va.) and BRACHYTHERAPY SERVICES, INC. (hereinafter "BEST DEFENDANTS"), and respectfully allege as follows:

1. This action was originally brought against a number of defendants. On April 11, 2012, the Court severed the single case into eight separate cases against the eight named Defendants. However, pursuant to Rule 42(a), Fed.R.Civ.P. the Court consolidated the severed cases for the purpose of pre-trial matters and directed the parties to file pleadings only in case 4:11cv614/RS-CAS. Consistent with the Court's

order, this pleading is filed only in Case 4:11cv614. This pleading pertains only to the BEST DEFENDANTS.

THE PARTIES, JURISDICTION AND VENUE

2. On April 29, 2003, the United States Patent and Trademark Office issued U.S. Patent No. 6,554,760 (“the ‘760 Patent”), a copy of which is attached to the original Complaint as Exhibit A. The ‘760 Patent forms the basis of this action. The ‘760 Patent was filed on October 24, 2001.

3. Plaintiff WORLD WIDE MEDICAL TECHNOLOGIES, LLC (“World Wide”) is a Connecticut Limited Liability Company with a principal place of business located at 49 Peter Road, Southbury, Connecticut 06488. Plaintiff World Wide is the assignee and owner of the ‘760 Patent. In addition, World Wide makes needles that are used in creating products falling under the ‘760 Patent. World Wide’s product are or have been used in making products that compete with the products offered by Defendants Bard.

4. Plaintiff ADVANCED CARE MEDICAL, INC. (“Advanced Care”) is a Connecticut corporation with a principal place of business located at 49 Peter Road, Southbury, Connecticut 06488. ADVANCED CARE MEDICAL, INC. is successor in interests to Advanced Care Pharmacy, LLC, formerly a Connecticut limited liability company and Advanced Care Pharmacy, Inc., formerly a Massachusetts corporation. Advanced Care is a licensed user of the ‘760 Patent that loads seeds into completed assemblies falling under the ‘760 Patent. Advanced Care’s products are or have been competitive with the products offered by Defendants Bard.

5. Plaintiff BRACHYSCIENCES, INC. (“BrachySciences”) is a Connecticut corporation with a principal place of business located at 49 Peter Road, Southbury, Connecticut 06488. BRACHYSCIENCES, INC. is successor in interests to Advanced Care Technology, Inc. BrachySciences is a licensed user of the ‘760 Patent that markets kits and completed assemblies falling under the ‘760 Patent. BrachySciences’s products are or have been competitive with the products offered by Defendants Bard.

6. Defendant BEST MEDICAL INTERNATIONAL, INC. (“BEST (VA)”) is a corporation organized and existing under the laws of Virginia with principal offices located 7643 Fullerton Road, Springfield, Virginia 22153. BEST (VA) is identified at www.teambest.com as the manufacturer of “Best® Iodine-125, Best® Palladium-103, Iridium-192 and Gold-198 seeds, along with LDR/HDR accessories, fiducial markers, Best® Brachytherapy Kit, and other products.”

7. Defendant BRACHYTHERAPY SERVICES, INC. (“BRACHYTHERAPY SERVICES”) is a corporation organized and existing under the laws of Virginia with principal offices located 7643 Fullerton Road, Springfield, Virginia 22153. In March 2009 an affiliate company, BEST THERATRONICS, INC. acquired certain assets of Debtor North American Scientific, Inc. (“NASI”), out of the bankruptcy. See *In Re North American Scientific, Inc.*, Case No. 1:09-bk-12675 (C.D. Ca – San Fernando Valley Div. 2011). In May 2009 the NASI assets were assigned to Defendant BRACHYTHERAPY SERVICES. The NASI assets acquired by Defendant BRACHYTHERAPY SERVICES consisted in large part of the means of production of NASI’s Prospera and SurTRAK

product lines. Although rebranded, the BEST DEFENDANTS have continued to produce Prospera and SurTRAK products.

8. The SurTRAK pre-plugged, pre-loaded needle and strand product lines were the subject of '760 Patent litigation between World Wide and NASI from 2005 to 2009. See *World Wide Medical Technologies, LLC, et al. v. North American Scientific*, Case No. 3:05-cv-01682 (D.CT. 2009). BEST THERATRONICS, INC expressly rejected acquisition out of bankruptcy of the NASI license alleged to encompass SurTRAK intellectual property. Subsequent rulings of both the California and Connecticut District Courts excluded all rights to the BEST DEFENDANTS to produce SurTRAK and related products. See Case No. 3:05-cv-01682 (D.CT. 2009) and Case No. 1:09-bk-12675 (C.D. Ca – San Fernando Valley Div. 2011).

9. This action arises under 28 U.S.C. §1338(a); the events giving rise to this cause of action occurred in the Northern District of Florida; and jurisdiction is proper in this Court.

10. Venue is proper in this Court.

11. All conditions precedent to bringing this suit have been performed or have been waived.

COUNT I – INFRINGEMENT AS TO BEST (VA)

12. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

13. Throughout the period complained of, Plaintiff World Wide owned the '760 Patent. Plaintiff World Wide still owns the '760 Patent.

14. Plaintiff World Wide has complied with its marking obligations.

15. Beginning on a date after October 25, 2001, Defendant BEST (VA) has directly infringed the '760 Patent under the provisions of 35 U.S.C. §271(a). To wit, BEST (VA) has offered to sell and sold products falling at least under claim 1 of the '760 Patent, as more particularly described in the following paragraph.

16. Beginning on a date after October 25, 2001, Defendant BEST (VA) has offered to sell and sold pre-loaded needle assemblies for the implantation of therapeutic elements, with the pre-loaded needle assemblies including a cannula having a wall and a sharpened distal end, a line of elements in the cannula extending rearward from the distal end, yieldable means, including a plug, for positioning an element more proximate the distal end a predetermined distance from the distal end, and a stylet reciprocable in the cannula and having a distal end engaging an end of the line of elements more remote from the distal end of the cannula.

17. The infringement of Defendant BEST (VA) of the '760 Patent is ongoing and will continue unless enjoined by this Court.

WHEREFORE, Plaintiffs demand as to Defendant BEST (VA):

- (a) a preliminary and final injunction against the continuing infringement;
- (b) an accounting for damages;
- (c) interest and costs; and
- (d) such other relief as the Court deems proper.

COUNT II – INFRINGEMENT AS TO BRACHYTHERAPY SERVICES

18. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

19. Throughout the period complained of, Plaintiff World Wide owned the '760 Patent. Plaintiff World Wide still owns the '760 Patent.

20. Plaintiff World Wide has complied with its marking obligations.

21. Beginning on a date after October 25, 2001, Defendant BRACHYTHERAPY SERVICES has directly infringed the '760 Patent under the provisions of 35 U.S.C. §271(a). To wit, BRACHYTHERAPY SERVICES has offered to sell and sold products falling at least under claim 1 of the '760 Patent, as more particularly described in the following paragraph.

22. Beginning on a date after October 25, 2001, Defendant BRACHYTHERAPY SERVICES has offered to sell and sold pre-loaded needle assemblies for the implantation of therapeutic elements, with the pre-loaded needle assemblies including a cannula having a wall and a sharpened distal end, a line of elements in the cannula extending rearward from the distal end, yieldable means, including a plug, for positioning an element more proximate the distal end a predetermined distance from the distal end, and a stylet reciprocable in the cannula and having a distal end engaging an end of the line of elements more remote from the distal end of the cannula.

23. The infringement of Defendant BRACHYTHERAPY SERVICES of the '760 Patent is ongoing and will continue unless enjoined by this Court.

WHEREFORE, Plaintiffs demand as to Defendant BRACHYTHERAPY SERVICES:

- (a) a preliminary and final injunction against the continuing infringement;
- (b) an accounting for damages;
- (c) interest and costs; and
- (d) such other relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiffs request trial by jury pursuant to Rule 38(b), Fed.R.Civ.P., of all claims and issues so triable under law.

Respectfully submitted this July 16th day of July 2012.

/s/ John Wiley Horton

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July 2012, a copy of the foregoing was served electronically upon the following:

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