

THE PARTIES

1. C. R. Bard, Inc. is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business located at 730 Central Avenue, Murray Hill, New Jersey, 07974.

2. On information and belief, Defendant Smiths Medical ASD, Inc. is a corporation organized under the laws of the State of Delaware and has a principal place of business at 1265 Grey Fox Road, St. Paul, Minnesota 55112. Defendant makes, sells, offers for sale, and/or uses medical products, including implantable port products throughout the United States, including within this District.

JURISDICTION AND VENUE

3. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271, which gives rise to the remedies specified under 35 U.S.C. §§ 281 and 283-285.

4. This Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400.

THE PATENTS-IN-SUIT

6. On May 24, 2011, the United States Patent and Trademark Office (the “PTO”) duly and legally issued U.S. Patent No. 7,947,022 (“the ’022 patent”), entitled “Access Port Identification Systems and Methods.” A true and accurate copy of the ’022 patent is attached hereto as Exhibit 1.

7. On August 31, 2010, the PTO duly and legally issued U.S. Patent No. 7,785,302

(“the ’302 patent”) entitled “Access Port Identification Systems and Methods.” A true and accurate copy of the ’302 patent is attached hereto as Exhibit 2.

8. C. R. Bard, Inc. is the owner by assignment of the ’022 patent and the ’302 patent (collectively, “the Asserted Patents”).

FIRST CAUSE OF ACTION

(Patent Infringement of the ’022 Patent)

9. Plaintiff realleges and incorporates paragraphs 1-8 as though fully set forth herein.

10. Defendant has infringed, and continues to infringe, literally or under the doctrine of equivalents, the ’022 patent by making, using, selling, offering for sale within the United States, and/or importing into the United States, products that are covered by one or more claims of the ’022 patent. Such products include implantable port products including, for example, PORT-A-CATH and P.A.S. PORT Power P.A.C. port products.

11. In addition to directly infringing the ’022 patent, Defendant has indirectly infringed and continues to indirectly infringe the ’022 patent, including by actively inducing others to directly infringe the ’022 patent in violation of 35 U.S.C. § 271(b).

12. Defendant has had knowledge of the ’022 patent since no later than January 11, 2012, by virtue of Plaintiff’s filing of the Complaint in this action.

13. Despite Defendant’s knowledge of the ’022 patent, as well as Plaintiff’s allegations of infringement, Defendant has actively induced and continues to actively induce others to make, use, sell, and/or offer to sell in the United States, and/or import into the United States, products that are covered by one or more claims of the ’022 patent. Such products include implantable port products, including, for example, PORT-A-CATH and P.A.S. PORT Power P.A.C. port products.

14. For example, in addition to Defendant's own direct infringement of the '022 patent, Defendant's customers, including radiologists, physicians, nurses, surgeons, medical technicians, and other medical professionals, on information and belief, are directly infringing the '022 patent through their use of products that are covered by one or more claims of the '022 patent, including, for example, the PORT-A-CATH and P.A.S. PORT Power P.A.C. port products.

15. On information and belief, Defendant has knowingly induced such infringement of the '022 patent and has done so with specific intent to induce such infringement, including through activities relating to marketing, advertising, promotion, support, and distribution of the PORT-A-CATH and P.A.S. PORT Power P.A.C. port products.

16. For example, Defendant provides materials that instruct its customers on how to use the PORT-A-CATH and P.A.S. PORT Power P.A.C. port products, including, for example Defendant's "Instructions for Use." The "Instructions for Use" state that Defendant's "POWER P.A.C. implantable venous access systems are indicated when patient therapy requires repeated vascular access for injection or infusion therapy and/or venous blood sampling" and that they are "indicated for power injection of contrast media."

17. Defendant further provides instructions to its customers for implantation of its power ports and "Instructions for Power Injection System Access," which inform its customers on how to use Defendant's PORT-A-CATH and P.A.S. PORT P.A.C. port products for power injection.

18. Moreover, Defendant markets these products to its customers as including "CT identifiers for easy viewing using X-rays or CT scout scans. The implantable ports facilitate quick acknowledgement that the ports can be used for power injection of contrast media."

19. Defendant actively publicizes such promotional and instructional materials for products including the PORT-A-CATH and P.A.S. PORT Power P.A.C. port products through numerous means, including through its website <http://www.smiths-medical.com/>. Specific examples of these materials can be found in Defendant's website at: <http://www.smithsmedical.com/plugins/news/2011/jan/smiths-medical-launches-implantable.html>, <http://www.smiths-medical.com/education-resources/downloads/vascular-access/port-cathaccess-systems.html>, <http://www.smiths-medical.com/catalog/implantable-ports/port-cath-ps.html>, <http://www.smiths-medical.com/catalog/implantable-ports/port-cath-implantable-venous.html>, http://www.smithsmedical.com/Upload/products/product_relateddocs/access/PORT-A-CATH-Access-Systems/192001%20PORTCTH%20PWR%20908.pdf

20. Defendant's direct and indirect infringement of the '022 patent has been and continues to be willful and deliberate. Despite Defendant's knowledge of the '022 patent, and Defendant's infringement thereof, Defendant has continued making, using, selling, and offering for sale in the United States and/or importing into the United States products that are covered by one or more claims of the '022 patent. Such products include implantable port products, including, for example, PORT-A-CATH and P.A.S. PORT Power P.A.C. port products. Defendant's willful and deliberate infringement entitles Plaintiff to enhanced damages under 35 U.S.C. § 284.

21. Unless and until enjoined by this Court, Defendant will continue to infringe the '022 patent. Defendant's infringement is causing and will continue to cause Plaintiff irreparable harm, for which there is no adequate remedy at law. Under 35 U.S.C. § 283, Plaintiff is entitled to a permanent injunction against further infringement.

SECOND CAUSE OF ACTION

(Patent Infringement of the '302 Patent)

22. Plaintiff realleges and incorporates paragraphs 1-21 as though fully set forth herein.

23. Defendant has infringed, and continues to infringe, literally or under the doctrine of equivalents, the '302 patent by making, using, selling, offering for sale within the United States, and/or importing into the United States, products that are covered by one or more claims of the '302 patent. Such products include implantable port products including, for example, PORT-A-CATH and P.A.S. PORT Power P.A.C. port products.

24. In addition to directly infringing the '302 patent, Defendant has indirectly infringed and continues to indirectly infringe the '302 patent, including by actively inducing others to directly infringe the '302 patent in violation of 35 U.S.C. § 271(b).

25. Defendant has had knowledge of the '302 patent since no later than January 11, 2012, by virtue of Plaintiff's filing of the Complaint in this action.

26. Despite Defendant's knowledge of the '302 patent, as well as Plaintiff's allegations of infringement, Defendant has actively induced and continues to actively induce others to make, use, sell, and/or offer to sell in the United States, and/or import into the United States, products that are covered by one or more claims of the '302 patent. Such products include implantable port products, including, for example, PORT-A-CATH and P.A.S. PORT Power P.A.C. port products.

27. For example, in addition to Defendant's own direct infringement of the '302 patent, Defendant's customers, including radiologists, physicians, nurses, surgeons, medical technicians, and other medical professionals, on information and belief, are directly infringing

the '302 patent through their use of products that are covered by one or more claims of the '302 patent, including, for example, the PORT-A-CATH and P.A.S. PORT Power P.A.C. port products.

28. On information and belief, Defendant has knowingly induced such infringement of the '302 patent and has done so with specific intent to induce such infringement, including through activities relating to marketing, advertising, promotion, support, and distribution of the PORT-A-CATH and P.A.S. PORT Power P.A.C. port products.

29. For example, Defendant provides materials that instruct its customers on how to use the PORT-A-CATH and P.A.S. PORT Power P.A.C. port products, including, for example Defendant's "Instructions for Use." The "Instructions for Use" state that Defendant's "POWER P.A.C. implantable venous access systems are indicated when patient therapy requires repeated vascular access for injection or infusion therapy and/or venous blood sampling" and that they are "indicated for power injection of contrast media."

30. Defendant further provides instructions to its customers for implantation of its power ports and "Instructions for Power Injection System Access," which inform its customers on how to use Defendant's PORT-A-CATH and P.A.S. PORT P.A.C. port products for power injection.

31. Moreover, Defendant markets these products to its customers as including "CT identifiers for easy viewing using X-rays or CT scout scans. The implantable ports facilitate quick acknowledgement that the ports can be used for power injection of contrast media."

32. Defendant actively publicizes such promotional and instructional materials for products including the PORT-A-CATH and P.A.S. PORT Power P.A.C. port products through

numerous means, including through its website <http://www.smiths-medical.com/>. Specific examples of these materials can be found in Defendant's website at: <http://www.smiths-medical.com/plugins/news/2011/jan/smiths-medical-launches-implantable.html>, <http://www.smiths-medical.com/education-resources/downloads/vascular-access/port-athaccess-systems.html>, <http://www.smiths-medical.com/catalog/implantable-ports/port-cath-ps.html>, <http://www.smiths-medical.com/catalog/implantable-ports/port-cath-implantablevenous.html>, http://www.smiths-medical.com/Upload/products/product_relateddocs/access/PORT-A-CATH-Access-Systems/192001%20PORTCTH%20PWR%20908.pdf

33. Defendant's direct and indirect infringement of the '302 patent has been and continues to be willful and deliberate. Despite Defendant's knowledge of the '302 patent, and Smiths's infringement thereof, Defendant has continued making, using, selling, and offering for sale in the United States and/or importing into the United States products that are covered by one or more claims of the '302 patent. Such products include implantable port products, including, for example, PORT-A-CATH and P.A.S. PORT Power P.A.C. port products. Defendant's willful and deliberate infringement entitles Plaintiff to enhanced damages under 35 U.S.C. § 284.

34. Unless and until enjoined by this Court, Defendant will continue to infringe the '302 patent. Defendant's infringement is causing and will continue to cause Plaintiff irreparable harm, for which there is no adequate remedy at law. Under 35 U.S.C. § 283, Plaintiff is entitled to a permanent injunction against further infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in favor of Plaintiff and prays that the Court grant the following relief to Plaintiff:

A. A judgment that the '022 and '302 patents are infringed by Defendant's manufacture, offers to sell, sales, or uses within the United States, or importation into the United States, of products, including without limitation implantable port products, that practice or are used in the practice of one or more of the inventions claimed in the '022 and '302 patents;

B. An order permanently enjoining Defendant, its affiliates and subsidiaries, and each of its officers, agents, servants and employees and those acting in privity or concert with them, from directly or indirectly infringing any of the claims of the '022 and '302 patents, and from causing or encouraging others to directly or indirectly infringe any claim of the '022 and '302 patents, including without limitation implantable port products, until after the expiration date of the '022 and '302 patents, including any extensions and/or additional periods of exclusivity to which Plaintiff is or becomes entitled;

C. An order awarding damages under 35 U.S.C. § 284 in an amount sufficient to compensate Plaintiff for its damages arising from infringement by Defendant, including, but not limited to, lost profits and/or a reasonable royalty, together with prejudgment and postjudgment interest, and costs;

D. An order awarding treble damages for willful infringement by Defendant, pursuant to 35 U.S.C. § 284;

E. An accounting and/or supplemental damages for all damages occurring after any discovery cutoff and through the Court's decision regarding the imposition of a permanent injunction;

F. A judgment declaring that this case is exceptional and awarding Plaintiff its reasonable costs and attorneys fees pursuant to 35 U.S.C. § 285; and G. Such further and other relief as this Court deems proper and just.

JURY DEMAND

In accordance with Rule 38 of the Federal Rules of Civil Procedure, Plaintiff respectfully demands a jury trial of all issues triable to a jury in this action.

Dated: July 19, 2012

Respectfully Submitted:

By: /s/ Bryon J. Benevento

Bryon J. Benevento (5254)
Kimberly Neville (9067)
DORSEY & WHITNEY LLP
Kearns Building
136 South Main Street, Suite 1000
Salt Lake City, UT 84101-1655
P: 801.933.8958
F: 801-880-9074
benevento.bryon@dorsey.com
neville.kimberly@dorsey.com

Steven C. Cherny (*pro hac vice*)
Jordan N. Malz (*pro hac vice*)
Leslie N. Schmidt (*pro hac vice*)
KIRKLAND & ELLIS, LLP
601 Lexington Avenue
New York, New York 10022
Telephone: 212-446-4965
Facsimile: 212-446-6460
steven.cherny@kirkland.com
jordan.malz@kirkland.com
leslie.schmidt@kirkland.com

Amanda Hollis (*pro hac vice*)
Elizabeth A. Cutri (*pro hac vice*)
KIRKLAND & ELLIS, LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: 312-862-2011
Facsimile: 312-862-2200
amanda.hollis@kirkland.com
elizabeth.cutri@kirkland.com

Attorneys for Plaintiff C. R. Bard, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2012, I caused a true and correct copy of the foregoing to be mailed, postage prepaid, and electronically transmitted to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Richard S. Florsheim (Pro Hac Vice)
R. Jan Pirozzolo-Mellowes (Pro Hac Vice)
FOLEY & LARDNER LLP
777 E. Wisconsin Avenue
Milwaukee, WI 53202-5306
Telephone: (414) 271-2400
Facsimile: (414) 297-4900
rflorsheim@foley.com
jpirozzolo-mellowes@foley.com

Robert R. Wallace (3366)
Michael D. Johnston (11273)
KIRTON & MCCONKIE
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, UT 84111
Telephone: (801) 328-3600
Facsimile: (801) 321-4893
rwallace@kmclaw.com
mjohnston@kmclaw.com

*Attorneys for Defendant Smiths Medical
ASD, Inc.*

/s/ Bryon J. Benevento
Bryon J. Benevento
DORSEY & WHITNEY LLP

Attorney for Plaintiff C.R. Bard, Inc.