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ATTORNEYS FOR DEFENDANTS, ABBOTT CARDIOVASCULAR
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VASCULAR, INC.

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4 SAN FRANCISCO DIVISION

5 MEDTRONIC VASCULAR, INC.,) Case No. C-06-01066-PJH (EMC)
6 MEDTRONIC USA, INC., MEDTRONIC,)
7 INC., MEDTRONIC VASCULAR) **STIPULATION AND ~~PROPOSED~~**
8 GALWAY, LTD., and EVYSIO MEDICAL) **ORDER SIMPLIFYING ISSUES FOR**
9 DEVICES ULC,) **TRIAL**
10)
11 Plaintiffs,)
12)
13 v.)
14)
15 ABBOTT CARDIOVASCULAR SYSTEMS,)
16 INC., ABBOTT LABORATORIES, and)
17 ABBOTT VASCULAR, INC.,)
18)
19 Defendants,)

20 WHEREAS, the plaintiffs Medtronic Vascular, Inc., Medtronic USA, Inc., Medtronic, Inc.,
21 Medtronic Vascular Galway, Ltd., and evYsio Medical Devices ULC (collectively, “Plaintiffs”)
22 have accused Abbott Cardiovascular Systems, Inc., Abbott Laboratories, and Abbott Vascular, Inc.,
23 (collectively, “Defendants”) of infringing U.S. Patent No. 6,858,037 (“the ‘037 patent”) and U.S.
24 Patent No. 7,094,255 (“the ‘255 patent”) by making, using, offering for sale and selling certain
25 existing designs of stents and stent systems under the names Vision, MiniVision, Xience V, Promus,
26 Penta and Zeta (“the Accused Instrumentalities”);

27 WHEREAS, certain of the claims of the ‘037 patent and the ‘255 patent include the
28 limitation “the polygon further comprises a first wall having a concave shape and a second wall
having a convex shape” (“the concave/convex limitation”);

WHEREAS, on May 13, 2008, the Court entered its Order Granting Second Motion for
Reconsideration (“Order”), which construed the concave/convex limitation as “the polygon having a
first wall with only a single apex directed toward the interior of the polygon and a second wall, also
with only a single apex, directed away from the interior of the polygon”; and

WHEREAS, in view of the Court’s Order, the parties wish to simplify the litigation by
removing certain claims from consideration;

1 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among,
2 Plaintiffs and Defendants, as follows:

3 1. In view of the Court’s claim construction in the Order, the Plaintiffs concede that if
4 the Court’s construction of the concave/convex limitation is correct, the Accused Instrumentalities
5 cannot infringe literally or by equivalents claims 58-75 of the ‘037 patent and claims 14 and 17-25
6 of the ‘255 patent (collectively “the Withdrawn Claims”), because the Accused Instrumentalities do
7 not meet the concave/convex limitation under that construction. As set forth in paragraph 3,
8 Plaintiffs reserve the right, however, to appeal the Court’s claim construction in the Order in
9 connection with any appeal of the final judgment in this case.

10 2. The Defendants hereby agree not to litigate the validity or infringement of the
11 Withdrawn Claims before or at trial in this case.

12 3. The Plaintiffs expressly reserve their right to challenge the Order (and any other of
13 the Court’s claim construction rulings) on appeal; in the event the Court’s construction of the
14 concave/convex limitation is overturned or modified on appeal in a manner material to the potential
15 infringement of those claims by the Accused Instrumentalities, the parties agree that the Plaintiffs
16 may pursue the Withdrawn Claims in any remand of this action. The parties further agree that the
17 Defendants may pursue a challenge to the validity, enforceability and/or infringement of the
18 Withdrawn Claims if Plaintiffs ever assert those claims against Defendants or any customers,
19 distributors, employees, successors, agents, or licensees thereof.

20 4. Plaintiffs covenant not to sue the Defendants, or any customers, distributors,
21 employees, successors, agents, or licensees thereof, for infringement of the Withdrawn Claims, as
22 construed in the Order, by the Accused Instrumentalities. However, this covenant will terminate and
23 be of no effect if the claim construction in the Order is modified on appeal in a manner that is
24 material to the potential infringement of the Withdrawn Claims.

25 5. Preserving their rights to assert claims of infringement as to the non-Withdrawn
26 Claims, and also as to the Withdrawn Claims subject to Paragraphs 3 and 4, the Plaintiffs hereby
27 dismiss with prejudice their claim that the Defendants’ alleged infringement of the ‘037 and ‘255
28 patents was willful. Plaintiffs further covenant not to assert a claim that any alleged infringement of

1 either the '037 patent or the '255 patent was willful against Defendants or any customers,
2 distributors, employees, successors, agents, or licensees thereof in the future based on the
3 manufacture, use, sale, offer for sale or importation of the Accused Instrumentalities except to the
4 extent that such manufacture, use, sale, offer for sale or importation occurs after a jury or court
5 determines that one or more claims of the '037 or '255 patents has been infringed by Abbott and that
6 any such claim has not been proved to be invalid.

7 6. The Defendants have not agreed to produce any opinion of counsel they may have
8 received relating to the infringement, validity or enforceability of the '037 patent or the '255 patent;
9 the Defendants (including anyone testifying on their behalf) shall not be entitled at trial to introduce
10 or refer to any opinion or advice of counsel they may have received concerning the infringement,
11 validity or enforceability of the '037 patent or the '255 patent.

12 7. The day following Defendants' execution of this agreement, Plaintiffs will identify to
13 Defendants not more than twelve (12) claims from the '037 and/or the '255 patents that may be
14 asserted at trial. Thereafter, within 5 court days after the Court rules upon the pending motions for
15 reconsideration of the Court's rulings on summary judgment motions as to liability issues, the
16 Plaintiffs will identify to Defendants not more than eight (8) (of the aforementioned twelve (12))
17 claims from the '037 and/or the '255 patents that will be asserted at trial ("the Selected Claims").
18 After the identification of the Selected Claims as set forth herein:

19 (a) Except as set forth in Paragraph 3 above, the parties will not litigate the
20 validity or infringement of any of the claims of the '037 patent or the '255 patent in this action, other
21 than the Selected Claims.

22 (b) Except as set forth in Paragraph 3 above, the Plaintiffs hereby covenant not to
23 assert any claims of the '037 or the '255 patents other than the Selected Claims in this or any other
24 litigation against the Defendants or any of the Defendants' customers, distributors, employees,
25 successors, agents, or licensees based on the manufacture, use, sale, offer for sale or importation of
26 the Accused Instrumentalities. For the avoidance of all doubt, Plaintiffs expressly reserve their
27 rights to assert any claims of the '037 and / or the '255 patents against Defendants or any of the
28 Defendants' customers, distributors, successors, agent, or licensees based on the manufacture, use,

1 sale, offer for sale or importation of any other product, or any modified version of the design of the
2 Accused Instrumentalities which substantively modifies or removes any element or limitation
3 required by the Selected Claims. In the event that any claims other than the Selected Claims are ever
4 asserted against the Defendants or any of the Defendants' customers, distributors, successors, agent,
5 or licensees, such parties shall have the right to challenge validity, enforceability, and/or
6 infringement at that time.

7 8. The parties make this stipulation for purposes of simplification of the issues in this
8 case only (*see* Fed. R. Civ. P. 16(c)(2)(A)), and the parties by this stipulation make no admission as
9 to, *inter alia*, the validity, enforceability or infringement of the '037 patent or the '255 patent, other
10 than as expressly set forth in this stipulation.

11 9. This stipulation may not be offered into evidence or otherwise referred to at trial.

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Dated: June 5, 2009

FOLEY & LARDNER LLP

BY: s/ Cynthia J. Franecki
Cynthia J. Franecki

Attorneys for Plaintiffs Medtronic
Vascular, Inc., Medtronic USA, Inc.,
Medtronic, Inc., and Medtronic Vascular
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Dated: June 5, 2009

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Dated: June 5, 2009

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1 Concurrence in the filing of this document has been obtained from Timothy J. Vezeau and
2 Cynthia J. Franecki, the signatories listed above.

3
4 Dated: June 5, 2009

**FINNEGAN HENDERSON FARABOW
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6
7 BY: s/ Robert F. McCauley III
8 Robert F. McCauley III

9 Attorneys for Defendants, Abbott
10 Cardiovascular Systems, Inc., Abbott
11 Laboratories, and Abbott Vascular, Inc.

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATE: June 16, 2009

Phyllis J. Hamilton
United States District Judge

