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clpvt

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

17 ABBOTT LABORATORIES and
18 ABBOTT CARDIOVASCULAR
19 SYSTEMS, INC.,

20 Plaintiffs,

21 v.

22 MEDTRONIC, INC. and MEDTRONIC
23 VASCULAR, INC.

24 Defendants.

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COMPLAINT

DEMAND FOR JURY TRIAL

1 **COMPLAINT**

2 Plaintiffs Abbott Laboratories and Abbott Cardiovascular Systems Inc. (“Abbott”), for their
3 Complaint against Defendants Medtronic, Inc. and Medtronic Vascular, Inc. (collectively, “Medtronic”)
4 allege as follows:

5 **INTRADISTRICT ASSIGNMENT**

6 1. This patent action is an excepted category for Civil L.R. 3-2(c), Assignment of a
7 Division, and will be assigned on a district-wide basis.

8 **RELATED CASE**

9 2. Plaintiff Abbott Cardiovascular Systems, Inc.’s predecessor previously sued
10 Defendant Medtronic, Inc. for infringement of the patent that is the subject of this action in Advanced
11 Cardiovascular Systems, Inc. v. Medtronic, Inc., Case No. 95-03577 DLJ, filed on October 10, 1995.

12 3. Medtronic, Inc. was found to have willfully infringed the patent that is the subject of
13 this action, and was permanently enjoined from infringing the patent that is the subject of this action
14 until October 29, 2008. The term of the patent that is the subject of this action extends, however,
15 beyond October 29, 2008.

16 4. Pursuant to Civil L.R. 3-12, an administrative motion will promptly be filed in the 95-
17 03577 action, asking the Court to consider whether the action that is the subject of this Complaint
18 should be treated as a related case to the 95-03577 action.

19 **THE PARTIES**

20 5. Plaintiff Abbott Laboratories (“Abbott”) is an Illinois Corporation with its principal
21 place of business at 100 Abbott Park Road, Abbott Park, Illinois 60064.

22 6. Plaintiff Abbott Cardiovascular Systems Inc. is a California corporation with a
23 principal place of business at 3200 Lakeside Drive, Santa Clara, California.

24 7. Abbott Cardiovascular Systems Inc. is a subsidiary of Abbott Laboratories.

25 8. On information and belief, Medtronic, Inc. is a Minnesota corporation with its
26 principal place of business in Minneapolis, Minnesota.

1 9. On information and belief, Medtronic, Inc. is engaged in the marketing, distribution,
2 and/or selling of interventional medical devices, including balloon dilatation catheters, coronary stent
3 systems, and drug-eluting stent systems in the United States.

4 10. On information and belief, Medtronic Vascular, Inc. is a Delaware corporation with its
5 principal place of business in Santa Rosa, California.

6 11. On information and belief, Medtronic Vascular, Inc. is a subsidiary of Medtronic, Inc.

7 12. On information and belief, Medtronic, Inc. and Medtronic Vascular, Inc. are engaged
8 in the marketing, distribution, and/or selling of interventional medical devices, including balloon
9 dilatation catheters, coronary stent systems, and drug-eluting stent systems in the United States.

10 **JURISDICTION AND VENUE**

11 13. This is an action for patent infringement and for declaratory judgment in a case of
12 actual and justiciable controversy between Abbott Laboratories and Abbott Cardiovascular Systems
13 Inc. (collectively “Abbott” or “plaintiffs”), on the one hand, and Medtronic, Inc. and Medtronic
14 Vascular, Inc. (collectively “Medtronic” or “defendants”), on the other, arising under the declaratory
15 Judgment Act, 28 U.S.C. §§ 2201 and 2202, the United States Patent Laws, 35 U.S.C. § 101 et seq.,
16 and the All Writs Act, 28 U.S.C. §1651(a).

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

18 15. Personal jurisdiction exists over defendant Medtronic Vascular, Inc., which is a
19 corporation with its principal place of business within this judicial district.

20 16. Personal jurisdiction exists over defendants because they have continuous systematic,
21 and substantial contacts with the State of California, including with respect to the marketing,
22 distribution, and selling interventional medical devices, including balloon dilatation catheters,
23 coronary stent systems, and drug-eluting stent systems in the State of California, and within this
24 judicial district. In addition, this lawsuit arises from the defendants’ imminent patent infringement
25 activities believed to be directed towards the State of California, and within this judicial district.

26 17. Abbott is informed and believes, and on that basis alleges, that Medtronic routinely
27 sells interventional medical devices, including balloon dilatation catheters, coronary stent systems,
28 and drug-eluting stent systems in California and within this judicial district.

1 18. Abbott is informed and believes, and on that basis alleges, that over the last several
2 years Medtronic has generated significant revenues from the sales of its products in California.

3 19. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b)-(c).

4 **COUNT I**

5 **DECLARATORY JUDGMENT OF**
6 **INFRINGEMENT OF THE 233 PATENT**
7 **AGAINST MEDTRONIC, INC. AND MEDTRONIC VASCULAR, INC.**
8 **BY THE ENDEAVOR RX AND DRIVER RX PRODUCTS**

9 20. Abbott incorporates by reference the allegations set forth in paragraphs 1-19 above as
10 though fully set forth herein.

11 21. Abbott markets and sells medical devices used in the United States to treat coronary
12 artery disease, including coronary angioplasty catheters, coronary stent systems, and drug-eluting
13 stent systems. Medical devices such as these are used by physicians to perform percutaneous
14 transluminal coronary angioplasty (“PTCA”), a minimally invasive procedure.

15 22. Abbott is informed and believes, and on that basis alleges, that Medtronic has made
16 substantial and meaningful preparations to manufacture, use, import, offer to sell, and/or sell the
17 Endeavor® Zotarolimus-Eluting Coronary Stent on the Rapid Exchange Stent Delivery System
18 (“Endeavor RX”) and Driver™ Rapid Exchange Coronary Stent System (“Driver RX”) in the United
19 States, including in the State of California and within this judicial district.

20 23. Abbott is informed and believes, and on that basis alleges, that Medtronic Vascular
21 filed Premarket Approval Application (“PMA”) No. P030009 for the Driver RX on or about April 10,
22 2003. The design of, and product specifications for, the Driver RX were substantially fixed by that
23 date.

24 24. Abbott is informed and believes, and on that basis alleges, that the Driver RX was
25 approved for commercial marketing on or about October 1, 2003.

26 25. Abbott is informed and believes, and on that basis alleges, that Medtronic Vascular
27 filed PMA No. P060033 for the Endeavor RX on or about November 26, 2006. The design of, and
28 product specifications for, the Endeavor RX were substantially fixed by that date.

1 26. Abbott is informed and believes, and on that basis alleges, that the Endeavor RX was
2 approved for commercial marketing on or about February 1, 2008.

3 27. Abbott is informed and believes, and on that basis alleges, that the design and
4 indicated use(s) of, and product specifications for, the Endeavor RX and Driver RX products remain
5 substantially fixed and cannot be changed without further approval from the United States Food and
6 Drug Administration (“FDA”).

7 28. Abbott is informed and believes, and on that basis alleges, that on or shortly after
8 October 30, 2008, Medtronic intends to market, distribute, and sell the Driver RX.

9 29. Abbott is informed and believes, and on that basis alleges, that on or shortly after
10 October 30, 2008, Medtronic intends to market, distribute, and sell the Endeavor RX.

11 30. On or about August 15, 2008, Medtronic, Inc. moved to dissolve a permanent
12 injunction prohibiting its infringement of U.S. Patent No. 5,451,233 (“the 233 patent”), as of October
13 29, 2008.

14 31. In its motion, Medtronic, Inc. stated that “Medtronic intends to market commercially
15 and sell [the Endeavor RX and Driver RX] after . . . October 29, 2008.”

16 32. Abbott is informed and believes, and on that basis alleges, that Medtronic has
17 repeatedly confirmed that it will act on its stated intent to market commercially the Endeavor RX and
18 Driver RX immediately after October 29, 2008.

19 33. Abbott Cardiovascular Systems Inc. is the exclusive United States licensee of the 233
20 patent, with the right to bring suit for infringement of the patent.

21 34. The 233 patent generally relates to a type of dilatation catheter called “rapid
22 exchange.”

23 35. The Endeavor RX and Driver RX products that Medtronic intends to make, use,
24 import, offer to sell, and/or sell use rapid exchange technology.

25 36. Abbott is informed and believes, and on that basis alleges, that Medtronic’s
26 commercial manufacture, use, offers for sale, sales, and/or importation of its Endeavor RX and
27 Driver RX products would infringe one or more claims of the 233 patent, including at least claim 3,
28 under 35 U.S.C. § 271.

1 37. Abbott is informed and believes, and on that basis alleges, that Medtronic's
2 infringement would be willful and with full knowledge of the 233 patent.

3 38. Abbott is under a reasonable apprehension that Medtronic's infringement of the 233
4 patent is imminent.

5 39. Thus, an actual and justiciable controversy exists between Abbott and Medtronic
6 regarding whether Medtronic's manufacture, use, importation, offers for sale, and/or sales of its
7 Endeavor RX and Driver RX products would infringe the claims of the 233 patent, including at least
8 claim 3 thereof, and whether such infringement would be willful and with full knowledge of the 233
9 patent.

10 40. To avoid legal uncertainty and the threat of the infringing Endeavor RX and Driver
11 RX products, Abbott seeks a declaratory judgment that such manufacture, use, importation, offers for
12 sale, and/or sales, and the acts of Medtronic alleged above relating thereto, would infringe the 233
13 patent, and that such infringement would be willful and with full knowledge of the 233 patent.

14 41. Medtronic's conduct as alleged above will result in irreparable harm to Abbott that
15 cannot be compensated by monetary damages.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Abbott respectfully requests the Court to enter judgment in favor of Abbott and
18 against Medtronic to include:

19 A. A declaration that Medtronic, Inc.'s and Medtronic Vascular, Inc.'s manufacture, use,
20 importation, offer for sale, and/or sale of the Endeavor® Zotarolimus-Eluting Coronary Stent on the
21 Rapid Exchange Stent Delivery System ("Endeavor RX") and Driver™ Rapid Exchange Coronary
22 Stent System ("Driver RX") products would infringe the claims of U.S. Patent No. 5,451,233,
23 including at least claim 3 thereof.

24 B. A declaration that such infringement would be willful and with full knowledge of the
25 233 patent.

26 C. A permanent injunction preventing Medtronic, Inc. and Medtronic Vascular, Inc., and
27 any affiliated entities, and their officers, agents, attorneys, and employees, and those acting in privity
28 or concert with them, from:

1 1. manufacturing, using, offering to sell, or selling within the United States, or
2 importing into the United States, the Endeavor RX and Driver RX products, and any colorable
3 variation thereof that infringes claim 3 of the 233 patent, until the expiration of the 233 patent; and

4 2. any other activity with respect to the Endeavor RX and Driver RX products, and
5 any colorable variation thereof that would constitute infringement of claim 3 of the 233 patent, until the
6 expiration of the 233 patent.

7 D. Damages for infringement, with interest and trebled, pursuant to 35 U.S.C. § 284.

8 E. Costs and expenses in this action.

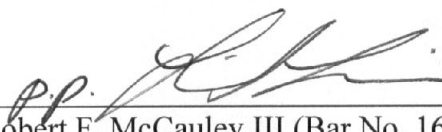
9 F. A declaration that this is an exceptional case, and an award to Abbott of its costs and
10 attorneys' fees, disbursements, and costs pursuant to 35 U.S.C. § 285 or other applicable law, in
11 connection with this action.

12 G. Any such further relief as this Court may deem just and proper.

13
14
15 Respectfully submitted,

16 FINNEGAN, HENDERSON, FARABOW,
17 GARRETT & DUNNER, LLP

18 Dated: October 29, 2008

19 
20 _____
21 Robert F. McCauley III (Bar No. 162056)
22 Attorneys for Plaintiffs
23 Abbott Laboratories
24 Abbott Cardiovascular Systems Inc.
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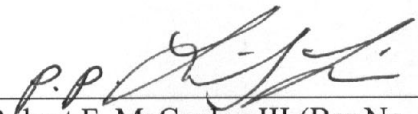
DEMAND FOR JURY TRIAL

Plaintiffs respectfully demand a jury trial on all issues so triable.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

Dated: October 29, 2008



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