

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

Boston Scientific Corp. and  
Boston Scientific Neuromodulation Corp.,

Plaintiffs,

v.

Nevro Corp.,

Defendant.

Civil Action No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiffs Boston Scientific Corp. (“BSC”) and Boston Scientific Neuromodulation Corp. (“BSNC”) (collectively, “Boston Scientific”), by their attorneys, hereby complain against Defendant Nevro Corp. (“Nevro”) and alleges as follows:

**OVERVIEW OF THE ACTION**

1. This is a patent infringement action arising from Nevro’s infringement of Boston Scientific’s U.S. Patent No. 6,895,280 (the “280 patent”), U.S. Patent No. 7,428,438 (the “438 patent”), U.S. Patent No. 7,437,193 (the “193 patent”), U.S. Patent No. 7,587,241 (the “241 patent”), U.S. Patent No. 7,891,085 (the “085 patent”), U.S. Patent No. 8,019,439 (the “439 patent”), U.S. Patent No. 8,644,933 (the “933 patent”), U.S. Patent No. 8,646,172 (the “172 patent”), U.S. Patent No. 8,650,747 (the “747 patent”), and U.S. Patent No. 9,370,664 (the “664 patent”) (collectively, the “Asserted Patents”) via the manufacture, use, sale, offer to sell, exportation, and/or importation, in whole or in part, of Nevro’s Senza® Spinal Cord Stimulation System (the “Senza System”).

### **THE PARTIES**

2. Plaintiff BSC is a corporation organized and existing under the laws of the State of Delaware and having a principal place of business at 300 Boston Scientific Way, Marlborough, Massachusetts 01752.

3. Plaintiff BSNC is a corporation organized and existing under the laws of the State of Delaware and having a principal place of business at 25155 Rye Canyon Loop, Valencia, California 91355. BSNC is a wholly-owned subsidiary of BSC.

4. Upon information and belief, Defendant Nevro is a corporation organized and existing under the laws of the State of Delaware and having a principal place of business at 1800 Bridge Pkwy, Redwood City, California, 94065.

### **JURISDICTION AND VENUE**

5. This action arises under the Patent Laws of the United States, Title 35 of the United States Code.

6. This court has subject matter jurisdiction over the causes of action asserted herein pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201 *et seq.*

7. This court has personal jurisdiction over Nevro. Upon information and belief, Nevro is a resident of this judicial district, has systematic and continuous contacts in this judicial district, regularly transacts business within this district, and regularly avails itself of the benefits of this district. Upon information and belief, Nevro also sells and distributes the Senza System in this district. Upon information and belief, Nevro derives substantial revenues from sales in this district.

8. Venue is proper in this District under 28 U.S.C. §§ 1391(a), 1391(c), and 1400(b).

### **COUNT I: INFRINGEMENT OF U.S. PATENT NO. 6,895,280**

9. Boston Scientific realleges paragraphs 1-8 above as if fully set forth herein.

10. The '280 patent, entitled "Rechargeable Spinal Cord Stimulator System," is a valid, enforceable patent that was duly issued by the United States Patent and Trademark Office ("USPTO") on May 17, 2005 in full compliance with Title 35 of the United States Code. A true and correct copy of the '280 patent is attached as Exhibit A.

11. BSNC is the assignee of the '280 patent with ownership of all substantial rights in the '280 patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringements. BSC is the exclusive licensee of the '280 patent.

12. Nevro has directly infringed, and continues to directly infringe, at least claim 1 of the '280 patent in violation of 35 U.S.C. § 271(a) by, for example and without limitation, making, using, offering to sell, selling, and/or importing in and into the United States the Senza System.

13. Nevro has actively induced others to infringe at least claim 1 of the '280 patent in violation of 35 U.S.C. § 271(b) by instructing others to use the Senza System. Nevro's active inducement includes, for example and without limitation, marketing, selling, and offering to sell the Senza System, providing instructions on how to use the Senza System, and promoting the use of the Senza System. Upon information and belief, Nevro has induced such infringement with the intent that one or more claims of the '280 patent be infringed.

14. Nevro has contributed to infringement by others of at least claim 1 of the '280 patent in violation of 35 U.S.C. § 271(c) by offering to sell, selling, and/or importing the Senza System and/or one or more components of the Senza System, which are components of a patented combination and which constitute a material part of the inventions claimed in the '280 patent, including without limitation the invention in at least claim 1 of the '280 patent. Nevro has offered to sell, sold, and/or imported the Senza System and/or one or more components of

the Senza System knowing the same to be especially made or especially adapted for use in an infringement of at least claim 1 of the '280 patent, and that the Senza System and/or one or more components of the Senza System are not staple articles or commodities of commerce suitable for substantial noninfringing use.

15. In violation of 35 U.S.C. § 271(f)(1), Nevro has supplied and/or caused to be supplied in or from the United States, and it continues to supply and/or cause to be supplied in or from the United States, the Senza System and/or one or more components of the Senza System, which constitute all or a substantial portion of the components of the inventions claimed in the '280 patent, including without limitation the invention in at least claim 1 of the '280 patent, where such components are uncombined in whole or in part, and in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe at least claim 1 of the '280 patent if such combination occurred within the United States.

16. In violation of 35 U.S.C. § 271(f)(2), Nevro has supplied and/or caused to be supplied in or from the United States, and it continues to supply and/or cause to be supplied in or from the United States, the Senza System and/or one or more components of the Senza System, (i) which are especially made or especially adapted for use in the inventions claimed in the '280 patent, including without limitation the invention in at least claim 1 of the '280 patent, (ii) which are not staple articles or commodities of commerce suitable for substantial noninfringing use, and (iii) where such components are uncombined in whole or in part, knowing that such components are so made or adapted and intending that such components will be combined outside of the United States in a manner that would infringe at least claim 1 of the '280 patent if such combination occurred within the United States.

17. Upon information and belief, Nevro has had actual and constructive knowledge of the '280 patent prior to the filing of this Complaint. Nevro has continued to infringe at least claim 1 of the '280 patent. Nevro's infringement is reckless, knowing, deliberate, and willful.

18. Boston Scientific has been damaged as a result of Nevro's infringing conduct and is entitled to recover damages that adequately compensate it for Nevro's infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

**COUNT II: INFRINGEMENT OF U.S. PATENT NO. 7,428,438**

19. Boston Scientific realleges paragraphs 1-18 above as if fully set forth herein.

20. The '438 patent, entitled "Systems And Methods For Providing Power To A Battery In An Implantable Stimulator," is a valid, enforceable patent that was duly issued by the USPTO on September 23, 2008 in full compliance with Title 35 of the United States Code. A true and correct copy of the '438 patent is attached as Exhibit B.

21. BSNC is the assignee of the '438 patent with ownership of all substantial rights in the '438 patent, including the right to exclude others and to enforce, sue, and recover damages for past and future infringements. BSC is the exclusive licensee of the '438 patent.

22. Nevro has directly infringed, and continues to directly infringe, at least claim 1 of the '438 patent in violation of 35 U.S.C. § 271(a) by, for example and without limitation, making, using, offering to sell, selling, and/or importing in and into the United States the Senza System.

23. Nevro has actively induced others to infringe at least claim 1 of the '438 patent in violation of 35 U.S.C. § 271(b) by instructing others to use the Senza System. Nevro's active inducement includes, for example and without limitation, marketing, selling, and offering to sell the Senza System, providing instructions on how to use the Senza System, and promoting the use

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