Case: 14-1185 CaseASEE-E2885TICIDAONTSeON2Y Dorageent: 19FiledPageO1/20E4ed: 01/07/2014

No. 2014-1185

IN THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

VASCULAR SOLUTIONS, INC.,

Plaintiff-Appellee,

v.

BOSTON SCIENTIFIC CORPORATION,

Defendant-Appellant.

Appeal from the United States District Court for the District of Minnesota in case no.13-CV-1172 (JRT/SER), Judge John R. Tunheim

CORRECTED BRIEF OF DEFENDANT-APPELLANT BOSTON SCIENTIFIC CORPORATION

Matthew M. Wolf *Counsel of Record*

Edward Han John E. Nilsson Seth I. Heller ARNOLD & PORTER LLP 555 Twelfth Street, N.W. Washington, D.C. 20004 Telephone: 202.942.5000 Facsimile: 202.942.5999

Counsel for Defendant-Appellant Boston Scientific Corporation

January 7, 2014

DOCKE

RM

Find authenticated court documents without watermarks at docketalarm.com.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

VASCULAR SOLUTIONS v. BOSTON SCIENTIFIC 2014-1185

CERTIFICATE OF INTEREST

Counsel for Defendant-Appellant Boston Scientific Corporation certifies the following:

1. The full name of every party or amicus represented by me is: Boston Scientific Corporation

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

Same.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

No publicly held corporation owns more than 10% of the stock of Boston Scientific Corporation.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Matthew M. Wolf Edward Han John E. Nilsson Seth I. Heller Tara Williamson **Arnold & Porter LLP** 555 Twelfth Street NW Washington, DC 20004 Telephone: (202) 942-5000 Facsimile: (202) 942-5999

DATED: January 7, 2014

DOCKE

Δ R M

/s/ Matthew M. Wolf Matthew M. Wolf

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIESiv						
STA	STATEMENT OF RELATED CASES					
JURISDICTIONAL STATEMENT						
STA	STATEMENT OF THE ISSUES					
STATEMENT OF THE CASE						
STATEMENT OF THE FACTS						
SUMMARY OF THE ARGUMENT16						
ARGUMENT						
I.	STA	NDARD OF REVIEW				
II.	BSC'S GUIDEZILLA PRODUCT DOES NOT INFRINGE THE SIDE OPENING CLAIMS OF THE VSI PATENTS					
	A.	The "Substantially Rigid Portion" Must " <i>Define</i> " The "Rail Structure Without A Lumen"				
	B.	The District Court Erred In Construing "Lumen"				
III.	THE	SIDE OPENING CLAIMS WERE OBVIOUS				
	A.	By 2004, Skived Proximal Lumen Openings Were Typical Of Rapid Exchange Catheters				
	B.	The District Court Wrongly Concluded That There Would Have Been No Motivation To Combine Prior Art Rapid Exchange Catheters With The Device Of The Adams Patent				
	C.	Klein Disclosed A Skived Opening Through Which Intravascular Devices Entered The Lumen				
	D.	By 2004, Modification Of Adams To Include A Skived Proximal Opening Was An Obvious Design Choice				

E.	There Is No Nexus Between The Claimed Side Openings And Any Indicia Of Non-Obviousness	41	
F.	VSI Failed To Establish Irreparable Harm Attributable To Infringement Of The Side Opening Claims	46	
CONCLUSION			

TABLE OF AUTHORITIES

CASES

Page(s)

Abbott Labs. v. Andrx Pharms., Inc., 452 F.3d 1331 (Fed. Cir. 2006)	20
<i>Amazon.com, Inc. v. Barnesandnoble.com, Inc.,</i> 239 F.3d 1343 (Fed. Cir. 2001)	20
Anton/Bauer, Inc. v. PAG, Ltd., 329 F.3d 1343 (Fed. Cir. 2003)1	18
<i>Apple Inc. v. Samsung Elecs. Co.,</i> 695 F.3d 1370 (Fed. Cir. 2012)	46
ArcelorMittal France v. AK Steel Corp., 700 F.3d 1314 (Fed. Cir. 2012)2	27
B.F. Goodrich Co. v. Aircraft Braking Sys. Corp., 72 F.3d 1577 (Fed. Cir. 1996)	41
Briggs & Stratton Corp. v. Chongqing RATO Power Co., No. 5:13-cv-0316, 2013 WL 3972391 (N.D.N.Y Jul. 23, 2013)4	46
<i>Chef Am. v. Lamb-Weston, Inc.</i> , 358 F.3d 1371 (Fed. Cir. 2004)	22
<i>Cybor Corp. v. FAS Techs.</i> , 138 F.3d 1448 (Fed. Cir. 1998)1	18
<i>Deere & Co. v. Bush Hog</i> , 703 F.3d 1349 (Fed. Cir. 2012)	24
Douglas Dynamics, LLC v. Buyers Prods. Co., 717 F.3d 1336 (Fed. Cir. 2013)2	24
Galderma Labs., L.P. v. Tolmar, Inc., No. 2013-1034, 2013 WL 6483704 (Fed. Cir. Dec. 11, 2013)4	44
Helmsderfer v. Bobrick Washroom Equip., Inc., 527 F.3d 1379 (Fed. Cir. 2008)2	21

DOCKET A L A R M



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.