

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

VASCULAR SOLUTIONS, INC.,

Civil No. 13-1172 (JRT/SER)

Plaintiff,

FILED UNDER SEAL

v.

**MEMORANDUM OPINION AND
ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION**

BOSTON SCIENTIFIC CORPORATION,

Defendant.

J. Thomas Vitt and Heather D. Redmond, **DORSEY & WHITNEY LLP**, 50 South Sixth Street, Suite 1500, Minneapolis, MN 55402, for plaintiff.

Edward Han, Matthew M. Wolf, and Tara Williamson, **ARNOLD & PORTER LLP**, 555 Twelfth Street N.W., Washington, DC 20004; Jeffer Ali, **CARLSON CASPERS VANDENBURGH LINDQUIST & SCHUMAN PA**, 225 South Sixth Street, Suite 4200, Minneapolis, MN 55402, for defendant.

Plaintiff Vascular Solutions, Inc. ("Vascular") owns three patents directed to a device and method of using a guide catheter extension in cardiac catheterization procedures accessing coronary arteries. Vascular alleges that defendant Boston Scientific Corp.'s ("Boston") guide extension catheter, the Guidezilla, not only infringes Vascular's patents but is also a copy of Vascular's guide extension catheter, the GuideLiner. Vascular seeks a preliminary injunction enjoining Boston from making, using, or offering for sale its Guidezilla product or any other product that would infringe Vascular's guide extension catheter patents. Vascular also seeks an injunction enjoining Boston from

preparing derivative works from Vascular's Instructions for Use ("IFUs") and copying or distributing copies of Guidezilla's IFUs.

The Court will grant in part Vascular's motion for a preliminary injunction, enjoining Boston from making, using, or offering for sale its Guidezilla product. The Court concludes that, at this stage, Vascular has shown a likelihood of success on the merits – that is, that Vascular will be able to prove infringement and overcome Boston's invalidity contentions for at least one of its patents' claims. The Court also finds that Vascular has demonstrated it is likely to suffer irreparable harm to its market and reputation, the balance of harms favors Vascular, and the public interest favors a preliminary injunction. To the extent Vascular seeks an injunction enjoining Boston from preparing derivative works from Vascular's IFUs and copying or distributing copies of Guidezilla's IFUs, however, Vascular's motion will be denied because Vascular fails to identify any irreparable harm stemming from Boston's alleged copyright infringement.

BACKGROUND

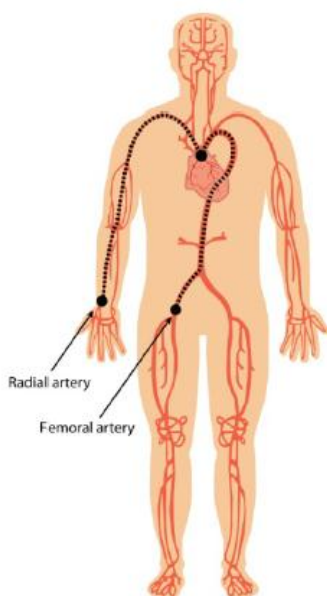
I. GUIDE EXTENSION CATHETERS

Vascular began working on its guide extension catheter in approximately 2004, filed its first patent application directed to the invention in 2006, and started selling its GuideLiner device in 2009.¹ (Decl. of Howard Root ¶ 21 & Ex. 2, June 10, 2013, Docket No. 12.) In order to understand Vascular's invention, it is necessary to understand the previously existing cardiac catheterization methods and devices.

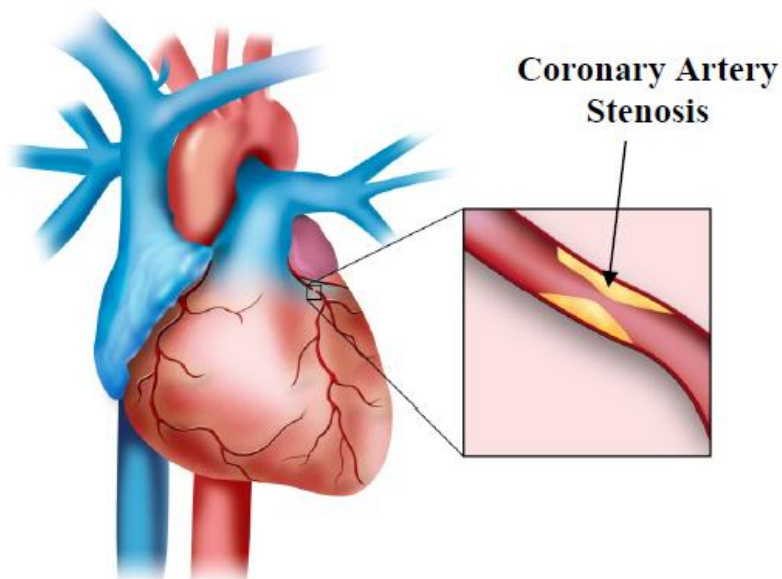
¹ After launching the original GuideLiner in 2009, Vascular developed a second version which it began selling in 2012. (Root Decl. ¶ 31.)

A. Cardiac Catheterization and Existing Methods and Devices

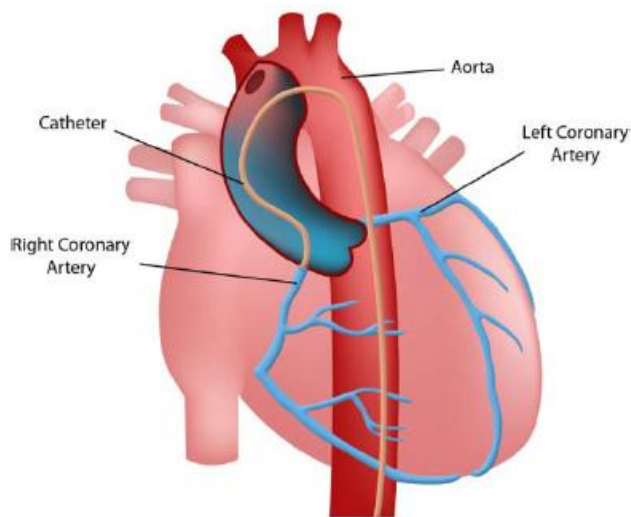
In a cardiac catheterization procedure, a physician inserts a needle into the wrist (radial) or leg (femoral) artery of a patient. (*See id.* ¶ 9.) A guidewire is inserted through the needle. (*See id.*) An introducer sheath is introduced over the wire and is used to provide access for “guidewires, catheters, and stents” during either a diagnostic or interventional procedure. (*Id.* ¶¶ 8-9, 11.) Either a guidewire or a catheter may be inserted through the arteries to the aorta. (*See id.* ¶ 9.)



(*Id.*) During an interventional catheterization procedure, a cardiologist must introduce a “guide catheter” deep into the coronary artery to deliver medical devices and stents, for example to treat coronary artery stenosis. (*Id.* ¶ 6, 11.)

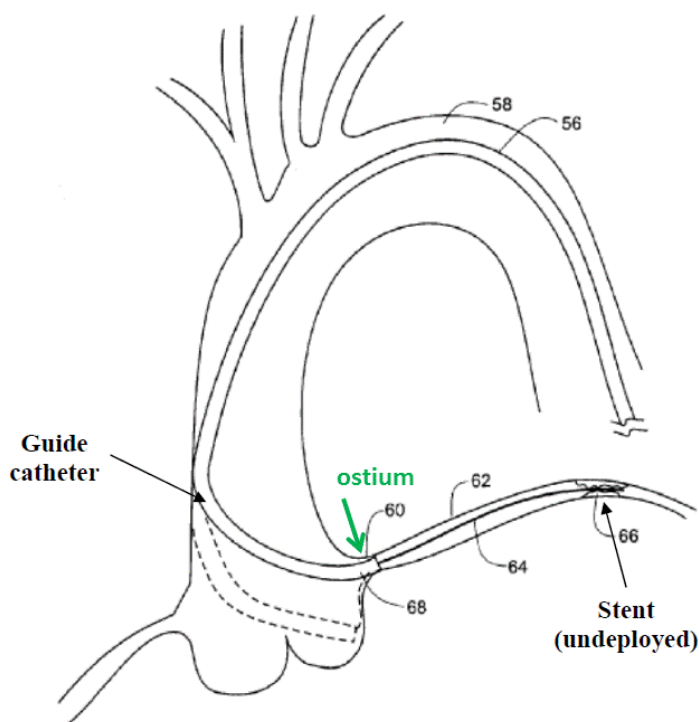


(*Id.* ¶ 6.) In order to reach the coronary arteries, the inserted guidewire or catheter must make sharp turns, as shown in the following figure:



(*Id.* ¶ 7.) Because of the curve and rigidity of guide catheters, the catheters are difficult to extend past the ostium, the opening of the coronary artery, into the coronary arteries.

(*See id.* ¶ 15.)



(*Id.* ¶ 11 (modified).)

Before Vascular’s invention, cardiologists used several types of standard guide catheters to place catheters and stents. One example of a standard guide catheter is an “over-the-wire” catheter. (*See id.* ¶ 19.) To use an over-the-wire catheter, the cardiologist inserts a guidewire first and then the catheter is delivered over the guidewire. (*See id.*)

Over-the-wire (OTW) catheter



(*Id.*) One uninterrupted lumen runs the length of the catheter. (*Id.*)

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