

No. 2014-_____

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

VASCULAR SOLUTIONS, INC.,

Plaintiff-Appellee,

v.

BOSTON SCIENTIFIC CORPORATION,

Defendant-Appellant.

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

**DEFENDANT-APPELLANT'S MOTION FOR AN INTERIM
STAY AND STAY PENDING APPEAL**

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December 27, 2013

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

VASCULAR SOLUTIONS v. BOSTON SCIENTIFIC

2014-____

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:

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DATED: December 27, 2013

Respectfully submitted,

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PRELIMINARY STATEMENT

Defendant-Appellant Boston Scientific Corporation (“BSC”) respectfully submits this motion, pursuant to FED. R. APP. P. 8, to stay and suspend, pending appeal, the December 9, 2013 order of the U.S. District Court for the District of Minnesota preliminarily enjoining BSC from making or selling its Guidezilla guide catheter in the United States (the “Injunction”). Memorandum Opinion and Order Granting In Part Plaintiff’s Motion for Preliminary Injunction, *Vascular Solutions, Inc. v. Boston Scientific Corp.*, No. 0:13-cv-1172-JRT-SER (D. Minn. Dec. 9, 2013), ECF No. 76 (Addendum (“Add.”) B). On December 23, 2013, the district court denied BSC’s motion for leave to file a motion for reconsideration and ruled that the Injunction will take effect on January 13, 2014. Add. C at 4-5. BSC also requests an interim stay of the Injunction pending expedited consideration of this motion on an emergency basis.

The district court granted the Injunction not on the basis of the asserted independent claim that was the exclusive focus of the opening brief of plaintiff-appellee Vascular Solutions, Inc. (“VSI”), but based on dependent claims directed to one narrow limitation—an angled (or “skived”) side opening in the claimed tubular structure (the “side opening” claims). In fact, as VSI tacitly acknowledged, BSC’s own prior art patent—U.S. Patent No. 5,527,292 (the “Adams patent”)—disclosed virtually every other element of the asserted claims.

In granting the Injunction, the district court: (1) improperly limited and misapplied the “without a lumen” limitation that appears in every claim; (2) failed to address BSC’s principal invalidity argument—that, by 2004 (when the VSI patents were purportedly conceived), the claimed side openings would have been an obvious design choice for a person of ordinary skill in the art making the Adams device; (3) incorrectly found a lack of motivation to combine Adams with prior art catheters arising from the same narrow field of invention and addressing the same problem; (4) ignored U.S. Patent No. 5,776,141 (“Klein”), which discloses an angled proximal opening that addresses all of the court’s objections to the other prior art cited by BSC; (5) relied on secondary indicia of nonobviousness, such as the commercial success of VSI’s GuideLiner product, even though VSI provided no evidence that such success or other indicia were attributable to the purportedly inventive side opening; and (6) found irreparable harm, despite VSI’s failure to show a specific nexus between its alleged harm and any infringement of the side opening claims. At a minimum, substantial questions should have precluded the Injunction.

FACTUAL BACKGROUND

This case relates to devices used in intravascular interventions, in which flexible, thin treatment devices such as balloon catheters are advanced through the blood vessels to the site of a blockage, where a treatment to relieve the blockage—

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