

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

**REPLY 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

February 3, 2014

*Counsel for Defendant-Appellant
Boston Scientific Corporation*

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

VASCULAR SOLUTIONS, INC. v. BOSTON SCIENTIFIC CORPORATION
No. 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: February 3, 2014

/s/ Matthew M. Wolf
Matthew M. Wolf

TABLE OF CONTENTS

	Page
INTRODUCTION	1
ARGUMENT	2
I. THE DISTRICT COURT ERRED IN FINDING A LIKELIHOOD OF SUCCESS	3
A. The District Court Erred In Construing “Substantially Rigid Portion Defining A Rail Structure Without A Lumen”	3
1. The District Court Improperly Redefined “Defining” To Mean “Including”	3
2. The District Court Improperly Narrowed The Ordinary Meaning Of “Lumen”	6
B. The District Court Erred In Concluding That BSC Failed To Raise A Substantial Question Of Validity	13
1. VSI Continues To Urge An Improper Standard At The Preliminary Injunction Stage.....	13
2. The Evidence Shows A Substantial Question Of Invalidity.....	14
3. The District Court Erred In Concluding That Objective Evidence Supported A Finding Of Non-Obviousness.....	24
II. VSI FAILED TO MEET THE REQUIREMENTS NECESSARY TO SHOW IRREPARABLE HARM	29
CONCLUSION.....	30

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Apple Inc. v. Samsung Elecs. Co.</i> , 695 F.3d 1370 (Fed. Cir. 2012)	29
<i>Aria Diagnostics, Inc. v. Sequenom, Inc.</i> , 726 F.3d 1296 (Fed. Cir. 2013)	2
<i>Ball Aerosol & Specialty Container, Inc. v. Limited Brands, Inc.</i> , 555 F.3d 984 (Fed. Cir. 2009)	21
<i>Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.</i> , 334 F.3d 1294 (Fed. Cir. 2003)	7
<i>Dippin’ Dots, Inc. v. Mosey</i> , 476 F.3d 1337 (Fed. Cir. 2007)	5
<i>Ecolochem, Inc. v. S. Cal. Edison Co.</i> , 227 F.3d 1361 (Fed. Cir. 2000)	27
<i>Festo Corp. v. Shoketsu</i> , 535 U.S. 722 (2002).....	12
<i>Friskit, Inc. v. RealNetworks, Inc.</i> , 306 F.Appx. 610 (Fed. Cir. 2009)	25
<i>Golden Bridge Tech., Inc. v. Nokia, Inc.</i> , 527 F.3d 1318 (Fed. Cir. 2008)	20
<i>Graver Tank & Mfg. Co. v. Line Air Prods. Co.</i> , 339 U.S. 605 (1950).....	12
<i>Helmsderfer v. Bobrick Washroom Equipment, Inc.</i> , 527 F.3d 1379 (Fed. Cir. 2008)	7
<i>Howes v. Med. Components, Inc.</i> , 814 F.2d 638 (Fed. Cir. 1987)	8
<i>J.T. Eaton & Co. v. Atl. Paste & Glue Co.</i> , 106 F.3d 1563 (Fed. Cir. 1997)	28

KSR Int'l Co. v. Teleflex Inc.,
550 U.S. 398 (2007).....18, 23

Lamex Foods, Inc. v. Audeliz Lebron Corp.,
646 F.3d 100 (1st Cir. 2011).....23

Lucent Techs., Inc. v. Gateway, Inc.,
525 F.3d 1200 (Fed. Cir. 2008)11

Medrad, Inc. v. MRI Devices Corp.,
401 F.3d 1313 (Fed. Cir. 2005)8

Monsanto Co. v. Bayer, Bioscience N.V.,
363 F.3d 1235 (Fed. Cir. 2004)8

Myspace v. GraphOn Corp.,
672 F.3d 1250 (Fed. Cir. 2012)10

N. Am. Container, Inc. v. Plastipak Packaging, Inc.,
415 F.3d 1335 (Fed. Cir. 2005)10

New England Braiding Co., Inc. v. A.W. Chesterton Co.,
970 F.2d 878 (Fed. Cir. 1992)2, 14, 19, 20

Norian Corp. v. Stryker Corp.,
432 F.3d 1356 (Fed. Cir. 2005)11

Novo Nordisk A/S v. Eli Lilly & Co.,
185 F.3d 884, 1999 WL 96413 (Fed. Cir. 1999).....13

Ormco Corp. v. Algin Tech., Inc.,
463 F.3d 1299 (Fed. Cir. 2006)28

Ortho-McNeil Pharm., Inc. v. Mylan Labs., Inc.,
520 F.3d 1358 (Fed. Cir. 2008)22

Perfect Web Techs. Inc., v. Info USA, Inc.,
587 F.3d 1324 (Fed. Cir. 2009)21

Phillips v. AWH Corp.,
415 F.3d 1303 (Fed. Cir. 2005) (en banc)7, 10, 19

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.