

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LIFEPORT SCIENCES LLC,
Plaintiff,

v.

ENDOLOGIX, INC.,
Defendant.

C.A. No. 12-cv-01791 GMS

**PLAINTIFF'S DISCLOSURE OF INITIAL CLAIM CHARTS
UNDER DEFAULT STANDARD FOR DISCOVERY 4(c)**

Under Paragraph 4(c) of the Default Standard for Discovery, Including Discovery of Electronically Stored Information (“ESI”) (“Default Standard”), Plaintiff LifePort Sciences LLC (“LifePort”) hereby serves its initial claim charts on Defendant Endologix, Inc. relating the accused products to the asserted claims.

Pursuant to Paragraph 4(c) of the Default Standard, the claim charts are “initial claim charts” only, and Plaintiff “shall be permitted to supplement.” Default Standard, footnote 3. Supplementation will also be necessary because the production of the “core technical documents” by Defendant pursuant to Paragraph 4(b) of the Default Standard was made only on August 11, 2014. This production includes over 80,000 documents comprising over 580,000 pages, and Plaintiff has not yet had an adequate opportunity to fully review them. Moreover, discovery has just begun and Defendant may be obligated to produce a large number of additional technical documents in response to Plaintiff’s document requests. Accordingly, the initial claim charts are based on information presently known to Plaintiff.

Plaintiff reserves its right to serve supplemental claim charts asserting additional grounds for infringement by the accused products in view of Defendant's supplemental productions of technical documents.

Attached hereto are the following initial claim charts:

- Ex. A, U.S. Patent No. 6,302,906, Claim Chart For Endologix AFX
- Ex. B, U.S. Patent No. 6,302,906 Claim Chart For Endologix IntuiTrak
- Ex. C, U.S. Patent No. 8,192,482 Claim Chart For Endologix AFX
- Ex. D, U.S. Patent No. 8,192,482 Claim Chart For Endologix IntuiTrak
- Ex. E, U.S. Patent No. 6,117,167 Claim Chart For Endologix AFX
- Ex. F, U.S. Patent No. 6,117,167 Claim Chart For Endologix Intuitrak
- Ex. G, U.S. Patent No. 5,676,696 Claim Chart For Endologix AFX
- Ex. H, U.S. Patent No. 5,676,696 Claim Chart For Endologix IntuiTrak
- Ex. I, U.S. Patent No. 5,993,481 Claim Chart For Endologix AFX
- Ex. J, U.S. Patent No. 5,993,481 Claim Chart For Endologix IntuiTrak
- Ex. K, U.S. Patent No. 5,489,295 Claim Chart For Endologix AFX
- Ex. L, U.S. Patent No. 5,489,295 Claim Chart For Endologix IntuiTrak

Plaintiff also incorporates by reference all infringement contentions in its Complaint, including amendments, and its identification of accused products pursuant to Paragraph 4(a) of the Default Standard. In addition, while each claim chart is intended to be complete and stand on its own, to the extent that other claim charts provide additional explanation or context, that material is deemed to be incorporated.

These infringement charts have been prepared without the benefit of a claim construction order from the Court. By providing the attached claim charts, Plaintiff does not intend to proffer or imply particular claim constructions. Instead, in accordance with the Court's Scheduling Order, Plaintiff will disclose its claim constructions for any disputed terms in accordance with the Scheduling Order. Similarly, Plaintiff does not admit or imply that any claim preambles are, or are not, limiting on the scope of the claims. Further, Plaintiff does not admit or concede that every fact, detail or citation in its charts is necessary in order to prove infringement.

Some of the infringement charts relate certain claim limitations to products or product configurations that are available in multiple sizes. For the sake of clarity and simplicity, only one size of a particular product or product configuration is generally cited in the claim charts. However, such contentions apply equally to all sizes of like products and product configurations. Plaintiff reserves the right to rely upon or cite to additional evidence respecting various product sizes to prove its infringement case.

For the convenience of the parties, Plaintiff is concurrently producing many of the documents cited or mentioned in the attached infringement charts. Such documents are also publicly available.

Plaintiff contends that each element of each asserted claim of the patents-in-suit is literally present in the accused instrumentalities. In the alternative, Plaintiff contends that any limitation not found to be literally present in an accused instrumentality is present under the doctrine of equivalents in that it is assembled or operates to perform substantially the same function, in substantially the same way, to create substantially the same result. Plaintiff expressly reserves the right to modify or amend these claim charts to include more detailed doctrine of equivalents contentions after further technical discovery from Defendant and/or third

parties, or if the Court's claim construction order arguably limits or precludes any of the literal infringement theories currently set forth in Plaintiff's claim charts.

To the extent that a Defendant's agent or vendor performs a step, or a portion of a step, in a claimed method as described in the attached claim charts, Plaintiff contends that the agent or vendor does so under the control or direction of Defendant, and that the agent's or vendor's actions are attributable to Defendant for the purposes of determining Defendant's liability for infringement of the Patents in Suit. Alternatively, Plaintiff contends that Defendant induces third parties to perform certain steps in its infringing operations.

DATED: Sep. 10, 2014

Respectfully submitted,

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/s/ Derek J. Brader

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