

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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|---|---|----------------------|
| EDWARDS LIFESCIENCES LLC, <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | C.A. No. 12-23 (GMS) |
| |) | |
| MEDTRONIC COREVALVE LLC, <i>et al.</i> , |) | REDACTED - PUBLIC |
| |) | VERSION |
| Defendants. |) | |

**PLAINTIFFS' OPENING BRIEF IN SUPPORT OF THEIR MOTION FOR
ENHANCED DAMAGES PURSUANT TO 35 U.S.C. § 284**

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I. NATURE AND STAGE OF THE PROCEEDINGS

On January 15, 2014, the jury returned a verdict that Medtronic¹ had willfully infringed Claims 1, 2, 4, and 5 of Edwards'² Cribier '825 Patent³, and that Medtronic failed to prove its validity defenses. [D.I. 170]. The jury awarded Edwards lost profits of \$388.8 million and reasonable royalties totaling \$4.8 million.⁴ [*Id.* at 9]. Medtronic offered no evidence of reliance on advice of counsel, and mounted no damages defense. Declaration of Jeremy A. Benjamin in Supp. of Edwards' Mot. for Enhanced Damages Pursuant to 35 U.S.C. § 284 ("Decl."), Ex. A at 920:9-10. Medtronic's only expert witness was not a person of ordinary skill in the art at the time of the invention of the '825 Patent. *Id.* at 1026:21-23, 1027:7-12.

This lawsuit is of Medtronic's own making. This is the second time Medtronic has been found to willfully infringe Edwards' patent rights concerning transcatheter heart valve ("THV") technology. *See* [D.I. 170]; *Edwards Lifesciences AG v. CoreValve, Inc.*, No. 08-91 (GMS) ("*Edwards I*") [D.I. 313] (jury verdict finding willful infringement of Edwards' U.S. Patent No. 5,411,552). Both *Edwards I* and this trial involved infringement by the same Medtronic THV products. Seemingly unfazed by the prior jury verdict or the threat of an injunction, Medtronic chose to plow ahead in its manufacture, commercialization, and sale of the CoreValve device in the U.S. Medtronic is a knowing and willful infringer.

¹ "Medtronic" refers to Medtronic CV Luxembourg S.a.r.l., Medtronic CoreValve LLC, Medtronic, Inc., Medtronic Vascular Galway Ltd., and Medtronic Vascular Inc.

² "Edwards" refers to Edwards Lifesciences LLC and Edwards Lifesciences PVT Inc.

³ The "'825 Patent" refers to U.S. Patent No. 8,002,825.

⁴ The jury's award covers damages that Edwards incurred from August 23, 2011—the issue date of the '825 Patent—through October 25, 2013.

35 U.S.C. § 284 allows for enhanced damages, up to three times the jury's compensatory award. The Court has great discretion in deciding the magnitude of any such award. Edwards asks that the Court send a message to Medtronic. Given the context of the broader dispute between the parties, and Medtronic's failure to honor its commitment to moving its operations offshore, Edwards submits that enhanced damages are appropriate here.⁵

II. SUMMARY OF ARGUMENT

Under 35 U.S.C. § 284, this Court may enhance the damages in this case up to three times the jury's compensatory award. Pursuant to this statute, Edwards respectfully requests an enhancement of at least \$100 million on the jury's \$394 million award. The circumstances of this case demonstrate the necessity of this enhancement. First, enhanced damages are appropriate in light of the jury's finding that Medtronic willfully infringed Edwards' patent. [D.I. 170 at 5]. Second, application of the *Read* factors⁶ to this case demonstrates the need for enhanced damages:

1. Medtronic knew of the '825 Patent and willfully infringed it.
2. Medtronic lacked a good faith belief that the '825 Patent was invalid or that its CoreValve device did not infringe that patent. At trial, Medtronic presented no opinion of counsel and/or evidence that it relied on an opinion of counsel.
3. Medtronic did not comply with the verdict in *Edwards I*, disregarded the Court's rulings, and presented misleading arguments to the jury.

⁵ On January 27, 2014, the Court Ordered that Plaintiffs' post-trial motions be filed by March 17, 2014. [D.I. 178].

⁶ See *Read Corp. v. Portec, Inc.*, 970 F.2d 816, 826-27 (Fed. Cir. 1992).

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