UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 12-00327-JVS (MLGx)	Date	September 17, 2013
Title	Medtronic Inc. v. Edwards Lifesciences Corp., et al.		

Present: The Honorable	James V. Selna

Ellen Matheson for Karla J. Tunis	Not Present
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: (IN CHAMBERS) Order re Motions for Summary Judgment

Plaintiff/Counterclaim-Defendant Medtronic, Inc. ("Medtronic") alleges that Defendants/Counterclaim-Plaintiffs Edwards Lifesciences Corporation *et al.* (collectively, "Edwards") indirectly infringe two patents assigned to Medtronic: U.S. Patent No. 7,184,829 ("the '829 Patent"), titled "Method and System for Nerve Stimulation Prior to and During a Medical Procedure"; and U.S. Patent No. 8,036,741 ("the '741 Patent"), titled "Method and System for Nerve Stimulation and Cardiac Sensing Prior to and During a Medical Procedure" (collectively, the "patents-in-suit"). (Complaint, Docket No. 1.) Medtronic alleges that Edwards induces infringement of Claim 43 of the '829 Patent, and Claims 10–13, 15–18, 20–21, and 28 of the '741 Patent (collectively, the "Asserted Claims").

Medtronic and Edwards move for summary judgment pursuant to Federal Rule of Civil Procedure 56 on the following infringement and invalidity issues[1]:

(1) Edwards's Motion for Summary Judgment of Noninfringement, Docket No. 214: Noninfringement Brief, Docket No. 283; Noninfringement Opposition, Docket No. 336; Noninfringement Reply, Docket No. 400.

(2) Medtronic's Motion for Partial Summary Judgment on Edwards' Derivation Claim (35 U.S.C. § 102(f)), Docket No. 211: Derivation Brief, Docket No. 230; Derivation Opposition, Docket No. 339; Derivation Reply, Docket No. 381.

(3) Edwards's Motion for Summary Judgment o

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(3) Edwards's Motion for Summary Judgment of Invalidity of the '741 Patent Under 35

U.S.C. §§ 102(f) and 112, Docket No. 216: '741 Invalidity Brief, Docket No. 285; '741 Invalidity Opposition, Docket No. 338; '741 Invalidity Reply, Docket No. 402.

(4) Medtronic's Motion for Partial Summary Judgment on Edwards' Public Use and On Sale Bar Claims (35 U.S.C. § 102(b)), Docket No. 213: Public Use/On-Sale Brief, Docket No. 231; Public Use/On-Sale Opposition, Docket No. 340; Public Use/On-Sale Reply, Docket No. 490.

(5) Edwards's Motion for Summary Judgment of Invalidity Under 35 U.S.C. §§ 102 and 103, Docket No. 215: Invalidity Brief, Docket No. 284; Invalidity Opposition, Docket No. 337; Invalidity Reply, Docket No. 401.

For the following reasons, the Noninfringement Motion is **DENIED**, the Derivation Motion is **GRANTED**, the '741 Invalidity Motion is **DENIED**, the Public Use/On-Sale Bar Motion is **GRANTED in part** and **DENIED in part**, and the Invalidity Motion is **DENIED**.

I. FACTUAL BACKGROUND[2]

Medtronic accuses Edwards of indirectly infringing the Asserted Claims when physicians use transfemoral and transapical procedures to implant Edwards's SAPIEN Transcatheter Heart Valve ("THV") (the "SAPIEN"). (Noninfringement SUF ¶ 1, Docket No. 28-1.) The Court construed disputed terms in the Asserted Claims on March 7, 2013. (Claim Construction Order, Docket No. 86.) The Court presumes familiarity with the procedural history of this matter.

Medtronic contends that the Asserted Claims cover "critical steps that Edwards instructs physicians to take in order to safely and effectively deploy the SAPIEN," which Medtronic considers a "stent device," "at the site of the native aortic valve" through rapid pacing. (Noninfringement SUF ¶¶ 2, 23.) The SAPIEN is used to replace damaged (stenotic) native aortic heart valves, which lie between the left ventricle of the heart and the aorta and allow blood to exit the left ventricle and flow through to the body. (Id. ¶

[2] Unless otherwise noted, the facts set forth throughout the Court's analysis are uncontroverted.

28.) Rapid pacing increases the heart rate to affect stroke volume and cardiac output and ensure the SAPIEN can be deployed safely. (E.g., Buller Opening Report ¶¶ 61–62 ("Pacing to achieve an increased rate will obviously increase the frequency of the heart beat, but when there is a fall in stroke volume the amplitude of cardiac movement will also fall."), Buller Decl. Ex. 1, Docket No. 287; Ing Dep. at 29:2–23, Raman Decl. Ex. 18, Docket No. 217.) A typical rapid pacing range is between 160 and 220 beats per minute. (Noninfringement SUF ¶ 10.) When the heart is paced to within that range, it is in a state referred to as ventricular tachycardia. (Id. ¶ 11.) After pacing ends, the heart typically regains its normal function.

II. LEGAL STANDARD

Summary judgment is appropriate only where the record, read in the light most favorable to the nonmoving party, indicates "that there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c)(2); see also Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986); PowerOasis, Inc. v. T-Mobile USA, Inc., 522 F.3d 1299, 1303 (Fed. Cir. 2008). Summary adjudication, or partial summary judgment "upon all or any part of [a] claim," is appropriate where there is no genuine issue of material fact as to that portion of the claim. Fed. R. Civ. P. 56(a), (b); see also Lies v. Farrell Lines, Inc., 641 F.2d 765, 769 n.3 (9th Cir. 1981) ("Rule 56 authorizes a summary adjudication that will often fall short of a final determination, even of a single claim." (internal quotation marks omitted)).

Material facts are those necessary to the proof or defense of a claim, and are determined by reference to substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). "[A] complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Celotex, 477 U.S. at 322. A fact issue is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248. To demonstrate a genuine issue, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts. . . . [T]he nonmoving party must come forward with specific facts showing that there is a genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586–87 (1986) (citations and internal quotation marks omitted). In deciding a motion for summary judgment, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn

the air, and the opposing party must produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d 898, 902 (9th Cir. 1987).

The burden initially is on the moving party to demonstrate an absence of a genuine issue of material fact. Celotex, 477 U.S. at 323. If the moving party meets its burden, then the nonmoving party must produce enough evidence to rebut the moving party's claim and create a genuine issue of material fact. See id. at 322–23. If the nonmoving party meets this burden, then the motion will be denied. Nissan Fire & Marine Ins. Co. v. Fritz Co., 210 F.3d 1099, 1103 (9th Cir. 2000).

Where the parties have made cross-motions for summary judgment, the court must consider each motion on its own merits. Fair Hous. Council of Riverside Cnty., Inc. v. Riverside Two, 249 F.3d 1132, 1136 (9th Cir. 2001). The court should consider each party's evidentiary showing, regardless of which motion the evidence was tendered under. See id. at 1137.

III. REQUEST FOR JUDICIAL NOTICE

Edwards requests that the Court take judicial notice of several documents pursuant to Federal Rule of Evidence 201. (Request for Judicial Notice ("RJN"), Docket No. 218.) Medtronic opposes because (1) Edwards has not substantiated its request and (2) the parties dispute the meaning and relevance of the documents. (Objections to RJN, Docket No. 312.) Edwards did not substantiate its request, but the Court will take judicial notice of the documents and the facts stated therein. Medtronic does not argue that Edwards altered the documents or dispute that the contents Edwards relies upon are in these documents. Thus, in that regard, the facts themselves are not subject to material dispute. Lee v. City of L.A., 250 F.3d 668, 689–90 (9th Cir. 2001). The *interpretation* of the facts is a different matter. Under Medtronic's position, courts could never take judicial notice of alleged prior art at the summary judgment stage if the parties disagree over its meaning and import. The Court does not take Edwards's contentions about the documents' meaning and import as true simply because the Court takes judicial notice. Accordingly, the Court **GRANTS** Edwards's Request for Judicial Notice.

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