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MEDTRONIC, INC., MEDTRONIC USA, INC.,
AND MEDTRONIC VASCULAR, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MEDTRONIC, INC., a Minnesota corporation, MEDTRONIC USA, INC., a Minnesota corporation, and MEDTRONIC VASCULAR, INC., a Delaware corporation,

Plaintiffs,

v.

AGA MEDICAL CORPORATION, a Minnesota corporation,

Defendant.

Case No. C07-00567 MMC

MEDTRONIC'S FED. R. CIV. P. 50(a) MOTION FOR JUDGMENT AS A MATTER OF LAW

Date: TBD
Time: TBD
Place: Courtroom 7, 19th Floor
Judge: Hon. Maxine M. Chesney

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE that Medtronic will and hereby does move this Court, pursuant to Federal Rule of Civil Procedure 50(a), for an Order granting judgment as a matter of law that (1) AGA has infringed U.S. Patent No. 6,306,141 (hereinafter "the '141 patent") and U.S. Patent No. 5,067,957 (hereinafter "the '957 patent"), (2) the '141 and '957 patents are not invalid, and (3) Medtronic is entitled to damages in the form of a reasonable royalty equal to 13.4% of AGA's sales of accused devices and delivery systems. This Motion is based upon this Notice of Motion and Motion, Memorandum of Points and Authorities, the evidence and testimony of record, other papers and pleadings on file, and on such other argument and evidence as may be presented to the Court at or prior to the hearing on this Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 50(a), Medtronic hereby moves for judgment as a matter of law on all factual issues that have been presented to the jury regarding AGA's infringement of the '141 and '957 patents, the validity of the '141 and '957 patents, and the amount of damages owed to Medtronic as a result of AGA's infringement. The trial record establishes that no reasonable jury could find that AGA has not infringed the asserted claims of the '141 and '957 patents, that the asserted claims of the '141 and '957 patents are invalid, or that Medtronic is not entitled to damages in the form of a reasonable royalty equal to 13.4% of AGA's sales of the accused products.[1]

II. AGA HAS INFRINGED THE ASSERTED CLAIMS OF THE '141 AND '957 PATENTS

Medtronic accuses AGA of infringement of the asserted claims of the '141 and/or '957 patents with respect to the following AGA devices and their corresponding delivery systems: the AMPLATZER® Septal Occluder and Multi-Fenestrated Septal Occluder, the AMPLATZER®

[1] Medtronic also moves for judgment as a matter of law on AGA's counterclaims for declaratory judgment of noninfringement and invalidity of the '141 and '957 patents because no reasonable juror could find that the patents are not infringed or are invalid.

Duct Occluder I and II, the AMPLATZER® PFO Occluder, the AMPLATZER® VSD Occluders (including the Membranous VSD Occluder, the Muscular VSD Occluder, and the P.I. Muscular VSD Occluder), and the AMPLATZER® Vascular Plug, Vascular Plug II, and Vascular Plug III. The occluders and plugs are collectively referred to as the "Accused Devices."

A. The Commonalities Among All The Accused Systems

1. All Accused Systems Function Similarly And Require The Use Of AGA's Delivery Cable And A Loader/Delivery Catheter

All sizes of the Accused Devices and their delivery systems function similarly. Dkt. 812 (Feinstein testimony) at 245-303. All of the Accused Devices are designed and made so that each occluder or plug device can be implanted into patients using minimally invasive techniques, requiring only a small incision allowing the device to be implanted via the patient's vascular system. *Id.*

Although AGA sells several components of the Accused Systems separately, every Accused Device requires a loader, AGA's delivery cable/wire and a delivery catheter in order to function. *See, e.g.*, Dkt. 812 at 258:1-3; TX Nos. 22, 23, 36, 346, 347, 457, 460, 474, 502, 503-506, 1558-1560, 1999, 1185, 1186, 2451-2454. The occluders are sold separately from their corresponding delivery systems, which include a loader, a sheath, and a delivery cable. *See, e.g.*, Dkt. 812 at 258:1-3; TX Nos. 22, 23, 36, 346, 347, 457, 460, 502, 504-506, 1558-1560, 1999, 1185, 1186, 2451, 2452, and 2454. Because an AGA loader and sheath are bundled with the required delivery cable, the vast majority of the time the physicians also use AGA's sheath and loader. *See, e.g.*, Dkt. 812 at 257:18-258:7. The vascular plugs are sold preloaded and pre-connected to the delivery wire. *See, e.g.*, TX Nos. 474, 503, 2453, and 2462. The sheaths used with the plugs are sold separately. *See, e.g.*, TX 474, 503, and 453.

For implantation, each occluder must first be affixed onto the end of AGA's delivery cable with a threaded connector. *See, e.g.*, Dkt. 812 at 258:1-3, TX Nos. 22, 23, 36, 346, 347, 457, 460, 502, 504-506, 1558-1560, 1999, 1185, 1186, 2451, 2452, and 2454. Using the AGA delivery cable to manipulate the device, the physician pulls the device into a loader so that the device is restrained in a deformed shape. *See, e.g.*, Dkt. 812 at 280-287. The loader is connected

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