

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**CLEARCOUNT MEDICAL  
SOLUTIONS, INC.**

*Plaintiff,*

**v.**

**SURGICOUNT MEDICAL, INC.**

*Defendant.*

CIVIL ACTION NO. \_\_\_\_\_

JURY TRIAL DEMAND

**FILED ELECTRONICALLY**

**COMPLAINT**

Plaintiff ClearCount Medical Solutions, Inc., through its counsel, hereby alleges as follows for its Complaint against Defendant SurgiCount Medical, Inc.:

**NATURE OF THE ACTION**

1. This is an action for infringement of U.S. Patent No. 8,279,068 B2, entitled “Automatic Surgical Sponge Counter and Blood Loss Determination System,” which was duly issued by the United States Patent and Trademark Office on October 2, 2012 (“the ’068 patent”). A true and correct copy of the ’068 patent is attached hereto as Exhibit A.

**THE PARTIES**

2. Plaintiff ClearCount Medical Solutions, Inc. (“ClearCount”) is a Delaware corporation having its principal place of business at 101 Bellevue Rd # 300, Pittsburgh, Pennsylvania.

3. On information and belief, Defendant SurgiCount Medical, Inc. (“SurgiCount”) is a California corporation having its principal place of business at 2 Venture Plaza, Suite 350, Irvine, California, and is a wholly owned subsidiary of Patient Safety Technologies, Inc.

### **JURISDICTION AND VENUE**

4. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

5. This Court has personal jurisdiction over defendant because it sold and/or offered for sale its infringing Safety-Sponge System in this district and throughout the Commonwealth of Pennsylvania.

6. Venue is proper under 28 U.S.C. §§ 1391 and 1400 because defendant has committed acts of infringement in this district.

### **BACKGROUND**

7. ClearCount manufactures and sells the SmartSponge System, a solution proven to improve patient safety and reduce healthcare costs by preventing one of the most common errors in surgery, retained foreign objects. The SmartSponge System embodies one or more claims of the '068 patent.

8. SurgiCount manufactures, uses, offers for sale, and/or sells the “Safety-Sponge System,” which includes the SurgiCounter, Safety-Sponges, and SurgiCount360. Advertising materials for the SurgiCounter and Safety-Sponge System are attached hereto as Exhibit B.

9. The products within the Safety-Sponge System infringe at least one claim of the '068 patent. Specifically, the Safety-Sponge System infringes at least claims 1, 2, 7-11, and 28-35 of the '068 patent.

**COUNT I**

**(INFRINGEMENT OF THE '068 PATENT)**

10. Plaintiff incorporate by reference the allegations set forth in paragraphs 1- 9, as if set forth herein in their entirety.

11. Defendant has infringed, and continues to infringe, one or more claims of the '068 patent by manufacturing, using, selling, and/or offering to sell its Safety-Sponge System. On information and belief, defendant will continue to infringe the '068 patent unless enjoined by this Court.

12. Defendant's activities in infringing the '068 patent are willful and wanton, constituting willful infringement 35 U.S.C. § 285. Defendant has prior knowledge of the '068 patent but, nevertheless, has continued to make, use, sell, and offer to sell its infringing Safety-Sponge System.

13. Plaintiff has been irreparably damaged and will continue to be irreparably damaged by reason of defendant's infringement of the '068 patent unless this Court enjoins the infringing acts of defendants.

WHEREFORE, Plaintiff prays:

A. That Defendant SurgiCount, its officers, agents, servants, employees, and attorneys, and other persons who are in active participation with them, be enjoined from infringing United States Patent No. 8,279,068;

B. For Judgment finding that Defendant SurgiCount has infringed United States Patent No. 8,279,068 and that such infringement was willful;

C. That Defendant SurgiCount be ordered to pay damages pursuant to 35 U.S.C. § 284, including interest from the date of infringement, resulting from defendant's infringement of United States Patent No. 8,279,068;

D. For treble damages pursuant to 35 U.S.C. § 284;

E. For costs of suit and reasonable attorneys' fees, pursuant to 35 U.S.C. §§ 284 and 285; and

F. For such other and further relief as this Court may deem just and proper.

### **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiff hereby demands a trial by jury for all issues triable by a jury.

Respectfully submitted,

Dated: February 21, 2014

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*(Pro Hac Vice Admission Pending)*