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BACK BAY MEDICAL INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

BACK BAY MEDICAL INC.,

Plaintiff,

vs.

COVIDIEN HOLDING INC., and
EV3, INC.,

Defendants.

CASE NO. 8:14-CV-1415

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

1 Plaintiff BACK BAY MEDICAL INC. files its Complaint against
2 Defendants COVIDIEN HOLDING INC. and EV3, INC., alleging as follows:

3 **THE PARTIES**

4 1. Plaintiff BACK BAY MEDICAL INC. (“Plaintiff”) is a corporation
5 organized and existing under the laws of the State of California with its principal
6 place of business located at 600 Anton Boulevard, Suite 1350, Costa Mesa, CA
7 92626.

8 2. Upon information and belief, COVIDIEN HOLDING INC.
9 (“Covidien”) is a corporation organized and existing under the laws of the State of
10 Delaware, with its principal place of business in Mansfield, MA. Covidien may be
11 served with process through its registered agent The Corporation Company located
12 at 555 Capitol Mall, Suite 1000, Sacramento, CA 95814.

13 3. Upon information and belief, EV3, INC. (“ev3”) is a corporation
14 organized and existing under the laws of the State of Delaware, with its principal
15 place of business in Plymouth, MN. ev3 may be served with process through its
16 registered agent, The Corporation Trust Company, Corporation Trust Center, 1209
17 Orange Street, Wilmington, DE 19801.

18 4. Upon information and belief, Covidien is a medical technology
19 company with a range of products in various medical specialties.

20 5. Upon information and belief, eV3 is a medical technology company
21 with a range of products for treating vascular diseases and disorders, including the
22 peripheral vascular and neurovascular markets. eV3 sells certain neurovascular
23 intervention products through its ev3 Neurovascular division located in Irvine,
24 California, including but not limited to the Pipeline Embolization Device. ev3 was
25 acquired by Covidien in July 2010 and now operates as a subsidiary of Covidien.

26 **JURISDICTION AND VENUE**

27 6. This is an action for infringement of United States patents. This Court
28 has exclusive jurisdiction of such action under Title 28 U.S.C. § 1338(a). Upon

1 information and belief, Defendants are subject to personal jurisdiction by this
2 Court. Defendants have committed such purposeful acts and/or transactions in the
3 State of California that they reasonably knew and/or expected that they could be
4 haled into a California court as a future consequence of such activity. Defendants
5 make, use, and/or sell infringing products within the Central District of California
6 and have a continuing presence and the requisite minimum contacts with the
7 Central District of California such that this venue is a fair and reasonable one.
8 Upon information and belief, Defendants have transacted and, at the time of the
9 filing of this Complaint, are continuing to transact business within the Central
10 District of California. For all of these reasons, personal jurisdiction exists and
11 venue is proper in this Court under 28 U.S.C. §§ 1391(b)(1), (2) and (c)(2) and 28
12 U.S.C. § 1400(b).

13 **PATENTS-IN-SUIT**

14 7. On January 24, 2006, United States Patent No. 6,989,024 B2 (“the
15 ’024 Patent”) was duly and legally issued for “Guidewire Loaded Stent for
16 Delivery Through a Catheter.” A true and correct copy of the ’024 Patent is
17 attached hereto as Exhibit A and made a part hereof.

18 8. On February 4, 2014, United States Patent No. 8,641,748 B2 (“the
19 ’748 Patent”) was duly and legally issued for “Guidewire Loaded Stent for Delivery
20 Through a Catheter.” A true and correct copy of the ’748 Patent is attached hereto
21 as Exhibit B and made a part hereof.

22 9. The ’024 Patent and the ’748 Patent are sometimes referred to herein
23 collectively as “the Patents-in-Suit.”

24 10. As it pertains to this lawsuit, the Patents-in-Suit, very generally
25 speaking, relate to a system for delivery of a vascular prosthesis within tortuous
26 regions of the body having small diameter vessels, such as the peripheral or
27 intracranial vasculature.

FIRST CLAIM FOR RELIEF

(Patent Infringement)

11. Plaintiff repeats and realleges every allegation set forth above.

12. Plaintiff is the owner of the Patents-in-Suit with the exclusive right to enforce the Patents-in-Suit against infringers, and collect damages for all relevant times, including the right to prosecute this action.

13. Upon information and belief, and without authority, consent, right, or license, and in direct infringement of the Patents-in-Suit, Defendants manufacture, make, have made, use, practice, import, provide, supply, distribute, sell, and/or offer for sale products or systems that infringe one or more claims in the Patents-in-Suit. Such conduct constitutes, at a minimum, patent infringement under 35 U.S.C. § 271(a).

14. More specifically, Defendants, at a minimum, have directly infringed and continue to directly infringe at least Claim 18 of the '024 Patent and at least Claim 12 of the '748 Patent because they manufacture, make, have made, use, practice, import, provide, supply, distribute, sell, and/or offer for sale neurovascular intervention prostheses and delivery systems, including at least the Pipeline Embolization Device.

15. Defendants have had actual notice of the Patents-in-Suit at least as early as the receipt of this Complaint.

16. Plaintiff has been damaged as a result of Defendants' infringing conduct. Defendants are, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for their infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

17. Upon information and belief, Defendants will continue their infringement of the Patents-in-Suit unless enjoined by the Court. Defendants'

1 infringing conduct has caused Plaintiff irreparable harm and will continue to cause
2 such harm without the issuance of an injunction.

3 18. Plaintiff reserves the right to assert additional claims of the Patents-in-
4 Suit.

5 **PRAYER FOR RELIEF**

6 Plaintiff requests that the Court find in its favor and against Defendants, and
7 that the Court grant Plaintiff the following relief:

- 8 a. Judgment that one or more claims of the Patents-in-Suit have been
9 infringed, either literally and/or under the doctrine of equivalents, by
10 Defendants;
- 11 b. Judgment that Defendants account for and pay to Plaintiff all damages
12 to and costs incurred by Plaintiff because of their infringing activities
13 and other conduct complained of herein;
- 14 c. That Defendants, their officers, agents, servants and employees, and
15 those persons in active concert and participation with any of them, be
16 permanently enjoined from infringement of the Patents-in-Suit. In the
17 alternative, if the Court finds that an injunction is not warranted,
18 Plaintiff requests an award of post judgment royalty to compensate for
19 future infringement;
- 20 d. That Defendants' infringement be found to be willful from the time
21 Defendants became aware of the infringing nature of its services, and
22 that the Court award treble damages for the period of such willful
23 infringement pursuant to 35 U.S.C. § 284.
- 24 e. That Plaintiff be granted pre-judgment and post-judgment interest on
25 the damages caused to it by reason of Defendants' infringing activities
26 and other conduct complained of herein;
- 27
28

1 f. That this Court declare this an exceptional case and award Plaintiff its
2 reasonable attorney's fees and costs in accordance with 35 U.S.C.
3 § 285; and

4 g. That Plaintiff be granted such other and further relief as the Court may
5 deem just and proper under the circumstances.

6 **JURY DEMAND**

7 Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal
8 Rules of Civil Procedure.

9 DATED: September 4, 2014.

/s/
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