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11 NEVRO CORP.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 NEVRO CORP.,

16 Plaintiff,

17 v.

18 BOSTON SCIENTIFIC CORPORATION and
19 BOSTON SCIENTIFIC NEUROMODULATION
CORPORATION,

20 Defendants.

Case No. 3:16-cv-06830-VC

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT
AND DECLARATORY
JUDGMENT**

DEMAND FOR JURY TRIAL

21
22 **[CONFIDENTIAL APPENDIX ATTACHED AT END OF DOCUMENT CONTAINS
23 HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY MATERIAL]**
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25 **[REDACTED VERSION OF DOCUMENT SOUGHT TO SEALED]**
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1 Plaintiff Nevro Corp. (“Nevro”) complains and alleges as follows against Defendants
2 Boston Scientific Corporation and Boston Scientific Neuromodulation Corporation (collectively,
3 “Boston Scientific”).

4 THE NATURE OF THE ACTION

5 1. Chronic pain is a significant health problem that affects more Americans than
6 diabetes, heart disease, and cancer combined. Nevro’s pioneering spinal cord stimulation
7 technology dramatically improves the quality of life of individuals suffering from chronic pain.
8 Nevro brings this action to prevent Boston Scientific from infringing the patents that protect
9 Nevro’s technology.

10 2. Spinal cord stimulation (“SCS”) therapy attempts to relieve pain by delivering
11 short electrical pulses to the spinal cord through small electrodes that are implanted near the
12 spinal cord. While SCS technology has been on the market for decades, Nevro’s patented SCS
13 technology is significantly more effective than the traditional systems supplied by the rest of the
14 SCS industry.

15 3. Traditional SCS therapy delivers “low frequency” electrical pulse waveforms, on
16 the order of 50 to 60 Hz, to generate a sensation known as paresthesia. Paresthesia is commonly
17 experienced as a tingling, numbness, buzzing, or pins-and-needles sensation. The paresthesia is
18 used to mask, or cover, the patient’s area of pain. In theory, the patient feels the paresthesia and
19 feels less pain.

20 4. Traditional, paresthesia-based low frequency SCS therapy has significant failings
21 that reduce its efficacy and limit its applicability. It is not effective in a large portion of the
22 population, and even when it works, the pain relief is limited. Paresthesia also narrows the
23 applicability of SCS therapy because patients often experience uncomfortable stimulations or
24 even jolting sensations during movement, which can impair sleep or preclude driving a car while
25 receiving therapy.

26 5. Nevro was founded to provide a solution to chronic pain without the drawbacks of
27 traditional low frequency SCS therapy. After years of research and development work, Nevro has
28 brought to market an SCS therapy that differs dramatically from traditional SCS therapy. Nevro’s

1 SCS therapy uses a unique “high frequency” electrical waveform to provide pain relief *without*
2 generating paresthesia.

3 6. With their long history of providing paresthesia-based low frequency SCS therapy,
4 Defendant Boston Scientific and the rest of the SCS industry were highly skeptical that Nevro’s
5 paresthesia-free high frequency SCS therapy would provide clinically effective pain relief. But to
6 the industry’s surprise, Nevro’s paresthesia-free high frequency SCS therapy has been
7 scientifically proven to provide significantly superior pain relief to a significantly larger
8 population of patients. And it does so without the failings of paresthesia-based low frequency
9 SCS.

10 7. To obtain FDA approval, Nevro tested its paresthesia-free high frequency SCS
11 therapy against Defendant Boston Scientific’s commercial, paresthesia-based low frequency SCS
12 system in an FDA-monitored randomized, controlled, trial. The trial showed that Nevro’s
13 paresthesia-free high frequency SCS therapy is not only clinically effective without paresthesia,
14 but also is nearly *twice as effective* as Boston Scientific’s paresthesia-based low frequency SCS
15 therapy. As a result, when the FDA granted approval for Nevro’s high frequency SCS therapy on
16 May 8, 2015, it awarded Nevro’s SCS therapy a rare “superiority” label—allowing Nevro to
17 claim its high frequency SCS therapy is clinically superior to Boston Scientific’s paresthesia-
18 based low frequency SCS therapy.

19 8. What started out as skepticism has turned into copying. Witnessing Nevro’s
20 superior results and rapid success, Defendant Boston Scientific is now aggressively trying to
21 mimic Nevro’s SCS therapy. In 2014, eight years after Nevro’s founding, Boston Scientific
22 initiated a clinical trial in the United States, utilizing SCS devices that operate at the same 10,000
23 Hz frequency as the commercial embodiment of Nevro’s SCS system. These devices infringe
24 Nevro’s patents. Boston Scientific is also manufacturing infringing SCS devices in the United
25 States that operate at frequencies up to 10,000 Hz, and exporting these devices to Europe for
26 commercial use in at least six countries. Nevro filed this lawsuit less than two weeks after
27 learning that Boston Scientific has received CE Mark approval in Europe to market its SCS
28 devices at high frequencies of up to 10,000 Hz. Additional allegations relating to Boston

1 Scientific's United States activities, which support Nevro's claims for infringement and
2 declaratory relief are set forth in the Confidential Appendix attached to the version of this First
3 Amended Complaint that has been filed under seal ("Confidential Appendix") and is fully
4 incorporated by reference here. These facts cannot be described in the public record because
5 Boston Scientific has designated them confidential.

6 9. Boston Scientific is acutely aware that Nevro's paresthesia-free high frequency
7 technology is patent-protected. Just six days after Nevro received its FDA approval, Boston
8 Scientific filed two parallel petitions for *inter partes* review seeking to invalidate Nevro's U.S.
9 Patent No. 8,359,102 ("the '102 patent"). Further, Boston Scientific has admitted that it has been
10 aware of the patent portfolio relating to the patents-in-suit since at least December 2013.

11 10. Boston Scientific's attempt to invalidate Nevro's '102 patent definitively failed.
12 The Patent Trials and Appeal Board ("PTAB") found that Boston Scientific had not shown a
13 reasonable likelihood of success for invalidating any of Nevro's claims and refused to institute
14 either of the petitions for *inter partes* review. Undaunted, Boston Scientific has continued to
15 pursue commercialization of its paresthesia-free high frequency SCS system in blatant disregard
16 of Nevro's intellectual property rights.

17 PARTIES

18 11. Plaintiff Nevro is a Delaware corporation with its principal place of business at
19 1800 Bridge Pkwy, Redwood City, CA 94065.

20 12. Defendant Boston Scientific Corporation is a Delaware corporation with its
21 principal place of business at 300 Boston Scientific Way, Marlborough, MA 01752, and
22 Defendant Boston Scientific Neuromodulation Corporation is a Delaware corporation with its
23 principal place of business at 25155 Rye Canyon Loop, Valencia, California 91355.

24 JURISDICTION AND VENUE

25 13. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal
26 question) and § 1338(a) (patents).

27 14. This Court has personal jurisdiction over Boston Scientific, which has multiple
28 sales representatives and other employees in California, has filed litigation in this Court, and has

1 facilities in Fremont, San Jose, and Valencia, California. According to its website and product
 2 labeling, Boston Scientific's facility in Valencia, California develops, designs, and manufactures
 3 the implantable pulse generators used in its SCS systems, which are sold and distributed in the
 4 United States and worldwide.

5 15. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and 1400(b) in that
 6 Boston Scientific is subject to personal jurisdiction in this District. In addition, venue is proper
 7 because Nevro's principal place of business is in this District, and Nevro suffered harm in this
 8 District. Moreover, the majority of the inventive activity that resulted in the patented technology
 9 occurred in this District.

10 **INTRADISTRICT ASSIGNMENT**

11 16. Pursuant to Civil Local Rules 3-2(c) and 3-5(b), because this action is an
 12 intellectual property action, it is properly assigned to any of the divisions in this District.

13 **BACKGROUND FACTS**

14 **Nevro's Pioneering Technology**

15 17. Chronic pain is often treated with opioid drugs. But there is little evidence that
 16 opioids provide long term relief for patients, and they frequently cause more problems than they
 17 solve. It is well known that the use of opioid drugs, particularly over a sustained period of time,
 18 is fraught with risk and has significant side effects. SCS technology was born of the promise of
 19 providing a solution to chronic pain without the use of drugs.

20 18. Nevro was founded in 2006 to develop a novel SCS technology for the treatment
 21 of chronic pain. Nevro's SCS system, known as the Senza® system, utilizes Nevro's unique and
 22 patented HF10™ therapy. Nevro's HF10™ therapy employs a much higher frequency than
 23 traditional "low frequency" SCS systems, along with a unique waveform and treatment algorithm.
 24 In its commercial embodiment, Nevro's Senza® system provides electrical pulses to the spinal
 25 cord at a rate of 10,000 pulses per second (10,000 Hz or 10 kHz), as compared to traditional SCS
 26 systems like Boston Scientific's, which utilize low frequency stimulation, typically between 50
 27 Hz and 60 Hz. The Senza® system, with its related subcomponents, is Nevro's only product.
 28

1 19. Unlike traditional low frequency SCS therapy, Nevro's Senza® system and
 2 HF10™ therapy provides pain relief *without* generating paresthesia. Nevro's advances represent
 3 a paradigm shift in SCS therapy. Before FDA approval of Nevro's Senza® system, every
 4 commercial SCS system sought to create paresthesia in the patient by using low frequency
 5 stimulation waveforms. Every commercial SCS system sought to use that paresthesia to overlap
 6 and mask pain in the patient. And virtually all of the development in the SCS industry for
 7 decades has been directed towards methods of improving paresthesia delivery and the mapping of
 8 paresthesia over a patient's area of pain. As a recent peer-reviewed publication concerning
 9 Nevro's SCS therapy stated: "Over the last 40 [years], the primary focus of innovation for SCS
 10 for chronic pain has been to improve the reliability of overlapping paresthesias with distribution
 11 of pain."¹

12 20. Like the rest of the SCS industry, Defendant Boston Scientific emphasized the
 13 importance of creating paresthesia for SCS therapy. For example, in a Boston Scientific
 14 sponsored study, one of its own co-author scientists asserted that "[p]atient-perceived concordant
 15 paresthesia overlapping the area of pain is *essential* for success of this therapy."²

16 21. Because Nevro's approach was fundamentally different from that of others in the
 17 market, the FDA put Nevro to a rigorous test. To obtain FDA approval, Nevro was required to
 18 prove that its therapy is paresthesia-free and that its therapy was clinically effective even though
 19 it is paresthesia-free. To definitely establish its results, the FDA required Nevro to test its
 20 Senza® system in an FDA-monitored randomized controlled trial in a head-to-head comparison
 21 against a commercially available low frequency SCS system (the "Controlled Trial"). Boston
 22 Scientific's Precision® SCS system was chosen as the commercially available comparator for the
 23

24 ¹ Leonardo Kapural et al., "Novel 10-kHz High-frequency Therapy (HF10 Therapy) Is
 25 Superior to Traditional Low-frequency Spinal Cord Stimulation for the Treatment of Chronic
 26 Back and Leg Pain: The SENZA-RCT Randomized Controlled Trial," *Anesthesiology*, Vol. 123
 No. 4 (October 2015) at 1364.

27 ² Oakley et al., "A New Spinal Cord Stimulation System Effectively Relieves Chronic,
 28 Intractable Pain: A Multicenter Prospective Clinical Study," *Neuromodulation*, Vol. 10 No. 3
 (2007) at 264.

1 Controlled Trial. In the Controlled Trial, Boston’s SCS devices were programmed by Boston
2 Scientific clinical engineers and/or sales representatives and implanted by physicians who
3 regularly work with them. In a landmark finding, the Controlled Trial found Nevro’s Senza®
4 system and HF10™ therapy to be nearly twice as effective as Boston Scientific’s paresthesia-
5 based low frequency SCS system in providing pain relief.

6 22. The Senza® system was approved by the FDA on May 8, 2015, for sale in the
7 United States. The FDA recognized Nevro’s pioneering technology by approving Nevro’s
8 Senza® system with a “superiority” labeling—a designation that is rare in the medical device
9 field. The superiority labeling indicates that Nevro’s Senza® system and HF10™ therapy
10 provides statistically superior efficacy when compared to Boston Scientific’s paresthesia-based
11 low frequency SCS therapy.

12 23. Nevro defied the conventional wisdom and demonstrated that effective pain relief
13 could be achieved without paresthesia. Nevro’s Senza® system provides more effective pain
14 relief to a greater percentage of patients. Traditional, low frequency SCS therapy has limited use.
15 For example, patients with predominant back pain are seldom seen as good candidates for
16 traditional SCS therapy because it is anatomically difficult to cover the back with paresthesia. In
17 contrast, Nevro’s Senza® system and HF10™ therapy provide significant and sustained pain
18 relief for *both* back and leg pain.

19 24. Nevro’s Senza® system and HF10™ therapy has other significant advantages over
20 paresthesia-based low frequency SCS systems as well. Paresthesia-based low frequency SCS has
21 a cumbersome operating procedure that requires waking a patient during the implantation
22 procedure so that the physician can position the paresthesia to overlap with the area of pain. In
23 contrast, because Nevro’s therapy does not require any intraoperative mapping of paresthesia, a
24 patient does not need to be awakened for questioning during the surgical implantation procedure.
25 This results in a much more predictable implantation procedure, and a much better patient
26 experience, which creates the potential for greater patient and physician adoption.

27 25. Importantly, Nevro’s Senza® system and HF10™ therapy also provides patients
28 with greater freedom of movement and activity. Paresthesia-based SCS therapies can cause

1 unexpected jolts or shocks when a patient bends, twists, or changes posture, and must be turned
2 off while driving or sleeping. Nevro's HF10™ SCS therapy does not have any such restriction.
3 Traditional low frequency SCS patients who have switched to Nevro's device have found it life-
4 changing, as they have become truly pain and paresthesia-free for the first time in years. In the
5 Controlled Trial, none of the patients receiving Nevro's HF10 therapy experienced induced
6 paresthesia or reported stimulation-related discomfort. In comparison, 46.5% of patients who
7 received Boston Scientific's low frequency paresthesia-based therapy reported uncomfortable
8 stimulation.³

9 26. Because of the superiority of Nevro's Senza® system over traditional SCS
10 systems, Medicare reimbursement in the United States is higher for the Senza® system than for
11 any of Nevro's competitors. The Centers for Medicare and Medicaid ("CMS") determined that
12 hospitals and clinics would receive this higher reimbursement after reviewing the clinical data on
13 HF10™ therapy. The procedure that CMS followed to provide for this additional reimbursement
14 has been employed only about a dozen times in the past ten years across the entire medical device
15 field.

16 27. Although Nevro has only been in the U.S. market since May 2015, it has seen
17 early success in breaking into the U.S. SCS market. The SCS market is dominated by three large
18 competitors: Medtronic, St. Jude, and Boston Scientific. Each of these companies has an
19 established market position, reinforced by extensive marketing and promotional infrastructure,
20 teams of sales representatives, and longstanding connections and relationships with hospitals and
21 doctors in the SCS field and in many other areas. Each of these companies leverages its multiple
22 strengths to keep a tight grip on the SCS market. The sole reason Nevro has been able to break
23 into the SCS market has been because it has unique—and demonstrably superior—SCS
24 technology.

25
26 ³ Leonardo Kapural et al., "Novel 10-kHz High-frequency Therapy (HF10 Therapy) Is
27 Superior to Traditional Low-frequency Spinal Cord Stimulation for the Treatment of Chronic
28 Back and Leg Pain: The SENZA-RCT Randomized Controlled Trial," *Anesthesiology*, Vol. 123
No. 4 (October 2015) at 1367.

1 28. Nevro has protected its innovative SCS technology through an extensive patent
2 portfolio of more than 100 issued U.S. and international patents, including the patents asserted in
3 this action. Nevro's patents cover many aspects of its pioneering technology, including
4 implantable high frequency SCS systems and devices, methods of treating patients with
5 paresthesia-free systems and devices, and methods of programming such systems and devices.

6 **Boston Scientific Begins To Pursue A High Frequency System**

7 29. Boston Scientific is a supplier of paresthesia-based low frequency SCS systems.
8 Boston Scientific is well aware of Nevro's role in pioneering paresthesia-free high frequency SCS
9 technology. The FDA-monitored clinical study that demonstrated the superiority of Nevro's
10 Senza® system used Boston Scientific's low frequency SCS devices as the comparator. Those
11 devices were implanted and monitored by physicians who regularly work with Boston Scientific
12 devices and programmed by Boston Scientific's clinical engineers and/or sales representatives.

13 30. After seeing the success of Nevro's Senza® system in the Australian and
14 European markets, and faced with the growing evidence of the superior performance of Nevro's
15 Senza® system in the FDA clinical study against Boston Scientific's own products, Boston
16 Scientific aggressively began pursuing plans to copy Nevro's technology and launch a competing
17 paresthesia-free high frequency SCS system.

18 31. Boston Scientific launched a clinical trial called "ACCELERATE" in March 2014
19 to evaluate the safety and effectiveness of paresthesia-free high frequency SCS therapy using
20 Boston Scientific's Precision SCS system as part of the process of seeking FDA approval.
21 Notably, the system that is the subject of the ACCELERATE study operates at the same 10,000
22 Hz frequency as Nevro's commercial paresthesia-free HF10™ therapy. The system of the
23 ACCELERATE study is covered by many claims in Nevro's patent portfolio, including the
24 patents in this action. The ACCELERATE study was scheduled for completion in October 2016.

25 **Boston Scientific Unsuccessfully Challenges Nevro's Patent Protection**

26 32. Boston Scientific is well aware of Nevro's extensive patent portfolio protecting
27 Nevro's innovative technology.
28

33. On May 14, 2015, just six days after the FDA approved Nevro's Senza® system for paresthesia-free high frequency SCS therapy, Boston Scientific filed two petitions with the U.S. Patent and Trademark Office ("PTO") seeking to challenge the validity of Nevro's U.S. Patent No. 8,359,102 ("the '102 patent") through *inter partes* review ("IPR") proceedings. The petitions alleged that sixteen claims of the '102 patent were invalid in light of the prior art. For example, Boston challenged the validity of claim 1 of the '102 patent, which claims:

1. A method for treating a patient, comprising:

delivering or instructing delivery of an electrical signal to the patient's spinal cord via at least one implantable signal delivery device; and

wherein the electrical signal has a frequency of from about 1.5 kHz to about 50 kHz and does not create paresthesia in the patient.

34. Between its two petitions, Boston Scientific raised four allegedly anticipatory grounds for invalidity, and over 25 obviousness allegations using various combinations of references. Yet both of Boston Scientific's petitions were decisively denied in their entirety. The PTO declined to institute any proceedings, finding that Boston Scientific failed to establish a reasonable likelihood of showing that even one of the sixteen challenged claims of Nevro's patent was invalid.

Boston Scientific Continues To Press Forward With Its High Frequency System

35. Despite the denial of its IPR petitions, Boston Scientific has continued to pursue its plans to market a paresthesia-free high frequency SCS system. Boston Scientific publicly announced that it would press forward with these plans regardless of its failed challenge against Nevro's patents.

36. At the Piper Jaffray Health Care Conference in December 2015, Boston Scientific's Vice President of Investor Relations, Susan Lisa, stated the company's intentions as follows:

Susan Lisa: So it was announced yesterday by the patent office that we – there are requests for an inter-party review with respect to a competitors patents and high frequency space for spinal cord stimulation. The request for that IPR review has been denied. . . . but I can say no change to our business strategy going forward in

1 spinal cord stem

2 Q: Okay. And you are moving forward with the 10,000 hertz trial,
3 so, I mean, I think that's the statement maybe in and of itself.

4 Susan Lisa: That's right. That's our ACCELERATE trial that is
5 looking at the 10,000 hertz trial that we'll continue to enroll, and
6 we'd expect to see it complete by the end of 2016.

7 37. At the Morgan Stanley Global Healthcare Conference in September 2016, Boston
8 Scientific's CEO Mike Mahoney confirmed that Boston Scientific is continuing to pursue its
9 plans for a paresthesia-free high frequency SCS system, and stated that Boston Scientific
10 expected to release the data from the ACCELERATE study before the end of the year:

11 Q: . . . [A]re we going to get ACCELERATE data at NANS in
12 January? And if the data is good are you going to launch this
13 product in the US?

14 Mike Mahoney: . . . In terms of the ACCELERATE data we will
15 disclose more of our ACCELERATE data and next steps in that
16 area by the end of – by fourth quarter end of this year. . . . Likely
17 you will hear more from us before NANS.

18 38. In its October 26, 2016 earnings call, Boston Scientific moved that date back
19 slightly, stating that it would provide “an update on the ACCELERATE trial” and “additional
20 insight” in its fourth quarter 2016 earnings call, which was scheduled to take place in February
21 2017.

22 39. In the February 2017 earnings call, contrary to its earlier announcements, Boston
23 Scientific announced that it was extending enrollment in the ACCELERATE trial to the end of
24 2017, with results expected in mid-2018. BSC's extension of the ACCELERATE trial, and the
25 current status of that trial, are discussed in the Confidential Appendix.

26 **Boston Scientific Is Already Making And Selling High Frequency Capable Systems**

27 40. In the meantime, although Boston Scientific has not yet received FDA approval,
28 Boston Scientific is already manufacturing and/or selling infringing SCS systems in the United
States that are capable of operating at frequencies up to 10,000 Hz.

1 41. Nevro learned less than two weeks prior to filing this action that Boston Scientific
2 has received CE Mark approval for commercial sale of paresthesia-free high frequency SCS
3 systems in Europe.

4 42. Boston Scientific's SCS devices are manufactured in the United States, at its
5 facility in Valencia, California.

6 43. Boston Scientific is selling these devices in at least Germany, Italy, Netherlands,
7 Spain, Switzerland, and the United Kingdom, marketing them as Precision SCS Systems with
8 MultiWave™ Technology. According to Boston Scientific, "[t]he Precision SCS System with
9 MultiWave Technology can be programmed by a user to provide stimulation frequencies up to
10 10,000 Hz" and "[s]timulation frequencies between 2,000Hz and 10,000Hz are used with a pulse
11 width of 20-240 µsec and an amplitude of 0-9mA."

12 44. Boston Scientific is also participating in a multi-center National Health Services
13 ("NHS") study in the United Kingdom called VELOCITY, employing Boston Scientific's
14 Precision SCS system. The research summary on the NHS site states that the study will be
15 conducted "using the commercially available Boston Scientific (BSC) PRECISION Spinal Cord
16 Stimulator System with MultiWave Technology" and that:

17 Up to 60 patients in up to 10 sites in Europe will be enrolled and
18 followed up to 12 months after device activation. Eligible subjects,
19 following written consent will receive the commercial stimulation
20 device programmed at 10KHz [10,000 Hz] as part of their standard
21 of care.

22 45. The Dutch Central Committee on Research Involving Human Subjects (CCMO)
23 recently approved the VELOCITY study in the Netherlands. The research summary on the
24 CCMO website similarly states that the study is using Boston Scientific's Precision SCS System
25 with MultiWave Technology and that this system "is capable of providing stimulation at rates up
26 to 10 kHz [10,000 Hz]." The summary also states: "*This is a post CE mark study, within the*
27 *indications for use.*" (emphasis added).

28 46. Boston Scientific is also participating in a separate clinical trial in the United
Kingdom called "PROCO" using its Precision SCS system to evaluate stimulation pulse rate on

1 clinical outcomes in patients whose back pain is controlled by 10,000 Hz frequency. The
2 PROCO study began in June 2015 and is scheduled for completion in August 2017.

3 47. It also appears that Boston Scientific is already manufacturing SCS systems that
4 are capable of operating at high frequencies (up to 10,000 Hz) for sale within the United States.
5 Boston Scientific submitted product specifications to the National Institutes of Health (“NIH”) in
6 September 2015 listing the Boston Scientific products available for the NIH BRAIN Initiative.
7 The list of products included Boston Scientific’s Precision MultiWave™ SCS system, which the
8 specifications described as similar to the Precision SCS system “but capable of stimulation
9 frequencies up to 10kHz [10,000 Hz].” Boston Scientific describes its MultiWave technology as
10 enabling the delivery of “higher rates,” and provides a chart indicating that the Precision SCS
11 System with MultiWave has the frequency, amplitude, and pulse width parameters described in
12 paragraph 43 above. Additional relevant facts are set forth in the Confidential Appendix.

13 48. Boston Scientific markets its Precision Spectra, Precision Montage, and Precision
14 Novi SCS systems commercially as containing MultiWave technology. For example, in a June 4,
15 2015 Press Release, Boston Scientific proclaimed that “Precision Novi is a MultiWave™
16 Platform capable of delivering a variety of field shapes and waveforms with or without
17 paresthesia, including burst and higher rate frequencies.”⁴ The press release indicates on its face
18 that it was issued from Boston Scientific’s headquarters in Marlborough, Massachusetts.

19 49. Boston Scientific has admitted that the system being used in the ACCELERATE
20 study is the Precision™ SCS System with MultiWave technology, the same system that is
21 commercially sold and used in Europe. These devices are being programmed by Boston
22 Scientific representatives.

23
24
25 ⁴ In this action, Boston Scientific has asserted that there are two different forms of
26 MultiWave technology, one of which operates at frequencies of between 2,000 and 10,000 Hz, as
27 described above, and one of which operates at frequencies below 1,200 Hz. Boston Scientific’s
28 nomenclature is unclear and inconsistent. Even if they do not currently have the capability to
operate at frequencies above 2,000 Hz, Nevro believes that these SCS systems will be modified to
do so.

1 50. Boston Scientific has allowed patients who had completed their participation in the
2 ACCELERATE Study to continue to receive high frequency therapy using the Precision SCS
3 System with MultiWave Technology and estimates that approximately 50% to 70% of patients
4 chose to do so. Boston Scientific states that it has provided programming support to these
5 patients on an as-requested basis.

6 51. Additional allegations relating to Boston Scientific's U.S. activities are set forth in
7 the Confidential Appendix.

8 52. In addition, multiple Boston Scientific sales representatives across the country
9 have been promoting Boston Scientific's upcoming high frequency device to discourage
10 physicians and health care providers from using Nevro's Senza SCS device by telling them that
11 Boston Scientific imminently will be launching its own high frequency device. Just since this
12 lawsuit was filed, Nevro has learned that such representations were made to physicians and/or
13 health care providers by at least Boston Scientific sales representatives Mitch D'Agastino, John
14 Taylor, Sean Dugan, Michael Canning, and Wes Layton.

15 53. Boston Scientific has been conducting its infringing activities in knowing violation
16 of Nevro's patents that cover these systems.

17 54. Nevro will be irreparably harmed if Boston Scientific is permitted to manufacture,
18 use, offer to sell, and sell a competing, infringing device. Nevro will be forced to compete
19 against the very technology that it spent years researching, developing and bringing to market.
20 Nevro does not license its technology to anyone else. This differentiating technology, developed
21 in the face of the skepticism of Boston Scientific and the SCS industry, has been the key to
22 Nevro's ability to break into a market that has been dominated for decades by three of the largest
23 medical device companies in the world. Nevro's marketing strategy has been built around
24 educating physicians, health care providers and consumers about the superior performance of its
25 Senza® system and paresthesia-free high frequency SCS, in comparison with traditional
26 paresthesia-based low frequency SCS therapy. If Boston Scientific is permitted to sell an
27 infringing paresthesia-free device, Nevro will lose its key distinguishing feature, and other
28 companies will feel free to launch their own competing, infringing devices.

1 55. Nevro believes that, when it does engage in the full commercial launch of its high
2 frequency paresthesia-free SCS systems in the United States, Boston Scientific will be able to
3 immediately launch on a widescale basis.

4 56. Nevro will accordingly seek an order from this Court preliminarily and
5 permanently enjoining Boston Scientific from infringing Nevro's patents.

6 **FIRST CAUSE OF ACTION**

7 (Infringement of U.S. Patent No. 8,712,533)

8 57. Nevro incorporates by reference the allegations contained in paragraphs 1-56
9 above, and the Confidential Appendix.

10 58. Nevro is the owner of all right, title, and interest in and to U.S. Patent No.
11 8,712,533 (the '533 patent). The '533 patent issued on April 29, 2014 and is entitled "Selective
12 High Frequency Spinal Cord Modulation for Inhibiting Pain with Reduced Side Effects, and
13 Associated Systems and Methods." A copy of the '533 patent is attached to the original
14 Complaint as Exhibit A.

15 59. The claims of the '533 patent cover implantable SCS systems and devices capable
16 of providing high frequency SCS therapy without creating paresthesia. For example, claim 1 of
17 the '533 patent is directed to an SCS system that has a signal generator capable of generating high
18 frequency therapy signals in a range from 1.5 kHz to 100 kHz without creating paresthesia, and
19 an implantable signal delivery device electrically coupleable to the signal generator and capable
20 of delivering the therapy signal to the patient's spinal cord region.

21 60. Boston Scientific has infringed, and will continue to infringe, the '533 patent by
22 manufacturing, using, selling and/or offering to sell in the United States SCS systems that have a
23 signal generator capable of generating high frequency therapy signals in a range from 1.5 kHz to
24 100 kHz without creating paresthesia, and an implantable signal delivery device electrically
25 coupleable to the signal generator and capable of delivering the therapy signal to the patient's
26 spinal cord region. Boston Scientific's manufacture, use, offer to sell and/or sale of these systems
27 infringes one or more claims of the '533 patent, including at least claim 1, literally or under the
28 doctrine of equivalents, and violate 35 U.S.C. § 271.

1 61. Boston Scientific has engaged in substantial preparation and taken concrete steps
2 with the intent to conduct these infringing activities. As discussed in more detail above, Boston
3 Scientific is already manufacturing SCS systems designed to perform at frequencies of up to
4 10,000 Hz in the United States for commercial use and sale in Europe. Additional information is
5 set forth in the Confidential Appendix. Boston Scientific sales representatives are already
6 promoting Boston Scientific's upcoming high frequency device to U.S. physicians, representing
7 that Boston Scientific will be imminently launching its own high frequency device. As such,
8 Nevro believes that Boston Scientific will immediately begin to further directly infringe the '533
9 patent on a wider scale upon receiving FDA approval.

10 62. Boston Scientific knows of or has been willfully blind to the existence of the '533
11 patent. The '533 patent is the parent of the '102 patent. Boston Scientific has already
12 unsuccessfully challenged the validity of sixteen claims of Nevro's '102 patent covering Nevro's
13 high frequency paresthesia-free SCS system by filing two IPR petitions with the PTO. Although
14 both petitions were denied by the PTO, Boston Scientific publicly announced at the December
15 2015 Piper Jaffray Health Conference that it intended to press forward nonetheless, and has
16 continued with the ACCELERATE study and with manufacturing and/or selling infringing
17 10,000 Hz-capable devices. Boston Scientific is also formally opposing Nevro's European
18 patents in Europe.

19 63. Boston Scientific has intentionally instructed, and will intentionally instruct,
20 others, including doctors and health care providers, to use its high frequency SCS in a manner
21 that infringes the '533 patent, literally or under the doctrine of equivalents. In the SCS industry,
22 the clinical engineers and/or sales representatives of the device manufacturer normally are present
23 in the operating room and will program the SCS device for the operation, including by setting the
24 parameters for the frequency, amplitude and pulse width of the electronic signal to be delivered
25 by the device. Boston Scientific knows or has been willfully blind to the fact that such actions are
26 inducing, and will induce, infringement. The foregoing actions by Boston Scientific constitute,
27 and will constitute, induced infringement of one or more claims of the '533 patent in violation of
28 35 U.S.C. § 271(b).

1 64. Moreover, Boston Scientific is continuing to program patients who have
2 completed their participation in the ACCELERATE study to provide paresthesia-free high
3 frequency SCS therapy, and will further induce infringement of the '533 patent by its actions.

4 65. Boston Scientific has supplied from the United States all or a substantial portion of
5 the components of its infringing SCS systems and induced the combination of such components
6 outside of the United States in a manner that would infringe the '533 patent if it occurred within
7 the United States. The foregoing actions by Boston Scientific constitute infringement of one or
8 more claims of the '533 patent in violation of 35 U.S.C. § 271(f).

9 66. Additional allegations relating to Boston Scientific's United States activities which
10 support this claim for infringement are set forth in the Confidential Appendix.

11 67. Boston Scientific's infringement is without the consent or other authority of
12 Nevro. Boston Scientific is not licensed under the '533 patent.

13 68. An actual and justiciable controversy exists between Nevro and Boston Scientific
14 regarding infringement of the '533 patent. Nevro is entitled to a declaration that Boston
15 Scientific's current and future commercial manufacture, use, offer for sale, sale, and/or
16 importation of high frequency SCS systems does and will infringe the '533 patent, directly and
17 indirectly.

18 69. Boston Scientific has actual and constructive notice of the '533 patent. Boston
19 Scientific's actions are willful and deliberate, and render this an exceptional case under 35 U.S.C.
20 § 285.

21 70. Nevro has been and will be damaged by Boston Scientific's acts in an amount as
22 yet unknown. Nevro has no adequate legal remedy. Unless enjoined by this Court, Boston
23 Scientific's continued acts of infringement will cause Nevro substantial and irreparable harm.
24 Under 35 U.S.C. § 283, Nevro is entitled to an injunction barring Boston Scientific from further
25 infringement of the '533 patent.

SECOND CAUSE OF ACTION

(Infringement of U.S. Patent No. 9,327,125)

71. Nevro incorporates by reference the allegations contained in paragraphs 1-70 above, and the Confidential Appendix.

72. Nevro is the owner of all right, title, and interest in and to U.S. Patent No. 9,327,125 (the '125 patent). The '125 patent issued on May 3, 2016, and is entitled "Selective High Frequency Spinal Cord Modulation for Inhibiting Pain with Reduced Side Effects, and Associated Systems and Methods." A copy of the '125 patent is attached to the original Complaint as Exhibit B.

73. The claims of the '125 patent cover implantable SCS systems that include means for providing high frequency SCS therapy without creating paresthesia. For example, claim 12 of the '125 patent is directed to an SCS system that includes means of generating a paresthesia-free therapy signal in a range from 1.5 kHz to 100 kHz and implantable means of delivering the therapy signal to the patient's spinal cord.

74. Boston Scientific has infringed, and will continue to infringe, the '125 patent by manufacturing, selling and/or offering to sell in the United States SCS systems that include means of generating a paresthesia-free therapy signal in a range from 1.5 kHz to 100 kHz and implantable means of delivering the therapy signal to the patient's spinal cord. Boston Scientific's manufacture and/or sale of these systems infringes one or more claims of the '125 patent, including at least claim 12, literally or under the doctrine of equivalents, and violate 35 U.S.C. § 271.

75. Boston Scientific has engaged in substantial preparation and taken concrete steps with the intent to conduct these infringing activities. As discussed in more detail above, Boston Scientific is already manufacturing SCS systems designed to perform at frequencies of up to 10,000 Hz in the United States for commercial use and sale in Europe. Additional information is set forth in the Confidential Appendix. Boston Scientific sales representatives are already promoting Boston Scientific's upcoming high frequency device to U.S. physicians, representing that Boston Scientific will be imminently launching its own high frequency device. As such,

1 Nevro believes that Boston Scientific will immediately begin to further directly infringe the '125
2 patent on a wider scale upon receiving FDA approval.

3 76. Boston Scientific knows of or has been willfully blind to the existence of the '125
4 patent. The '125 patent is in the same patent family as the '102 patent. Boston Scientific has
5 already unsuccessfully challenged the validity of sixteen claims of Nevro's '102 patent covering
6 Nevro's high frequency paresthesia-free SCS system by filing two IPR petitions with the PTO.
7 Although both petitions were denied by the PTO, Boston Scientific publicly announced at the
8 December 2015 Piper Jaffray Health Conference that it intended to press forward nonetheless,
9 and has continued with the ACCELERATE study and with manufacturing and/or selling
10 infringing 10,000 Hz-capable devices. Boston Scientific is also formally opposing Nevro's
11 European patents in Europe.

12 77. Boston Scientific has intentionally instructed, and will intentionally instruct,
13 others, including doctors and health care providers, to use its high frequency SCS in a manner
14 that infringes the '125 patent, literally or under the doctrine of equivalents. In the SCS industry,
15 the clinical engineers and/or sales representatives of the device manufacturer normally are present
16 in the operating room and will program the SCS device for the operation, including by setting the
17 parameters for the frequency, amplitude and pulse width of the electronic signal to be delivered
18 by the device. Boston Scientific knows or has been willfully blind to the fact that such actions are
19 inducing, and will induce, infringement. The foregoing actions by Boston Scientific constitute,
20 and will constitute, induced infringement of one or more claims of the '125 patent in violation of
21 35 U.S.C. § 271(b).

22 78. Moreover, Boston Scientific is continuing to program patients who have
23 completed their participation in the ACCELERATE study to provide paresthesia-free high
24 frequency SCS therapy, and will further induce infringement of the '125 patent by its actions.

25 79. Boston Scientific has supplied from the United States all or a substantial portion of
26 the components of its infringing SCS systems and induced the combination of such components
27 outside of the United States in a manner that would infringe the '125 patent if it occurred within
28

1 the United States. The foregoing actions by Boston Scientific constitute infringement of one or
 2 more claims of the '125 patent in violation of 35 U.S.C. § 271(f).

3 80. Additional allegations relating to Boston Scientific's United States activities which
 4 support this claim for infringement are set forth in the Confidential Appendix.

5 81. Boston Scientific's infringement is without the consent or other authority of
 6 Nevro. Boston Scientific is not licensed under the '125 patent.

7 82. An actual and justiciable controversy exists between Nevro and Boston Scientific
 8 regarding infringement of the '125 patent. Nevro is entitled to a declaration that Boston
 9 Scientific's current and future commercial manufacture, use, offer for sale, sale, and/or
 10 importation of high frequency SCS systems does and will infringe the '125 patent, directly and
 11 indirectly.

12 83. Boston Scientific has actual and constructive notice of the '125 patent. Boston
 13 Scientific's actions are willful and deliberate, and render this an exceptional case under 35 U.S.C.
 14 § 285.

15 84. Nevro has been and will be damaged by Boston Scientific's acts in an amount as
 16 yet unknown. Nevro has no adequate legal remedy. Unless enjoined by this Court, Boston
 17 Scientific's continued acts of infringement will cause Nevro substantial and irreparable harm.
 18 Under 35 U.S.C. § 283, Nevro is entitled to an injunction barring Boston Scientific from further
 19 infringement of the '125 patent.

20 **THIRD CAUSE OF ACTION**

21 (Infringement of U.S. Patent No. 8,359,102)

22 85. Nevro incorporates by reference the allegations contained in paragraphs 1-84
 23 above, and the Confidential Appendix.

24 86. Nevro is the owner of all right, title, and interest in and to the '102 patent. The
 25 '102 patent issued on January 22, 2013, and is entitled "Selective High Frequency Spinal Cord
 26 Modulation for Inhibiting Pain with Reduced Side Effects, and Associated Systems and
 27 Methods." A copy of the '102 patent is attached to the original Complaint as Exhibit C.
 28

1 87. The claims of the '102 patent cover methods of treating patients with high
2 frequency SCS without creating paresthesia. For example, claim 1 of the '102 patent is directed
3 to a method for treating a patient with an implantable electrode and high frequency electrical
4 signals (from about 1,500 Hz to about 50,000 Hz) without creating paresthesia in the patient.

5 88. Boston Scientific has infringed and continues to infringe the '102 patent by using,
6 offering to sell, and/or selling in the United States SCS systems and methods for treating a patient
7 that have an implantable electrode high frequency electrical signals above 1,500 Hz and up to
8 10,000 Hz without creating paresthesia in the patient. Boston Scientific's use, offer to sell, and/or
9 sale of these systems and methods infringes one or more claims of the '102 patent, literally or
10 under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

11 89. Boston Scientific knows of the existence of the '102 patent. Nevro believes that
12 Boston Scientific has intentionally instructed others, including doctors and health care providers,
13 to use its high frequency SCS in a manner that infringes the '102 patent. In the SCS industry, the
14 clinical engineers and/or sales representatives of the device manufacturer normally are present in
15 the operating room and will program the SCS device for the operation, including by setting the
16 parameters for the frequency, amplitude and pulse width of the electronic signal to be delivered
17 by the device. Boston Scientific knows or has been willfully blind to the fact that such actions are
18 induced infringement. The foregoing actions by Boston Scientific constitute induced
19 infringement of one or more claims of the '102 patent in violation of 35 U.S.C. § 271(b) and
20 (f)(1).

21 90. Boston Scientific has supplied from the United States all or a substantial portion of
22 the components of its infringing SCS systems and induced the combination of such components
23 outside of the United States in a manner that would infringe the '102 patent if it occurred within
24 the United States. The foregoing actions by Boston Scientific constitute infringement of one or
25 more claims of the '102 patent in violation of 35 U.S.C. § 271(f).

26 91. Additional allegations relating to Boston Scientific's United States activities which
27 support this claim for infringement are set forth in the Confidential Appendix.
28

1 As such, Nevro believes that Boston Scientific will immediately begin to further directly infringe
2 the '102 patent on a wider scale upon receiving FDA approval.

3 98. In addition to directly infringing, Nevro believes that upon FDA approval and
4 commercial launch of Boston Scientific's infringing paresthesia-free high frequency SCS
5 systems, Boston Scientific will further induce infringement of the '102 patent by inducing others
6 to directly infringe the '102 patent, literally or under the doctrine of equivalents.

7 99. Moreover, Boston Scientific is continuing to program patients who have
8 completed their participation in the ACCELERATE study to provide paresthesia-free high
9 frequency SCS therapy, and will further directly infringe and induce infringement of the '102
10 patent by its actions.

11 100. Boston Scientific knows of the existence of the '102 patent. Nevro believes that
12 Boston Scientific has intentionally made substantial preparation to and will instruct others,
13 including doctors and health care providers, to use its high frequency SCS in a manner that
14 infringes the '102 patent. In the SCS industry, the clinical engineers and/or sales representatives
15 of the device manufacturer normally are present in the operating room and will program the SCS
16 device for the operation, including by setting the parameters for the frequency, amplitude and
17 pulse width of the electronic signal to be delivered by the device. Boston Scientific knows or is
18 willfully blind to the fact that such actions will induce infringement. The foregoing actions by
19 Boston Scientific will constitute induced infringement of one or more claims of the '102 patent in
20 violation of 35 U.S.C. § 271(b) and (f)(1).

21 101. An actual and justiciable controversy exists between Nevro and Boston Scientific
22 regarding infringement of the '102 patent. Boston Scientific has already unsuccessfully
23 challenged the validity of sixteen claims of Nevro's '102 patent covering Nevro's high frequency
24 paresthesia-free SCS system by filing two IPR petitions with the Patent and Trademark Office.
25 Although both petitions were denied by the PTO, Boston Scientific announced at the December
26 2015 Piper Jaffray Health conference that it intended to press forward nonetheless, and has
27 continued with the ACCELERATE study and with manufacturing and/or selling infringing
28

1 10,000 Hz-capable devices nonetheless. Boston Scientific is also formally opposing Nevro's
2 European patents in Europe.

3 102. Additional allegations relating to Boston Scientific's United States activities which
4 support this claim for declaratory relief are set forth in the Confidential Appendix.

5 103. Boston Scientific's imminent infringement will be without the consent or other
6 authority of Nevro. Boston Scientific is not licensed under the '102 patent.

7 104. Nevro is entitled to a declaratory judgment that Boston Scientific's future
8 commercial manufacture, use, offer for sale, sale, and/or importation of high frequency SCS
9 systems does and will infringe the '102 patent, directly and indirectly.

10 105. Boston Scientific has actual notice of the '102 patent. Boston Scientific's actions
11 are willful and deliberate, and render this an exceptional case under 35 U.S.C. § 285.

12 106. Nevro has been and will be damaged by Boston Scientific's acts in an amount as
13 yet unknown. Nevro has no adequate legal remedy. Unless enjoined by this Court, Boston
14 Scientific's imminent infringement will cause Nevro substantial and irreparable harm. Under 35
15 U.S.C. § 283, Nevro is entitled to an injunction barring Boston Scientific from further
16 infringement of the '102 patent.

17 **FIFTH CAUSE OF ACTION**

18 (Infringement of U.S. Patent No. 9,480,842)

19 107. Nevro incorporates by reference the allegations contained in paragraphs 1-106
20 above, and the Confidential Appendix.

21 108. Nevro is the owner of all right, title, and interest in and to U.S. Patent No.
22 9,480,842 (the '842 patent). The '842 patent issued on November 1, 2016 and is entitled
23 "Selective High Frequency Spinal Cord Modulation for Inhibiting Pain with Reduced Side
24 Effects, and Associated Systems and Methods." A copy of the '842 patent is attached to the
25 original Complaint as Exhibit D.

26 109. The claims of the '842 patent cover implantable SCS systems and devices capable
27 of providing high frequency SCS therapy with certain ranges of amplitudes and pulse widths. For
28 example, claim 1 of the '842 patent is directed to an SCS system that has a signal generator

1 capable of generating therapy signals with a frequency of 10 kHz, an amplitude up to 6 mA, and
2 pulses with a pulse width between 30 and 35 microseconds, and an implantable signal delivery
3 device electrically coupleable to the signal generator and capable of being implanted within a
4 patient's epidural space to deliver the therapy signal to the patient's spinal cord.

5 110. Boston Scientific has infringed, and will continue to infringe, the '842 patent by
6 manufacturing, and/or selling or offering to sell in the United States SCS systems that have a
7 signal generator capable of generating therapy signals with a frequency of 10 kHz, an amplitude
8 up to 6 mA, and pulses with a pulse width between 30 and 35 microseconds, and an implantable
9 signal delivery device electrically coupleable to the signal generator and capable of being
10 implanted within a patient's epidural space to deliver the therapy signal to the patient's spinal
11 cord. Boston Scientific's manufacture and/or sale of these systems infringes one or more claims
12 of the '842 patent, including at least claim 1, literally or under the doctrine of equivalents, and
13 violate 35 U.S.C. § 271.

14 111. Boston Scientific has engaged in substantial preparation and taken concrete steps
15 with the intent to conduct these infringing activities. As discussed in more detail above, Boston
16 Scientific is already manufacturing SCS systems designed to perform at frequencies of up to
17 10,000 Hz in the United States for commercial use and sale in Europe. Additional information is
18 set forth in the Confidential Appendix. Boston Scientific sales representatives are already
19 promoting Boston Scientific's upcoming high frequency device to U.S. physicians, representing
20 that Boston Scientific will be imminently launching its own high frequency device. As such,
21 Nevro believes that Boston Scientific will immediately begin to further directly infringe the '842
22 patent on a wider scale upon receiving FDA approval.

23 112. Boston Scientific knows of or has been willfully blind to the existence of the '842
24 patent. The '842 patent is in the same patent family as the '102 patent. Boston Scientific has
25 already unsuccessfully challenged the validity of sixteen claims of Nevro's '102 patent covering
26 Nevro's high frequency paresthesia-free SCS system by filing two IPR petitions with the PTO.
27 Although both petitions were denied by the PTO, Boston Scientific publicly announced at the
28 December 2015 Piper Jaffray Health Conference that it intended to press forward nonetheless,

1 and has continued with the ACCELERATE study and with manufacturing and/or selling
2 infringing 10,000 Hz-capable devices. Boston Scientific is also formally opposing Nevro's
3 European patents in Europe.

4 113. Boston Scientific has intentionally instructed, and will intentionally instruct,
5 others, including doctors and health care providers, to use its high frequency SCS in a manner
6 that infringes the '842 patent, literally or under the doctrine of equivalents. In the SCS industry,
7 the clinical engineers and/or sales representatives of the device manufacturer normally are present
8 in the operating room and will program the SCS device for the operation, including by setting the
9 parameters for the frequency, amplitude and pulse width of the electronic signal to be delivered
10 by the device. Boston Scientific knows or has been willfully blind to the fact that such actions are
11 inducing, and will induce, infringement. The foregoing actions by Boston Scientific constitute,
12 and will constitute, induced infringement of one or more claims of the '842 patent in violation of
13 35 U.S.C. § 271(b).

14 114. Moreover, Boston Scientific is continuing to program patients who have
15 completed their participation in the ACCELERATE study to provide paresthesia-free high
16 frequency SCS therapy, and will further induce infringement of the '842 patent by its actions.

17 115. Boston Scientific has supplied from the United States all or a substantial portion of
18 the components of its infringing SCS systems and induced the combination of such components
19 outside of the United States in a manner that would infringe the '842 patent if it occurred within
20 the United States. The foregoing actions by Boston Scientific constitute infringement of one or
21 more claims of the '842 patent in violation of 35 U.S.C. § 271(f).

22 116. Additional allegations relating to Boston Scientific's United States activities which
23 support this claim for infringement are set forth in the Confidential Appendix.

24 117. Boston Scientific's infringement is without the consent or other authority of
25 Nevro. Boston Scientific is not licensed under the '842 patent.

26 118. An actual and justiciable controversy exists between Nevro and Boston Scientific
27 regarding infringement of the '842 patent. Nevro is entitled to a declaration that Boston
28 Scientific's current and future commercial manufacture, use, offer for sale, sale, and/or

1 importation of high frequency SCS systems does and will infringe the '842 patent, directly and
2 indirectly.

3 119. Boston Scientific has actual and constructive notice of the '842 patent. Boston
4 Scientific's actions are willful and deliberate, and render this an exceptional case under 35 U.S.C.
5 § 285.

6 120. Nevro has been and will be damaged by Boston Scientific's acts in an amount as
7 yet unknown. Nevro has no adequate legal remedy. Unless enjoined by this Court, Boston
8 Scientific's continued acts of infringement will cause Nevro substantial and irreparable harm.
9 Under 35 U.S.C. § 283, Nevro is entitled to an injunction barring Boston Scientific from further
10 infringement of the '842 patent.

11 **SIXTH CAUSE OF ACTION**

12 (Infringement of U.S. Patent No. 9,333,357)

13 121. Nevro incorporates by reference the allegations contained in paragraphs 1-120
14 above, and the Confidential Appendix.

15 122. Nevro is the owner of all right, title, and interest in and to U.S. Patent No.
16 9,333,357 (the '357 patent). The '357 patent issued on May 10, 2016 and is entitled "Selective
17 High Frequency Spinal Cord Modulation for Inhibiting Pain with Reduced Side Effects, and
18 Associated Systems and Methods." A copy of the '357 patent is attached to the original
19 Complaint as Exhibit E.

20 123. The claims of the '357 patent cover implantable SCS systems and devices capable
21 of providing SCS therapy within certain ranges of pulse widths and amplitudes without
22 generating paresthesia. For example, claim 1 of the '357 patent is directed to an SCS system that
23 has a signal generator that can be programmed to generate and deliver electrical therapy signals to
24 a patient's spinal cord from an epidural location via a coupleable implantable signal delivery
25 device, wherein the signal has a plurality of sequential bi-phasic pulses with a pulse width
26 between 10 and 333 microseconds and an amplitude between 0.5 mA and 10 mA, and at least
27 partially reduces the patient's sensation of pain without generating paresthesia.
28

1 124. Boston Scientific has infringed, and will continue to infringe, the '357 patent by
2 manufacturing, and/or selling or offering to sell in the United States SCS systems that have a
3 signal generator that can be programmed to generate and deliver electrical therapy signals to a
4 patient's spinal cord from an epidural location via a coupleable implantable signal delivery
5 device, wherein the signal has a plurality of sequential bi-phasic pulses with a pulse width
6 between 10 and 333 microseconds and an amplitude between 0.5 mA and 10 mA, and at least
7 partially reduces the patient's sensation of pain without generating paresthesia. Boston
8 Scientific's manufacture and/or sale of these systems infringes one or more claims of the '357
9 patent, including at least claim 1, literally or under the doctrine of equivalents, and violate 35
10 U.S.C. § 271.

11 125. Boston Scientific has engaged in substantial preparation and taken concrete steps
12 with the intent to conduct these infringing activities. As discussed in more detail above, Boston
13 Scientific is already manufacturing SCS systems designed to perform at amplitudes and pulse
14 widths within the claimed ranges in the United States for commercial use and sale in Europe.
15 Additional information is set forth in the Confidential Appendix. Boston Scientific sales
16 representatives are already promoting Boston Scientific's upcoming infringing paresthesia-free
17 device to U.S. physicians, representing that Boston Scientific will be imminently launching its
18 own device. As such, Nevro believes that Boston Scientific will immediately begin to further
19 directly infringe the '357 patent on a wider scale upon receiving FDA approval.

20 126. Boston Scientific knows of or has been willfully blind to the existence of the '357
21 patent. The '357 patent is in the same patent family as the '102 patent. Boston Scientific has
22 already unsuccessfully challenged the validity of sixteen claims of Nevro's '102 patent covering
23 Nevro's high frequency paresthesia-free SCS system by filing two IPR petitions with the PTO.
24 Although both petitions were denied by the PTO, Boston Scientific publicly announced at the
25 December 2015 Piper Jaffray Health Conference that it intended to press forward nonetheless,
26 and has continued with the ACCELERATE study and with manufacturing and/or selling
27 infringing paresthesia-free devices. Boston Scientific is also formally opposing Nevro's
28 European patents in Europe.

1 127. Boston Scientific has intentionally instructed, and will intentionally instruct,
2 others, including doctors and health care providers, to use its high frequency SCS in a manner
3 that infringes the '357 patent, literally or under the doctrine of equivalents. In the SCS industry,
4 the clinical engineers and/or sales representatives of the device manufacturer normally are present
5 in the operating room and will program the SCS device for the operation, including by setting the
6 parameters for the frequency, amplitude and pulse width of the electronic signal to be delivered
7 by the device. Boston Scientific knows or has been willfully blind to the fact that such actions are
8 inducing, and will induce, infringement. The foregoing actions by Boston Scientific constitute,
9 and will constitute, induced infringement of one or more claims of the '357 patent in violation of
10 35 U.S.C. § 271(b).

11 128. Moreover, Boston Scientific is continuing to program patients who have
12 completed their participation in the ACCELERATE study to provide paresthesia-free SCS
13 therapy, and will further induce infringement of the '357 patent by its actions.

14 129. Boston Scientific has supplied from the United States all or a substantial portion of
15 the components of its infringing SCS systems and induced the combination of such components
16 outside of the United States in a manner that would infringe the '357 patent if it occurred within
17 the United States. The foregoing actions by Boston Scientific constitute infringement of one or
18 more claims of the '357 patent in violation of 35 U.S.C. § 271(f).

19 130. Additional allegations relating to Boston Scientific's United States activities which
20 support this claim for infringement are set forth in the Confidential Appendix.

21 131. Boston Scientific's infringement is without the consent or other authority of
22 Nevro. Boston Scientific is not licensed under the '357 patent.

23 132. An actual and justiciable controversy exists between Nevro and Boston Scientific
24 regarding infringement of the '357 patent. Nevro is entitled to a declaration that Boston
25 Scientific's current and future commercial manufacture, use, offer for sale, sale, and/or
26 importation of high frequency SCS systems does and will infringe the '357 patent, directly and
27 indirectly.
28

133. Boston Scientific has actual and constructive notice of the '357 patent. Boston Scientific's actions are willful and deliberate, and render this an exceptional case under 35 U.S.C. § 285.

134. Nevro has been and will be damaged by Boston Scientific's acts in an amount as yet unknown. Nevro has no adequate legal remedy. Unless enjoined by this Court, Boston Scientific's continued acts of infringement will cause Nevro substantial and irreparable harm. Under 35 U.S.C. § 283, Nevro is entitled to an injunction barring Boston Scientific from further infringement of the '357 patent.

SEVENTH CAUSE OF ACTION

(Infringement of U.S. Patent No. 8,792,988)

135. Nevro incorporates by reference the allegations contained in paragraphs 1-134 above, and the Confidential Appendix.

136. Nevro is the owner of all right, title, and interest in and to U.S. Patent No. 8,792,988 (the '988 patent). The '988 patent issued on July 29, 2014, and is entitled "Selective High Frequency Spinal Cord Modulation for Inhibiting Pain with Reduced Side Effects, and Associated Systems and Methods." A copy of the '988 patent is attached to the original Complaint as Exhibit F.

137. The claims of the '988 patent cover methods for programming devices to treat patients with SCS without creating paresthesia. For example, claim 23 of the '988 patent is directed to a method for programming a signal generator to generate and deliver therapy signals at a frequency between 1.5 kHz and 100 kHz and at an amplitude that at least partially reduces the patient's sensation of pain without inducing paresthesia in the patient.

138. Boston Scientific has infringed and continues to infringe the '988 patent by using, offering to sell, and/or selling in the United States SCS systems and methods for programming a signal generator to generate and deliver therapy signals at a frequency between 1.5 kHz and 10 kHz and at an amplitude that at least partially reduces the patient's sensation of pain without inducing paresthesia in the patient. Boston Scientific's use, offer to sell, and/or sale of these

1 systems and methods infringes one or more claims of the '988 patent, including at least 23,
2 literally or under the doctrine of equivalents, and violates 35 U.S.C. § 271.

3 139. Boston Scientific knows of or has been willfully blind to the existence of the '988
4 patent. Nevro believes that Boston Scientific has intentionally instructed others, including
5 doctors and health care providers, to use its high frequency SCS in a manner that infringes the
6 '988 patent. In the SCS industry, the clinical engineers and/or sales representatives of the device
7 manufacturer normally are present in the operating room and will program the SCS device for the
8 operation, including by setting the parameters for the frequency, amplitude and pulse width of the
9 electronic signal to be delivered by the device. Boston Scientific knows or has been willfully
10 blind to the fact that such actions are inducing infringement. The foregoing actions by Boston
11 Scientific constitute induced infringement of one or more claims of the '988 patent in violation of
12 35 U.S.C. § 271(b) and (f)(1).

13 140. Additional allegations relating to Boston Scientific's United States activities which
14 support this claim for infringement are set forth in the Confidential Appendix.

15 141. Boston Scientific's infringement is without the consent or other authority of
16 Nevro. Boston Scientific is not licensed under the '988 patent.

17 142. Boston Scientific has actual notice of the '988 patent. Boston Scientific's actions
18 are willful and deliberate, and render this an exceptional case under 35 U.S.C. § 285.

19 143. Nevro has been damaged by Boston Scientific's acts in an amount as yet unknown.
20 Nevro has no adequate legal remedy. Unless enjoined by this Court, Boston Scientific's
21 imminent infringement will cause Nevro substantial and irreparable harm. Under 35 U.S.C. §
22 283, Nevro is entitled to an injunction barring Boston Scientific from infringement of the '988
23 patent.

24 **EIGHTH CAUSE OF ACTION**

25 (Declaratory Judgment of Infringement of U.S. Patent No. 8,792,988)

26 144. Nevro incorporates by reference the allegations contained in paragraphs 1-143
27 above, and the Confidential Appendix.

1 145. Boston Scientific does engage, and will engage, in the commercial manufacture,
2 use, offer for sale, sale, and/or importation of SCS systems that have a signal generator that can
3 be programmed to generate and deliver therapy signals at a frequency between 1.5 kHz and 100
4 kHz and at an amplitude that at least partially reduces the patient's sensation of pain without
5 inducing paresthesia in the patient. In the SCS industry, the clinical engineers and/or sales
6 representatives of the device manufacturer normally are present in the operating room and will
7 program the SCS device for the operation, including by setting the parameters for the frequency,
8 amplitude and pulse width of the electronic signal to be delivered by the device. The foregoing
9 actions by Boston Scientific will constitute direct infringement of one or more claims of the '988
10 patent, literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

11 146. Boston Scientific has engaged in substantial preparation and taken concrete steps
12 with the intent to conduct these infringing activities. As discussed in more detail above, Boston
13 Scientific is already manufacturing SCS systems designed to perform at frequencies of up to
14 10,000 Hz in the United States for commercial sale in Europe. Additional information relating to
15 imminence is set forth in the Confidential Appendix. Boston Scientific sales representatives are
16 already promoting Boston Scientific's upcoming high frequency device to U.S. physicians,
17 representing that Boston Scientific will be imminently launching its own high frequency device.
18 As such, Nevro believes that Boston Scientific will immediately begin to further directly infringe
19 the '988 patent on a wider scale upon receiving FDA approval.

20 147. In addition to directly infringing, Nevro believes that upon FDA approval and
21 commercial launch of Boston Scientific's infringing paresthesia-free high frequency SCS
22 systems, Boston Scientific will further induce infringement of the '988 patent by inducing others
23 to directly infringe the '988 patent, literally or under the doctrine of equivalents.

24 148. Moreover, Boston Scientific is continuing to program patients who have
25 completed their participation in the ACCELERATE study to provide paresthesia-free high
26 frequency SCS therapy, and will further directly infringe and induce infringement of the '988
27 patent by its actions.
28

1 149. Boston Scientific knows of or is willfully blind to the existence of the '988 patent.
2 Nevro believes that Boston Scientific has intentionally made substantial preparation to and will
3 instruct others, including doctors and health care providers, to use its high frequency SCS in a
4 manner that infringes the '988 patent. In the SCS industry, the clinical engineers and/or sales
5 representatives of the device manufacturer normally are present in the operating room and will
6 program the SCS device for the operation, including by setting the parameters for the frequency,
7 amplitude and pulse width of the electronic signal to be delivered by the device. Boston
8 Scientific knows or is willfully blind to the fact that such actions will induce infringement. The
9 foregoing actions by Boston Scientific will constitute induced infringement of one or more claims
10 of the '988 patent in violation of 35 U.S.C. § 271(b) and (f)(1).

11 150. An actual and justiciable controversy exists between Nevro and Boston Scientific
12 regarding infringement of the '988 patent. The '988 patent is in the same patent family as the
13 '102 patent. Boston Scientific has already unsuccessfully challenged the validity of sixteen
14 claims of Nevro's '102 patent covering Nevro's high frequency paresthesia-free SCS system by
15 filing two IPR petitions with the Patent and Trademark Office. Although both petitions were
16 denied by the PTO, Boston Scientific announced at the December 2015 Piper Jaffray Health
17 conference that it intended to press forward nonetheless, and has continued with the
18 ACCELERATE study and with manufacturing and/or selling infringing 10,000 Hz-capable
19 devices nonetheless. Boston Scientific is also formally opposing Nevro's European patents in
20 Europe.

21 151. Additional allegations relating to Boston Scientific's United States activities which
22 support this claim for declaratory relief are set forth in the Confidential Appendix.

23 152. Boston Scientific's imminent infringement will be without the consent or other
24 authority of Nevro. Boston Scientific is not licensed under the '988 patent.

25 153. Nevro is entitled to a declaratory judgment that Boston Scientific's future
26 commercial manufacture, use, offer for sale, sale, and/or importation of high frequency SCS
27 systems does and will infringe the '988 patent, directly and indirectly.

154. Boston Scientific has actual notice of the '988 patent. Boston Scientific's actions are willful and deliberate, and render this an exceptional case under 35 U.S.C. § 285.

155. Nevro has been and will be damaged by Boston Scientific's acts in an amount as yet unknown. Nevro has no adequate legal remedy. Unless enjoined by this Court, Boston Scientific's imminent infringement will cause Nevro substantial and irreparable harm. Under 35 U.S.C. § 283, Nevro is entitled to an injunction barring Boston Scientific from infringement of the '988 patent.

NINTH CAUSE OF ACTION

(Infringement of U.S. Patent No. 8,768,472)

156. Nevro incorporates by reference the allegations contained in paragraphs 1-155 above, and the Confidential Appendix.

157. Nevro is the owner of all right, title, and interest in and to U.S. Patent No. 8,768,472 (the '472 patent). The '472 patent issued on July 1, 2014, and is entitled "Multi-Frequency Neural Treatments and Associated Systems and Methods." A copy of the '472 patent is attached as Exhibit G.

158. The claims of the '472 patent cover methods for alleviating patient pain or discomfort, without relying on paresthesia or tingling to mask the patient's sensation of the pain. For example, claim 1 of the '472 patent is directed to a method that includes implanting a percutaneous lead with at least one electrode in the patient's epidural space, implanting a signal generator in the patient, electrically coupling the percutaneous lead to the signal generator, and programming the signal generator to generate and deliver electrical therapy signals to the spinal cord region at a frequency between about 2.5 kHz and 100 kHz.

159. Boston Scientific has infringed and continues to infringe the '472 patent by using, offering to sell, and/or selling in the United States SCS systems and methods for alleviating patient pain or discomfort that include implanting a percutaneous lead with at least one electrode in the patient's epidural space, implanting a signal generator in the patient, electrically coupling the percutaneous lead to the signal generator, and programming the signal generator to generate and deliver electrical therapy signals to the spinal cord region at a frequency between about 2.5

1 kHz and 100 kHz. Boston Scientific's use, offer to sell, and/or sale of these systems and methods
2 infringes one or more claims of the '472 patent, including at least claim 1, literally or under the
3 doctrine of equivalents, and violate 35 U.S.C. § 271.

4 160. Boston Scientific knows of or has been willfully blind to the existence of the '472
5 patent. Nevro believes that Boston Scientific has intentionally instructed others, including
6 doctors and health care providers, to use its high frequency SCS in a manner that infringes the
7 '472 patent. In the SCS industry, the clinical engineers and/or sales representatives of the device
8 manufacturer normally are present in the operating room and will program the SCS device for the
9 operation, including by setting the parameters for the frequency, amplitude and pulse width of the
10 electronic signal to be delivered by the device. Boston Scientific knows or has been willfully
11 blind to the fact that such actions are inducing infringement. The foregoing actions by Boston
12 Scientific constitute induced infringement of one or more claims of the '472 patent in violation of
13 35 U.S.C. § 271(b).

14 161. In addition and/or in the alternative to inducing infringement, Boston Scientific
15 also directly infringes the asserted claims of the '472 patent through joint acts with physicians, or
16 as part of a joint enterprise with physicians, whereby the acts of one are attributable to the other
17 such that a single entity is responsible for the infringement. Physicians implant and electrically
18 couple the leads and signal generators for Boston Scientific's infringing SCS systems. Boston
19 Scientific's clinical engineers and/or sales representatives program the signal generators and are
20 present in the operating room with physicians while the implantation is performed, working
21 jointly to carry out the procedure. Boston Scientific's Vice-President of Clinical and Regulatory
22 Affairs, Kaoru Lee Adair, testified that Boston Scientific's clinical engineers and/or sales
23 representatives carry out this programming under the direction of physicians.

24 162. Boston Scientific has supplied from the United States all or a substantial portion of
25 the components of its infringing SCS systems and induced the combination of such components
26 outside of the United States in a manner that would infringe the '472 patent if it occurred within
27 the United States. The foregoing actions by Boston Scientific constitute infringement of one or
28 more claims of the '472 patent in violation of 35 U.S.C. § 271(f).

163. Additional allegations relating to Boston Scientific's United States activities which support this claim for infringement are set forth in the Confidential Appendix.

164. Boston Scientific's infringement is without the consent or other authority of Nevro. Boston Scientific is not licensed under the '472 patent.

165. Boston Scientific has actual notice of the '472 patent. Boston Scientific's actions are willful and deliberate, and render this an exceptional case under 35 U.S.C. § 285.

166. Nevro has been damaged by Boston Scientific's acts in an amount as yet unknown. Nevro has no adequate legal remedy. Unless enjoined by this Court, Boston Scientific's continued acts of infringement will cause Nevro substantial and irreparable harm. Under 35 U.S.C. § 283, Nevro is entitled to an injunction barring Boston Scientific from further infringement of the '472 patent.

TENTH CAUSE OF ACTION

(Declaratory Judgment of Infringement of U.S. Patent No. 8,768,472)

167. Nevro incorporates by reference the allegations contained in paragraphs 1-166 above, and the Confidential Appendix.

168. Boston Scientific does engage, and will engage, in the commercial manufacture, use, offer for sale, sale, and/or importation of SCS systems and methods for alleviating patient pain or discomfort that include implanting a percutaneous lead with at least one electrode in the patient's epidural space, implanting a signal generator in the patient, electrically coupling the percutaneous lead to the signal generator, and programming the signal generator to generate and deliver electrical therapy signals to the spinal cord region at a frequency between about 2.5 kHz and 100 kHz. The foregoing actions by Boston Scientific will constitute infringement of one or more claims of the '472 patent, literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

169. Boston Scientific has engaged in substantial preparation and taken concrete steps with the intent to conduct these infringing activities. As discussed in more detail above, Boston Scientific is already manufacturing SCS systems designed to perform at frequencies of up to 10,000 Hz in the United States for commercial sale in Europe. Additional information relating to

1 imminence is set forth in the Confidential Appendix. Boston Scientific sales representatives are
2 already promoting Boston Scientific's upcoming high frequency device to U.S. physicians,
3 representing that Boston Scientific will be imminently launching its own high frequency device.
4 As such, Nevro believes that Boston Scientific will immediately begin to further directly infringe
5 the '472 patent on a wider scale upon receiving FDA approval.

6 170. Nevro believes that upon FDA approval and commercial launch of Boston
7 Scientific's infringing paresthesia-free high frequency SCS systems, Boston Scientific will further
8 induce infringement of the '472 patent by inducing others to directly infringe the '472 patent,
9 literally or under the doctrine of equivalents.

10 171. Moreover, Boston Scientific is continuing to program patients who have
11 completed their participation in the ACCELERATE study to provide paresthesia-free high
12 frequency SCS therapy, and will further directly infringe and induce infringement of the '472
13 patent by its actions.

14 172. Boston Scientific knows of or is willfully blind to the existence of the '472 patent.
15 Nevro believes that Boston Scientific has intentionally made substantial preparation to and will
16 instruct others, including doctors and health care providers, to use its high frequency SCS in a
17 manner that infringes the '472 patent. In the SCS industry, the clinical engineers and/or sales
18 representatives of the device manufacturer normally are present in the operating room and will
19 program the SCS device for the operation, including by setting the parameters for the frequency,
20 amplitude and pulse width of the electronic signal to be delivered by the device. Boston
21 Scientific knows or is willfully blind to the fact that such actions will induce infringement. The
22 foregoing actions by Boston Scientific will constitute induced infringement of one or more claims
23 of the '472 patent in violation of 35 U.S.C. § 271(b) and (f)(1).

24 173. In addition and/or in the alternative to inducing infringement, Boston Scientific
25 will directly infringe the asserted claims of the '472 patent through joint acts with physicians, or
26 as part of a joint enterprise with physicians, whereby the acts of one are attributable to the other
27 such that a single entity is responsible for the infringement. Physicians implant and electrically
28 couple the leads and signal generators for Boston Scientific's infringing SCS systems. Boston

1 Scientific's clinical engineers and/or sales representatives program the signal generators and are
2 present in the operating room with physicians while the implantation is performed, working
3 jointly to carry out the procedure. Boston Scientific's Vice-President of Clinical and Regulatory
4 Affairs, Kaoru Lee Adair, testified that Boston Scientific's clinical engineers and/or sales
5 representatives carry out this programming under the direction of physicians.

6 174. Boston Scientific supplies from the United States all or a substantial portion of the
7 components of its infringing SCS systems and induces the combination of such components
8 outside of the United States in a manner that would infringe the '472 patent if it occurred within
9 the United States. The foregoing actions by Boston Scientific will constitute infringement of one
10 or more claims of the '472 patent in violation of 35 U.S.C. § 271(f).

11 175. An actual and justiciable controversy exists between Nevro and Boston Scientific
12 regarding infringement of the '472 patent. The '472 patent is in the same patent family as U.S.
13 Patent Application No. 2009/0204173, which Boston Scientific has cited in its invalidity
14 contentions in this action. Boston Scientific is formally opposing Nevro's European patents in
15 Europe, including European counterparts to the '472 patent. Moreover, Boston Scientific has
16 already unsuccessfully challenged the validity of sixteen claims of Nevro's '102 patent covering
17 Nevro's high frequency paresthesia-free SCS system by filing two IPR petitions with the Patent
18 and Trademark Office. Although both petitions were denied by the PTO, Boston Scientific
19 announced at the December 2015 Piper Jaffray Health conference that it intended to press
20 forward nonetheless, and has continued with the ACCELERATE study and with manufacturing
21 and/or selling infringing 10,000 Hz-capable devices nonetheless.

22 176. Additional allegations relating to Boston Scientific's United States activities which
23 support this claim for declaratory relief are set forth in the Confidential Appendix.

24 177. Boston Scientific's imminent infringement will be without the consent or other
25 authority of Nevro. Boston Scientific is not licensed under the '472 patent.

26 178. Nevro is entitled to a declaratory judgment that Boston Scientific's future
27 commercial manufacture, use, offer for sale, sale, and/or importation of high frequency SCS
28 systems and methods does and will infringe the '472 patent, directly and indirectly.

179. Boston Scientific has actual notice of the '472 patent. Boston Scientific's actions are willful and deliberate, and render this an exceptional case under 35 U.S.C. § 285.

180. Nevro has been and will be damaged by Boston Scientific's acts in an amount as yet unknown. Nevro has no adequate legal remedy. Unless enjoined by this Court, Boston Scientific's imminent infringement will cause Nevro substantial and irreparable harm. Under 35 U.S.C. § 283, Nevro is entitled to an injunction barring Boston Scientific from infringement of the '472 patent.

PRAYER FOR RELIEF

WHEREFORE, Nevro prays for relief as follows:

1. A judgment that Boston Scientific has infringed one or more claims of the '533, '125, '102, '842, '357, '988, and '472 patents;
2. A judgment and a declaration that making, using, selling, offering for sale, or importing Boston Scientific's high frequency and paresthesia-free SCS systems and devices infringes one or more claims of the '533, '125, '102, '842, '357, '988, and '472 patents, directly and indirectly;
3. An order and judgment temporarily, preliminarily and permanently enjoining Boston Scientific and its officers, directors, agents, servants, employees, and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns, from further acts of infringement of the '533, '125, '102, '842, '357, '988, and '472 patents;
4. A judgment awarding Nevro all damages suffered by Nevro for Boston Scientific's unlawful conduct, and in no event less than a reasonable royalty for Boston Scientific's acts of infringement, including all pre-judgment and post-judgment interest at the maximum rate permitted by law;
5. A judgment trebling any damages pursuant to 35 U.S.C. § 284;
6. Costs of suit and reasonable attorneys' fees; and
7. Any other remedy to which Nevro may be entitled.

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FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND DECLARATORY JUDGMENT
CASE No. 3:16-cv-06830-VC
sf-3789793

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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b) and Civil Local Rule 3-6, Nevro demands a trial by jury on all issues so triable in this action.

Dated: June 29, 2017

MORRISON & FOERSTER LLP

By: /s/ Michael A. Jacobs

Michael A. Jacobs

Attorneys for Plaintiff
NEVRO CORP.