IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MEDTRONIC, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 07-823-SLR-LPS
	)	
BOSTON SCIENTIFIC CORPORATION, GUIDANT CORPORATION and MIROWSKI FAMILY VENTURES, L.L.C.,	)	**PUBLIC VERSION**
	)	
Defendants.	)	

DEFENDANT MIROWSKI FAMILY VENTURES, L.L.C.'S
REPLY IN SUPPORT OF ITS MOTION TO STRIKE
PLAINTIFF MEDTRONIC'S JURY TRIAL DEMAND

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Dated: May 23, 2008
Public Version Dated: May 30, 2008
867177 / 32582

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Since MFV Has Not Requested (Patent Infringement) Damages, There Is No Right to a Jury Trial

MFV, in its opening brief, stated that, since MFV does not seek (patent infringement) damages, there is no right to a jury trial. Medtronic, in its opposition, does not appear to dispute the point that, if MFV does not seek (patent infringement) damages, there is no right to a jury trial.

MFV, in its opening brief, stated (at 1) that its agreement with Medtronic provides that [redacted] Medtronic, in its opposition, does not disagree.

As the pleadings reflect, Medtronic seeks a declaration of non-infringement (more precisely, a declaration of non-coverage since Medtronic is a licensee and cannot infringe) and/or a declaration of invalidity. In response, MFV (the patentee), in its answer, seeks no damages and only that "Medtronic's complaint be dismissed with prejudice and that MFV be awarded its costs, disbursements, attorneys' fees, and such other relief as the Court deems just and proper." D.I. 20.

Since MFV does not seek damages, there is no right to a jury trial. In response, Medtronic's theory appears to be that [redacted]

[1] [redacted]

Contrary to Medtronic's Assertion, [redacted]

[redacted]

The Standard Is Not Whether the Patentee Seeks Only Equitable Relief But, Rather, Whether He Seeks (Patent Infringement) Damages

Medtronic argues (at 6) that it is only when the patentee seeks only equitable relief that there is no right to a jury trial. However, as set forth in MFV's opening brief (D.I. 34), the standard is not whether the patentee seeks only equitable relief but, rather, whether he seeks

damages for patent infringement. As noted above, MFV does not seek patent infringement damages and, indeed, could not do so since Medtronic is a licensee.

Although Immaterial, MFV Did Not Request a Jury Trial on Its Counterclaim

Although immaterial, Medtronic asserts that MFV requested a jury trial on its counterclaim. However, MFV made no such request. The designation "JURY TRIAL DEMANDED" under the civil action number in MFV's answer and counterclaim merely refers to the fact that Medtronic demanded a jury trial and arises from a local practice that, if the plaintiff demands a jury trial, the cover page of defendant's answer also includes this designation even though defendant does not request a jury trial. Moore declaration filed herewith. Further, Medtronic's complaint (D.I. 1) includes the statement - "Pursuant to Fed. R. Civ. P. 38(b), plaintiffs hereby demand a trial by a jury on all issues so triable." MFV's answer and counterclaim includes no such statement. Also, the docket text for this case (Exhibit A hereto) states that only Medtronic requested a jury trial - "Jury Demand: Plaintiff." In any event, the fact remains that MFV did not request (patent infringement) damages in its answer to Medtronic's complaint.

Responses to Other Medtronic Arguments

[redacted]

[redacted]

Conclusion

Accordingly, Medtronic's demand for a jury trial should be stricken.

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Dated: May 23, 2008
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on May 30, 2008, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on May 30, 2008, the attached document was Electronically Mailed to the following person(s):

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EXHIBIT A

CASREF, MEDIATION-LPS, PATENT

U.S. District Court
District of Delaware (Wilmington)
CIVIL DOCKET FOR CASE #: 1:07-cv-00823-SLR-LPS

Medtronic Inc. v. Boston Scientific Corporation et al
Assigned to: Judge Sue L. Robinson
Referred to: Judge Leonard P. Stark
Related Cases: 1:03-cv-00848-SLR
1:04-cv-00067-SLR
Cause: 28:2201 Declaratory Judgment

Date Filed: 12/17/2007
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Plaintiff

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V.

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V.

Counter Defendant

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/17/2007	1	COMPLAINT filed with Jury Demand against Boston Scientific Corporation, Guidant Coropration, Mirowski Family Ventures L.L.C. - Magistrate Consent Notice to Pltf. (Filing fee $ 350, receipt number 149947.) - filed by Medtronic Inc.. (Attachments: # 1 Exhibits to complaint# 2 Civil Cover Sheet # 3 Acknowledgement of Consent Form)(lid) (Entered: 12/18/2007)

12/17/2007		No Summons Issued (lid) (Entered: 12/18/2007)
12/17/2007	2	Notice of Availability of a U.S. Magistrate Judge to Exercise Jurisdiction (lid) (Entered: 12/18/2007)
12/17/2007	3	Report to the Commissioner of Patents and Trademarks for Patent/Trademark Number(s) US RE38,119 E; US RE39,897 E; (lid) (Entered: 12/18/2007)
12/18/2007		Summons Issued as to Boston Scientific Corporation on 12/18/2007; Guidant Coropration on 12/18/2007; Mirowski Family Ventures L.L.C. on 12/18/2007. (lid) (Entered: 12/18/2007)
12/19/2007	4	NOTICE of Related Cases by Medtronic Inc. re 1 Complaint, (Connolly, Arthur) (Entered: 12/19/2007)
12/21/2007	5	Return of Service Executed by Medtronic Inc.. Boston Scientific Corporation served on 12/19/2007, answer due 1/8/2008. (Connolly, Arthur) (Entered: 12/21/2007)
12/21/2007	6	Return of Service Executed by Medtronic Inc.. Guidant Coropration served on 12/19/2007, answer due 1/8/2008. (Connolly, Arthur) (Entered: 12/21/2007)
12/21/2007	7	Return of Service Executed by Medtronic Inc.. Mirowski Family Ventures L.L.C. served on 12/19/2007, answer due 1/8/2008. (Connolly, Arthur) (Entered: 12/21/2007)
12/27/2007	8	[1:07-cv-823-***]: Please note that, in accordance with the attached standing orders, this case has been designated as one to be assigned to the judge who fills the vacancy left by the elevation of Judge Kent A. Jordan to the United States Court of Appeals for the Third Circuit. Pending assignment, the case has been referred to Magistrate Judge Leonard P. Stark for all pretrial proceedings, pursuant to 28 U.S.C. section 636(b). Please include ***, in place of the Judge's initials, after the case number on all documents filed. (rjb) (Entered: 12/27/2007)
01/08/2008	9	STIPULATION TO EXTEND TIME for Defendants to answer, move or otherwise respond to the Complaint to February 8, 2008 - filed by Medtronic Inc., Boston Scientific Corporation, Guidant Coropration, Mirowski Family Ventures L.L.C.. (Horwitz, Richard) (Entered: 01/08/2008)
01/08/2008		SO ORDERED, re 9 STIPULATION TO EXTEND TIME for Defendants to answer, move or otherwise respond to the Complaint to February 8, 2008: Reset Answer Deadlines: Boston Scientific Corporation answer due 2/8/2008; Guidant Coropration answer due 2/8/2008; Mirowski Family Ventures L.L.C. answer due 2/8/2008. Signed by Judge Leonard P. Stark on 1/8/08. (ntl) (Entered: 01/09/2008)
01/09/2008		Case reassigned to Judge Sue L. Robinson. Please include the initials of the Judge (SLR) after the case number on all documents filed. (rjb) (Entered: 01/09/2008)
01/14/2008	10	(THIS ORDER HAS BEEN REVISED - SEE D.I. 25) ORDER REFERRING CASE to Magistrate Judge Leonard P. Stark to; 1) hear and determine all motions to dismiss and for summary judgment (by report and

		recommendation); 2) hear and determine all discovery disputes; 3) conduct alternate dispute resolution; 4) hear and determine all matters related to any of the foregoing (i.e., briefing, scheduling, extensions of time). Signed by Judge Sue L. Robinson on 1/12/08. (bkb) Modified on 3/4/2008 (fmt). (Entered: 01/14/2008)
01/14/2008		CASE REFERRED to Mediation. (rpg) (Entered: 03/18/2008)
01/15/2008	11	ORDER Setting Mediation Conference: Telephone Conference set for 3/31/2008 10:00 AM before Honorable Leonard P. Stark. Counsel for Boston Scientific shall initiate the call. Signed by Judge Leonard P. Stark on 1/15/08. (rpg) (Entered: 01/15/2008)
01/22/2008	12	ORDER Setting Mediation Conference: Telephone Conference set for 2/20/2008 11:00 AM before Honorable Leonard P. Stark. Signed by Judge Leonard P. Stark on 1/22/08. (rpg) (Entered: 01/23/2008)
01/23/2008	13	MOTION for Pro Hac Vice Appearance of Attorney Arthur I. Neustadt of Oblon, Spivak, McClelland, Maier, & Neustadt, P.C. - filed by Mirowski Family Ventures L.L.C.. Motions referred to Leonard P. Stark.(Moore, David) (Entered: 01/23/2008)
01/24/2008	14	MOTION for Pro Hac Vice Appearance of Attorney Jan M. Conlin, Richard M. Martinez, Martin R. Lueck, and Sharon E. Roberg-Perez - filed by Medtronic Inc.. Motions referred to Leonard P. Stark.(Connolly, Arthur) (Entered: 01/24/2008)
01/24/2008	15	NOTICE of Appearance by Frederick L. Cottrell, III on behalf of Boston Scientific Corporation, Guidant Coropration (Cottrell, Frederick) (Entered: 01/24/2008)
01/24/2008	16	NOTICE of Appearance by Anne Shea Gaza on behalf of Boston Scientific Corporation, Guidant Coropration (Gaza, Anne) (Entered: 01/24/2008)
01/31/2008		SO ORDERED, re 13 MOTION for Pro Hac Vice Appearance of Attorney Arthur I. Neustadt of Oblon, Spivak, McClelland, Maier, & Neustadt, P.C. filed by Mirowski Family Ventures L.L.C., 14 MOTION for Pro Hac Vice Appearance of Attorney Jan M. Conlin, Richard M. Martinez, Martin R. Lueck, and Sharon E. Roberg-Perez filed by Medtronic Inc. Signed by Judge Sue L. Robinson on 1/31/08. (fmt) (Entered: 01/31/2008)
02/06/2008	17	MOTION for Pro Hac Vice Appearance of Attorney J. Michael Jakes and Naveen Modi - filed by Boston Scientific Corporation, Guidant Coropration. Motions referred to Leonard P. Stark.(Cottrell, Frederick) (Entered: 02/06/2008)
02/08/2008	18	ANSWER to Complaint by Boston Scientific Corporation, Guidant Coropration.(Gaza, Anne) (Entered: 02/08/2008)
02/08/2008	19	Disclosure Statement pursuant to Rule 7.1 filed by Boston Scientific Corporation, Guidant Coropration identifying No corporate parent as Corporate Parent. (Gaza, Anne) (Entered: 02/08/2008)
02/08/2008	20	ANSWER to Complaint, COUNTERCLAIM against Medtronic Inc. by

		Mirowski Family Ventures L.L.C..(Horwitz, Richard) (Entered: 02/08/2008)
02/08/2008	21	Disclosure Statement pursuant to Rule 7.1 filed by Mirowski Family Ventures L.L.C. identifying none as Corporate Parent. (Horwitz, Richard) (Entered: 02/08/2008)
02/13/2008		SO ORDERED, re 17 MOTION for Pro Hac Vice Appearance of Attorney J. Michael Jakes and Naveen Modi filed by Boston Scientific Corporation, Guidant Coropration. Signed by Judge Sue L. Robinson on 2/13/2008. (nfn) (Entered: 02/13/2008)
02/20/2008	22	ORDER Setting Mediation Conference: Telephone Conference set for 3/19/2008 12:00 PM before Judge Leonard P. Stark. Signed by Judge Leonard P. Stark on 2/20/2008. (rpg) (Entered: 02/20/2008)
02/28/2008	23	ANSWER to 20 Answer to Complaint, Counterclaim by Medtronic Inc.. (Connolly, Arthur) (Entered: 02/28/2008)
03/04/2008	24	ORDER Setting Hearings(Scheduling TeleConference set for 4/8/2008 08:30 AM before Judge Sue L. Robinson.). Signed by Judge Sue L. Robinson on 3/4/2008. (fmt) (Entered: 03/04/2008)
03/04/2008	25	REVISED ORDER REFERRING CASE to Magistrate Judge Leonard P. Stark. Judge Stark shall (1) Hear and determine all pretrial motions and related matters (including stipulations and briefing schedules), except motions and matters relating to claim construction, sum. jgm. and trial. (2) Hear and determine all discovery disputes and related matters (including stipulations, briefing schedules, and review of protective orders). (3) Conduct alternate dispute resolution. Signed by Judge Sue L. Robinson on 3/4/08. (fmt) (Entered: 03/04/2008)
03/12/2008		Set/Reset Hearings: Scheduling Teleconference set for 4/8/08 has been cancelled; Scheduling Teleconference reset for 4/17/2008 08:30 AM before Judge Sue L. Robinson. (fmt) (Entered: 03/12/2008)
03/21/2008	26	Letter to Magistrate Judge Stark from Arthur G. Connolly, III, Esq. regarding mediation date of June 10, 2008 - re Case Referred to Mediation, 25 Order Referring Case to Magistrate Judge,,. (Connolly, Arthur) (Entered: 03/21/2008)
03/25/2008	27	ORDER Setting Mediation Conference: Mediation Conference set for 6/10/2008 09:00 AM in Courtroom 2A before Judge Leonard P. Stark. Signed by Judge Leonard P. Stark on 3/25/2008. (rpg) (Entered: 03/25/2008)
04/15/2008	28	Letter to The Honorable Sue L. Robinson from David E. Moore, Esquire regarding enclosing the parties' proposed Scheduling Order. (Moore, David) (Entered: 04/15/2008)
04/15/2008	29	PROPOSED ORDER Scheduling Order re 28 Letter *to The Honorable Sue L. Robinson from David E. Moore, Esquire regarding enclosing the parties' proposed Scheduling Order* by Mirowski Family Ventures L.L.C.. (Moore, David) (Entered: 04/15/2008)
04/17/2008		Minute Entry for proceedings held before Judge Sue L. Robinson - Scheduling Conference held on 4/17/2008. (Court Reporter not present.) (nfn) (Entered:

		04/17/2008)
04/17/2008	30	ORDER, Setting Deadlines: (Notice of Compliance deadline for defendants to file a motion challenging plaintiff's demand for a jury trial set for 5/2/2008.) The motion is NOT referred to Judge Stark for resolution. Signed by Judge Sue L. Robinson on 4/17/2008. (nfn) (Entered: 04/17/2008)
04/17/2008	31	NOTICE OF SERVICE of Defendant Mirowski Family Ventures L.L.C.'s First Set of Interrogatories to Plaintiff Medtronic, Inc., and Defendant Mirowski Family Ventures L.L.C.'s First Set of Document Requests to Plaintiff Medtronic, Inc. by Mirowski Family Ventures L.L.C..(Moore, David) (Entered: 04/17/2008)
04/18/2008	32	NOTICE OF SERVICE of Medtronic, Inc.'s First Set of Interrogatories to Defendants (1-2) and Medtronic, Inc.'s First Set of Requests for Production of Documents and Things to Defendants (1-4) by Medtronic Inc..(Connolly, Arthur) (Entered: 04/18/2008)
04/24/2008	33	MOTION to Strike 30 Order, Set Deadlines,, *[DEFENDANT MIROWSKI FAMILY VENTURES, L.L.C.'S MOTION TO STRIKE PLAINTIFF MEDTRONIC INC.'S JURY TRIAL DEMAND]* - filed by Mirowski Family Ventures L.L.C.. (Attachments: # 1 Text of Proposed Order)Motions referred to Leonard P. Stark.(Moore, David) (Entered: 04/24/2008)
04/24/2008	34	SEALED OPENING BRIEF in Support re 33 MOTION to Strike 30 Order, Set Deadlines,, *[DEFENDANT MIROWSKI FAMILY VENTURES, L.L.C.'S MOTION TO STRIKE PLAINTIFF MEDTRONIC INC.'S JURY TRIAL DEMAND]* MOTION to Strike 30 Order, Set Deadlines,, *[DEFENDANT MIROWSKI FAMILY VENTURES, L.L.C.'S MOTION TO STRIKE PLAINTIFF MEDTRONIC INC.'S JURY TRIAL DEMAND]* filed by Mirowski Family Ventures L.L.C..Answering Brief/Response due date per Local Rules is 5/12/2008. (Moore, David) (Entered: 04/24/2008)
04/30/2008	35	NOTICE OF SERVICE of Defendants Boston Scientific Corporation, Guidant Corporation and Mirowski Family Ventures, L.L.C.'s Pre-Discovery Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1) and D. Del. LR 16.2 by Mirowski Family Ventures L.L.C..(Moore, David) (Entered: 04/30/2008)
04/30/2008	36	NOTICE OF SERVICE of Medtronic, Inc.'s Initial Disclosures by Medtronic Inc..(Connolly, Arthur) (Entered: 04/30/2008)
05/01/2008	37	REDACTED VERSION of 34 Opening Brief in Support,, *re 33 MOTION to Strike 30 Order, Set Deadlines,, [DEFENDANT MIROWSKI FAMILY VENTURES, L.L.C.'S MOTION TO STRIKE PLAINTIFF MEDTRONIC INC.'S JURY TRIAL DEMAND]* by Mirowski Family Ventures L.L.C.. (Attachments: # 1 Exhibit A)(Moore, David) (Entered: 05/01/2008)
05/08/2008	38	SEALED ANSWERING BRIEF in Opposition re 33 MOTION to Strike 30 Order, Set Deadlines,, *[DEFENDANT MIROWSKI FAMILY VENTURES, L.L.C.'S MOTION TO STRIKE PLAINTIFF MEDTRONIC INC.'S JURY TRIAL DEMAND]* MOTION to Strike 30 Order, Set Deadlines,, *[DEFENDANT MIROWSKI FAMILY VENTURES, L.L.C.'S MOTION TO STRIKE PLAINTIFF MEDTRONIC INC.'S JURY TRIAL DEMAND]* filed by Medtronic Inc..Reply

		Brief due date per Local Rules is 5/19/2008. (Connolly, Arthur) (Entered: 05/08/2008)
05/08/2008	39	REQUEST for Oral Argument by Medtronic Inc. re 33 MOTION to Strike 30 Order, Set Deadlines,, *[DEFENDANT MIROWSKI FAMILY VENTURES, L.L.C.'S MOTION TO STRIKE PLAINTIFF MEDTRONIC INC.'S JURY TRIAL DEMAND]* MOTION to Strike 30 Order, Set Deadlines,, *[DEFENDANT MIROWSKI FAMILY VENTURES, L.L.C.'S MOTION TO STRIKE PLAINTIFF MEDTRONIC INC.'S JURY TRIAL DEMAND]*. (Connolly, Arthur) (Entered: 05/08/2008)
05/12/2008	40	MOTION to Dismiss Based upon previously filed action(dismiss or alternatively trasfer) - filed by Medtronic Inc.. (Connolly, Arthur) (Entered: 05/12/2008)
05/12/2008	41	SEALED OPENING BRIEF in Support re 40 MOTION to Dismiss Based upon previously filed action(dismiss or alternatively transfer) filed by Medtronic Inc., NOTE: The BRIEF, proposed order, and EXHIBITS A, B, C, G, and H are filed under SEAL. Exhibits D, E, and F are filed separately (not under seal). Answering Brief/Response due date per Local Rules is 5/30/2008. (Connolly, Arthur) Modified on 5/13/2008 (rbe). (Entered: 05/12/2008)
05/13/2008	42	REQUEST for Oral Argument by Medtronic Inc. re 40 MOTION to Dismiss Based upon previously filed action(dismiss or alternatively trasfer). (Connolly, Arthur) (Entered: 05/13/2008)
05/13/2008		CORRECTING ENTRY: Text of DI 41 corrected to read: SEALED OPENING BRIEF, and adds a note regarding the exhibits: EXHIBITS A, B, C, G, and H are filed under SEAL. Exhibits D, E, and F to be filed separately (not under seal). (rbe). (Entered: 05/12/2008) (rbe) (Entered: 05/13/2008)
05/13/2008	43	EXHIBIT re 41 Opening Brief in Support, *Exhibits D, E and F to Medtronic's Opening Brief in Support of Its Motion to Dismiss Mirowski Family Ventures' Counterclaim or, in the Alternative, to Sever and Transfer Counterclaim to the United States District Court for the Southern District of Indiana* by Medtronic Inc.. (Connolly, Arthur) (Entered: 05/13/2008)
05/15/2008	44	STIPULATION TO EXTEND TIME MFV's Reply Brief on its Motion to Strike Plaintiff Medtronic Inc.'s Jury Trial Demand to May 27, 2008 - filed by Mirowski Family Ventures L.L.C.. (Moore, David) (Entered: 05/15/2008)
05/15/2008	45	REDACTED VERSION of 38 Answering Brief in Opposition, *to Mirowski Family Ventures' Motion to Strike Medtronic's Jury Trial Demand* by Medtronic Inc.. (Attachments: # 1 Exhibit A)(Connolly, Arthur) (Entered: 05/15/2008)
05/16/2008		SO ORDERED, re 44 STIPULATION TO EXTEND TIME MFV's Reply Brief on its Motion to Strike Plaintiff Medtronic Inc.'s Jury Trial Demand to May 27, 2008 filed by Mirowski Family Ventures L.L.C.. Signed by Judge Leonard P. Stark on 5/16/2008. (rpg) (Entered: 05/16/2008)
05/19/2008	46	REDACTED VERSION of 41 Opening Brief in Support, *of Its Motion to Dismiss Mirowski Family Ventures' Counterclaim or, in the Alternative, to*

		Sever and Transfer Counterclaim to the United States District Court for the Southern District of Indiana by Medtronic Inc.. (Attachments: # 1 Exhibit A, B, C, G and H)(Connolly, Arthur) (Entered: 05/19/2008)
05/21/2008		Set/Reset Hearings: Oral Argument re D.I. 40 set for 7/17/2008 11:00 AM in Courtroom 6B before Judge Sue L. Robinson. Each side will be given 25 minutes. (nmf) (Entered: 05/21/2008)

PACER Service Center

Transaction Receipt

05/23/2008 12:44:28

PACER Login:	pa0018	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	1:07-cv-00823-SLR-LPS Start date: 1/1/1970 End date: 5/23/2008
Billable Pages:	6	**Cost:**	0.48