

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO:**

MICROSPHERIX LLC,

Plaintiff,

v.

BRACHYSCIENCES, INC.,

Defendant.

COMPLAINT FOR PATENT INFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff Microspherix LLC, for its complaint against Defendant BrachySciences, Inc., hereby alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for infringement of United States Patent No. 7,776,310 (“the ‘310 patent”), attached as Exhibit A. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* The ‘310 patent covers brachytherapy seeds, which are implantable devices used for cancer treatment. BrachySciences, Inc.’s manufacture, solicitation of, and sale of their AnchorSeed products infringes claims of the ‘310 patent.

PARTIES

2. Plaintiff Microspherix LLC (“Microspherix”) is a Florida corporation having a principal place of business at 21283 Rockledge Lane, Boca Raton, Florida 33428 in Palm Beach County.

3. Defendant BrachySciences, Inc. (“BrachySciences”) is a Connecticut corporation with its principal place of business at 115 Hurley Road, Building 3C, Oxford, Connecticut 06478. Records maintained by the Secretary of State for the State of Connecticut indicate that BrachySciences is a domestic corporation incorporated in Connecticut.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), which create federal question jurisdiction over this patent infringement action.

5. This Court has personal jurisdiction over BrachySciences because: BrachySciences has minimum contacts within the State of Florida and the Southern District of Florida; BrachySciences has purposefully availed itself of the privileges of conducting business in the State of Florida and the Southern District of Florida; BrachySciences has sought protection and benefit from the laws of the State of Florida; and Microspherix’s cause of action arises directly from BrachyScience’s business contacts and other activities in the State of Florida and the Southern District of Florida.

6. BrachySciences transacts business in Florida and has otherwise committed acts in and beyond Florida causing injury to Microspherix in Florida.

7. BrachySciences has offered to sell, sold, and shipped infringing product(s) to customers in Florida and in the Southern District of Florida including Coral Springs, Plantation, and Fort Lauderdale, Florida (all cities in Broward County).

8. BrachySciences thus committed a tortious act within Florida under Florida's long-arm statute (Fla. Stat. § 48.193(1)(b)) when BrachySciences solicited and subsequently sold and shipped the infringing product(s) on several occasions to locations within the State of Florida.

9. BrachySciences caused injury to persons or property within Florida arising out of an act or omission by BrachySciences outside of Florida under Florida's long-arm statute (Fla. Stat. § 48.193(1)(f)) when BrachySciences solicited, sold, and shipped the infringing product(s) from outside the State of Florida to locations within the State of Florida.

10. BrachySciences conducted business within Florida under Florida's long-arm statute (Fla. Stat § 48.193(1)(a)) when BrachySciences' principals negotiated with Dr. Kaplan within the State of Florida for a license to the patent application which resulted in the '310 patent.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because this judicial district is the district in which a substantial part of the events or omissions giving rise to the claim occurred.

BACKGROUND

12. On August 17, 2010, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,776,310, entitled "Flexible and/or Elastic Brachytherapy Seed or Strand," naming Dr. Edward J. Kaplan as sole inventor. A copy of the '310 patent is attached hereto as Exhibit A.

13. Dr. Kaplan assigned the entire right, title and interest in and to the '310 patent to Microspherix. The entire right, title, and interest in the '310 patent is owned by Microspherix, with the right to sue for and collect damages for all past, present, and future infringement.

14. BrachySciences has manufactured and sold and/or is presently manufacturing and selling, products ("the accused products"), including at least products designated as AnchorSeed.

COUNT I - PATENT INFRINGEMENT

15. Microspherix incorporates the allegations contained in paragraphs 1 through 14 above as though fully set forth herein.

16. During the relevant period, BrachySciences has infringed one or more of the claims of the '310 patent in violation of 35 U.S.C. § 271(a) by making, using, offering to sell and/or selling (directly and/or through intermediaries), in the Southern District of Florida and elsewhere in the United States, infringing products including the AnchorSeed products. BrachySciences manufactures AnchorSeed products which infringe the '310 patent. BrachySciences has offered to sell and has sold AnchorSeed products.

17. Microspherix has suffered monetary damages as a result of BrachySciences' infringement of the '310 patent in an amount to be determined at trial.

18. BrachySciences has been aware of the issued '310 patent since at least late August 2010. Microspherix and BrachySciences held licensing negotiations in Florida regarding a potential license that would have included the '310 patent, but BrachySciences chose to terminate the negotiations without entering into a license agreement. Despite knowledge of Microspherix's patent rights and their applicability to the accused products, BrachySciences

continued its infringement of the '310 patent. On information and belief, such infringement has been and is willful.

REQUESTED RELIEF

WHEREFORE, Microspherix respectfully prays that:

- A. BrachySciences be adjudged and decreed to have infringed the claims of the '310 patent in violation of 35 U.S.C. § 271(a);
- B. BrachySciences be adjudged and decreed to have willfully infringed the claims of the '310 patent;
- C. Microspherix be awarded monetary damages in an amount sufficient to compensate Microspherix for BrachySciences' infringement of the '310 patent;
- D. Microspherix be awarded treble damages as a result of BrachySciences' willful infringement of the '310 patent;
- E. This case be deemed exceptional under 35 U.S.C. § 285 and that Microspherix be awarded its costs, expenses, and attorneys' fees incurred in this action;
- F. Microspherix be awarded costs under 28 U.S.C. § 1920; and
- G. Microspherix be awarded such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Microspherix respectfully requests a jury trial on all issues and claims so triable.

Dated: July 14, 2011

Respectfully submitted,

s/ Janet Munn

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