

1 James J. Elacqua (CSB No.: 187897)  
james.elacqua@dechert.com  
2 Noemi C. Espinosa (CSB No.: 116753)  
nicky.espinosa@dechert.com  
3 Ellen J. Wang (CSB No.: 215478)  
ellen.wang@dechert.com  
4 DECHERT LLP  
1117 California Avenue  
5 Palo Alto, California 94304  
Telephone: (650) 813-4800  
6 Facsimile: (650) 813-4848

**E-FILING ADR**

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JUL 21 2006

RICHARD W. WIERING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

7 Attorneys for Plaintiffs  
MEDTRONIC, INC., MEDTRONIC USA, INC.,  
8 AND MEDTRONIC VASCULAR, INC.

9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 **C06 - 04455 JL**

13 MEDTRONIC, INC., a Minnesota  
corporation, MEDTRONIC USA, INC., a  
14 Minnesota corporation, and MEDTRONIC  
VASCULAR, INC., a Delaware corporation,

Case No.

**COMPLAINT FOR PATENT  
INFRINGEMENT**

15 Plaintiffs,

**DEMAND FOR JURY TRIAL**

16 v.

17 W.L. GORE & ASSOCIATES, INC., a  
18 Delaware corporation,

**CERTIFICATION OF INTERESTED  
PARTIES**

19 Defendant.

20  
21  
22 Plaintiffs, Medtronic, Inc., Medtronic USA, Inc., and Medtronic Vascular, Inc.  
23 (collectively "Plaintiffs"), by and for their Complaint against defendant, W.L Gore & Associates,  
24 Inc. ("Gore") allege as follows:

25 **I.**

26 **NATURE OF THE CASE**

27 1. This is a case to enforce patents against infringement. Plaintiffs hold the rights to  
28 U.S. Patent Nos. 4,886,062, 6,656,219, 6,923,828, 5,067,957, and 6,306,141 (collectively, the

1 “patents-in-suit.”) The United States patent laws grant the holder of a patent the right to exclude  
2 infringers from making, using or selling the invention claimed in a patent, and to recover damages  
3 for the infringer’s violations of these rights, and to recover treble damages where the infringer has  
4 willfully infringed the patent. Plaintiffs are suing Gore for infringing their patents, and doing so  
5 willfully. Plaintiffs seek to recover damages for Gore’s infringement, including treble damages  
6 for willful infringement, as well as injunctive relief to end Gore’s further infringement.

7 **II.**

8 **THE PARTIES**

9 2. Medtronic, Inc. (“INC”) is a Minnesota Corporation, having its principal place of  
10 business in Minneapolis, Minnesota.

11 3. Medtronic USA, Inc. (“USA”) is a Minnesota corporation with its principal place  
12 of business in Minneapolis, Minnesota.

13 4. Medtronic Vascular, Inc. (“VASCULAR”) is a Delaware corporation with a  
14 principal place of business in Santa Rosa, California, within this judicial district.

15 5. Plaintiffs develop, manufacture and sell medical devices, including endoprosthesis  
16 devices and related products. Vascular and USA have contractual rights to sue for damages and  
17 to exclude others from practicing the inventions claimed in the patents-in-suit.

18 6. Upon information and belief, Gore is a Delaware corporation. Gore develops,  
19 manufactures and sells medical devices, including the EXCLUDER<sup>®</sup> AAA endoprosthesis, the  
20 TAG thoracic endoprosthesis and the VIABAHN<sup>®</sup> SFA endoprosthesis devices. Gore is doing  
21 business within this judicial district by offering for sale and selling such endoprosthesis devices.  
22 Gore has a place of business at 1327 Orleans Drive, Sunnyvale, California, 94089.

23 **III.**

24 **JURISDICTION AND VENUE**

25 7. This is an action for patent infringement arising under the patent laws of the  
26 United States of America, Title 35 § 271 of the United States Code.

27 8. This Court has subject matter jurisdiction over this case under 28 U.S.C. §§ 1331  
28 and 1338(a).

1 9. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b)  
2 because, upon information and belief, Gore has, among other things, committed infringing acts in  
3 this district and generally does business in this district.

4 **INTRADISTRICT ASSIGNMENT**

5 10. This patent action is in an excepted category for Local Rule 3-2(c), Assignment of  
6 a Division, and will be assigned on a district wide basis.

7 **IV.**

8 **CLAIMS FOR RELIEF**

9 **COUNT I**

10 **(Patent Infringement of U.S. Patent 4,886,062)**

11 11. Plaintiffs hereby incorporate by reference paragraphs 1-10 of this Complaint.

12 12. U.S. Patent No. 4,886,062 (the "'062 Patent"), entitled "Intravascular Radially  
13 Expandable Stent and Method of Implant," duly and legally issued on December 12, 1989, to  
14 Dominik M. Wiktor (attached as Exhibit A), with INC as the named assignee.

15 13. INC is the current assignee of the rights under the '062 Patent.

16 14. On information and belief, Gore has been, and is currently infringing, directly  
17 and/or through acts of contributory infringement or inducement, one or more claims of the '062  
18 Patent by, among other things, making, using, selling and/or offering for sale, certain medical  
19 devices, within the territorial boundaries of the United States, including this district, that embody  
20 and/or practice the inventions claimed in the '062 Patent.

21 15. On information and belief, Gore's infringement of the '062 Patent has been and is  
22 willful, and will continue unless enjoined by this Court. Plaintiffs have suffered, and will  
23 continue to suffer, irreparable harm as a result of this willful infringement. Remedies available at  
24 law are inadequate to compensate Plaintiffs for the irreparable harm they have suffered and will  
25 continue to suffer. In considering the balance of hardships between Plaintiffs and Gore, a remedy  
26 in equity is warranted. Furthermore, the public interest would not be disserved by a permanent  
27 injunction. Plaintiffs are entitled to a permanent injunction against further infringement pursuant  
28 to 35 U.S.C. § 283, and treble damages for willful infringement pursuant to 35 U.S.C. § 284.

**COUNT II**

**(Patent Infringement of U.S. Patent 6,656,219)**

16. Plaintiffs hereby incorporate by reference paragraphs 1-10 of this Complaint.

17. U.S. Patent No. 6,656,219 (the “’219 Patent”), entitled “Intravascular Stent,” duly and legally issued on December 2, 2003, to Dominik M. Wiktor (attached as Exhibit B).

18. INC is the current assignee of the rights under the ’219 Patent.

19. On information and belief, Gore has been, and is currently infringing, directly and/or through acts of contributory infringement or inducement, one or more claims of the ’219 Patent by, among other things, making, using, selling and/or offering for sale, certain medical devices, within the territorial boundaries of the United States, including this district, that embody and/or practice the inventions claimed in the ’219 Patent.

20. On information and belief, Gore’s infringement of the ’219 Patent has been and is willful, and will continue unless enjoined by this Court. Plaintiffs have suffered, and will continue to suffer, irreparable harm as a result of this willful infringement. Remedies available at law are inadequate to compensate Plaintiffs for the irreparable harm they have suffered and will continue to suffer. In considering the balance of hardships between Plaintiffs and Gore, a remedy in equity is warranted. Furthermore, the public interest would not be disserved by a permanent injunction. Plaintiffs are entitled to a permanent injunction against further infringement pursuant to 35 U.S.C. § 283, and treble damages for willful infringement pursuant to 35 U.S.C. § 284.

**COUNT III**

**(Patent Infringement of U.S. Patent 6,923,828)**

21. Plaintiffs hereby incorporate by reference paragraphs 1-10 of this Complaint.

22. U.S. Patent No. 6,923,828 (the “’828 Patent”), entitled “Intravascular Stent,” duly and legally issued on August 2, 2005, to Dominik M. Wiktor (attached as Exhibit C) with INC as the assignee.

23. INC is the current assignee of the rights under the ’828 Patent.

24. On information and belief, Gore has been, and is currently infringing, directly and/or through acts of contributory infringement or inducement, one or more claims of the ’828

1 Patent by, among other things, making, using, selling and/or offering for sale, certain medical  
2 devices, within the territorial boundaries of the United States, including this district, that embody  
3 and/or practice the inventions claimed in the '828 Patent.

4 25. On information and belief, Gore's infringement of the '828 Patent has been and is  
5 willful, and will continue unless enjoined by this Court. Plaintiffs have suffered, and will  
6 continue to suffer, irreparable harm as a result of this willful infringement. Remedies available at  
7 law are inadequate to compensate Plaintiffs for the irreparable harm they have suffered and will  
8 continue to suffer. In considering the balance of hardships between Plaintiffs and Gore, a remedy  
9 in equity is warranted. Furthermore, the public interest would not be disserved by a permanent  
10 injunction. Plaintiffs are entitled to a permanent injunction against further infringement pursuant  
11 to 35 U.S.C. § 283, and treble damages for willful infringement pursuant to 35 U.S.C. § 284.

12 **COUNT IV**

13 **(Patent Infringement of U.S. Patent 5,067,957)**

14 26. Plaintiffs hereby incorporate by reference paragraphs 1-10 of this Complaint.

15 27. U.S. Patent No. 5,067,957 (the "'957 Patent'"), entitled "Method Of Inserting  
16 Medical Devices Incorporating SIM Alloy Elements" duly and legally issued on November 26,  
17 1991 to James E. Jarvis (attached as Exhibit D), with Raychem Corporation as the originally  
18 named assignee.

19 28. INC is the current assignee of the rights under the '957 Patent.

20 29. On information and belief, Gore has been, and is currently infringing, directly  
21 and/or through acts of contributory infringement or inducement, one or more claims of the '957  
22 Patent by, among other things, making, using, selling and/or offering for sale, certain medical  
23 devices, within the territorial boundaries of the United States, including this district, including  
24 this district, that embody and/or practice the inventions claimed in the '957 Patent.

25 30. On information and belief, Gore's infringement of the '957 Patent has been and is  
26 willful, and will continue unless enjoined by this Court. Plaintiffs have suffered, and will  
27 continue to suffer, irreparable harm as a result of this willful infringement. Remedies available at  
28 law are inadequate to compensate Plaintiffs for the irreparable harm they have suffered and will

1 continue to suffer. In considering the balance of hardships between Plaintiffs and Gore, a remedy  
2 in equity is warranted. Furthermore, the public interest would not be disserved by a permanent  
3 injunction. Plaintiffs are entitled to a permanent injunction against further infringement pursuant  
4 to 35 U.S.C. § 283, and treble damages for willful infringement pursuant to 35 U.S.C. § 284.

5 **COUNT V**

6 **(Patent Infringement of U.S. Patent 6,306,141)**

7 31. Plaintiffs hereby incorporate by reference paragraphs 1-10 of this Complaint.

8 32. U.S. Patent No. 6,306,141 (the "'141 Patent"), entitled "Medical Devices  
9 Incorporating SIM Alloy Elements," duly and legally issued on October 23, 2001, to James E.  
10 Jervis (attached as Exhibit E), with INC as the named assignee.

11 33. INC is the current assignee of the rights under the '141 Patent.

12 34. On information and belief, Gore has been, and is currently infringing, directly  
13 and/or through acts of contributory infringement or inducement, one or more claims of the '141  
14 Patent by, among other things, making, using, selling and/or offering for sale, certain medical  
15 devices, within the territorial boundaries of the United States, including this district, that embody  
16 and/or practice the inventions claimed in the '141 Patent.

17 35. On information and belief, Gore's infringement of the '141 Patent has been and is  
18 willful, and will continue unless enjoined by this Court. Plaintiffs have suffered, and will  
19 continue to suffer, irreparable harm as a result of this willful infringement. Remedies available at  
20 law are inadequate to compensate Plaintiffs for the irreparable harm they have suffered and will  
21 continue to suffer. In considering the balance of hardships between Plaintiffs and Gore, a remedy  
22 in equity is warranted. Furthermore, the public interest would not be disserved by a permanent  
23 injunction. Plaintiffs are entitled to a permanent injunction against further infringement pursuant  
24 to 35 U.S.C. § 283, and treble damages for willful infringement pursuant to 35 U.S.C. § 284.

25 36. Plaintiffs have complied with the notice provisions of 35 U.S.C. § 287 with respect  
26 to the '141 patent.

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28

V.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

1. That Gore be adjudged to have infringed, directly and/or through acts of contributory infringement, and or to have induced infringement under 35 U.S.C. § 271 of the 4,886,062, 6,656,219, 6,923,828, 5,067,957, and 6,306,141 patents;

2. That Gore, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently enjoined and restrained under 35 U.S.C. § 283 from infringing in any manner the patents-in-suit;

3. That Gore be ordered to pay Plaintiffs an award of damages pursuant to 35 U.S.C. § 284 to adequately compensate Plaintiffs for Gore's direct, contributory and/or inducement of infringement of the patents-in-suit;

4. That the award of damages to Plaintiffs be trebled pursuant to 35 U.S.C. § 284 for Gore's willful infringement of the patents-in-suit;

5. That this case is an exceptional case and award Plaintiffs their reasonable attorneys' fees pursuant to 35 U.S.C. § 285;

6. For an assessment of pre-judgment and post-judgment interest and costs against Gore, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284; and

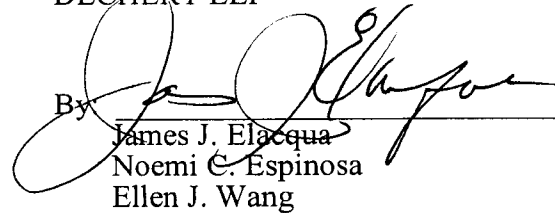
7. That Plaintiffs be awarded such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Dated: July 21, 2006

DECHERT LLP

By



James J. Elacqua  
Noemi C. Espinosa  
Ellen J. Wang

Attorneys for Plaintiffs.  
MEDTRONIC, INC.  
MEDTRONIC USA, INC.  
MEDTRONIC VASCULAR, INC.

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**DEMAND FOR TRIAL BY JURY**

Plaintiffs hereby demand a trial by jury for all issues so triable in this action.

Dated: July 21, 2006

DECHERT LLP

By: 

James J. Elacqua  
Noemi C. Espinosa  
Ellen J. Wang

Attorneys for Plaintiffs  
MEDTRONIC, INC.  
MEDTRONIC USA, INC.  
MEDTRONIC VASCULAR, INC.



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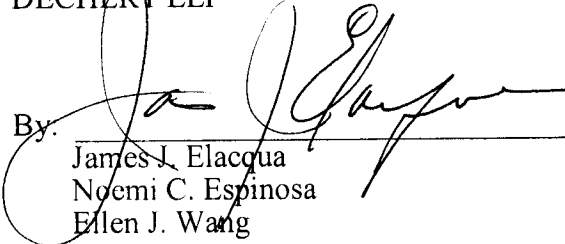
**CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

Pursuant to this district’s Local Rule 3-16, the undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a nonfinancial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

- Medtronic, Inc.
- Medtronic USA, Inc.
- Medtronic Vascular, Inc.

Dated: July 21, 2006

DECHERT LLP

By: 

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James J. Elacqua  
 Noemi C. Espinosa  
 Ellen J. Wang

Attorneys for Plaintiff  
MEDTRONIC, INC.  
MEDTRONIC USA, INC.  
MEDTRONIC VASCULAR, INC.