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NORTHERN DISTRICT OF CALIFORNIA
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Attorneys for Plaintiff DR. SHAUN L. W. SAMUELS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LB

DR. SHAUN L. W. SAMUELS

CV 13 2261

Plaintiff,

CIVIL ACTION NO. _____

v.

TRIVASCULAR CORPORATION

JURY TRIAL DEMANDED

Defendant.

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COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Dr. Shaun L.W. Samuels ("Dr. Samuels") for his Complaint against
Defendant TriVascular Corporation avers as follows:

NATURE OF THE ACTION

1. This is a patent infringement action in which plaintiff seeks compensatory damages, a reasonable royalty and declaratory and injunctive relief.

JURISDICTION AND VENUE

- 2. This action arises under the United States patent laws, 35 U.S.C. §§271 *et seq.*
- 3. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331, 1338(a) and (b).
- 4. Venue is proper in this district under 28 U.S.C. §§1391(b) and (c) and 1400(b).

PARTIES

5. Dr. Samuels is a doctor of medicine currently residing at 5825 SW 119th Street, Coral Gables, Florida 33156.

6. On information and belief, TriVascular Corporation is a corporation organized and existing under the laws of the State of California, conducts business throughout the United States including this judicial district, and has its corporate headquarters at 3910 Brickway Blvd., Santa Rosa, CA 95403. TriVascular can be served through its registered agent for service of process, National Registered Agents, Inc., 818 W Seventh St., Los Angeles, California, 90017.

FACTUAL ALLEGATIONS

7. Dr. Samuels is, and at all times relevant hereto has been, an active investigator and inventor in the field of interventional radiology.

8. He currently holds multiple United States Letters Patents for innovations in intraluminal medical devices based on his revolutionary inflatable cuff technology.

9. Dr. Samuels' inflatable cuff technology is particularly useful for the repair of abdominal aortic aneurysms ("AAA"), a weakening and dilatation of the abdominal section of the body's largest artery. AAA has a mortality rate of more than 50% if left untreated.

10. Because approximately one of every 250 people over the age of 50 dies of rupture of an AAA, it is a leading cause of death in the United States.

11. On information and belief, TriVascular pursued with the United States Food and Drug Administration ("FDA") approval to market the Ovation Prime™ Abdominal Stent Graft System, a product intended to treat AAA.

12. On information and belief, on January 21, 2013 the Ovation Prime™ Abdominal Stent

Graft System received approval from the U.S. Food & Drug Administration (FDA) for the treatment of abdominal aortic aneurysms.

13. On information and belief, TriVascular is also seeking approval to market the Ovation Prime™ Abdominal Stent Graft System in Europe.

14. On information and belief, quantities of the Ovation Prime™ Abdominal Stent Graft System have been manufactured in the United States and sold in the United States. On information and belief, TriVascular has treated over 1,000 patients worldwide with the Ovation Prime™ Abdominal Stent Graft System.

15. On information and belief, TriVascular has earned revenues in the United States from the Ovation Prime™ Abdominal Stent Graft System.

16. Dr. Samuels is the owner and inventor of U.S. Patent No. 6,007,575 entitled “Inflatable Intraluminal Stent And Method For Affixing Same Within The Human Body” issued December 28, 1999 (hereinafter also referred to as “the '575 patent”).

COUNT I - PATENT INFRINGEMENT

17. This is an action for patent infringement arising under the patent laws of the United States, Title 35 United States Code, Sections 271 *et seq.*

18. Jurisdiction of the subject matter of this action is established under 28 U.S.C. §§1331 and 1338. Venue is determined by 28 U.S.C. §§1391 and 1400.

19. On information and belief, TriVascular has willfully and knowingly made, used, sold and/or offered for sale devices embodying the patented invention that constitute infringement of U.S. Patent No. 6,007,575 in violation of 35 U.S.C. §271, *et seq.*

20. Plaintiff seeks damages for TriVascular’s infringement in an amount no less than a reasonable royalty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Dr. Samuels prays for judgment as follows:

- A. Adjudging that TriVascular has infringed, contributorily infringed, and actively induced infringement of the '575 patent, and that such infringement, contributory infringement, and active inducement of infringement have been willful;
- B. Declaring and adjudging that the manufacture, use, sale, and/or offer for sale of the Ovation Prime™ Abdominal Stent Graft System constitutes infringement, contributory infringement, and active inducement of infringement of the '575 patent;
- C. Enjoining TriVascular, its officers, directors, employees, attorneys, agents, representatives, parents, subsidiaries, affiliates, and all other persons acting in concert, participation, or privity with it, and its successors and assigns, from infringing, contributorily infringing, and/or inducing others to infringe the '575 patent;
- D. Enjoining TriVascular, its officers, directors, employees, attorneys, agents, representatives, parents, subsidiaries, affiliates, and all other persons acting in concert, participation, or privity with them, and its successors and assigns, from continuing to use and/or derive commercial advantage from infringement of Dr. Samuels' patent;
- E. Awarding Dr. Samuels damages adequate to compensate him for infringement of the '575 patent, increased threefold for willfulness, together with interest and costs, pursuant to 35 U.S.C. § 284;
- F. Adjudging this to be an exceptional case and awarding Dr. Samuels his attorneys fees pursuant to 35 U.S.C. §285; and
- G. Awarding Dr. Samuels such other and further relief as this Court may deem just and

proper.

Dated: May 17, 2013

/s/ James D. Petruzzi
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PLAINTIFF'S JURY DEMAND

Plaintiff demands a trial by jury on all issues that may be so tried.

/s/ James D. Petruzzi
James D. Petruzzi

JS 44 (Rev. 12/12) and rev (1/15/13)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Dr. Shaun L. W. Samuels

DEFENDANTS

TriVascular Corporation

(b) County of Residence of First Listed Plaintiff Miami-Dade, Florida
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Sonoma
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Mason & Petruzzi, 4900 Woodway, Suite 745, Houston, Texas 77056;
(713) 840-9993

Attorneys (If Known)

13-2261214

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 35 U.S.C. §§271 et seq
 Brief description of cause:
 Patent Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
05/17/2013

SIGNATURE OF ATTORNEY OF RECORD
/s/ James D. Petruzzi

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.