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11 Attorneys for Plaintiff

12 ENDOTACH LLC

13 **IN THE UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN JOSE DIVISION**

16 ENDOTACH LLC,

17 Plaintiff,

18 vs.

19 MEDTRONIC, INC. and  
MEDTRONIC VASCULAR, INC.,

20 Defendants.

CASE NO. 5:13-cv-03292-EJD

**PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

Jury Trial Demanded

1 Plaintiff ENDOTACH LLC files this First Amended Complaint against  
2 Defendants MEDTRONIC, INC. and MEDTRONIC VASCULAR, INC.  
3 (“Defendants” herein), alleging as follows:

4 **I. THE PARTIES**

5 1. Plaintiff ENDOTACH LLC (“Plaintiff”) is a Texas limited liability  
6 company with its principal place of business at 2400 Dallas Parkway, Suite 200,  
7 Plano, TX, 75093.

8 2. Upon information and belief, Defendant MEDTRONIC, INC. is a  
9 Minnesota corporation with a principal place of business in Minneapolis, MN.  
10 Defendant has been served with process and is before this Court for all purposes.

11 3. Upon information and belief, Defendant MEDTRONIC VASCULAR,  
12 INC. is Delaware corporation with a principal place of business in Santa Rosa,  
13 California. Defendant has been served with process and is before this Court for all  
14 purposes.

15 **II. JURISDICTION AND VENUE**

16 4. This is an action for infringement of a United States patent. Federal  
17 question jurisdiction is conferred to this Court over such action under 28 U.S.C. §§  
18 1331 and 1338(a).

19 5. Upon information and belief, Defendants are subject to personal  
20 jurisdiction by this Court. Defendants have committed such purposeful acts and/or  
21 transactions in the State of California that it reasonably knew and/or expected that  
22 it could be haled into a California court as a future consequence of such activity.  
23 Defendants make, use and/or sell infringing products within the Northern District  
24 of California, have a continuing presence within the Northern District of  
25 California, and have the requisite minimum contacts with the Northern District of  
26 California such that this venue is a fair and reasonable one. Upon information and  
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1 belief, Defendants have transacted and, at the time of the filing of this Complaint,  
2 are continuing to transact business within the Northern District of California.

3 6. For these reasons, personal jurisdiction exists and venue is proper in  
4 this Court under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

### 5 **III. PATENT-IN-SUIT**

6 7. On January 14, 1997, United States Patent No. 5,593,417 (“the ’417  
7 Patent”) was duly and legally issued to Dr. Rhodes for an “Intravascular Stent with  
8 Secure Mounting Means.” A true and correct copy of the ’417 Patent is attached  
9 hereto as Exhibit “A” and made a part hereof.

10 8. As it pertains to this lawsuit, the ’417 Patent, generally speaking,  
11 relates to an endovascular graft for revascularization of aneurysms or stenosis  
12 occurring in blood vessels that includes anchoring projections to aid in securing the  
13 graft in place within the blood vessel.

14 9. Dr. Rhodes was an award-winning surgeon who practiced in the field  
15 of vascular medicine for over thirty years, serving as Chief of Vascular Services at  
16 Point Pleasant Hospital and Brick Hospital (now Ocean Medical Center) in Brick,  
17 New Jersey. Dr. Rhodes was prominently involved in the field of vascular  
18 medicine, demonstrated by several patents related to vascular devices for which he  
19 is the named inventor as well as numerous medical publications regarding  
20 advances in medical procedures he developed. His innovative work was  
21 recognized by the State of New Jersey, which awarded him a certificate of Pioneer  
22 in Medicine.

23 10. During the late 1980s and early 1990s, Dr. Rhodes invented and  
24 developed several improvements in vascular graft technology, including those  
25 described in the ’417 Patent. In or around 1996, Dr. Rhodes was forced to retire  
26 due to a terminal illness. He relocated to Santa Rosa Beach, Florida where he  
27 voluntarily treated patients who were without insurance and pursued a number of  
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1 civic activities, including the establishment of a library in the area. After a  
2 prolonged fight with the illness that cost him the entirety of his life savings, Dr.  
3 Rhodes passed away in 2000.

4 11. After Dr. Rhodes's passing, the '417 Patent was devised to a trust  
5 created by Dr. Rhodes. An exclusive license to the '417 Patent was granted to  
6 Acacia Patent Acquisition LLC ("Acacia"), which assigned its rights to the '417  
7 Patent under the exclusive license to Plaintiff.

8 12. Plaintiff is the owner of all substantial rights in and to the '417 Patent,  
9 including the exclusive right to make, have made, use, import, offer or sell  
10 products covered by the '417 Patent, to enforce the '417 Patent against all  
11 infringers, and to collect past, present and future damages and seek and obtain  
12 injunctive or any other relief for infringement of the '417 Patent.

#### 13 **IV. FIRST CLAIM FOR RELIEF**

##### 14 **(Patent Infringement)**

15 13. Plaintiff repeats and realleges every allegation set forth above.

16 14. Upon information and belief, and without authority, consent, right, or  
17 license, and in direct infringement of the '417 Patent, Defendants manufacture,  
18 make, have made, use, market, sell and/or import products that infringe one or  
19 more claims in the '417 Patent. Such conduct constitutes, at a minimum, patent  
20 infringement under 35 U.S.C. § 271(a).

21 15. Defendants have directly infringed, and continues to infringe, at least  
22 claims 1, 2, and 13 of the '417 Patent by its manufacture, use, sale, offer for sale  
23 and/or importation of stent graft products, including at least the Endurant AAA  
24 Stent Graft and Endurant II AAA Stent Graft.

25 16. Plaintiff maintains that Defendant had actual notice of the Patents-in-  
26 Suit at least as early as 2012, and since that time, Defendant willfully infringed and  
27 continues to willfully infringe the '417 Patent. At a minimum, Plaintiff maintains  
28

1 that Defendants had actual knowledge of the '417 Patent no later than November 1,  
2 2012, the filing of the Complaint in *Endotach LLC v. Medtronic Inc. et al.*, Civil  
3 Action No. 5:13-cv-00452-EJD.

4 17. Plaintiff has been damaged as a result of Defendants' infringing  
5 conduct. Defendants are, thus, liable to Plaintiff in an amount that adequately  
6 compensates for its infringement, which, by law, cannot be less than a reasonable  
7 royalty, together with interest and costs as fixed by this Court under 35 U.S.C. §  
8 284.

9 18. Upon information and belief, Defendants will continue their  
10 infringement of the '417 Patent unless enjoined by the Court. Defendants'  
11 infringing conduct has caused Plaintiff irreparable harm and will continue to cause  
12 such harm without the issuance of an injunction.

13 19. Plaintiff reserves the right to assert additional claims of the '417  
14 Patent.

#### 15 **V. JURY DEMAND**

16 Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal  
17 Rules of Civil Procedure.

#### 18 **VI. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff respectfully requests that the Court find in its favor  
20 and against Defendants, and that the Court grant Plaintiff the following relief:

21 a. Judgment that one or more claims of United States Patent No.  
22 5,593,417 has been infringed, either literally and/or under the doctrine of  
23 equivalents, by Defendants;

24 b. Judgment that Defendants account for and pay to Plaintiff all damages  
25 to and costs incurred by Plaintiff because of Defendants' infringing activities and  
26 other conduct complained of herein;

1 c. That Defendants' infringement be found to be willful from the time  
2 Defendants became aware of the infringing nature of its services, and that the  
3 Court award treble damages for the period of such willful infringement pursuant to  
4 35 U.S.C. § 284.

5 d. That Plaintiff be granted pre judgment and post judgment interest on  
6 the damages caused by Defendants' infringing activities and other conduct  
7 complained of herein;

8 e. That the Court declare this an exceptional case and award Plaintiff its  
9 reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285;

10 f. That Defendants be permanently enjoined from any further activity or  
11 conduct that infringes one or more claims of United States Patent No. 5,593,417;  
12 and

13 g. That Plaintiff be granted such other and further relief as the Court may  
14 deem just and proper under the circumstances.

15  
16 Dated: October 18, 2013

/s/ Brett M. Pinkus

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Brett M. Pinkus  
Attorney for Plaintiff

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of October, 2013, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Northern District of California, San Jose Division, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

I further hereby certify that a true and correct copy of the above and foregoing document has been provided via electronic mail to all counsel of record:

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Dated: October 22, 2013

/s/ Brett M. Pinkus  
Brett M. Pinkus  
Attorney for Plaintiff