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18 **UNITED STATES DISTRICT COURT**
19 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

20 ENDOBOTICS, INC.,
21 Plaintiff,

22 v.

23 FORTIMEDIX SURGICAL B.V. and
24 FORTIMEDIX USA, INC.,
25 Defendants.

Civil Action No. **'17CV2425 MMAJMA**

**COMPLAINT FOR
PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

26 Plaintiff Endobotics, Inc. (“Endobotics”), hereby alleges for its Complaint for
27 Patent Infringement against Fortimedix Surgical B.V. (“Fortimedix Surgical”) and
28 Fortimedix USA, Inc. (“Fortimedix USA”) (collectively, “Defendants”) on personal
knowledge as to its own activities and on information and belief as to all other
matters, as follows:

NATURE OF THE ACTION

1. This action arises under 35 U.S.C. § 271 for Defendants’ infringement

1 of Endobotics' U.S. Patent Nos. 7,147,650, 7,338,513, 7,364,582, 8,221,450 and
2 7,686,826 (attached hereto as Exhibits A-E, respectively).

3 **PARTIES**

4 2. Plaintiff Endobotics is a Delaware limited liability company with its
5 principal place of business located at 160 Greentree Drive, Suite 101, Dover,
6 Delaware 19904.

7 3. Defendant Fortimedix Surgical is a Netherlands corporation with a
8 principal place of business at Daelderweg 20, 6361 HK Nuth, the Netherlands.

9 4. Defendant Fortimedix USA is a California corporation with a principal
10 place of business at 8174 Doug Hill, San Diego, California 92127.

11 **JURISDICTION AND VENUE**

12 5. This is an action for patent infringement arising under the provisions of
13 the Patent Laws of the United States of America, Title 35 of the United States Code,
14 §§ 100, *et seq.*

15 6. Subject matter jurisdiction over Endobotics' claims is conferred upon
16 this Court by 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. §
17 1338(a) (patent jurisdiction).

18 7. This Court has personal jurisdiction over Defendant Fortimedix Surgical
19 because Fortimedix Surgical is subject to general and specific jurisdiction.
20 Fortimedix Surgical has established minimum contacts with this forum, and regularly
21 conducts business in this District, by inter alia, directing its sales and importation of
22 infringing goods to the United States of America at least through its U.S. subsidiary,
23 which is incorporated in the State of California, and thus enjoys the privileges and
24 protections of California law. Fortimedix Surgical, through its subsidiary, directs
25 marketing, selling, offering for sale, and/or importing the Accused Products (defined
26 *infra*). The exercise of personal jurisdiction comports with Fortimedix Surgical's
27 right to due process, because it has purposefully availed itself of the privilege of
28 conducting activities within the Southern District of California such that it should

1 reasonably anticipate being hailed into court here.

2 8. This Court has personal jurisdiction over Defendant Fortimedix USA
3 because Fortimedix USA is subject to general and specific jurisdiction. Fortimedix
4 USA has established minimum contacts with this forum by being incorporated within
5 it. Fortimedix USA is incorporated in the State of California and thus enjoys the
6 privileges and protections of California law. Fortimedix USA resides and regularly
7 conducts business in this District, including by marketing, selling, offering for sale,
8 and/or importing the Accused Products (defined *infra*). The exercise of personal
9 jurisdiction comports with Fortimedix USA's right to due process, because it has
10 purposefully availed itself of the privilege of conducting activities within the
11 Southern District of California such that it should reasonably anticipate being hailed
12 into court here.

13 9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)
14 and (c) and § 1400(b) at least because Defendant Fortimedix USA is a California
15 corporation has its principal place of business within this district, transacts business
16 within this district, and has committed acts in this district that infringe U.S. Patent
17 Nos. 7,147,650, 7,338,513, 7,364,582, 7,686,826, and 8,221,450, and at least
18 because Defendant Fortimedix Surgical directs its activities in the United States of
19 America through its subsidiary with its principal place of business within this
20 district.

21 **BACKGROUND**

22 10. Endobotics' predecessor-in-interest, Cambridge Endoscopic Devices,
23 Inc. ("Cambridge"), developed and manufactured minimally invasive surgical tools.
24 For example, Cambridge developed a surgical instrument that increases the
25 manipulative ability of a surgical tool affixed to the end of the surgical instrument.
26 Recognizing their value to laparoscopic surgery as well as trans-oral and trans-anal
27 surgery, Endobotics acquired the patents-in-suit when Cambridge went bankrupt.
28 Fortimedix Surgical and Fortimedix USA manufacture and sell a single-port surgery

1 solution for use with standard 15mm laproscopic trocars, providing a single-port
2 approach. (See [http://www.fortimedixsurgical.com/symphonxtm/symphonxtm-
4 surgical-platform/](http://www.fortimedixsurgical.com/symphonxtm/symphonxtm-
3 surgical-platform/)). This device incorporates the features claimed in numerous
5 claims in Endobotics' patents. For at least the past year, Defendants have known
6 about Endobotics' patents. Endobotics sent Defendants numerous letters and has had
7 numerous phone conversations with Defendants' attorneys in which Endobotics
8 informed Defendants that their device incorporates a number of features claimed in
9 Endobotics' patents. Each time, Defendants refused to negotiate in good faith to
10 avoid a lawsuit. Even after Endobotics presented detailed claim charts highlighting
11 the elements of the Endobotics patents and mapping them to elements of the
12 Fortimedix device, Defendants refused to take a license to cure their infringement.

12 **COUNT 1: INFRINGEMENT OF U.S. PATENT NO. 7,147,650**

13 11. Endobotics re-alleges and incorporates the allegations in each of the
14 preceding paragraphs as if fully set forth herein.

15 12. United States Patent No. 7,147,650 ("the '650 patent"), entitled
16 "Surgical Instrument," was duly and legally issued by the U.S. Patent and Trademark
17 Office on December 12, 2006. Endobotics is the owner by assignment of all right,
18 title and interest in and to the '650 patent, including all right to recover for any and
19 all infringement thereof. All necessary maintenance fees for the '650 patent have
20 been timely paid in full. The '650 patent is valid and enforceable. A true and correct
21 copy of the '650 patent is attached as Exhibit A.

22 13. Claim 1 of the '650 patent recites, for example, a surgical instrument.
23 The surgical instrument includes an elongated instrument shaft with proximal and
24 distal ends. A tool is disposed from the distal end of the instrument shaft, and is
25 coupled to the instrument shaft via a first movable member. A control handle is
26 disposed from the proximal end of the instrument shaft, and is coupled to the
27 instrument shaft via a second movable member. Movement of the control handle
28 with respect to the elongated instrument shaft, via the second movable member,

1 causes attendant movement of the tool with respect to the instrument shaft via the
2 first movable member. Both movable members include a bendable motion member,
3 with each bendable motion member providing at least one degree of freedom. The
4 bending stiffness of the second movable member is greater than the bending stiffness
5 of the first movable member.

6 14. Claim 4 of the '650 patent recites, for example, a surgical instrument.
7 The surgical instrument includes an elongated instrument shaft with proximal and
8 distal ends. A tool is disposed from the distal end of the instrument shaft, and is
9 coupled to the instrument shaft via a first movable member. A control handle is
10 disposed from the proximal end of the instrument shaft, and is coupled to the
11 instrument shaft via a second movable member. Movement of the control handle
12 with respect to the elongated instrument shaft, via the second movable member,
13 causes attendant movement of the tool with respect to the instrument shaft via the
14 first movable member. Both movable members include a bendable motion member,
15 with the maximum transverse cross-sectional dimension of the second movable
16 member being different than that of the first movable member. The tool movement
17 with respect to the distal end of the elongated shaft is in the same direction of the
18 control handle movement with respect to the proximal end of the elongated shaft.

19 15. Claim 22 of the '650 patent recites, for example, a surgical instrument.
20 The surgical instrument includes an elongated instrument shaft with proximal and
21 distal ends. A tool is disposed from the distal end of the instrument shaft, and is
22 coupled to the instrument shaft via a first movable member. A control handle is
23 disposed from the proximal end of the instrument shaft, and is coupled to the
24 instrument via a second movable member. Movement of the control handle with
25 respect to the elongated instrument shaft, via the second movable member, causes
26 attendant movement of the tool with respect to the instrument shaft via the first
27 movable member. At least one of the first and second members includes a bendable
28 motion member. The second movable member is able to axially rotate about the

1 control handle.

2 16. Claim 84 of the '650 patent recites, for example, a surgical instrument.
3 The surgical instrument includes an elongated instrument shaft with proximal and
4 distal ends. A tool is disposed from the distal end of the instrument shaft, and a
5 control handle is disposed from the proximal end of the instrument shaft. A distal
6 bendable member couples the distal end of the elongated instrument shaft to the tool.
7 A proximal bendable member couples the proximal end of the elongated instrument
8 shaft to the handle. Actuation means extend between the distal and proximal
9 bendable members. Any deflection of the control handle with respect to the
10 elongated instrument shaft causes a corresponding bending of the distal bendable
11 member for control of the tool. At least one of the bendable members includes a
12 single unitary slotted structure that is readily capable of bending in any direction.
13 The slotted structure includes a plurality of separately disposed non-contiguous slots.

14 17. Claim 111 of the '650 patent recites, for example, a surgical instrument.
15 The surgical instrument includes an elongated instrument shaft with proximal and
16 distal ends. A tool is disposed from the distal end of the instrument shaft, and a
17 control handle is disposed from the proximal end of the instrument shaft. A distal
18 bendable member couples the distal end of the elongated instrument shaft to the tool.
19 A proximal bendable member couples the proximal end of the elongated instrument
20 shaft to the handle. Actuation means extend between the distal and proximal
21 bendable members for coupling motion of the proximal bendable member to the
22 distal bendable member for controlling the positioning of the tool. The proximal
23 bendable member has a diameter that is different than the diameter of the distal
24 bendable member.

25 18. Dependent claim 2 of the '650 patent further recites that each bendable
26 motion member has two degrees of freedom to provide motion in all directions.

27 19. Dependent claim 3 of the '650 patent further recites that the control
28 handle includes a push-pull actuation arrangement.

1 20. Dependent claim 25 of the ‘650 patent further recites that the surgical
2 instrument further includes a rolling-motion wheel adjacent to the control handle and
3 rotatable relative to the control handle for causing a corresponding rotation of the
4 tool about a roll axis.

5 21. Dependent claim 28 of the ‘650 patent further recites that the maximum
6 transverse cross-sectional dimension of the second movable member is different than
7 that of the first movable member.

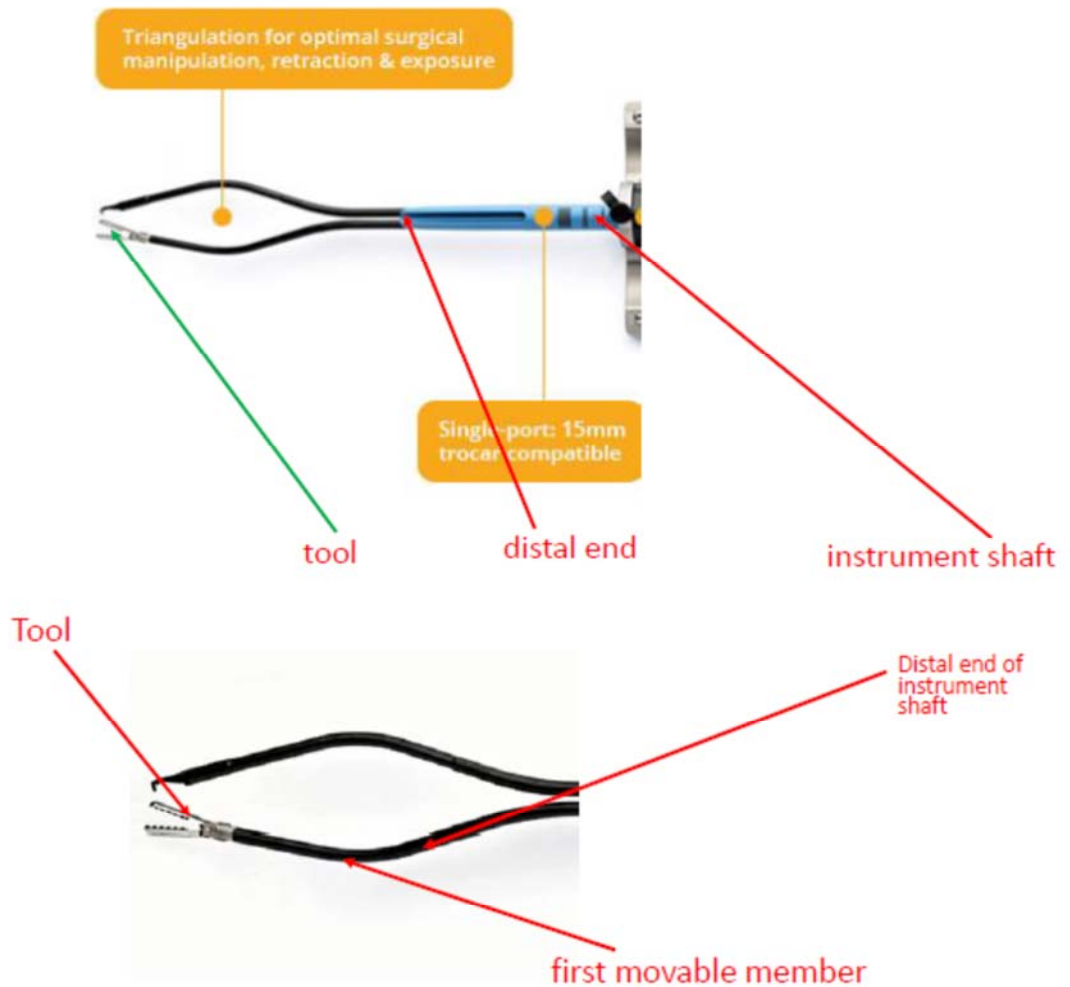
8 22. Dependent claim 29 of the ‘650 patent recites that the control handle is
9 able to axially rotate relative to at least one of the instrument shaft and second
10 movable member.

11 23. Defendants make, use, sell, offer to sell, and/or import into the United
12 States surgical instruments that implement what Defendants call a “single-port
13 surgery solution” “to achieve excellent triangulation for optimal surgical
14 manipulation, retraction and exposure during a single-port approach” in their
15 symphonX device (the “Accused Products”). (See, e.g., Exhibit F printout of
16 www.fortimedixsurgical.com/symphonxtm/symphonxtm-surgical-platform/). These
17 Accused Products include without limitation the symphonX surgical platform and all
18 variations known to Plaintiff. The Accused Products incorporate the features
19 claimed in numerous claims in the ‘650 patent.

20 24. The Accused Products include a platform. For example, as illustrated in
21 the promotional video on [www.fortimedixsurgical.com/symphonxtm/symphonxtm-](http://www.fortimedixsurgical.com/symphonxtm/symphonxtm-surgical-platform/)
22 [surgical-platform/](http://www.fortimedixsurgical.com/symphonxtm/symphonxtm-surgical-platform/):

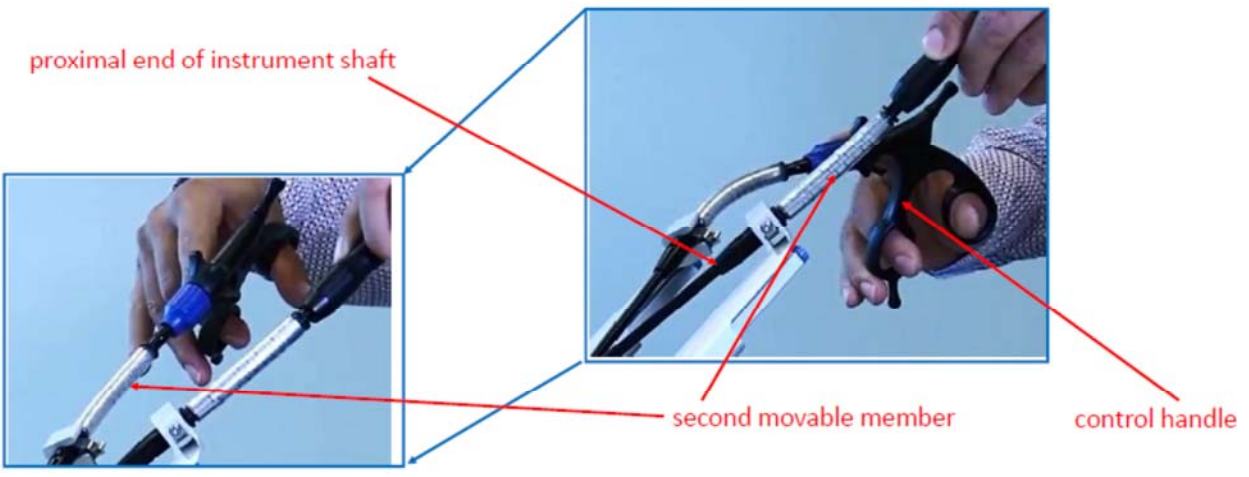
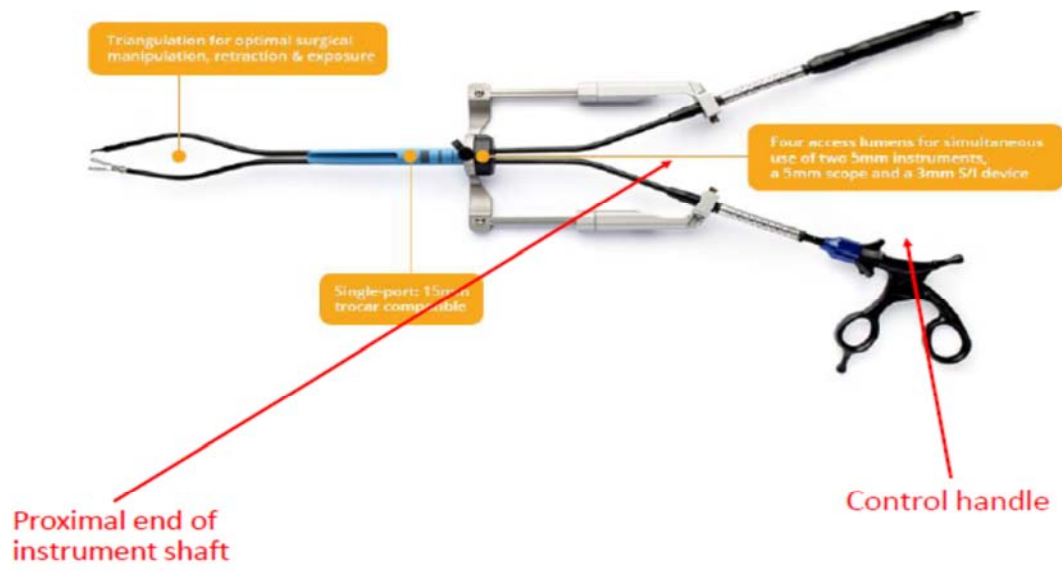


1 25. The Accused Products include an elongated shaft with proximal and
2 distal ends. A tool is disposed from the distal end of the instrument shaft, and is
3 coupled to the instrument shaft via a first movable member. For example:

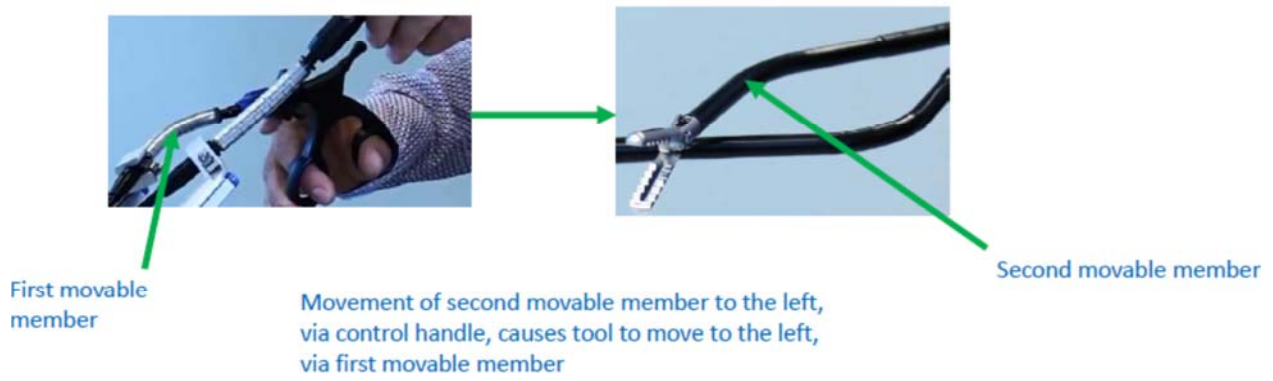


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21 26. The Accused Products include a control handle disposed from the
22 proximal end of the instrument shaft. The control handle is coupled to the
23 instrument shaft via a second movable member. For example:

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27. The Accused Products include movement of the control handle with respect to the elongated instrument shaft, via the second movable member, causing attendant movement of the tool with respect to the instrument shaft via the first movable member. For example, this feature is illustrated in the promotional video:

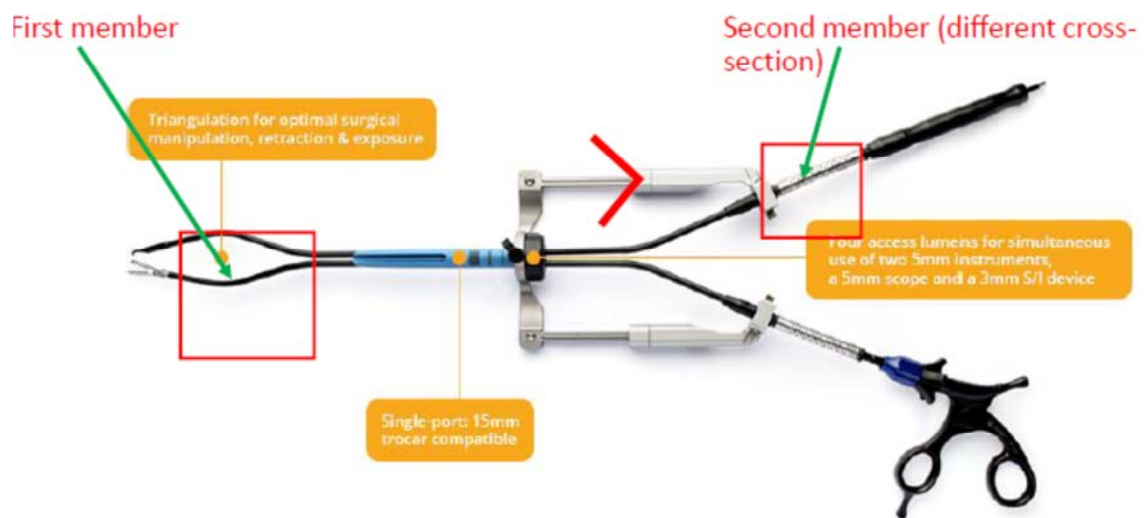


1 28. The Accused Products include the feature that both movable members
2 include a bendable motion member, with each bendable motion member providing at
3 least one degree of freedom. For example:

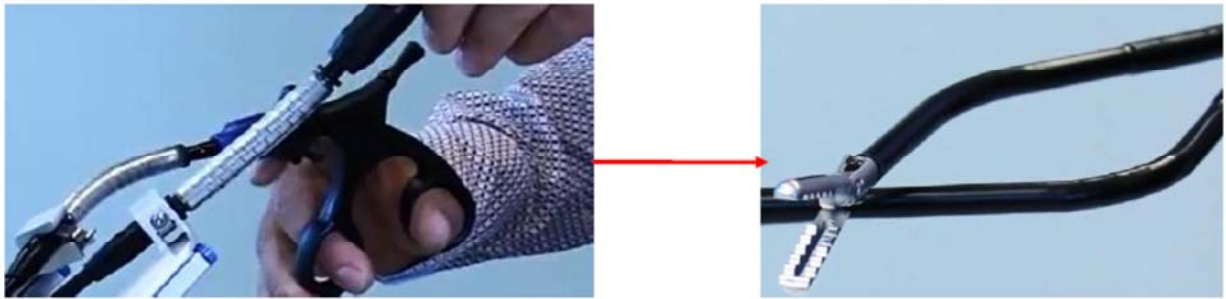


10 29. The Accused Products have a bending stiffness of the second movable
11 member that is greater than the bending stiffness of the first movable member.

12 30. The Accused Products have a maximum transverse cross-sectional
13 dimension of the second movable member being different than that of the first
14 movable member. For example:



24 31. The Accused Products have the tool movement with respect to the distal
25 end of the elongated shaft in the same direction of the control handle movement with
26 respect to the proximal end of the elongated shaft. For example:



As the handle is turned to the right, the tool moves toward the right

32. The Accused Products include a second movable member that is able to axially rotate about the control handle.

33. The Accused Products have actuation means that extend between the distal and proximal bendable members. The deflection of the control handle with respect to the elongated instrument shaft causes, in the Accused Products, a corresponding bending of the distal bendable member for control of the tool. At least one of the bendable members includes a single unitary slotted structure that is readily capable of bending in any direction, and the slotted structure includes a plurality of separately disposed non-contiguous slots.

34. The Accused Products include a proximal bendable member with a diameter that is different than the diameter of the distal bendable member.

35. The Accused Products have a bendable motion member with two degrees of freedom to provide motion in all directions.

36. The control handle of the Accused Products includes a push-pull actuation arrangement.

37. The Accused Products include a rolling-motion wheel adjacent to the control handle and rotatable relative to the control handle, which causes a corresponding rotation of the tool about a roll axis.

38. The Accused Products' control handle is able to axially rotate relative to at least one of the instrument shaft and the second movable member.

39. Therefore, the Accused Products meet all of the limitations of at least

1 claims 1-4, 22, 25, 28-29, 84 and 111, literally or under the doctrine of equivalents.

2 **COUNT 2: INFRINGEMENT OF U.S. PATENT NO. 7,338,513**

3 40. Endobotics re-alleges and incorporates the allegations in each of the
4 preceding paragraphs as if fully set forth herein.

5 41. United States Patent No. 7,338,513 (“the ‘513 patent”), entitled
6 “Surgical Instrument,” was duly and legally issued by the U.S. Patent and Trademark
7 Office on March 4, 2008. Endobotics is the owner by assignment of all right, title
8 and interest in and to the ‘513 patent, including all right to recover for any and all
9 infringement thereof. All necessary maintenance fees for the ‘513 patent have been
10 timely paid in full. The ‘513 patent is valid and enforceable. A true and correct
11 copy of the ‘513 patent is attached as Exhibit B.

12 42. Claim 1 of the ‘513 patent recites, for example, a surgical instrument.
13 The surgical instrument includes an elongated instrument shaft with proximal and
14 distal ends. A tool is disposed from the distal end of the instrument shaft, and is
15 supported extending along a distal tool axis. A control handle is disposed from the
16 proximal end of the instrument shaft. A distal bendable member couples the distal
17 end of the elongated instrument shaft to the tool. A proximal bendable member
18 couples the proximal end of the elongated instrument shaft to the handle. Actuation
19 means extend between the distal and proximal bendable members for coupling
20 motion of the proximal motion member to the distal motion member for controlling
21 the positioning of the tool. A rotation knob is adjacent to the control handle, and
22 rotates relative to the control handle, causing a corresponding rotation of the tool on
23 the distal tool axis.

24 43. Dependent claim 5 of the ‘513 patent recites that both bendable
25 members are bendable into a curved configuration, and any rotation of the rotation
26 knob causes a corresponding rotation of the bendable members, instrument shaft and
27 tool.

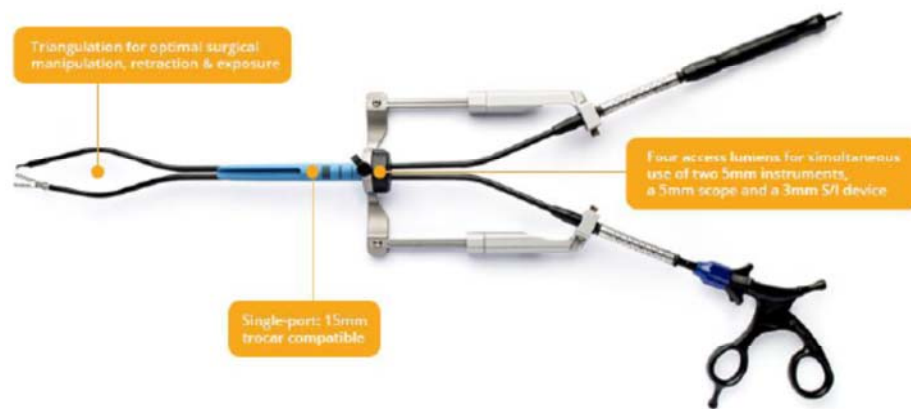
28 44. Claim 36 of the ‘513 patent recites, for example, a surgical instrument.

1 The surgical instrument includes an elongated instrument shaft with proximal and
2 distal ends, with a working member disposed from the distal end and a control
3 handle disposed from the proximal end. The working member is coupled to the
4 distal end via a distal bendable member. A proximal member, capable of bending
5 into a curved configuration, is used to couple a control handle to the proximal end of
6 the instrument shaft. A manually rotatable member is arranged adjacent to the
7 control, and between the control handle and proximal bendable member. The
8 manually rotatable member is adapted to be manually rotated in order to rotate the
9 proximal bendable member, instrument shaft, distal bendable member and working
10 member relative to the control handle. An actuation element extends between the
11 distal and proximal bendable members. Deflection of the control handle with respect
12 to the elongated instrument shaft causes the proximal bendable member to bend, and
13 a corresponding bending of the distal bendable member for control of the working
14 member.

15 45. Claim 50 of the '513 patent recites, for example, a manually operated
16 medical instrument. The medical instrument includes an instrument shaft that
17 couples with an operating handle at a proximal end and a tool at a distal end. A
18 proximal bendable member is located at the proximal end of the instrument shaft and
19 is bendable into a curved configuration. A distal motion member is located at the
20 distal end of the instrument shaft, and is deflectable. One or more actuating elements
21 intercouple the proximal bendable member and the distal motion member, with a
22 manually initiated bending at the proximal bendable member causing a
23 corresponding deflection of the distal motion member. This allows for the handle to
24 control the positioning of the tool and a rotation knob disposed between a handle and
25 proximal bendable member for controlling the rotation of the tool.

26 46. Defendants make, use, sell, offer to sell, and/or import into the United
27 States Accused Products that infringe at least the aforementioned claims of the '513
28 patent.

1 47. The Accused Products include an elongated instrument shaft with a tool
2 disposed from the distal end and a control handle disposed from the proximal end. A
3 distal bendable member couples the distal end of the elongated instrument shaft to
4 the tool, while a proximal bendable member couples the proximal end of the
5 elongated instrument shaft to the handle. In the Accused Products, actuation means
6 extend between the distal and proximal bendable members, allowing the proximal
7 motion to be coupled to the distal motion member. A rotation knob is adjacent to the
8 control handle and rotates relative to the control handle, causing a corresponding
9 rotation of the tool on the distal tool axis. For example, as shown in the Defendants
10 promotional materials:



18 48. The Accused Products further incorporate the features of claims 5, 36
19 and 50.

20 49. Therefore, the Accused Products meet all of the limitations of at least
21 claims 1, 5, 36 and 50, literally or under the doctrine of equivalents.

22 **COUNT 3: INFRINGEMENT OF U.S. PATENT NO. 7,364,582**

23 50. Endobotics re-alleges and incorporates the allegations in each of the
24 preceding paragraphs as if fully set forth herein.

25 51. United States Patent No. 7,364,582 (“the ‘582 patent”), entitled
26 “Surgical Instrument,” was duly and legally issued by the U.S. Patent and Trademark
27 Office on April 29, 2008. Endobotics is the owner by assignment of all right, title
28 and interest in and to the ‘582 patent, including all right to recover for any and all

1 infringement thereof. All necessary maintenance fees for the '582 patent have been
2 timely paid in full. The '582 patent is valid and enforceable. A true and correct
3 copy of the '582 patent is attached as Exhibit C.

4 52. Claim 1 of the '582 patent recites, for example, a surgical instrument.
5 The surgical instrument includes an elongated instrument shaft, with a tool disposed
6 from the distal end of the instrument shaft and a control handle disposed from the
7 proximal end of the instrument shaft. A distal motion member couples the distal end
8 of the instrument to the tool, and a proximal bendable member, bendable into a
9 curved configuration, couples the proximal end of the shaft to the handle. Actuation
10 means extend between the distal motion member and the proximal bendable
11 member, in order to couple the motion for controlling the positioning of the tool. A
12 rolling-motion wheel adjacent to the control handle and rotatable relative to the
13 control handle causes a corresponding rotation of the tool about a distal tool roll axis.

14 53. Claim 10 of the '582 patent recites, for example, a medical instrument.
15 The medical instrument includes an instrument shaft, with a working member
16 disposed from the distal end of the instrument shaft and a control handle disposed
17 from the proximal end of the instrument shaft. A first movable member couples the
18 distal end of the instrument to the working member, and a second movable member
19 couples the proximal end of the instrument shaft to the control handle. Movement of
20 the control handle with respect to the instrument shaft, via the second movable
21 member, causes attendant movement of the working member with respect to the
22 instrument shaft via the first movable member. Both movable members include a
23 bendable motion member, with each bendable motion member providing at least one
24 degree of freedom. The bending stiffness of the second movable member is different
25 from the bending stiffness of the first movable member.

26 54. Claim 29 of the '582 patent recites, for example, an instrument. The
27 instrument includes an instrument shaft, with a working member disposed from the
28 distal end of the instrument shaft and a control handle disposed from the proximal

1 end of the instrument shaft. A distal movable member couples the distal end of the
2 instrument to the working member, and a proximal movable member couples the
3 proximal end of the instrument shaft to the control handle. Movement of the control
4 handle with respect to the instrument shaft, via the proximal movable member,
5 causes attendant movement of the working member with respect to the instrument
6 shaft via the distal movable member. The proximal movable member is capable of
7 axially rotating relative to the control handle. The instrument further includes a
8 rolling-motion wheel adjacent to the control handle and rotatable relative to the
9 control handle for causing a corresponding rotation of the tool about the distal tool
10 roll axis.

11 55. Claim 41 of the '582 patent recites, for example, a surgical instrument.
12 The surgical instrument includes an elongated instrument shaft, with a tool disposed
13 from the distal end of the instrument shaft and a control handle disposed from the
14 proximal end of the instrument shaft. A distal bendable member couples the distal
15 end of the instrument to the tool, and a proximal bendable member couples the
16 proximal end of the shaft to the handle. Actuation means extend between the distal
17 bendable member and the proximal bendable member, in order to couple the motion
18 for controlling the positioning of the tool. The proximal bendable member has a
19 maximum transverse cross-sectional dimension different than that of the distal
20 bendable member.

21 56. Claim 46 of the '582 patent recites, for example, an instrument. The
22 instrument includes an instrument shaft, with a working member disposed from the
23 distal end of the instrument shaft and a control handle disposed from the proximal
24 end of the instrument shaft. A distal bendable member couples the distal end of the
25 instrument to the working member, and a proximal bendable member couples the
26 proximal end of the instrument shaft to the control handle. Movement of the control
27 handle with respect to the instrument shaft, via the proximal bendable member,
28 causes attendant movement of the working member with respect to the instrument

1 shaft via the distal bendable member. Cables connect the proximal and distal
2 bendable members, with the cables being located at a different radial distance from
3 the center of the proximal bendable member, when compared to the distal bendable
4 member.

5 57. Claim 49 of the '582 patent recites, for example, an instrument. The
6 instrument includes an instrument shaft, with a working member disposed from the
7 distal end of the instrument shaft and a control handle disposed from the proximal
8 end of the instrument shaft. A distal bendable member couples the distal end of the
9 instrument to the working member, and a proximal bendable member couples the
10 proximal end of the instrument shaft to the control handle. Actuating means extend
11 between the distal bendable member and the proximal bendable member, in order to
12 couple the motion for controlling the positioning of the working member. The
13 actuating means include cables arranged so that each cable is located a first radial
14 distance from the center of the distal bendable and a second radial distance from the
15 center of the proximal bendable member, with the first and second radial distances
16 being different.

17 58. Claim 55 of the '582 patent recites, for example, an instrument. The
18 instrument includes a proximal control handle and a distal tool intercoupled by an
19 elongated instrument shaft. Proximal and distal movable members intercouple the
20 control handle and distal tool, respectively, with the instrument shaft. The proximal
21 movable member includes a proximal bendable member. Cabling extends between
22 the movable members, such that a motion of the proximal movable member controls
23 the distal movable member. A control member at the control handle is manipulable
24 via proximal and distal movable members to rotate the distal tool on its axis.

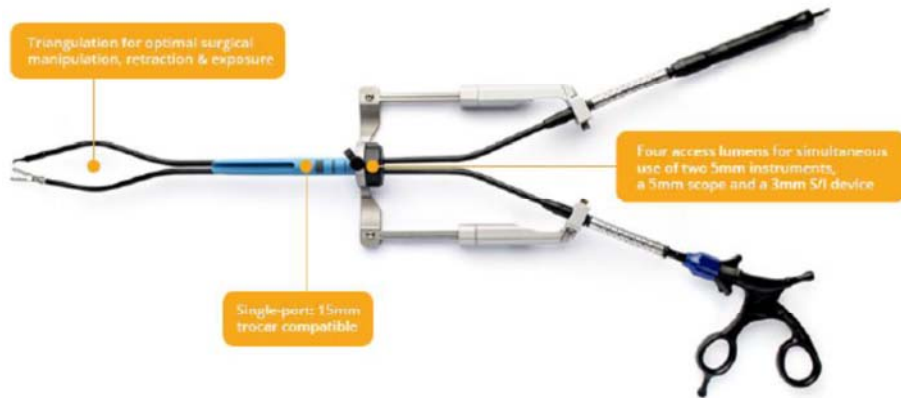
25 59. Claim 61 of the '582 patent recites, for example, a method of
26 controlling a medical instrument. The medical instrument includes a proximal end
27 with a control handle and distal end with a distal tool. The control handle and distal
28 tool are intercoupled by an elongated instrument shaft that passes within an anatomic

1 body, with the distal tool including a longitudinal distal tool axis. In the method,
2 provided are proximal and distal movable members intercoupling, respectively, the
3 proximal control handle and distal tool with the instrument shaft. The proximal and
4 distal movable members include bendable members. Cabling is extended between
5 the movable members so that a motion at the proximal movable member controls the
6 distal movable member. The rotation, on the longitudinal distal tool axis, of the
7 instrument shaft, proximal and distal movable members and the distal tool is
8 manually controlled from the proximal end of the instrument. A control member at
9 the proximal end of the instrument controls the rotation on the distal tool axis. The
10 distal tool axis is a longitudinal axis common to both the distal movable and the tool.

11 60. Defendants make, use, sell, offer to sell, and/or import into the United
12 States Accused Products that infringe at least the aforementioned claims of the '582
13 patent.

14 61. The Accused Products include an elongated instrument shaft, with a tool
15 disposed from the distal end of the instrument shaft and a control handle disposed
16 from the proximal end of the instrument shaft. A distal motion member couples the
17 distal end of the instrument to the tool, and a proximal bendable member, bendable
18 into a curved configuration, couples the proximal end of the shaft to the handle. In
19 the Accused Products, actuation means extend between the distal motion member
20 and the proximal bendable member, in order to couple the motion for controlling the
21 positioning of the tool. A rolling-motion wheel adjacent to the control handle and
22 rotatable relative to the control handle causes a corresponding rotation of the tool
23 about a distal tool roll axis. For example, as shown in the Defendants' promotional
24 materials:

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62. The Accused Products further incorporate the features of claims 10, 29, 41, 46, 49, 55 and 61.

63. Therefore, the Accused Products meet all of the limitations of at least claims 1, 10, 29, 41, 46, 49, 55 and 61, literally or under the doctrine of equivalents.

COUNT 4: INFRINGEMENT OF U.S. PATENT NO. 8,221,450

64. Endobotics re-alleges and incorporates the allegations in each of the preceding paragraphs as if fully set forth herein.

65. United States Patent No. 8,221,450 (“the ‘450 patent”), entitled “Surgical Instrument,” was duly and legally issued by the U.S. Patent and Trademark Office on July 17, 2012. Endobotics is the owner by assignment of all right, title and interest in and to the ‘450 patent, including all right to recover for any and all infringement thereof. All necessary maintenance fees for the ‘450 patent have been timely paid in full. The ‘450 patent is valid and enforceable. A true and correct copy of the ‘450 patent is attached as Exhibit D.

66. Claim 1 of the ‘450 patent recites, for example, a manually operated medical instrument. The medical instrument includes an instrument shaft coupling an operating handle at a proximal end and a tool at a distal end. A proximal bendable member, bendable into a curved configuration, is located at the proximal end, and a distal bendable member, bendable into a curved configuration, is located at the distal end. One or more actuating elements intercouple the proximal and distal bendable members, which are responsive to a manually initiated bending at the

1 proximal bendable member, thereby causing a corresponding bending of the distal
2 bendable member into a curved position. This controls, via the handle, the
3 positioning of the tool.

4 67. Dependent claim 2 of the '450 patent recites that the bendable members
5 are bendable in all directions.

6 68. Dependent claim 3 of the '450 patent recites that the bendable members
7 are bendable in any direction.

8 69. Dependent claim 4 of the '450 patent recites that the proximal bendable
9 member is manipulated in any direction, so that the distal bendable is controlled in
10 three dimensions.

11 70. Dependent claim 5 of the '450 patent recites that a rotation knob is
12 disposed between the handle and proximal bendable member.

13 71. Dependent claim 6 of the '450 patent recites that the rotation knob is
14 supported to rotate the proximal bendable member.

15 72. Dependent claim 7 of the '450 patent recites that rotation of the rotation
16 knob controls the tool for corresponding rotation about the tool axis.

17 73. Dependent claim 8 of the '450 patent recites that the tool is disposed
18 from the distal bendable member along a longitudinal distal tool axis, and rotation of
19 the knob causes a corresponding rotation of the tool about the distal tool axis.

20 74. Dependent claim 9 of the '450 patent recites that the one or more
21 actuating elements include a set of actuation cables, with at least one cable in tension
22 with the other is in relaxation.

23 75. Dependent claim 10 of the '450 patent recites that four cables are
24 disposed at 90 degree intervals around the instrument shaft, with two in tension and
25 two in relaxation during bending.

26 76. Dependent claim 11 of the '450 patent recites that the instrument shaft
27 includes an elongated instrument shaft extending along a longitudinal axis. The
28 distal bendable member is located in-line with the elongated instrument shaft,

1 coupling a distal end of the elongated instrument shaft to the tool. The proximal
2 bendable member is located in-line with the elongated instrument shaft, coupling a
3 proximal end of the elongated instrument shaft to the handle, via the rotation knob.

4 77. Claim 12 of the '450 patent recites, for example, a surgical instrument.
5 The surgical instrument includes an elongated instrument shaft, with a working
6 member disposed from a distal end of the shaft and a control handle disposed from a
7 proximal end of the shaft. A distal bendable member, capable of bending into a
8 curved configuration, couples the working member to the distal end of the shaft, and
9 a proximal bendable member, capable of bending into a curved configuration,
10 couples the control handle to the proximal end of the shaft. A manually rotatable
11 member is located adjacent to the control handle and between the control handle and
12 the proximal bendable member. The rotatable member is adapted to be manually
13 rotated, which rotates the instrument shaft, distal bendable member and working
14 member relative to the control handle. An actuation element extends between the
15 distal and proximal bendable members, with any deflection of the control handle
16 with respect to the shaft causing a corresponding bending of the distal motion
17 member, for control of the working member.

18 78. Dependent claim 13 of the '450 patent recites that the rotatable member
19 includes a rotation knob with a cavity. The cavity receives at least a portion of the
20 proximal bendable member, and at least a portion of the rotation knob is received by
21 an open end of the handle. The rotation knob has a proximal bendable member
22 supported therein, in a fixed relative rotation with respect to the proximal bendable
23 member.

24 79. Dependent claim 14 of the '450 patent recites that the working member
25 includes a tool, supported from the distal bendable member, extending along a distal
26 tool axis. The rotatable member includes a rotation knob, with rotation of the knob
27 causing rotation of the working member about the distal tool axis.

28 80. Dependent claim 15 of the '450 recites that rotation of the rotation knob

1 rotates the instrument shaft and distal bendable member, rotating the tool about the
2 distal tool axis, while maintaining the orientation of the tool.

3 81. Defendants make, use, sell, offer to sell, and/or import into the United
4 States Accused Products that infringe at least the aforementioned claims of the '450
5 patent.

6 82. The Accused Products include a medical instrument with an instrument
7 shaft coupling an operating handle at a proximal end and a tool at a distal end. A
8 proximal bendable member, bendable into a curved configuration, is located at the
9 proximal end, and a distal bendable member, bendable into a curved configuration, is
10 located at the distal end. In the Accused Products, one or more actuating elements
11 intercouple the proximal and distal bendable members, which are responsive to a
12 manually initiated bending at the proximal bendable member, thereby causing a
13 corresponding bending of the distal bendable member into a curved position. This
14 controls, via the handle, the positioning of the tool.

15 83. The Accused Products further incorporate the features of claims 2-15.

16 84. Therefore, the Accused Products meet all of the limitations of at least
17 claims 1-15, literally or under the doctrine of equivalents.

18 **COUNT 5: INFRINGEMENT OF U.S. PATENT NO. 7,686,826**

19 85. Endobotics re-alleges and incorporates the allegations in each of the
20 preceding paragraphs as if fully set forth herein.

21 86. United States Patent No. 7,686,826 ("the '826 patent"), entitled
22 "Surgical Instrument," was duly and legally issued by the U.S. Patent and Trademark
23 Office on March 30, 2010. Endobotics is the owner by assignment of all right, title
24 and interest in and to the '826 patent, including all right to recover for any and all
25 infringement thereof. All necessary maintenance fees for the '826 patent have been
26 timely paid in full. The '826 patent is valid and enforceable. A true and correct
27 copy of the '826 patent is attached as Exhibit E.

28 87. Claim 38 of the '826 patent recites, for example, a surgical instrument.

1 The surgical instrument includes an elongated instrument shaft, with a tool coupled,
2 via a distal bendable member, at a distal end, and a control handle coupled, via a
3 proximal bendable member, at a proximal end. Actuation means extend between the
4 distal and proximal bendable members, with any deflection of the control handle
5 with respect to the shaft causing corresponding motion of the distal bendable
6 member for control of the tool. A rotation knob rotates the instrument shaft and tool
7 relative to the control handle. The proximal bendable member arranges for rotation
8 with the rotation knob. The shaft includes an outer shaft tube that interouples
9 between the proximal and distal bendable members, with actuator cable extending
10 through the outer shaft tube between the control handle and tool. Both the outer
11 shaft tube and the actuator cable are rotated upon rotation of the rotation knob.

12 88. Defendants make, use, sell, offer to sell, and/or import into the United
13 States Accused Products that infringe at least the aforementioned claims of the '826
14 patent.

15 89. The Accused Products include a surgical instrument with an elongated
16 instrument shaft, with a tool coupled, via a distal bendable member, at a distal end,
17 and a control handle coupled, via a proximal bendable member, at a proximal end.
18 Actuation means in the Accused Products extend between the distal and proximal
19 bendable members, with any deflection of the control handle with respect to the shaft
20 causing corresponding motion of the distal bendable member for control of the tool.
21 A rotation knob rotates the instrument shaft and tool relative to the control handle.
22 The proximal bendable member arranges for rotation with the rotation knob. The
23 shaft includes an outer shaft tube that interouples between the proximal and distal
24 bendable members, with actuator cable extending through the outer shaft tube
25 between the control handle and tool. Both the outer shaft tube and the actuator cable
26 are rotated upon rotation of the rotation knob.

27 90. Therefore, the Accused Products meet all of the limitations of at least
28 claim 38, literally or under the doctrine of equivalents.

1 **Willful Infringement**

2 91. Endobotics re-alleges and incorporates the allegations in each of the
3 preceding paragraphs as if fully set forth herein.

4 92. Upon information and belief, all of Defendants infringing activities have
5 been done with knowledge, understanding and appreciation of the ‘650 patent, ‘513
6 patent, ‘582 patent, ‘450 patent, and the ‘826 patent, and the rights in the surgical
7 instrumentation these patents bestow on Endobotics.

8 93. Upon information and belief, Defendants have known about the ‘650
9 patent, ‘513 patent, ‘582 patent, ‘450 patent, and the ‘826 patent, and their pertinence
10 to their business activities, for at least one year.

11 94. For at least the past year, Defendants have continued in a course of
12 conduct without taking sufficient steps to ensure the non-infringement of the ‘650
13 patent, ‘513 patent, ‘582 patent, ‘450 patent, and the ‘826 patent by, *inter alia*,
14 continuing to sell, offer for sale and manufacture products whose use in the manner
15 directed by Defendants infringe the ‘650 patent, ‘513 patent, ‘582 patent, ‘450
16 patent, and the ‘826 patent.

17 95. Defendants actions in spite of continued warnings by Endobotics
18 evidence a willful disregard of Endobotics’ rights vis-à-vis the ‘650 patent, ‘513
19 patent, ‘582 patent, ‘450 patent, and the ‘826 patent and a desire to profit irrespective
20 of U.S. patent laws.

21 96. Defendants’ acts of infringement have caused and will continue to cause
22 substantial and irreparable damage to Endobotics.

23 **DAMAGES**

24 97. On information and belief, 35 U.S.C. § 287(a) was complied with at all
25 relevant times.

26 98. Endobotics has sustained damages as a direct and proximate result of
27 Defendants’ infringement of the ‘650 patent, ‘513 patent, ‘582 patent, ‘450 patent,
28 and the ‘826 patent.

1 99. As a consequence of Defendants' past infringement of the '650 patent,
2 '513 patent, '582 patent, '450 patent, and the '826 patent, Endobotics is entitled to
3 the recovery of past damages in the form of, at a minimum, a reasonable royalty.

4 100. As a consequence of Defendants' continued and future infringement of
5 the '650 patent, '513 patent, '582 patent, '450 patent, and the '826 patent,
6 Endobotics is entitled to royalties for its infringement of these patents on a going-
7 forward basis.

8 101. Because Defendants' infringement of the '650 patent, '513 patent, '582
9 patent, '450 patent, and the '826 patent has been and continues to be willful,
10 Endobotics is entitled to treble damages.

11 **PRAYER FOR RELIEF**

12 102. WHEREFORE, Endobotics respectfully requests that this court enter
13 judgment against Defendants as follows:

14 A. Adjudging that Defendants have infringed at least claims 1-4, 22, 25,
15 28-29, 84 and 111 of the '650 patent, claims 1, 5, 36 and 50 of the '513 patent,
16 claims 1, 10, 29, 41, 46, 49, 55 and 61 of the '582 patent, claims 1-15 of the '450
17 patent, and claim 38 of the '826 patent, in violation of 35 U.S.C. §§ 271(a) and (b);

18 B. An award of damages to be paid by Defendants adequate to compensate
19 Endobotics for Defendants past infringement and any continuing or future
20 infringement up until the date such judgment is entered, and in no event less than a
21 reasonable royalty, including interest, costs and disbursements pursuant to 35 U.S.C.
22 § 284 and, if necessary to adequately compensate Plaintiff for Defendant's
23 infringement, an accounting of all infringing sales including without limitation those
24 sales not presented at trial;

25 C. Ordering an injunction or for Defendants to continue to pay royalties to
26 Endobotics for infringement of the '650 patent, '513 patent, '582 patent, '450 patent,
27 and '826 patent, on a going-forward basis at an increased amount to account for
28 willfulness;

1 D. Awarding Endobotics treble damages based on any infringement to be
2 willful pursuant to 35 U.S.C. § 284;

3 E. Adjudging that Defendants willfully infringed the patents-in-suit and
4 this case be exceptional under 35 U.S.C. § 285 and awarding enhanced damages,
5 including costs and attorneys' fees, to Endobotics;

6 F. Awarding Endobotics pre-judgment and post-judgment interest at the
7 maximum rate permitted by law on its damages; and

8 G. Granting Endobotics such further relief as this Court deems just and
9 proper under the circumstances.

10 **DEMAND FOR JURY TRIAL**

11 Endobotics, Inc. demands a trial by jury on all claims and issues so triable.
12

13 DATED: December 1, 2017

PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP

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16 By: s/Victor M. Felix
Victor M. Felix
17 Attorneys for Endobotics, Inc.
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