

** NOT FOR PRINTED PUBLICATION**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FILED

P.M. 11-11 2014

DR. MARK A. BARRY,

Plaintiff,

v.

MEDTRONIC, INC.,

Defendant.

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U.S. DISTRICT COURT
By [Signature] DEPUTY

CIVIL ACTION No. 1:14-CV-104

JUDGE RON CLARK

PRD

VERDICT FORM

When answering the following questions and filling out this Verdict Form, please follow the directions provided in the Jury Instructions and throughout this form. Your answer to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in the Jury Instructions and its appendices. Please refer to the Jury Instructions if you are unsure about the meaning or usage of any legal term that appears in the questions below.

Question No. 1 : Underlying Direct Infringement

Do you find by a preponderance of the evidence that one or more surgeons performed a scoliosis surgery in the United States using the Medtronic accused products in which any of the following claims were directly infringed? Answer "Yes" or "No" as to each claim by writing "Yes" or "No" in the spaces provided.

a. '358 Patent

Claim 4 yes Claim 5 yes

b. '121 Patent

Claim 2 yes Claim 3 yes Claim 4 yes

If you answered "Yes" in any of the blanks provided above in Question No. 1, please proceed to Question No. 2. However, if you answered "No" in all of the blanks in Question No. 1, please proceed to Question No. 3.

Question No. 2: Induced Infringement In the United States

Do you find by a preponderance of the evidence that Medtronic, Inc. has actively induced the direct infringement in the United States of any of the following claims of the following patents? Answer "Yes" or "No" as to each claim by writing "Yes" or "No" in the spaces provided.

a. '358 Patent

Claim 4 yes Claim 5 yes

b. '121 Patent

Claim 2 yes Claim 3 yes Claim 4 yes

Please proceed to Question No. 3.

Question No. 3 : Infringement Outside the United States

Do you find by a preponderance of the evidence that Medtronic, Inc. supplied, or caused to be supplied, from the United States all or a substantial portion of the components of any of the systems claimed in claims 2, 3, and/or 4 of the '121 Patent and actively induced others to combine those components outside the United States in a way that would infringe that claim if such combination occurred within the United States? Answer "Yes" or "No" as to each claim of the '121 Patent by writing "Yes" or "No" in the spaces provided.

Claim 2 yes Claim 3 yes Claim 4 yes

If you answered "Yes" in any of the blanks in Question Nos. 2 or 3, please proceed to Question No. 4. If you answered "No" in all of the blanks in Question Nos. 2 and 3 or all of the blanks in Question Nos. 1 and 3, please proceed to Question No. 5.

Question No. 4: Willful Infringement

Do you find by a preponderance of the evidence that Medtronic's infringement with respect to either of the following patents was willful?

Answer "Yes" or "No" as to each patent by writing "Yes" or "No" in the spaces provided.

a. '358 Patent yes

b. '121 Patent yes

Please proceed to Question No. 5.

Question No. 5: Invalidity – Public Use

- a. Do you find by clear and convincing evidence that any of the following claims of the **'358 Patent** are invalid because the claimed method was ready for patenting and was also being openly used in public before December 30, 2003? Answer "Yes" or "No" as to each claim of the **'358 Patent** by writing "Yes" or "No" in the spaces provided.

Claim 4 NO Claim 5 NO

- b. Do you find by clear and convincing evidence that any of the following claims of the **'121 Patent** are invalid because the claimed system was ready for patenting and was also being openly used in public before December 30, 2003? Answer "Yes" or "No" as to each claim of the **'121 Patent** by writing "Yes" or "No" in the spaces provided.

Claim 2 NO Claim 3 NO Claim 4 NO

Please proceed to Question No. 6.

Question No. 6: Invalidity – Prior Sale

- a. Do you find by clear and convincing evidence that any of the following claims of the **'358 Patent** are invalid because the claimed method was ready for patenting and also is the subject of a commercial sale or offered for sale in the United States before December 30, 2003?

Answer “Yes” or “No” as to each claim of the **'358 Patent** by writing “Yes” or “No” in the spaces provided.

Claim 4 NO Claim 5 NO

Please proceed to Question No. 7.

Question No. 7: Invalidity – Prior Invention

Please answer all four parts (a, b, c, and d) of Question No. 7.

- a. Do you find by clear and convincing evidence that either of the following claims of the **'358 Patent** are invalid because Dr. Lenke invented the invention embodied in that claim by conceiving of that invention and reducing it to practice before Dr. Barry conceived of the invention and Dr. Lenke did not abandon, suppress, or conceal the invention?

Answer “Yes” or “No” as to each claim of the **'358 Patent** by writing “Yes” or “No” in the spaces provided.

Claim 4 NO

Claim 5 NO

- b. Do you find by clear and convincing evidence that either of the following claims of the **'358 Patent** are invalid because Dr. Lenke conceived of the alleged invention embodied by that claim before Dr. Barry conceived of it, and Dr. Lenke was reasonably diligent in reducing the alleged invention to practice?

Answer “Yes” or “No” as to each claim of the **'358 Patent** by writing “Yes” or “No” in the spaces provided.

Claim 4 NO

Claim 5 NO

- c. Do you find by clear and convincing evidence that any of the following claims of the **'121 Patent** are invalid because Dr. Lenke invented the invention embodied in that claim by conceiving of that invention and reducing it to practice before Dr. Barry conceived of the invention and Dr. Lenke did not abandon, suppress, or conceal the invention?
- Answer "Yes" or "No" as to each claim of the **'121 Patent** by writing "Yes" or "No" in the spaces provided.

Claim 2 NO Claim 3 NO Claim 4 NO

- d. Do you find by clear and convincing evidence that any of the following claims of the **'121 Patent** are invalid because Dr. Lenke conceived of the alleged invention embodied by that claim before Dr. Barry conceived of it, and Dr. Lenke was reasonably diligent in reducing the alleged invention to practice?
- Answer "Yes" or "No" as to each claim of the **'121 Patent** by writing "Yes" or "No" in the spaces provided.

Claim 2 NO Claim 3 NO Claim 4 NO

Please proceed to next page.

If you answered “Yes” as to any claim listed in Question Nos. 2 or 3 and did not find the same claim invalid in Question Nos. 5, 6, or 7, answer Question No. 9.

If you did not answer “Yes” to any claim listed in Question Nos. 2 or 3 or answered “Yes” as to a certain claim or claims in Question Nos. 2 or 3 and then found that claim or each of those claims to be Invalid by answering “Yes” as to that or those claims in Question Nos. 5, 6, or 7, please do not answer Question No. 9, and proceed to review and initial the verdict form on the last page.

Question No. 9: Damages

What sum of money, if paid now in cash, do you find that Dr. Barry has proven by a preponderance of the evidence would fairly and adequately compensate Dr. Barry for the conduct you found to infringe?

Please answer in dollars and cents, if any, as to each category.

- a. Compensation for Dr. Barry's injury due to infringement of the '358 Patent that occurred within the U.S.

\$ 15,095,970

- b. Compensation for injury due to infringement of the '121 Patent that occurred within the U.S. since February 18, 2014, the date on which Dr. Barry filed this lawsuit

\$ 2,625,210

- c. Compensation for injury due to infringement of the '121 Patent that occurred outside of the U.S. since February 18, 2014, the date on which Dr. Barry filed this lawsuit

\$ 2,625,210

Please proceed to the next page.

Total: \$20,346,390

You have now reached the end of the verdict form. The foreperson is requested to initial and date this document in the space provided below as the unanimous verdict of the jury.

11/11/14
DATE

OPR
INITIALS OF FOREPERSON