IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AORTIC INNOVATIONS LLC,	)	
	)	
Plaintiff,	)	
	)	**C.A. NO. 21-1377 (JPM)**
v.	)	
	)	**JURY TRIAL DEMANDED**
EDWARDS LIFESCIENCES CORPORATION, EDWARDS LIFESCIENCES LLC, AND EDWARDS LIFESCIENCES (U.S.) INC.,	)	
	)	
Defendants.	)	

JOINT STIPULATION AND [PROPOSED] FINAL JUDGMENT OF NON-INFRINGEMENT

Plaintiff Aortic Innovations LLC ("Aortic") and Defendants Edwards Lifesciences Corporation, Edwards Lifesciences LLC, and Edwards Lifesciences (U.S.) Inc. (collectively, "Edwards") (collectively with "Aortic" the "Parties"), by and through their respective attorneys, stipulate to a judgment of non-infringement of U.S. Patent Nos. 10,881,538 ("the '538 Patent"); 10,966,846 ("the '846 Patent"); 10,987,236 ("the '236 Patent"); and 11,129,735 ("the '735 Patent) (collectively, "Patents-in-Suit").

Specifically, Aortic has alleged that Edwards directly infringes claims 1-8, 10-18, and 20 of the '538 Patent, claim 6 of the '846 Patent, claims 1-4 of the '236 Patent, and claims 1-10 and 12 of the '735 Patent (collectively, "the Asserted Claims"), by making, using, offering for sale, and selling within the United States, or importing into the United States, its SAPIEN 3 Ultra transcatheter heart valves having either RESILIA or non-RESILIA tissue leaflets (collectively "Accused Products"). Aortic has also alleged that Edwards indirectly infringes the Asserted Claims.

Edwards has alleged that the Asserted Claims are invalid and not infringed.

On May 9, 2023, the Court issued its claim construction order construing the disputed terms of the '735 patent. D.I. 125. Therein, the Court construed the term "outer frame" to mean "a self-expanding frame." *Id.* at 11-19. The Court's claim construction order, however, was directed only to the '735 patent, because the '846, '538, and '236 Patents were stayed pending *inter partes* review. D.I. 125 at 4 ("[T]he portion of this action relating to these three patents has been stayed pending Inter Partes Review, and these patents do not form the basis of any claim construction disputes at this time.").

On August 23, 2023, after additional briefing from the Parties addressing whether the Court's claim construction of "outer frame" applies to the '846, '538, and '236 Patents, the Court issued a Supplemental Claim Construction order. D.I. 140. Therein, the Court held that "the term 'outer frame' should be given the same construction across the '538 Patent, the '846 Patent, the '236 Patent, and the '735 Patent, with that construction being 'a self-expanding frame.'" D.I. 140 at 15.

Edwards' Accused Products are transcatheter valve replacement devices comprising a metallic frame and other components. D.I. 1-3, Ex. 44 (SAPIEN 3 and SAPIEN 3 Ultra Instructions for Use at 17: "The SAPIEN 3 Ultra transcatheter heart valve is comprised of a balloon-expandable, radiopaque, cobalt-chromium frame [and other components]."). In its Complaint and its Supplemental Infringement Contentions served prior to the Court's Claim Construction Order, Aortic alleged that the metallic frame of Edwards' Accused Products satisfied the "outer frame" limitation in the Asserted Claims, either literally or under the doctrine of equivalents. D.I. 1 (Complaint ¶¶74-75). The metallic frame of the Edwards' Accused Products, however, is a balloon-expandable frame, not a self-expanding frame. D.I. 1-3, Ex. 44 (SAPIEN 3 and SAPIEN 3 Ultra Instructions for Use at 17). Therefore, under the Court's Claim Construction Order, and the Order on Plaintiff's Motion for Clarification, Aortic cannot show that Edwards'

Accused Products meet the "outer frame" limitation of any of the Asserted Claims, either literally or under the doctrine of equivalents.

The Parties, therefore, stipulate that Aortic cannot prevail on the issue of infringement, either literally or under the doctrine of equivalents, of any claim of the Patents-in-Suit as to any act of alleged infringement involving Edwards' Accused Products under the Court's construction of the term "outer frame." The parties also stipulate and request that the Court: (1) lift the stay of this action relating to the '846 Patent, the '538 Patent, and the '236 Patent to allow entry of the Final Judgment as to those patents as well as the '735 Patent; (2) dismiss without prejudice all of Edwards' defenses and counterclaims as moot; and (3) toll any deadline, including any deadline under Federal Rule of Civil Procedure 54(d), for Edwards to seek recovery of costs and attorneys' fees, as set forth in the Proposed Final Judgment. Aortic expressly disagrees that Edwards is entitled to any costs and/or fees and is solely agreeing to toll the deadline to place this case in a posture for appeal.

Aortic states that its stipulations herein are limited to this action and the Patents-in-Suit in this action. Aortic reserves the right to challenge the Court's claim construction and non-infringement judgment on appeal and any remand, and Edwards reserves the right to defend the judgment and all underlying rulings.

Should the Federal Circuit vacate or reverse this Court's construction of the claim term "outer frame" and remand this case back to this Court for further proceedings, the Parties reserve all rights to: (a) continue litigating the Asserted Claims, including all defenses, counterclaims, and arguments not foreclosed by any decision on appeal; and (b) appeal other rulings from this Court.

While the Parties believe that the present stipulation adequately sets forth the basis for the stipulated judgment of non-infringement, in the event that the Federal Circuit were to view Aortic's

appeal as deficient in that respect, the Parties agree to undertake further proceedings in this Court on remand to perfect this stipulated judgment for appeal.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the Parties, subject to the approval of the Court that the proposed final judgment attached hereto as Exhibit A should be entered.

Dated: October 6, 2023

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