

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

**Abiomed Inc.,**

**Plaintiff/Counterclaim Defendant,**

**vs.**

**MAQUET Cardiovascular LLC,**

**Defendant/Counterclaim Plaintiff,**

**vs.**

**Abiomed Europe GmbH and Abiomed  
R&D, Inc.,**

**Counterclaim Defendants.**

**C.A. NO. 1:16-CV-10914**

**JURY DEMAND**

**DEFENDANT MAQUET CARDIOVASCULAR LLC'S  
PRELIMINARY INFRINGEMENT CONTENTIONS**

Pursuant to this Court's Scheduling Order (D.I. 60), Defendant Maquet Cardiovascular LLC ("Maquet") provides the following Preliminary Infringement Contentions to Plaintiff Abiomed Inc. and Third-Party Defendants Abiomed R&D Inc. and Abiomed Europe GmbH's (collectively "Abiomed" and "Counterclaim Defendants").

Maquet asserts six patents in this lawsuit against Abiomed.<sup>1</sup> These patents are U.S. Patent No. 7,022,100 ("the '100 Patent"), U.S. Patent No. 8,888,728 ("the '728 Patent"), U.S. Patent

<sup>1</sup> Maquet intends to amend its Counterclaims to add U.S. Patent No. 9,545,468 ("the '468 Patent"), U.S. Patent No. 9,561,314 ("the '314 Patent"), and U.S. Patent No. 9,597,437 ("the '437 Patent"). Maquet has previously informed Abiomed and the Court that these Patents will be added to this litigation.

No. 9,327,068 (“the ’068 Patent”), U.S. Patent No. 9,545,468 (“the ’468 Patent”), U.S. Patent No. 9,561,314 (“the ’314 Patent”), and U.S. Patent No. 9,597,437 (“the ’437 Patent”) (collectively, “Asserted Patents”). These Preliminary Infringement Disclosures provide a good-faith basis for identifying the specific product which Maquet believes infringe the Asserted Patents and are based on information currently known to Maquet. Maquet reserves the right to supplement and/or amend these disclosures based on Maquet’s ongoing investigation and information that becomes available through discovery.

#### **A. Abiomed’s Document Production**

As an initial matter, Maquet objects to Counterclaim Defendants productions of technical documents in according to this Court’s Scheduling Order (D.I. 60). This order required Counterclaim Defendants to produce “specifications and technical documentation concerning the structure, features and operation of the accused Impella products” (*Id.* at 9). Abiomed’s production consisted of only 91 documents and did not contain any design drawings or manufacturing specifications. Instead, these documents consisted primarily of versions of Impella’s publically available product manuals (E.g. AB-M00000001-151; M00000152-267; M0000268-398; M00000399-530). Accordingly, Maquet reserves the right to amend and supplement these infringement contentions after Counterclaim Defendants comply with their obligations pursuant to the Court’s Scheduling Order (D.E. 60).

#### **B. Abiomed’s Infringement**

The Counterclaim Defendants each directly and/or indirectly infringe the following claims in the asserted patents: claims 9-12, 14, 16, and 17 in the ’100 Patent; claims 1, 6-8, 10, and 15-17 in the ’728 Patent; claims 1, 5, 7, 9, 10, 13-15, and 20 in the ’068 Patent; claims 1-8,

10, 12- 24, and 26 in the '468 Patent; claims 1-8, 10, 12-23, 25-27, 29, and 30 in the '314 Patent; and claims 1-5, 7-16, and 19-29 in the '437 Patent ("Asserted Claims").

### **1. Direct Infringement.**

The Counterclaim Defendants each directly infringed, and continue to directly infringe, the following claims in violation of 35 U.S.C. § 271(a): claims 9-12, 14, 16, and 17 in the '100 Patent; claims 1, 6-8, 10, and 15-17 in the '728 Patent; claims 1-8, 10, 12- 24, and 26 in the '468 Patent; and claims 1-8, 10, 12-23, 25-27, 29, and 30 in the '314 Patent. Abiomed, Inc., Abiomed R&D, and Abiomed Europe each have directly infringed these claims by making, using, offering to sell, selling, and/or importing into the United States intravascular blood pumps including at least the following productions: Impella 2.5, the Impella 5.0, the Impella CP, and the Impella RP products ("Accused Products")<sup>2</sup>, and continues to do so, all without authority from Maquet.

### **2. Indirect Infringement**

Counterclaim Defendants have also indirectly infringed, and continue to indirectly infringe, the Asserted Claims in violation of 35 U.S.C. § 271(b) and (c).

During the term of the '100 Patent, the '728 Patent, the '068 Patent, the '468 Patent, the '314 Patent, and the '468 Patent, Counterclaim Defendants' customers, distributors, and end users have infringed the patents by at least making, using, offering for sale, selling, or importing into the United States the Accused Products, and continue to do so, all without authority from the patent holder, Maquet. Counterclaim Defendants know their customers' and end users' conduct

<sup>2</sup> Abiomed's documents also identify the Impella 3.5 and Impella cVAD (E.g. AB-M000000583-595; AB-M00001975-1987), but Abiomed has not produced any technical information concerning these products as required by this Court's scheduling order and Abiomed's discovery obligations. To the extent these products include the accused features identified in Appendix A-F, these products also infringe the Asserted Patents.

infringes the Asserted Claims, and/or Counterclaim Defendants are willfully and deliberately ignoring that its customers' and end users' conduct infringes the Asserted Claims.

In addition, Abiomed Europe and Abiomed R&D have induced and continue to induce the infringement of Abiomed, Inc. Abiomed Europe has encouraged, aided and abetted, and continues to encourage, aid and abet, Abiomed, Inc. to infringe the Asserted Claims, by among other things, manufacturing products that Abiomed uses in its infringing activities and working in concert with Abiomed, Inc. to continue its infringing activities. In addition, Abiomed R&D has encouraged, aided and abetted, and continues to encourage, aid and abet, Abiomed, Inc. to infringe the Asserted Claims, by among other things, developing products that Abiomed uses in its infringing activities and working in concert with Abiomed, Inc. to continue its infringing activities.

Counterclaim Defendants have had knowledge of the '100 Patent and the '728 Patent since at least about December 15, 2015. D.E. 1-4. On that date, Maquet sent the CEO of Abiomed Inc. a letter identifying the '100 Patent and the '728 Patent and notifying Abiomed, Inc. of its infringement of claims included within these patents. This information was communicated to the other defendants by Abiomed Inc. and the Counterclaim Defendants admit they have known of these patents since December 15, 2015. *Plaintiff Abiomed Inc. and Third-Party Defendants Abiomed R&D Inc. and Abiomed Europe GMBH's Responses and Objections to Defendant Maquet Cardiovascular LLC's First Set of Interrogatories*, No. 6.

Furthermore, Counterclaim Defendants have had knowledge of the '100 Patent and this patent family since before the filing of this suit, as evidenced at least by the identification of the '100 Patent in Abiomed, Inc.'s International Patent Application No. PCT/US2011/062851 on

February 20, 2012. Abiomed, Inc.'s employees Zhenghong Tao, Stephen Vaughan, and Marie-Eve Mongeau are named inventors on this application. Abiomed, Inc. also disclosed the '100 Patent in a March 11, 2014 Information Disclosure Statement by Applicant submitted during the prosecution of U.S. Patent Application No. 13/552,366, assigned to Abiomed, Inc., which names the following Abiomed, Inc. employees as inventors: Caitlyn Hastie, Frank Kirchhoff, and Thorsten Siess.

Counterclaim Defendants have had knowledge of U.S. Patent Application 14/543,815 ("the '815 Application"), which is the application that led to the '068 Patent, and the allowed claims in the '815 Application since at least December 15, 2015, which is when Maquet sent Abiomed, Inc. a letter identifying the '815 Application. D.E. 1-4; *see also Plaintiff Abiomed Inc. and Third-Party Defendants Abiomed R&D Inc. and Abiomed Europe GMBH's Responses and Objections to Defendant Maquet Cardiovascular LLC's First Set of Interrogatories*, No. 6). In that letter, Maquet notified Counterclaim Defendants that it was practicing the allowed claims in this application, and that Maquet intended to enforce its provisional rights under 35 U.S.C. 154(d). D.E. 1-4. The claims that issued in the '068 Patent are substantially identical to the published claims in Maquet's '815 Application. This information would have been communicated to the other defendants by Abiomed Inc. Further, Counterclaim Defendants have had knowledge of the '068 Patent since at least about May 3, 2016, because Maquet sent counsel for Abiomed Inc. a letter on that date identifying the '068 Patent and notifying Counterclaim Defendants of their infringement of the claims included within this patent. D.E. 1-6. This information was communicated to the other defendants by Abiomed Inc. *Plaintiff Abiomed Inc.*

*and Third-Party Defendants Abiomed R&D Inc. and Abiomed Europe GMBH's Responses and Objections to Defendant Maquet Cardiovascular LLC's First Set of Interrogatories*, No. 6.

Counterclaim Defendants have also had knowledge of the '468 Patent since January 20, 2017, because Maquet sent counsel for Counterclaim Defendants a letter on that date identifying the '468 Patent and notifying Counterclaim Defendants of their infringement of the claims included within this patent. Ltr. M. Connor to S. McEvoy and C. Larsen dated Jan. 20, 2017 (attached hereto as Exhibit 1). Counterclaim Defendants have also had knowledge of the '314 Patent since February 7, 2017, because Maquet sent counsel for Counterclaim Defendants a letter on that date identifying the '314 Patent and notifying Counterclaim Defendants of their infringement of the claims included within this patent. Ltr. M. Connor to S. McEvoy and C. Larsen dated Feb. 7, 2017 (attached hereto as Exhibit 2). Counterclaim Defendants have also had knowledge of the '437 Patent since March 21, 2017, because Maquet sent counsel for Counterclaim Defendants a letter on that date identifying the '437 Patent and notifying Counterclaim Defendants of their infringement of the claims included within this patent. Ltr. M. Connor to S. McEvoy and C. Larsen dated Feb. 7, 2017 (attached hereto as Exhibit 3).

Despite their knowledge, Counterclaim Defendants have encouraged, aided and abetted, and continue to encourage, aid and abet, their customers<sup>3</sup> and end users to infringe the Asserted Claims.

Despite their knowledge, Counterclaim Defendants have sold, and continue to sell, to their customers<sup>4</sup> Counterclaim Defendants' intravascular blood pumps and/or blood pump parts

<sup>3</sup> Abiomed, Inc. is a customer of both Abiomed Europe and Abiomed R&D.

<sup>4</sup> Abiomed, Inc. is a customer of both Abiomed Europe and Abiomed R&D.

of their Impella line including the Accused Products. These Impella blood pumps and/or blood pump parts are a material part of the invention of the Asserted Claims, and the Impella blood pumps are not a stable article or commodity of commerce suitable for substantial noninfringing uses.

### **3. Willful Infringement**

Despite their knowledge, Counterclaim Defendants' infringement has been and continues to be willful and deliberate because Counterclaim Defendants know, or are willfully and deliberately ignoring that each of their actions constituted infringement of the Asserted Claims. As discussed above, Counterclaim Defendants have known of these patents as well as their infringement for some time and continued their egregious infringement of the Asserted Claims.

### **4. Claim Charts**

Attached as Appendix A-F are claim charts demonstrating Counterclaim Defendants' infringement of the Asserted Claims. As demonstrated in these charts, all elements of the Asserted Claims are literally present. To the extent any of these limitations are not literally present, those limitations are present under the doctrine of equivalents.

These charts are representative of the how the Accused Products meet each and every limitation in the Asserted Claims, and the documents cited in these charts are not exhaustive. Rather, Maquet's infringement contentions are further supported by at least the documents: AB-M00000001 – 3632 & MAQ\_00001186 – MAQ\_00001997. Maquet further reserves the right to rely on any additional document not cited herein to support its claim that Counterclaim Defendants infringe the Asserted Claims.

Dated: Charlotte, North Carolina  
May 25, 2017

Respectfully submitted,

/s/ Michael S. Connor

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing has been served via electronic mail on the following:

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Dated: May 25, 2017

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