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15 *Attorneys for Plaintiffs Memory Metal Holland*
16 *BV and Don Michael International, LLC*

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 MEMORY METAL HOLLAND BV and DON
20 MICHAEL INTERNATIONAL, LLC,

21 Plaintiffs,

22 vs.

23 CLARET MEDICAL, INC.,

24 Defendant.

25 Case No. 18-cv-2487

26 **COMPLAINT FOR PATENT**
27 **INFRINGEMENT**

28 **DEMAND FOR JURY TRIAL**

1 Plaintiffs Memory Metal Holland BV (“Memory Metal”) and Don Michael International,
2 LLC (“DMI”) (together, “Plaintiffs”) bring this action against defendant Claret Medical, Inc.
3 (“Claret”) and hereby allege as follows:

4 **THE PARTIES**

5 1. Memory Metal Holland BV is a limited liability company organized and existing
6 under the laws of the Netherlands having a principal place of business at Gronausestraat 1220,
7 Enschede 7534 AT, Netherlands.

8 2. Memory Metal is in the business of developing and commercializing medical
9 technology.

10 3. Don Michael International, LLC, is a limited liability company organized and
11 existing under the laws of California having a principal place of business at 4109 Sill Place,
12 Bakersfield, California 93306.

13 4. Claret Medical, Inc. is a corporation organized and existing under the laws of
14 Delaware having a principal place of business at 1745 Copperhill Parkway, Suite 1, Santa Rosa,
15 CA 95403.

16 **JURISDICTION AND VENUE**

17 5. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*
18 This Court accordingly has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2202.

19 6. This Court has jurisdiction over Claret because Claret does business in the State of
20 California and this District, contracts to supply goods or services within the State of California and
21 this District, has continuous and systematic business contacts within the State of California and this
22 District, derives substantial revenue from interstate commerce from goods used or services
23 rendered in the State of California and this District, and/or commits and has committed acts of
24 patent infringement either within the State of California and this District, or outside the State of
25 California and this District with a reasonable expectation that such acts would have consequences
26 within the State of California and this District.

27 7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c),
28 1400(b), and 1404(a).

1 **FACTS**

2 *The Asserted Patents*

3 8. On November 26, 2002, U.S. Patent No. 6,485,502 (the “’502 Patent”), entitled
4 “Vascular Embolism Prevention Device Employing Filters,” a copy of which is attached hereto as
5 Exhibit A, was duly and legally issued by the United States Patent and Trademark Office
6 (“USPTO”) to T. Anthony Don Michael and Peter Besselink as inventors.

7 9. Plaintiffs are the owners of the ’502 Patent by assignment, having received all right,
8 title, and interest of the ’502 Patent from the inventors.

9 10. On May 8, 2007, U.S. Patent No. 7,214,237 (the “’237 Patent,” together with the
10 ’502 Patent, the “Asserted Patents”), entitled “Vascular Filter With Improved Strength and
11 Flexibility,” a copy of which is attached hereto as Exhibit B, was duly and legally issued by the
12 USPTO to T. Anthony Don Michael and Peter Besselink as inventors.

13 11. Plaintiffs are the owners of the ’237 Patent by assignment, having received all right,
14 title, and interest of the ’237 Patent from the inventors.

15 12. The Asserted Patents identify and sets out to prevent embolism in a vascular system,
16 such as during angioplasty or stenting. (’502 Patent 1:12-24; ’237 Patent at 1:14-20.) The claimed
17 inventions of the Asserted Patents provide a system to prevent embolism by preventing the escape
18 of debris from the treatment site in a blood vessel using filter elements. (’502 Patent 1:64-67; ’237
19 Patent at 2:27-31.)

20 *Claret’s Infringing Systems and Services*

21 13. Claret makes, uses, sells, and/or offers to sell various medical devices including, but
22 not limited to, the Sentinel Cerebral Protection System (and any previous versions or alternate
23 names, including but not limited to the CE Pro System and Montage) (the “Accused Product”).

24 14. The Accused Product is a medical device that filters, captures, and removes embolic
25 debris during vascular procedures.

26 15. The Accused Product accomplishes the removal of debris using two filters that
27 deploy independently and collect debris released during the procedure, such as valve tissue,
28

1 calcification, thrombus, or other material, to prevent that material from traveling to the brain.

2 When the procedure is complete, the filters and collected debris are removed.

3 16. Upon information and belief, Claret develops, designs, manufactures, and sells the
4 Accused Product at its facility in Santa Rosa, California.

5 17. Claret markets, sells, and offers to sell the Accused Product to, without limitation,
6 individual doctors, hospitals, and other medical and/or healthcare organizations.

7 18. Claret provides the Accused Product to at least fifty U.S. transcatheter aortic heart
8 valve replacement (“TAVR”) centers and TAVR providers throughout the world, including, for
9 example, Pinnacle Health in Pennsylvania (“Customers”).

10 19. Upon information and belief, Claret manufactures and/or combines all or at least a
11 substantial portion of the components of the Accused Product in its Santa Rosa, California facility.

12 20. Upon information and belief, Claret supplies all or a substantial portion of the
13 components of the Accused Product from its California facility to, without limitation, individual
14 doctors, hospitals, and other medical and/or healthcare organizations around the world, including
15 without limitation, Brazil, Canada (such as St. Paul’s Hospital in Vancouver, Canada) and Europe
16 (such as Erasmus Medical Center in Rotterdam, The Netherlands).

17 21. Claret instructs Customers regarding the combination of the components and the use
18 of the Accused Product with knowledge that such combination and/or use would infringe the
19 Asserted Patents. Claret provides at least the following instructions regarding use of the Accused
20 Product: a guide of the procedure for using the Accused Product
21 (<http://www.claretmedical.com/physicians/technology/sentinel-cps-procedure/>), “Instructions for
22 Use” (<http://claretmedical.com/Sentinel-IFU.pdf?version=c>), “Physician Resources”
23 (<http://www.claretmedical.com/physicians/resources/healthcare-professionals/>), and a YouTube
24 channel.

25 22. The components of the Accused Product that Claret provides to Customers outside
26 of the United States are especially made for, or especially adapted for, use in the Accused Product
27 and have no other substantial non-infringing use and are not staple articles or commodities of
28 commerce.

1 infringement of exemplary claims. Upon information and belief, Claret received the October 17,
2 2017 letter on or about October 18, 2017.

3 29. Since becoming aware of the Asserted Patents at least as early as April 20, 2010,
4 and no later than on or about October 18, 2017, Claret continued to develop, make, use, sell, and
5 offer to sell the Accused Product to customers, thereby willfully and knowingly infringing the
6 Asserted Patents.

7 **COUNT 1 – INFRINGEMENT OF THE '502 PATENT**

8 30. Plaintiffs repeat the allegations contained in the preceding paragraphs 1 through 29
9 as though fully set forth herein.

10 31. Upon information and belief, Claret has in the past infringed and continues to
11 infringe the '502 Patent, directly and/or by contributory infringement and/or by inducement of
12 infringement, by making, using, selling and/or offering to sell, in this judicial district, throughout
13 the United States, and elsewhere, the Accused Product, which embodies the patented inventions of
14 the '502 Patent.

15 32. Pursuant to 35 U.S.C. § 271(a), Claret is liable for direct infringement of the '502
16 Patent by having made, used, offered to sell, or sold and continuing to make, use, sell and/or offer
17 to sell the Accused Product in the United States. Claret's infringement includes, but is not limited
18 to, the manufacture, use, sale, importation and/or offer for sale of Accused Product that embodies
19 the patented invention of the '502 Patent. Claret has contracted to sell and has sold the Accused
20 Product (in configurations generally similar to the allegations previously made herein) to, *inter*
21 *alia*, Customers. Claret continues to make, use, sell, offer to sell, and/or import Accused Product
22 despite having knowledge of the infringement of the '502 Patent as discussed *supra*.

23 33. Pursuant to 35 U.S.C. § 271(b), Claret is liable for inducement of infringement by
24 having, and continuing to, knowingly cause (or intend to cause) the direct infringement of the '502
25 Patent by users of the Accused Product.

26 34. Pursuant to 35 U.S.C. § 271(c), Claret is liable for contributory infringement of the
27 '502 Patent by having sold or offered to sell and continuing to sell or offer to sell the Accused
28 Product, and the components thereof, that comprise a material component of the invention

1 embodied in the '502 Patent, that are especially made or adapted for use in infringing the '502
2 Patent, and that are not suitable for any substantial non-infringing use with knowledge that the '502
3 Patent was/is being directly infringed by users.

4 35. Pursuant to 35 U.S.C. § 271(f), Claret is liable for infringement of the '502 Patent
5 by knowingly supplying customers outside of the United States with all or a substantial portion of
6 the components of the Accused Product, the components having no other substantial non-infringing
7 use and not being staple articles or commodities of commerce. Further, Claret knew that the
8 combination of components supplied by Claret to foreign entities would infringe the '502 Patent if
9 such combination occurred within the United States.

10 36. Upon information and belief, Claret's infringement of the '502 Patent is willful,
11 deliberate, and intentional by continuing its acts of infringement with knowledge of the '502 Patent
12 and thus acting in reckless disregard of Plaintiffs' patent rights.

13 37. As a result of Claret's acts of infringement of the '502 Patent, Plaintiffs have
14 suffered injury to its business and property in an amount to be determined as damages, and will
15 continue to suffer damages in the future.

16 38. Unless an injunction is issued enjoining Claret and their officers, agents, servants,
17 employees and attorneys, and all those persons in active concert or participation with them from
18 infringing the '502 Patent, Plaintiffs will suffer irreparable injury for which there is no adequate
19 remedy at law.

20 **COUNT 2 – INFRINGEMENT OF THE '237 PATENT**

21 39. Plaintiffs repeat the allegations contained in the preceding paragraphs 1 through 39
22 as though fully set forth herein.

23 40. Upon information and belief, Claret has in the past infringed and continues to
24 infringe the '237 Patent, directly and/or by contributory infringement and/or by inducement of
25 infringement, by making, using, selling and/or offering to sell, in this judicial district, throughout
26 the United States, and elsewhere, the Accused Product, which embodies the patented inventions of
27 the '237 Patent.

1 41. Pursuant to 35 U.S.C. § 271(a), Claret is liable for direct infringement of the '237
2 Patent by having made, used, offered to sell, or sold and continuing to make, use, sell and/or offer
3 to sell the Accused Product in the United States. Claret's infringement includes, but is not limited
4 to, the manufacture, use, sale, importation and/or offer for sale of Accused Product that embodies
5 the patented invention of the '237 Patent. Claret has contracted to sell and has sold the Accused
6 Product (in configurations generally similar to the allegations previously made herein) to, *inter*
7 *alia*, Customers. Claret continues to make, use, sell, offer to sell, and/or import Accused Product
8 despite having knowledge of the infringement of the '237 Patent as discussed *supra*.

9 42. Pursuant to 35 U.S.C. § 271(b), Claret is liable for inducement of infringement by
10 having, and continuing to, knowingly cause (or intend to cause) the direct infringement of the '237
11 Patent by users of the Accused Product.

12 43. Pursuant to 35 U.S.C. § 271(c), Claret is liable for contributory infringement of the
13 '237 Patent by having sold or offered to sell and continuing to sell or offer to sell the Accused
14 Product, and the components thereof, that comprise a material component of the invention
15 embodied in the '237 Patent, that are especially made or adapted for use in infringing the '237
16 Patent, and that are not suitable for any substantial non-infringing use with knowledge that the '237
17 Patent was/is being directly infringed by users.

18 44. Pursuant to 35 U.S.C. § 271(f), Claret is liable for infringement of the '237 Patent
19 by knowingly supplying customers outside of the United States with all or a substantial portion of
20 the components of the Accused Product, the components having no other substantial non-infringing
21 use and not being staple articles or commodities of commerce. Further, Claret knew that the
22 combination of components supplied by Claret to foreign entities would infringe the '237 Patent if
23 such combination occurred within the United States.

24 45. Upon information and belief, Claret's infringement of the '237 Patent is willful,
25 deliberate, and intentional by continuing its acts of infringement with knowledge of the '237 Patent
26 and thus acting in reckless disregard of Plaintiffs' patent rights.

1 46. As a result of Claret's acts of infringement of the '237 Patent, Plaintiffs have
2 suffered injury to its business and property in an amount to be determined as damages, and will
3 continue to suffer damages in the future.

4 47. Unless an injunction is issued enjoining Claret and their officers, agents, servants,
5 employees and attorneys, and all those persons in active concert or participation with them from
6 infringing the '237 Patent, Plaintiffs will suffer irreparable injury for which there is no adequate
7 remedy at law.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiffs pray for judgment and relief as follows:

- 10 A. A declaration that Claret has infringed, is infringing, has induced and is inducing, has
11 contributed and is contributing to the infringement of the '502 Patent;
- 12 B. A declaration that Claret has infringed, is infringing, has induced and is inducing, has
13 contributed and is contributing to the infringement of the '237 Patent;
- 14 C. A permanent injunction enjoining Claret, its officers, agents, servants, employees, affiliates
15 and attorneys, and all those in active concert or participation with them, from further
16 infringing, inducing infringement, and contributing to the infringement of the '502 Patent;
- 17 D. A permanent injunction enjoining Claret, its officers, agents, servants, employees, affiliates
18 and attorneys, and all those in active concert or participation with them, from further
19 infringing, inducing infringement, and contributing to the infringement of the '237 Patent;
- 20 E. An award of damages adequate to compensate Plaintiffs for the infringement of the '502
21 Patent by Claret and its Customers;
- 22 F. An award of damages adequate to compensate Plaintiffs for the infringement of the '237
23 Patent by Claret and its Customers;
- 24 G. A declaration that Claret's continuing infringement of the '502 Patent was and is willful,
25 justifying a trebling of the award of damages under 35 U.S.C. § 284, or such other
26 enhancement of the award of damages that the Court deems appropriate;
- 27
28

- 1 H. A declaration that Claret’s continuing infringement of the ’237 Patent was and is willful,
2 justifying a trebling of the award of damages under 35 U.S.C. § 284, or such other
3 enhancement of the award of damages that the Court deems appropriate;
- 4 I. An award of pre-judgment and post-judgment interest on the damages caused by reason of
5 Claret’s infringement of the Asserted Patents;
- 6 J. A declaration that this an exceptional case and that Plaintiffs be granted its reasonable
7 attorneys’ fees and expenses in accordance with 35 U.S.C. § 285;
- 8 K. An award of costs and expenses to Plaintiffs; and
- 9 L. A grant to Plaintiffs of such other and further relief as the Court may deem just and proper.

10 **JURY DEMAND**

11 Memory Metal Holland BV and Don Michael International, LLC, demand trial by jury on
12 all claims and issues so triable.

13
14 Dated: April 26, 2018

15 By: /s/ Sarah A. Pfeiffer

16 Sarah A. Pfeiffer

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