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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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Robert R. Di Troia  
CLERK U.S. DISTRICT  
COURT OF TN, MEMPHIS

MEDTRONIC SOFAMOR DANEK, INC., )  
)  
Plaintiff, )  
)  
v. )  
)  
GARY KARLIN MICHELSON, MD, and )  
KARLIN TECHNOLOGY, INC., )  
)  
Defendants. )

Civil Action No. 01-2373 GV

JURY TRIAL DEMANDED

**SECOND AMENDED COMPLAINT FOR DAMAGES, DECLARATORY  
AND INJUNCTIVE RELIEF, AND SPECIFIC PERFORMANCE**

Plaintiff, Medtronic Sofamor Danek, Inc. ("Medtronic"), by and through its undersigned attorneys, upon personal knowledge as to itself, its own acts, its allegations as to the contents of documents, and, upon information and belief, as to all other matters, for its Second Amended Complaint ("Complaint") alleges:

**NATURE OF THIS ACTION**

1. This is an action to declare the intellectual property and contract rights of Medtronic under a license agreement entered into with Defendant Karlin Technology, Inc. ("KTI"), a separate purchase agreement entered into with Defendant Gary K. Michelson, MD ("Michelson"), and an assignment and guarantee executed by Michelson. The license agreement concerns a threaded implant or threaded implants for use in spinal surgical or stabilization procedures, and instruments and methods related thereto. The purchase agreement concerns a non-threaded implant or non-threaded implants for use in spinal surgical or stabilization procedures and instruments and methods related thereto. The Complaint requests declaratory

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relief that, by virtue of the license agreement and the purchase agreement, Medtronic does not infringe any patent of Defendants KTI or Michelson. The Complaint further requests declaratory relief that the actions of Defendants KTI and Michelson in invoking the "best efforts" clauses of the license agreement and purchase agreement in an attempt to take back the subject technology are ineffective, null and void.

2. Defendants KTI and Michelson have threatened to offer, and have represented that they have offered, to other parties the technology owned by or licensed to Medtronic. Medtronic requests injunctive relief to protect the intellectual property to which it is entitled under the agreements and the assignment and guarantee from others, who have no right to it.

3. This action also seeks damages and specific performance from KTI and Michelson resulting from their breaches of the agreements and the assignment and guarantee; damages from Michelson on account of tortious interference with contract; and damages from Michelson and KTI resulting from intentional and/or negligent misrepresentation. Finally, Medtronic seeks declaratory relief that it has not engaged in any wrongful conduct with respect to KTI or Michelson including, without limitation, breaches of contract, misappropriation or derivation of inventions and/or devices, misappropriation of confidential information or trade secrets, coercion, fraud, misrepresentation, unfair competition or any unfair, dishonest, deceptive, destructive, fraudulent or discriminatory practices, or unfair competition.

#### **THE PARTIES**

4. Plaintiff Medtronic, formerly known as Sofamor Danek Group, Inc., is an Indiana corporation having a principal place of business located at 1800 Pyramid Place, Memphis, Tennessee 38132. Medtronic is a medical technology company engaged in manufacturing and selling device-based medical therapies.

5. Defendant Michelson is an adult citizen of California residing at 438 Sherman Canal, Venice, California 90291.

6. Defendant KTI is a California Corporation with its principal place of business located at 4929 Premier Avenue, Lakewood, California 90712.

### **JURISDICTION AND VENUE**

7. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332, in that the parties are citizens of different states and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. The Court also has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338, as this action arises under the United States Patent Laws.

8. The Court has personal jurisdiction over Michelson because Medtronic's claims arise out of and relate to Michelson's extensive contacts with this forum with respect to the agreements. The Court also has personal jurisdiction over Michelson because Michelson has had, and, continues to have, systematic and continuous contacts with this forum apart from those contacts related to the agreements.

9. The Court has personal jurisdiction over KTI because Medtronic's claims arise out of and relate to KTI's extensive contacts with this forum with respect to the agreements. The Court also has personal jurisdiction over KTI because KTI has had, and, continues to have, systematic and continuous contacts with this forum apart from those contacts related to the agreements.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

## ALLEGATIONS OF FACT

### The License Agreement

11. On or about December 31, 1993, Medtronic entered into a license agreement with KTI with respect to Michelson's threaded spinal implant technology ("License Agreement").

12. Under Section 2.1 of the License Agreement, Medtronic received, subject only to the limitations set forth in Section 2.3 of the License Agreement, the world-wide, sole and exclusive right to use and practice the various intellectual property defined as "Technology," including the world-wide, sole and exclusive right to make, have made, use and sell threaded spinal implants, and instruments and methods related thereto which utilize the Technology.

13. Moreover, under Section 1.4 of the License Agreement Medtronic received the exclusive right to use and practice Technology which KTI may develop, acquire or license after the Effective Date of the License Agreement.

14. The scope of Medtronic's sole and exclusive license, and all other rights granted to Medtronic under the License Agreement, is, according to Section 2.3 of the License Agreement, limited only by a prior May 10, 1992 license agreement between KTI, Michelson and Spine-Tech, Inc. ("Spine-Tech") (the "Prior Agreement").

15. "Technology" is defined in Section 1.4 of the License Agreement as:

1.4 Technology. Technology shall mean any United States and foreign patents and patent applications and future applications, including, without limitation, any amendment, continuation, division, reissue and reexamination thereof, and any know-how, trade secrets or confidential information, proprietary rights, processes, engineering/design/technical information and data pertaining to the Medical Device which KTI has heretofore developed, acquired or licensed as listed in Disclosure

Schedule 3.2, or which KTI may develop, acquire or license after the Effective Date hereof, whether or not subject to the Prior Agreement.

(Emphasis added.)

16. "Medical Device" is defined in Section 1.2 of the License Agreement as:

1.2 Medical Device. Medical Device shall mean a threaded implant or threaded implants for use in spinal surgical or stabilization procedures and instruments and methods related thereto, which utilize the Technology and are Michelson's invention as disclosed in the patent and patent applications listed in Disclosure Schedule 3.2, whether claimed or not, or whether issued or not.

(Emphasis added.)

17. Under the License Agreement, the license granted to Medtronic included: (i) all of the patents and patent applications defined in Disclosure Schedule 3.2, and the corresponding trade secrets, know-how, confidential information and other listed items, including all agreements and patents, patent applications or other rights licensed or assignable to Medtronic under the Prior Agreement; (ii) all patent applications and patents claiming priority to U.S. Patent No. 5,015,247 ("the '247 patent"); and (iii) all future patents and patent applications and the corresponding trade secrets and know-how pertaining to the threaded implants, instruments and methods, among other things, that are disclosed in the patents, patent applications, and elsewhere, or which KTI may develop, acquire or license after the effective date of the License Agreement, whether or not subject to the Prior Agreement.

18. Despite its obligations under the License Agreement, KTI has refused to license to Medtronic all of the Technology pertaining to the Medical Device to which Medtronic is entitled, and has denied and disputed Medtronic's right to all of such Technology.

19. Under Section 2.4 of the License Agreement, KTI further granted to Medtronic the option to purchase the Technology and the Medical Device.

20. Pursuant to a covenant-not-to-compete contained in Section 3.2 of the License Agreement, KTI is strictly prohibited from competing either directly or indirectly with the spinal implants, instruments, methods and procedures that are the subject of the License Agreement.

21. Despite its obligation not to compete with respect to the Technology that is the subject of the License Agreement, KTI has threatened to license or assign the subject Technology to other parties who have no rights to such Technology.

22. On or about January 11, 1994, Michelson executed an Assignment and Guarantee related to the License Agreement. Pursuant to the Assignment and Guarantee,

Michelson warrants, represents, and guarantees that any future Technology that Michelson, either directly or indirectly, develops, creates, acquires, possesses or obtains a license to after the Effective Date of the Agreement which pursuant to the Agreement is to be licensed or assigned to Danek [Medtronic] shall be promptly transferred and assigned (a) to KTI so that Danek can enjoy the full benefits of same under the Agreement, or (b) to Danek, if Danek shall have previously exercised its right to purchase the Technology and the Medical Device as permitted by the terms of the Agreement.

(Emphasis added.)

23. Despite his obligation to assign future Technology to KTI for the benefit of Medtronic (or to Medtronic if Medtronic had exercised its right to purchase the Technology and the Medical Device), Michelson has failed to assign such Technology to KTI for the benefit of Medtronic.

24. Medtronic has had numerous meetings and discussions with KTI relating to KTI's breaches of the License Agreement. During these meetings and discussions, both sides made their respective positions quite clear. Despite being on notice of its breaches, KTI has made clear to Medtronic that (i) KTI does not agree that it has breached the License Agreement or that Medtronic has the scope of rights under the License Agreement which Medtronic contends; (ii) KTI would not voluntarily acknowledge such rights to Medtronic without payment of substantial additional consideration; and, (iii) that litigation would be necessary to determine the parties' respective rights. The referenced meetings and discussions constitute the equivalent of repeated notice and several opportunities to cure. Given KTI's unequivocal repudiation of the License Agreement and its continued breaches thereof, providing KTI with any further or more formal notice and opportunity to cure its breaches as provided for in the License Agreement would have been a meaningless and futile gesture.

25. On May 21, 2001, Medtronic exercised its option under Section 2.4 of the License Agreement to purchase the Technology and the Medical Device.

#### **The Purchase Agreement**

26. On January 11, 1994, Medtronic and Michelson entered a separate agreement for the acquisition by Medtronic of all of Michelson's technology and medical devices directed to non-threaded spinal implants and methods and instruments for implanting the same (the "Purchase Agreement") including all of Michelson's technology pertaining to the medical device developed, possessed, created or acquired by Michelson after the Closing Date of the Purchase Agreement.

27. Under Section 2.2 of the Purchase Agreement, Michelson assigned to Medtronic, "all of his worldwide rights, title and interest in, under and to" his rights in the "Medical Device" and "Technology," as those terms are defined in the Purchase Agreement including all of Michelson's Technology pertaining to the Medical Device developed, possessed, created or acquired by Michelson after the Closing Date of the Purchase Agreement.

28. "Medical Device" and "Technology" are defined in the Purchase Agreement as follows:

1.1 Medical Device. Medical Device shall mean a non-threaded implant or non-threaded implants for use in spinal surgical or stabilization procedures, and instruments and methods related thereto, which utilize the Technology and are Michelson's invention as disclosed in the patent applications listed on Michelson Schedules A and B, whether claimed or not, or whether issued or not.

1.3 Technology. Technology shall mean any United States and foreign patents and patent applications and future applications, including, without limitation, any amendment, continuation, division, reissue and reexamination thereof, and any know-how, trade secrets or confidential information, proprietary rights, processes, engineering/design/technical information and data pertaining to the Medical Device which Michelson has heretofore developed, acquired or possessed or which Michelson may develop, acquire or possess in the future after the Closing Date hereof.

(Emphasis added.)

29. Under Schedule B of the Purchase Agreement, "Medical Device" specifically includes, among other things:



Technology pertaining to the Medical Device developed, possessed, created, or acquired by Michelson after the Closing Date hereof, as Michelson will update and provide to . . . [Medtronic] from time to time.

30. Under the Purchase Agreement, Medtronic is entitled to the assignment of all then-existing and future patents and patent applications, and the corresponding trade secrets, know-how, confidential information and other listed items, pertaining to the non-threaded implants, instruments and methods, among other things, that are disclosed in the patents, filed patent applications, unfiled patent applications, and elsewhere, including any such items developed, possessed, created, or acquired by Michelson after the Closing Date of the Purchase Agreement.

31. Despite his obligations under the Purchase Agreement, Michelson has refused to assign to Medtronic all of the Technology to which Medtronic is entitled, and has denied and disputed Medtronic's rights to such Technology.

32. Pursuant to a covenant-not-to-compete in Section 3.2 of the Purchase Agreement, Michelson is strictly prohibited from competing either directly or indirectly with Medtronic with respect to the Technology and the Medical Device and from impeding Medtronic's quiet enjoyment of the Technology and the Medical Device.

33. Despite his obligation not to compete with respect to the Technology that is the subject of the Purchase Agreement, Michelson has threatened to license or assign the subject Technology to other parties who have no right to such Technology.

34. Medtronic has had numerous meetings and discussions with Michelson relating to Michelson's breaches of the Purchase Agreement. During these meetings and discussions, both sides made their respective positions quite clear. Despite being on notice of his breaches,

Michelson has made clear to Medtronic that (i) Michelson does not agree that he breached the Purchase Agreement or that Medtronic has the scope of rights under the Purchase Agreement which Medtronic contends; (ii) Michelson would not voluntarily acknowledge such rights to Medtronic without payment of substantial additional consideration; and, (iii) that litigation would be necessary to determine the parties' respective rights. The referenced meetings and discussions constitute the equivalent of repeated notice and several opportunities to cure. Given Michelson's unequivocal repudiation of the Purchase Agreement and his continued breaches thereof, providing Michelson with any further or more formal notice and opportunity to cure his breaches as provided for in the Purchase Agreement would have been a meaningless and futile gesture.

**COUNT I**  
**Breach of Contract // Damages**  
**(Against Defendant KTI)**

35. Medtronic realleges and incorporates by reference Paragraphs 1 - 34 of this Complaint as if fully set forth herein.

36. Under Section 2.1 of the License Agreement, Medtronic has a *bona fide* license entitling it to the world-wide, sole and exclusive right to use and practice the various intellectual property defined as "Technology," including the world-wide, sole and exclusive right to make, have made, use and sell threaded spinal implants, and instruments or methods used to implant a threaded spinal implant which utilize the Technology.

37. Medtronic's sole and exclusive license under the License Agreement is limited only by the prior grant of rights to Spine-Tech under the Prior Agreement.

38. Under Section 2.4 of the License Agreement, Medtronic has a *bona fide* purchase option entitling it to purchase the Technology and the Medical Device as defined in the License Agreement, including but not limited to certain patents and patent applications.

39. Despite Medtronic's rights under the License Agreement, KTI has breached the License Agreement by refusing to license to Medtronic: (i) all of the patents and patent applications defined in Disclosure Schedule 3.2 and the corresponding trade secrets and know-how, including all agreements and patents, patent applications or other rights licensed or assignable to Medtronic under the Prior Agreement; (ii) all patent applications and patents claiming priority to the '247 patent; and (iii) all future patents and patent applications and the corresponding trade secrets and know-how pertaining to the threaded implants, instruments and methods, among other things, that are disclosed in the patents, patent applications, and elsewhere or which KTI may develop, acquire or license after the effective date of the License Agreement, whether or not subject to the Prior Agreement. KTI has also breached the License Agreement by denying and disputing certain of Medtronic's rights under the License Agreement.

40. Medtronic has duly performed its obligations under the License Agreement.

41. Medtronic had no obligation to provide further or more formal notice and opportunity to cure to KTI pursuant to Section 13.14 of the License Agreement because such notice and opportunity to cure would have been futile.

42. KTI's breaches have interfered with Medtronic's business and have, among other things, prevented Medtronic from developing and marketing products in the areas in which its rights have been denied and disputed by KTI. As a result of KTI's breaches of the License

Agreement, Medtronic has suffered damages in excess of the sum or value of \$75,000, exclusive of interest and costs.

**COUNT II**  
**Specific Performance**  
**(Against Defendant KTI)**

43. Medtronic realleges and incorporates by reference Paragraphs 1 - 42 of this Complaint as if fully set forth herein.

44. Under the License Agreement, Medtronic has a *bona fide* license entitling it to the world-wide, sole and exclusive right to use and practice the various intellectual property defined as "Technology," including the world-wide, sole and exclusive right to make, have made, use and sell threaded spinal implants, and instruments or methods used to implant a threaded spinal implant which utilize the Technology.

45. Medtronic's sole and exclusive license under the License Agreement is limited only by the prior grant of rights to Spine-Tech under the Prior Agreement.

46. Under the License Agreement, Medtronic has a *bona fide* purchase option entitling it to purchase all of the Technology and the Medical Device.

47. Despite Medtronic's rights under the License Agreement, KTI has refused to license to Medtronic all of the Technology and the Medical Device to which Medtronic is entitled, including but not limited to (i) all of the patents and patent applications defined in Disclosure Schedule 3.2 and the corresponding trade secrets and know-how, including all agreements and patents, patent applications or other rights licensed or assignable to Medtronic under the Prior Agreement; (ii) all patent applications and patents claiming priority to the '247 patent; and, (iii) all future patents and patent applications and the corresponding trade secrets and

know-how pertaining to the threaded implants, instruments and methods, among other things, that are disclosed in the patents, patent applications, and elsewhere or which KTI may develop, acquire or license after the effective date of the License Agreement, whether or not subject to the Prior Agreement.

48. Medtronic has duly performed its obligations under the License Agreement.

49. Medtronic had no obligation to provide further or more formal notice and opportunity to cure to KTI pursuant to Section 13.14 of the License Agreement because such notice and opportunity to cure would have been futile.

50. Medtronic is entitled to a decree of specific performance directing KTI to honor its obligations under the License Agreement, including its obligation to license to Medtronic all of the Technology and the Medical Device to which Medtronic is entitled, including but not limited to (i) all of the patents and patent applications defined in Disclosure Schedule 3.2 and the corresponding trade secrets and know-how, including all agreements and patents, patent applications or other rights licensed or assignable to Medtronic under the Prior Agreement; (ii) all patent applications and patents claiming priority to the '247 patent; and (iii) all future patents and patent applications and the corresponding trade secrets, know-how, confidential information and other listed items, pertaining to the threaded implants, instruments and methods, among other things, that are disclosed in the patents, patent applications, and elsewhere or which KTI may develop, acquire or license after the effective date of the License Agreement, whether or not subject to the Prior Agreement. In addition, Medtronic requests a decree of specific performance directing KTI to cease breaches of the License Agreement and other tortious conduct.

**COUNT III**  
**Declaratory Relief Re: License Agreement**  
**(Against Defendant KTI)**

51. Medtronic realleges and incorporates by reference Paragraphs 1 - 50 of this Complaint as if fully set forth herein.

52. Under the License Agreement, Medtronic has a *bona fide* license entitling it to the world-wide, sole and exclusive right to use and practice the various intellectual property defined as "Technology," including the world-wide, sole and exclusive right to make, have made, use and sell threaded spinal implants, and instruments or methods used to implant a threaded spinal implant which utilize the Technology.

53. Medtronic's sole and exclusive license under the License Agreement, is limited only by the prior grant of rights to Spine-Tech under the Prior Agreement.

54. Under the License Agreement, Medtronic has a *bona fide* purchase option entitling it to purchase the Technology and the Medical Device as defined in the License Agreement, including but not limited to certain patents and patent applications.

55. Despite Medtronic's rights under the License Agreement, KTI has refused to license to Medtronic (i) all of the patents and patent applications defined in Disclosure Schedule 3.2 and the corresponding trade secrets and know-how, including all agreements and patents, patent applications or other rights licensed or assignable to Medtronic under the Prior Agreement; (ii) all patent applications and patents claiming priority to the '247 patent; and (iii) all future patents and patent applications and the corresponding trade secrets and know-how pertaining to the threaded implants, instruments and methods, among other things, that are disclosed in the patents, patent applications, and elsewhere or which KTI may develop, acquire

or license after the effective date of the License Agreement, whether or not subject to the Prior Agreement.

56. Medtronic has duly performed its obligations under the License Agreement.

57. Medtronic is entitled to a declaratory ruling that it is entitled to an exclusive license to (i) all of the patents and patent applications defined in Disclosure Schedule 3.2 and the corresponding trade secrets and know-how, including all agreements and patents, patent applications or other rights licensed or assignable to Medtronic under the Prior Agreement; (ii) all patent applications and patents claiming priority to the '247 patent; and (iii) all future patents and patent applications and the corresponding trade secrets and know-how pertaining to the threaded implants, instruments and methods, among other things, that are disclosed in the patents, patent applications, and elsewhere or which KTI may develop, acquire or license after the effective date of the License Agreement, whether or not subject to the Prior Agreement.

#### **COUNT IV**

##### **Specific Performance: Assignment and Guarantee (Against Defendant Michelson)**

58. Medtronic realleges and incorporates by reference Paragraphs 1 - 57 of this Complaint as if fully set forth herein.

59. Under the Assignment and Guarantee, Michelson has an obligation to assign all Technology as defined in the License Agreement (including any future Technology that Michelson either directly or indirectly, develops, creates, acquires, possesses, or obtains a license to after the Effective Date of the Agreement) to KTI for the benefit of Medtronic or to Medtronic after Medtronic's exercise of its option to purchase the Technology and the Medical Device.

60. Despite his obligation to assign all Technology, Michelson has refused to assign certain of the Technology to KTI, claiming that it is in KTI's and Michelson's best interest to keep title to such Technology in Michelson's name for his personal income tax benefit, and has failed and refused to assign to Medtronic all such future Technology and has disputed Medtronic's ownership of such future Technology, thereby depriving Medtronic of its rights to all such Technology.

61. Medtronic is entitled to a decree of specific performance directing Michelson to honor his obligations under the Assignment and Guarantee and to promptly assign to KTI for the benefit of Medtronic, or directly to Medtronic upon its exercise of the purchase option in the License Agreement, all Technology that Michelson, directly or indirectly, has developed, created, acquired, possessed or obtained a license to after the effective date of the License Agreement. In addition, Medtronic is entitled to a decree of specific performance directing Michelson to cease the breaches of the Assignment and Guarantee and other tortious conduct described herein.

**COUNT V**  
**Breach of Contract // Damages**  
**(Against Defendant Michelson)**

62. Medtronic realleges and incorporates by reference Paragraphs 1 - 61 of this Complaint as if fully set forth herein.

63. Under the Purchase Agreement, Medtronic has a *bona fide* and exclusive right to Michelson's Technology and Medical Devices related to non-threaded spinal implants and methods and instruments for implanting the same, including but not limited to the Technology identified in Schedule B to the Purchase Agreement, as follows:

- (a) U.S. Patent Application entitled or covering the "Truncated Implants" filed or to be filed;



- (b) U.S. Patent Application entitled or covering the "Non-Threaded Cylindrical Implant" filed or to be filed;
- (c) U.S. Patent Application entitled or covering the "Cervical Implant with Sliding Side Wall Filling Access and Insertion Instrumentation" filed or to be filed;
- (d) All trade secrets, know how, confidential information and proprietary rights pertaining to the above patent applications, but not disclosed therein;
- (e) Technology pertaining to the Medical Device developed, possessed, created, or acquired by Michelson after the execution of the Purchase Agreement, as Michelson will update and provide to Sofamor [Medtronic] from time to time.

64. Medtronic has duly performed its obligations under the Purchase Agreement.

65. Medtronic had no obligation to provide further or more formal notice and opportunity to cure to Michelson pursuant to Section 12.14 of the Purchase Agreement because such notice and opportunity to cure would have been futile.

66. Despite Medtronic's rights under the Purchase Agreement, Michelson has refused to assign all of his Technology pertaining to the Medical Device, and has disputed Medtronic's ownership of certain Technology including after-developed technology.

67. Michelson's breaches have interfered with Medtronic's business and have, among other things, prevented Medtronic from developing and marketing products in the areas in which its rights have been denied and disputed by Michelson. As a result of Michelson's breaches of the Purchase Agreement, Medtronic has suffered damages in excess of the sum or value of \$75,000, exclusive of interest and costs.

**COUNT VI**  
**Specific Performance**  
**(Against Defendant Michelson)**

68. Medtronic realleges and incorporates by reference Paragraphs 1 - 67 of this Complaint as if fully set forth herein.

69. Under the Purchase Agreement, Medtronic has a *bona fide* and exclusive right to Michelson's technology and medical devices related to non-threaded spinal implants and methods and instruments for implanting the same, including but not limited to the Technology identified in Schedule B as follows:

- (a) U.S. Patent Application entitled or covering the "Truncated Implants" filed or to be filed;
- (b) U.S. Patent Application entitled or covering the "Non-Threaded Cylindrical Implant" filed or to be filed;
- (c) U.S. Patent Application entitled or covering the "Cervical Implant with Sliding Side Wall Filling Access and Insertion Instrumentation" filed or to be filed;
- (d) All trade secrets, know-how, confidential information and proprietary rights pertaining to the above patent applications, but not disclosed therein;
- (e) Technology pertaining to the Medical Device developed, possessed, created, or acquired by Michelson after the execution of the Purchase Agreement, as Michelson will update and provide to Sofamor from time to time.

70. Medtronic has duly performed its obligations under the Purchase Agreement.

71. Medtronic had no obligation to provide further or more formal notice and opportunity to cure to Michelson pursuant to Section 12.14 of the Purchase Agreement, if Section 12.14 were applicable to the allegations of Count VI, because such notice and opportunity to cure would have been futile.

72. Despite Medtronic's rights under the Purchase Agreement, Michelson has refused to assign to Medtronic all of his Technology pertaining to the Medical Device, and has disputed Medtronic's ownership of certain Technology including after-developed Technology.

73. Medtronic is entitled to a decree of specific performance directing Michelson to assign to Medtronic exclusively Michelson's technology and medical devices related to non-

threaded spinal implants and methods and instruments for implanting the same, including but not limited to the Technology identified in Schedule B as follows:

- (a) U.S. Patent Application entitled or covering the "Truncated Implants" filed or to be filed;
- (b) U.S. Patent Application entitled or covering the "Non-Threaded Cylindrical Implant" filed or to be filed;
- (c) U.S. Patent Application entitled or covering the "Cervical Implant with Sliding Side Wall Filling Access and Insertion Instrumentation" filed or to be filed;
- (d) All trade secrets, know-how, confidential information and proprietary rights pertaining to the above patent applications, but not disclosed therein;
- (e) Technology pertaining to the Medical Device developed, possessed, created, or acquired by Michelson after the execution of the Purchase Agreement, as Michelson will update and provide to Sofamor from time to time.

74. In addition, Medtronic is entitled to a decree of specific performance directing Michelson to honor his obligations under the Purchase Agreement and to cease the breaches of the Agreement and other tortious conduct described herein.

**COUNT VII**  
**Declaratory Relief Re: Purchase Agreement**  
**(Against Defendant Michelson)**

75. Medtronic realleges and incorporates by reference Paragraphs 1 - 74 of this Complaint as if fully set forth herein.

76. Under the Purchase Agreement, Medtronic has a *bona fide* and exclusive right to Michelson's technology and medical devices related to non-threaded spinal implants and methods and instruments for implanting the same, including but not limited to the Technology identified in Schedule B as follows:

- (a) U.S. Patent Application entitled or covering the "Truncated Implants" filed or to be filed;

- (b) U.S. Patent Application entitled or covering the "Non-Threaded Cylindrical Implant" filed or to be filed;
- (c) U.S. Patent Application entitled or covering the "Cervical Implant with Sliding Side Wall Filling Access and Insertion Instrumentation" filed or to be filed;
- (d) All trade secrets, know-how, confidential information and proprietary rights pertaining to the above patent applications, but not disclosed therein;
- (e) Technology pertaining to the Medical Device developed, possessed, created, or acquired by Michelson after the execution of the Purchase Agreement, as Michelson will update and provide to Sofamor from time to time.

77. Medtronic has duly performed its obligations under the Purchase Agreement.

78. Despite Medtronic's rights under the Purchase Agreement, Michelson has refused to assign exclusively to Medtronic all of his Technology pertaining to the Medical Device.

79. Medtronic is entitled to a declaratory ruling that it is exclusively entitled to ownership of all of Michelson's Technology pertaining to the Medical Device as defined in the Purchase Agreement, including all such Technology developed, possessed, created, or acquired by Michelson after the execution of the Purchase Agreement.

**COUNT VIII**  
**Tortious Interference with Contract**  
**Tenn. Code Ann. § 47-50-109**  
**(Against Defendant Michelson)**

80. Medtronic realleges and incorporates by reference Paragraphs 1 - 79 of this Complaint as if fully set forth herein.

81. The core aspect of Medtronic's business is the manufacturing and selling of device-based medical therapies.

82. Medtronic intended to use the Technology and the Medical Device, trade secrets, know-how, etc., to which Medtronic is entitled under the License Agreement with KTI to further

its business concerning spinal implants. Michelson was aware of Medtronic's License Agreement with KTI and KTI's obligations thereunder.

83. Michelson, by intentionally and maliciously causing KTI to fail and refuse to assign all rights to the Medical Device and the Technology to Medtronic under the License Agreement, and by denying and disputing Medtronic's rights to the Medical Device and the Technology, has wrongfully interfered with Medtronic's contractual relationship with KTI and caused KTI to breach its contract with Medtronic.

84. Medtronic has duly performed its obligations under the License Agreement.

85. Medtronic had no obligation to provide further or more formal notice and opportunity to cure to KTI pursuant to Section 13.14 of the License Agreement, if Section 13.14 were applicable to KTI's breaches referred to in this Count, because such notice and opportunity to cure would have been futile.

86. As a direct result of Michelson's wrongful interference with Medtronic's contractual relationships with KTI, Medtronic has suffered damages in excess of the sum or value of \$75,000, exclusive of interest and costs. Under Tenn. Code Ann. § 47-50-109, Medtronic is entitled to treble damages.

**COUNT IX**  
**Intentional Misrepresentation**  
**(Against Defendants KTI and Michelson)**

87. Medtronic realleges and incorporates by reference Paragraphs 1 - 86 of this Complaint as if fully set forth herein.

88. In connection with the negotiation and execution of the License Agreement, the Assignment and Guarantee and the Purchase Agreement, KTI, Michelson and their agents

represented to Medtronic that should the transactions be entered into as agreed, KTI and Michelson would cause to be assigned to Medtronic all of the Technology relating to the Medical Device, including future developed technology.

89. The representations referred to in Paragraph 88, above, were false in that Michelson and KTI did not intend to assign all such Technology rights to Medtronic, but instead intended to withhold from Medtronic certain Technology rights, including after-developed technology, in order to attempt to extract further consideration from Medtronic in exchange for such withheld technology. Further, Michelson did not intend to assign all such Technology to KTI or Medtronic pursuant to the Assignment and Guarantee, but instead intended to continue to hold certain of such Technology in his own name for his personal tax benefit.

90. At the time that Michelson and KTI made the representations referred to in Paragraph 88, above, Michelson and KTI did not believe them to be true and intended to induce Medtronic to rely on said untrue representations.

91. In justifiable reliance on Michelson's and KTI's untrue representations, Medtronic entered into the License Agreement and Purchase Agreement, and invested substantial sums of money in the development, governmental approval and marketing of products in the field of the Technology. However, as a result of Michelson's and KTI's misrepresentations, Medtronic has been inhibited from entering into development and marketing of products with respect to the wrongfully withheld Technology.

92. As a result of Medtronic's justifiable reliance on Michelson's and KTI's false representations, Medtronic has suffered damages in excess of the sum or value of \$75,000, exclusive of interest and costs.

**COUNT X**  
**Negligent Misrepresentation**  
**(Against Defendants KTI and Michelson)**

93. Medtronic realleges and incorporates by reference Paragraphs 1 - 92 of this Complaint as if fully set forth herein.

94. In connection with the negotiation and execution of the License Agreement, the Assignment and Guarantee and the Purchase Agreement, KTI, Michelson and their agents represented to Medtronic that should the transactions be entered into as agreed, KTI and Michelson would cause to be assigned to Medtronic all of the Technology relating to the Medical Device, including future developed technology.

95. The representations referred to in Paragraph 94, above were negligent in that Michelson and KTI did not use reasonable care in making said representations.

96. At the time that Michelson and KTI made the representations referred to in Paragraph 94, above, Michelson and KTI had no reasonable basis for believing them to be true. Medtronic relied on said untrue representations.

97. In justifiable reliance on Michelson's and KTI's negligent representations, Medtronic entered into the License Agreement and Purchase Agreement, and invested substantial sums of money in the development, governmental approval and marketing of products in the field of the Technology. However, as a result of Michelson's and KTI's negligent representations, Medtronic has been inhibited from entering into development and marketing of products with respect to the wrongfully withheld Technology.

98. As a result of Medtronic's justifiable reliance on Michelson's and KTI's false representations, Medtronic has suffered damages in excess of the sum or value of \$75,000, exclusive of interest and costs.

**COUNT XI**  
**Injunctive Relief**  
**(Against Defendants KTI and Michelson)**

99. Medtronic realleges and incorporates by reference Paragraphs 1 - 98 of this Complaint as if fully set forth herein.

100. Medtronic's license to the Medical Device and the Technology under the License Agreement is sole and exclusive, subject only to the Prior Agreement, and Medtronic has acquired all of the worldwide rights, title and interest in the Medical Device and the Technology under the Purchase Agreement. Nevertheless, during various negotiations and discussions relating to the License Agreement and the Purchase Agreement, Defendants KTI and Michelson have threatened to offer, and have represented that they have offered, to other parties the Technology owned by or licensed to Medtronic, in an attempt to extract from Medtronic further consideration for the Technology than is provided in the License Agreement and Purchase Agreement. In addition to violating Medtronic's intellectual property rights under the License Agreement and Purchase Agreement, Defendants' actions constitute violations of the non-competition agreements contained in such agreements.

101. Medtronic will suffer irreparable harm for which no adequate remedy at law exists if Defendants are not enjoined from licensing or assigning the Technology in violation of the License Agreement and the Purchase Agreement.



102. Accordingly, Medtronic requests an injunction, enjoining Defendants and all other persons in active concert or participation therewith from licensing or assigning to others the Technology to which Medtronic is entitled under the License Agreement and the Purchase Agreement, including all such Technology developed, possessed, created or acquired by Michelson after the Closing Date of the Purchase Agreement or the Effective Date of the License Agreement, and such other and further relief as may be deemed just and proper.

**COUNT XII**  
**Request for Declaratory Relief**  
**(Against Defendant Michelson)**

103. Medtronic realleges and incorporates by reference Paragraphs 1 - 102 of this Complaint as if fully set forth herein.

104. On or about May 11, 2000 Michelson sent Medtronic a notice dated May 10, 2000, purporting to invoke the "best efforts" clause of the Purchase Agreement in an attempt to retake from Medtronic the rights sold by Michelson to Medtronic under the Purchase Agreement.

105. Medtronic is entitled to a declaratory judgment that Michelson's notice purporting to invoke the "best efforts" clause remedy of the Purchase Agreement is ineffective, null and void on the grounds that the prerequisites necessary to invoke the "best efforts" clause remedy have not been met and the notice is defective. Specifically, among other things: (i) Medtronic has complied with its obligations under the "best efforts" clause of the Purchase Agreement; (ii) Medtronic has not determined that obtaining regulatory approval and actively promoting the sale of the Medical Device consistent with Medtronic's standards, beyond such activities as Medtronic has already undertaken, would not be an unreasonable or unnecessary business, regulatory, legal, financial or commercial risk or commitment; (iii) Medtronic's Board of

Directors has not determined not to utilize the technology in the United States or Europe; (iv) the notice is defective in that Michelson failed to tender to Medtronic the funds required to exercise the option; and, (v) the notice is defective under Paragraph 12.6 of the Purchase Agreement.

**COUNT XIII**  
**Request for Declaratory Relief**  
**(Against Defendants KTI and Michelson)**

106. Medtronic realleges and incorporates by reference Paragraphs 1 - 105 of this Complaint as if fully set forth herein.

107. From time to time during negotiations and discussions pertaining to the License Agreement, the Purchase Agreement and other matters of discussion among the parties, KTI and Michelson have alleged that Medtronic has engaged in various improper acts, including, without limitation, breaches of contract, misappropriation or derivation of inventions and/or devices, misappropriation of confidential information or trade secrets, coercion, fraud, misrepresentation, unfair competition, or unfair, dishonest, deceptive, destructive, fraudulent or discriminatory practices. Medtronic denies all such allegations.

108. Medtronic is entitled to a declaratory judgment that it has not engaged in any wrongful conduct with respect to KTI and/or Michelson, including, without limitation, any breach of contract, misappropriation or derivation of inventions and/or devices, misappropriation of confidential information or trade secrets, coercion, fraud, misrepresentation, unfair competition or unfair, dishonest, deceptive, destructive, fraudulent or discriminatory practices.

**COUNT XIV**  
**Declaration of Non-Infringement**  
**(Against Defendant KTI)**

109. Medtronic realleges and incorporates by reference Paragraphs 1 - 108 of this Complaint as if fully set forth herein.

110. An actual controversy exists between KTI and Medtronic concerning the scope of the patent rights to which Medtronic is entitled to under the License Agreement and concerning whether or not Medtronic is infringing any of KTI's patents.

111. Despite Medtronic's broad and exclusive rights under the License Agreement as described herein, counsel for KTI asserted in a June 6, 2001 letter to Medtronic's counsel, that Medtronic has misappropriated KTI's intellectual property, both prior to, and, as a result of, this lawsuit:

Medtronic continues to misappropriate Dr. Michelson's intellectual property that is not covered by the License Agreement and Purchase Agreement. Medtronic has, among other things, utilized Dr. Michelson's patented methods and instruments and has developed infringing devices that were created in breach of non-disclosure agreements and in violation of Dr. Michelson's patents. . . . In any event, Medtronic must immediately cease infringing Dr. Michelson's patents.

...[T]he Tennessee lawsuit is a transparent attempt by Medtronic to obtain intellectual property rights to which it has no entitlement ...[.] Medtronic's lawsuit thus is not only baseless, but has a serious and chilling effect on the intellectual property rights that are the product of Dr. Michelson's inventions. ...

Letter from Marc Marmaro, Esq. to Jack Q. Lever, Esq., et al. (Jun. 6, 2001), at 4-5.

112. KTI's counsel threatened legal action to protect KTI's alleged rights: "[I]f the Tennessee lawsuit is not dismissed immediately and if Medtronic's infringement activities does not cease immediately, Dr. Michelson will take all appropriate steps to protect his rights and to

recover all damages to which he is legally entitled." Letter from Marc Marmaro, Esq. to Jack Q. Lever, Esq., et al. (Jun. 6, 2001), at 5.

113. KTI's assertion that certain Technology is unlicensed and that Medtronic is infringing certain patents leaves Medtronic's rights in the technology in doubt and exposes Medtronic to potential actions for infringement of patents that are licensed to Medtronic.

114. Pursuant to 28 U.S.C. § 2201 and 35 U.S.C. § 271, Medtronic requests a judicial determination of its rights under the License Agreement, including a determination that Medtronic's use of the Technology does not infringe any patent of KTI.

**COUNT XV**  
**Declaration of Non-Infringement**  
**(Against Defendant Michelson)**

115. Medtronic realleges and incorporates by reference Paragraphs 1 - 114 of this Complaint as if fully set forth herein.

116. An actual controversy exists between Michelson and Medtronic concerning the scope of the patent rights to which Medtronic is entitled to under the Purchase Agreement and concerning whether or not Medtronic is infringing any of Michelson's patents.

117. Despite Medtronic's broad and exclusive rights under the Purchase Agreement as described herein, counsel for Michelson asserted in a June 6, 2001 letter to Medtronic's counsel, that Medtronic has misappropriated Michelson's intellectual property, both prior to, and, as a result of, this lawsuit:

Medtronic continues to misappropriate Dr. Michelson's intellectual property that is not covered by the License Agreement and Purchase Agreement. Medtronic has, among other things, utilized Dr. Michelson's patented methods and instruments and has developed infringing devices that were created in breach of non-disclosure agreements and in violation of Dr. Michelson's patents. . . . In any event, Medtronic must immediately cease infringing Dr. Michelson's patents.

...[T]he Tennessee lawsuit is a transparent attempt by Medtronic to obtain intellectual property rights to which it has no entitlement ...[.] Medtronic's lawsuit thus is not only baseless, but has a serious and chilling effect on the intellectual property rights that are the product of Dr. Michelson's inventions. ...

Letter from Marc Marmaro, Esq. to Jack Q. Lever, Esq., et al. (Jun. 6, 2001), at 4-5.

118. Michelson's counsel threatened legal action to protect Dr. Michelson's alleged rights: "[I]f the Tennessee lawsuit is not dismissed immediately and if Medtronic's infringement activities does not cease immediately, Dr. Michelson will take all appropriate steps to protect his rights and to recover all damages to which he is legally entitled." Letter from Marc Marmaro, Esq. to Jack Q. Lever, Esq., et al. (Jun. 6, 2001), at 5.

119. Michelson's unilateral declaration that certain Technology is not subject to the Purchase Agreement and that Medtronic is infringing certain patents leaves Medtronic's rights in the technology in doubt and exposes Medtronic to potential actions for infringement of the patents that are owned by Medtronic.

120. Pursuant to 28 U.S.C. § 2201 and 35 U.S.C. § 271, Medtronic requests a judicial determination of its rights under the Purchase Agreement, including a determination that Medtronic's use of the Technology does not infringe any patent of Michelson.

**COUNT XVI**  
**Request for Declaratory Relief**  
**(Against Defendant KTI)**

121. Medtronic realleges and incorporates by reference Paragraphs 1 - 120 of this Complaint as if fully set forth herein.

122. On or about June 6, 2001, counsel for KTI sent Medtronic a notice purporting to invoke the "best efforts" clause of the License Agreement in an attempt to retake from Medtronic

the rights granted by KTI to Medtronic under the License Agreement. Letter from Marc Marmaro, Esq. to Jack Q. Lever, Esq., et al. (Jun. 6, 2001), at 3-4.

123. Medtronic is entitled to a declaratory judgment that KTI's notice purporting to invoke the "best efforts" clause remedy of the License Agreement is ineffective, null and void on the grounds that the prerequisites necessary to invoke the "best efforts" clause remedy have not been met and the notice is defective. Specifically, among other things: (i) Medtronic has complied with its obligations under the "best efforts" clause of the License Agreement; (ii) Medtronic has not determined that obtaining regulatory approval and actively promoting the sale of the Medical Device consistent with Medtronic's standards, beyond such activities as Medtronic has already undertaken, would not be an unreasonable or unnecessary business, regulatory, legal, financial or commercial risk or commitment; (iii) Medtronic's Board of Directors has not determined not to utilize the technology in the United States or Europe; (iv) the notice is defective in that KTI failed to tender to Medtronic the funds required to exercise the option; and, (v) the notice is defective under Paragraph 13.6 of the License Agreement.

**COUNT XVII:  
Declaratory Judgment re Option Exercise  
(Against Defendant KTI)**

124. Medtronic realleges and incorporates by reference Paragraphs 1 - 123 of this Complaint as if fully set forth herein.

125. On May 21, 2001, Medtronic exercised its option under Section 2.4 of the License Agreement to purchase the Technology and the Medical Device.

126. On June 6, 2001, counsel for KTI sent counsel for Medtronic a letter purporting to invoke the "best efforts" clause of the License Agreement in an attempt to take back from

Medtronic the Medical Device and the Technology which were initially licensed to Medtronic and subsequently acquired by Medtronic by exercise of its purchase option.

127. As a result of KTI's action, Medtronic's rights with respect to its exercise of the purchase option under the License Agreement, and its ownership of the Technology and the Medical Device, are in doubt. Medtronic is entitled to a declaratory judgment that it has lawfully and properly exercised its option under Section 2.4 of the License Agreement to purchase the Technology and the Medical Device, and that it is now the sole and exclusive owner of the rights thereunder, subject only to the Prior Agreement.

#### **REQUESTS FOR RELIEF**

WHEREFORE, Plaintiff Medtronic prays for a judgment:

A. Under Count I, a finding that Defendant KTI has breached the License Agreement and awarding to Medtronic such damages as are proven at trial and such other and further relief as may be deemed just and proper.

B. Under Count II, a decree of specific performance directing KTI to honor its obligations under the License Agreement, including its obligation to license to Medtronic exclusively, subject only to the Prior Agreement, all of the Technology and the Medical Device to which Medtronic is entitled, including but not limited to: (i) all of the patents and patent applications defined in Disclosure Schedule 3.2 and the corresponding trade secrets and know-how, including all agreements and patents, patent applications or other rights licensed or assignable to Medtronic under the Prior Agreement; (ii) all patent applications and patents claiming priority to the '247 patent; and (iii) all future patents and patent applications and the corresponding trade secrets, know-how, confidential information and other listed items,

pertaining to the threaded implants, instruments and methods, among other things, that are disclosed in the patents, patent applications, and elsewhere or which KTI may develop, acquire or license after the effective date of the License Agreement, whether or not subject to the Prior Agreement. In addition, Medtronic requests a decree of specific performance directing KTI to cease breaches of the License Agreement and other tortious conduct.

C. Under Count III, a declaratory ruling that Medtronic is entitled to an exclusive license, subject only to the Prior Agreement, to: (i) all of the patents and patent applications defined in Disclosure Schedule 3.2 and the corresponding trade secrets and know-how, including all agreements and patents, patent applications or other rights licensed or assignable to Medtronic under the Prior Agreement; (ii) all patent applications and patents claiming priority to the '247 patent; and, (iii) all future patents and patent applications and the corresponding trade secrets, know-how, confidential information and other listed items, pertaining to the threaded implants, instruments and methods, among other things, that are disclosed in the patents, patent applications, and elsewhere or which KTI may develop, acquire or license after the effective date of the License Agreement, whether or not subject to the Prior Agreement.

D. Under Count IV, a decree of specific performance directing Michelson to honor his obligations under the Assignment and Guarantee and to promptly assign to KTI for the benefit of Medtronic, or directly to Medtronic upon its exercise of the purchase option in the License Agreement, all Technology that Michelson, directly or indirectly, has developed, created, acquired, possessed or obtained a license to after the Effective Date of the License Agreement. In addition, Medtronic is entitled to a decree of specific performance directing Michelson to cease the breaches of the Assignment and Guarantee and other tortious conduct described herein.



E. Under Count V, a finding that Michelson has breached the Purchase Agreement and awarding to Medtronic such damages as are proven at trial and such other and further relief as may be deemed just and proper.

F. Under Count VI, a decree of specific performance directing Michelson to assign to Medtronic exclusively Michelson's technology and medical devices related to non-threaded spinal implants and methods and instruments for implanting the same, including but not limited to the Technology identified in Schedule B as follows:

- (a) U.S. Patent Application entitled or covering the "Truncated Implants" filed or to be filed;
- (b) U.S. Patent Application entitled or covering the "Non-Threaded Cylindrical Implant" filed or to be filed;
- (c) U.S. Patent Application entitled or covering the "Cervical Implant with Sliding Side Wall Filling Access and Insertion Instrumentation" filed or to be filed;
- (d) All trade secrets, know-how, confidential information and proprietary rights pertaining to the above patent applications, but not disclosed therein;
- (e) Technology pertaining to the Medical Device developed, possessed, created, or acquired by Michelson after the execution of the Purchase Agreement, as Michelson will update and provide to Sofamor from time to time.
- (f) In addition, Medtronic is entitled to a decree of specific performance directing Michelson to honor his obligations under the Purchase Agreement and to cease the breaches of the Agreement and other tortious conduct described herein.

G. Under Count VII, a declaratory ruling that Medtronic is exclusively entitled to ownership of all of Michelson's Technology pertaining to the Medical Device as defined in the Purchase Agreement, including all such Technology developed, acquired, or possessed by Michelson at any time after the Closing date of the Purchase Agreement.

H. Under Count VIII, a finding that Defendant Michelson tortiously interfered with Medtronic's contract with KTI and awarding Medtronic such damages as proven at trial and such

other relief as may be deemed just and proper, including treble damages under Tenn. Code Ann. § 47-50-109.

I. Under Counts IX and X, a finding that Defendants intentionally and/or negligently misrepresented that they would cause to be assigned to Medtronic all of the Technology relating to the Medical Device, including future developed technology and awarding Medtronic such damages as may be proven at trial and such other relief as may be deemed just and proper.

J. Under Count XI, an injunction, enjoining Defendants and all other persons in active concert or participation therewith from licensing or assigning to others any of the Technology to which Medtronic is entitled under the License Agreement and the Purchase Agreement, including all such Technology developed, possessed, created, or acquired by Michelson after the Closing Date of the Purchase Agreement or the Effective Date of the License Agreement, and such other and further relief as may be deemed just and proper.

K. Under Count XII, a declaration that Michelson's notice purporting to invoke the "best efforts" clause of the Purchase Agreement is ineffective, null and void.

L. Under Count XIII, a declaration that Medtronic has not engaged in any wrongful conduct with respect to KTI and/or Michelson, including, without limitation, breaches of contract, misappropriation or derivation of inventions and/or devices, misappropriation of confidential information or trade secrets, coercion, fraud, misrepresentation, unfair competition, or unfair, dishonest, deceptive, destructive, fraudulent or discriminatory practices.

M. Under Count XIV, a declaration that Medtronic's use of the Technology and the Medical Device as defined in the License Agreement does not constitute infringement of any KTI patent and such other and further relief as may be deemed just and proper.

N. Under Count XV, a declaration that Medtronic's use of the Technology and the Medical Device as defined in the Purchase Agreement does not constitute infringement of any Michelson patent and such other and further relief as may be deemed just and proper.

O. Under Count XVI, a declaration that KTI's notice purporting to invoke the "best efforts" clause of the License Agreement is ineffective, null and void.

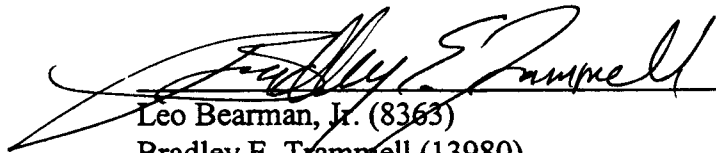
P. Under Count XVII, a declaration that Medtronic has lawfully and properly exercised its option under Section 2.4 of the License Agreement to purchase the Technology and the Medical Device, and that it is now the sole and exclusive owner of the rights thereunder, subject only to the Prior Agreement.

**JURY DEMAND**

Trial by jury is hereby demanded.

Respectfully submitted,

Dated: Sept. 24, 2001



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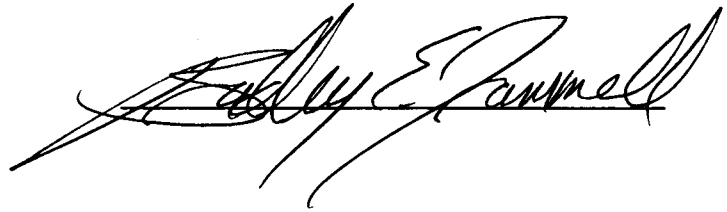
Attorneys for Plaintiff  
Medtronic Sofamor Danek, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24 day of ~~June~~<sup>Sept</sup> 2001, a true and correct copy of the foregoing Second Amended Complaint was served via the U.S. Mail (first-class, postage prepaid) upon:

Marc Marmaro, Esq.  
Jeffer, Mangels, Butler & Marmaro  
2121 Avenue of the Stars  
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Jay S. Bowen, Esq.  
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A handwritten signature in black ink, appearing to read "Jay S. Bowen", written over a horizontal line.