

**U.S. District Court
 District of Delaware (Wilmington)
 CIVIL DOCKET FOR CASE #: 1:20-cv-00361-LPS-CJB**

Speyside Medical, LLC v. Medtronic Corevalve, LLC et al
 Assigned to: Judge Leonard P. Stark
 Referred to: Judge Christopher J. Burke
 Cause: 35:1 Patent Infringement

Date Filed: 03/13/2020
 Jury Demand: Plaintiff
 Nature of Suit: 830 Patent
 Jurisdiction: Federal Question

| Date Filed | # | Docket Text |
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| 04/19/2021 | 104 | <p>ORAL ORDER: The Court, having now reviewed the parties' supplemental letter briefs, (D.I. 95; D.I. 97; D.I. 99), in which Defendants ask the Court to reconsider its March 2, 2021 Order denying Defendants' request for Plaintiff to produce certain documents and communications (to the extent they are not privileged) relating to third-party funding (the "request"), (D.I. 88), hereby notes as follows: (1) The Court agrees with Plaintiff that in its March 2nd Order, the Court misstated the representation made by Plaintiff's counsel during oral argument about the nature of a third party's interest in the patents-in-suit. (D.I. 89) It appreciates Plaintiff's counsel's efforts to quickly and appropriately correct the record with regard to that issue.; (2) If the extent of the third-party funder's interest in the asserted patents is what Plaintiff says it is (i.e., that the funding agreement does not convey any license to the third-party funder and simply "include[s] a provision giving the funder a security interest in the patents to secure performance of that agreement" that "has not been exercised, and [] is not automatically triggered by any event"), (id.), then the Court cannot see how (and Defendants have not persuasively explained how) the agreement would now be relevant to a viable lack-of-standing affirmative defense. See Colibri Heart Valve LLC v. Medtronic CoreValve LLC, Case No. 8-20-cv-00847-DOC (JDEx) (C.D. Cal. Mar. 26, 2016) (concluding that a funding agreement providing an not-exercised security interest in the asserted patents to a litigation funder was not relevant to the issue of standing) (attached to D.I. 99); WAG Acquisition, LLC v. Multi Media, LLC, Civil Action No.: 14-2340 (ES) (MAH), 2019 WL 3804135, at *4 (D.N.J. Aug. 13, 2019) (concluding that the existence of a similar agreement did not deprive a plaintiff of standing). The Court also notes that no such affirmative defense has actually been pleaded in the case, (D.I. 97 at 1; see also D.I. 81), and that Defendants otherwise have the ability to propound discovery in an attempt to confirm certain of the contours of or the status of any third-party interest in the patents (and that if circumstances change in the future regarding the substance of Plaintiffs answers to such discovery requests, that Plaintiff would then presumably be required to update those answers), (D.I. 97 at 3).; (3) While the Court does not want to give the impression that in camera review should be a frequent occurrence, or a substitute for work that the parties can and should do themselves via discovery, here in light of our Court's precedent, see United Access Techs., LLC v. AT&T Corp., C.A. No. 11-338-LPS, 2020 WL 3128269, at *1 (D. Del. June 12, 2020), and Plaintiff's repeated offers to produce the agreement in camera, (see D.I. 97 at 1), the Court agrees that it makes sense for Plaintiff to do so, in order for the Court to confirm that what Plaintiff says about the agreement is in fact correct.; (4) Therefore the Court ORDERS that by no later than April 20, 2021, Plaintiff shall produce in camera to the Court the funding agreement in question (highlighting the relevant portions that the Court should direct its attention to). If the agreement is as Plaintiff says it is, the Court will thereafter expect to deny Defendants' request for reconsideration on lack-of-relevance grounds. Ordered by Judge Christopher J. Burke on 4/19/2021. (dlb) (Entered: 04/19/2021)</p> |