

NOTE: This order is nonprecedential.

## United States Court of Appeals for the Federal Circuit

2007-1296, -1347

CARDIAC PACEMAKERS, INC.  
and GUIDANT SALES CORPORATION,

Plaintiffs-Appellants,

and

MIROWSKI FAMILY VENTURES, LLC and ANNA MIROWSKI,

Plaintiffs-Appellants,

v.

ST. JUDE MEDICAL, INC.  
and PACESETTER, INC.,

Defendants-Cross Appellants.

Appeals from the United States District Court for the Southern District of Indiana in 96-CV-1718, Judge David F. Hamilton.

Before MICHEL, Chief Judge, NEWMAN, MAYER, LOURIE, RADER, SCHALL, BRYSON, GAJARSA, LINN, DYK, PROST, and MOORE, Circuit Judges.

PER CURIAM.

### ORDER

Combined petitions for panel rehearing and rehearing en banc were filed by both the Plaintiffs-Appellants and the Defendants-Cross Appellants. The court invited a response to the petition of Defendants-Cross Appellants and asked that the response be limited to the issue concerning construction of 35 U.S.C. § 271(f). Plaintiffs-Appellants filed a response. The court granted the Federal Circuit Bar Association, et al., and Cisco Systems, et al., motions for leave to file briefs as amici curiae.

The petition for rehearing was referred to the panel that heard the appeal, and thereafter the petition for rehearing en banc, response, and the amici curiae briefs were referred to the circuit judges who are authorized to request a poll whether to rehear the appeal en banc. A poll was requested, taken, and the court has decided that the appeal warrants en banc consideration.

Upon consideration thereof,

IT IS ORDERED THAT:

- (1) Both petitions for panel rehearing are denied.
- (2) The petition of Defendants-Cross Appellants for rehearing en banc is granted.
- (3) The court's December 18, 2008, opinion is vacated and the appeal is reinstated.
- (4) The petition of Plaintiffs-Appellants for rehearing en banc is denied.
- (5) The parties are requested to file new briefs addressing only the following question:
  - 1) Does 35 U.S.C. § 271(f) apply to method claims, as well as product claims?

This appeal will be heard en banc on the basis of briefs addressing the issue set forth above. An original and thirty copies of all briefs shall be filed, and two copies served on opposing counsel. The Defendants-Cross Appellants shall file a brief within thirty (30) days from the date of filing of this order. The Plaintiffs-Appellants' response brief is due within twenty (20) days from the date of service of the Defendant-Cross Appellants' brief. The Defendants-Cross Appellants' reply brief, if any, is due seven (7) days from the date of service of the Plaintiffs-Appellants' brief. Briefs shall adhere to

the type-volume limitations set forth in Federal Rule of Appellate Procedure 32 and Federal Circuit Rule 32.

Briefs of amici curiae will be entertained, and any such amicus briefs may be filed without leave of court but otherwise must comply with Federal Rule of Appellate Procedure 29 and Federal Circuit Rule 29.

The parties and amici should not anticipate any extensions of time for the briefing schedule. Oral argument will be held at 2 P.M. on Monday, June 1, 2009, in Courtroom 201.

FOR THE COURT

March 6, 2009  
Date

/s/ Jan Horbaly  
Jan Horbaly  
Clerk

cc: Arthur I. Neustadt, Esq.  
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