IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

CARDIAQ VALVE TECHNOLOGIES, INC., a Delaware corporation, Plaintiff. v. NEOVASC INC., a Canadian corporation; and NEOVASC TIARA INC., a Canadian corporation, Defendants.	)	Civil Action No. 1:14-cv-12405-NMG **SECOND AMENDED COMPLAINT AND JURY DEMAND**

Plaintiff CardiAQ Valve Technologies, Inc. ("CardiAQ"), for its Second Amended Complaint against Defendants Neovasc Inc. ("Neovasc Inc.") and Neovasc Tiara Inc. ("Neovasc Tiara"), alleges as follows:

I. JURISDICTION AND VENUE

1. This Second Amended Complaint asserts claims for relief for: (a) correction of inventorship; (b) breach of contract; (c) breach of the implied covenant of good faith and fair dealing; (d) fraud; (e) misappropriation of trade secrets; and (f) unfair and deceptive trade practices.

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332(a)(2), 1338(a) & (b), and 1367(a).

3. This Court has personal jurisdiction over Neovasc Inc. and Neovasc Tiara (jointly, "Defendants") by virtue of Defendants' systematic and continuous contacts with Massachusetts and by Defendants' actions in Massachusetts giving rise to the claims asserted in this Second Amended Complaint.

4. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b).

II. PARTIES

5. CardiAQ is a corporation organized and existing under the laws of the State of Delaware. Since February 2010, CardiAQ has maintained its principal place of business in Irvine, Orange County, California. Before that date, CardiAQ maintained its principal place of business in Winchester, Middlesex County, Massachusetts.

6. Neovasc Inc. is, and at all times herein mentioned was, a corporation organized and existing under the laws of Canada with its principal place of business in Richmond, British Columbia, Canada.

7. Neovasc Tiara is a corporation organized in March 2013 and existing under the laws of Canada with its principal place of business in Richmond, British Columbia, Canada. CardiAQ is informed and believes, and thereupon alleges, that Neovasc Tiara is a wholly owned subsidiary of Neovasc Inc.

8. Based upon Neovasc Inc.'s public filings with Canadian securities regulators, Neovasc Inc. conducts a substantial portion of its business in the United States; several of Neovasc Inc.'s largest customers are located in the United States; and for years one of Neovasc Inc.'s largest customers was non-party LeMaitre Vascular, Inc., which is located in Massachusetts.

9. On November 12, 2013, the United States Patent and Trademark Office issued U.S. Patent No. 8,579,964 (the "'964 Patent") to Neovasc Inc. The '964 Patent issued from the patent application filed on May 5, 2010.

III. FACTUAL ALLEGATIONS

10. CardiAQ is a medical device company. The focus of CardiAQ's platform technology is a Transcatheter Mitral Valve Implantation ("TMVI") system designed to be

an effective alternative to open-chest surgery for treating mitral regurgitation in the human heart. CardiAQ's mission is to develop and to commercialize cost effective, catheter-based valve replacement systems that restore long term function to patients with failing mitral valves.

11. Beginning in 2005, prior to working on mitral valve replacements, Dr. Arshad Quadri, founder of CardiAQ, worked extensively to develop an aortic valve replacement, or Transcatheter Aortic Valve Implantation ("TAVI") system. Shortly after Dr. Quadri formed CardiAQ and established CardiAQ's facilities in Massachusetts, he and CardiAQ personnel worked on numerous iterations of the TAVI system and continuously improved the technology. By 2008, Dr. Quadri and CardiAQ developed a fourth generation of the TAVI technology.

12. Building upon its research and experience gained from the evolution of the TAVI technology, in August 2008 CardiAQ began work, in Massachusetts, on the TMVI system. By April 2009, CardiAQ began to file patent applications to protect the intellectual property that it developed, and was developing, in Massachusetts concerning certain aspects of the TMVI technology.

13. Among other inventions, Dr. Quadri and J. Brent Ratz (CardiAQ's President and Chief Operations Officer) invented the following:

a. atrial and ventricular anchoring suitable for a mitral valve prosthetic to engage a portion of the mitral valve from an atrial side of the valve annulus and to engage a portion of the valve from a ventricular side of the valve annulus, as well as a deployment method for such anchoring;

b. wherein the mitral valve prosthetic comprises a frame (in Claim 1 of the ’964 patent, Neovasc Inc. recites “an anchor”) having an atrial portion that anchors against a portion of the atrium (in Claim 1 of the ’964 patent, Neovasc Inc. recites anchoring an “atrial skirt” against a portion of the atrium), an annular region that engages the native mitral valve annulus, a ventricular portion that displaces the native mitral valve leaflets radially outward (in Claim 1 of the ’964 patent, Neovasc Inc. recites radially expanding a “ventricular skirt,” thereby displacing the native mitral valve leaflets radially outwardly), a ventricular anchor that anchors against a first fibrous trigone on a first side of an anterior leaflet of the native mitral valve (in Claim 1 of the ’964 patent, Neovasc Inc. recites “a first trigonal anchoring tab” that is anchored against a first fibrous trigone on a first side of an anterior leaflet of the native mitral valve), and two or more valve leaflets;

c. wherein at least a portion of the mitral valve prosthetic is covered with tissue or a synthetic material;

d. wherein the atrial portion comprises two or more barbs and wherein expanding the atrial portion comprises anchoring the barbs into the superior surface of the mitral valve;

e. wherein expanding the atrial portion comprises sealing the atrial portion against the superior surface of the native mitral valve;

f. wherein the radially expanding the annular region comprises slidably moving a restraining sheath away from the annular region, thereby allowing radial expansion of the annular region;

g. wherein radially expanding the annular region comprises asymmetrically expanding the annular region such that an anterior portion of the annular region is substantially flat, and a posterior portion of the annular region is cylindrically shaped;

h. wherein the mitral valve prosthetic comprises a plurality of prosthetic valve leaflets, and wherein radially expanding the ventricular portion comprises displacing the native mitral valve leaflets radially outward, thereby preventing interference of the native mitral valve leaflets with the prosthetic valve leaflets;

i. wherein radially expanding the ventricular portion comprises displacing the native mitral valve leaflets radially outward without contacting a ventricular wall and without obstructing a left ventricular outflow tract; and

j. wherein radially expanding the ventricular portion comprises asymmetrically expanding the ventricular portion such that an anterior portion of the ventricular portion is substantially flat and a posterior portion of the ventricular portion is cylindrically shaped.

14. Dr. Quadri and Mr. Ratz each assigned to CardiAQ their respective ownership interests in their inventions, including the inventions described in Paragraph 13 above.

15. On June 4, 2009, CardiAQ received, in Massachusetts, an unsolicited email from Brian McPherson, who identified himself as the "VP, Operations" and the "President, Surgical Products" for Neovasc Inc. Through Mr. McPherson's email, Neovasc Inc. offered to CardiAQ products and services including "biological tissue

materials and associated development and manufacturing services." A true and correct copy of Neovasc Inc.'s June 4, 2009, email (including its attachment) is attached hereto as Exhibit A. In those communications, Neovasc Inc. represented that its customers were "industry partners," that Neovasc Inc. specialized in "tissue leaflets for aortic and mitral valves," and that Neovasc Inc. prided itself "for providing exemplary service to our partners . . . ." Neovasc Inc. also represented that its core products were "implantable pericardial tissue technologies" and the "Reducer™ stent for refractory angina."

16. On June 4, 2009, Neovasc Inc. sent to CardiAQ, in Massachusetts, a Non-Disclosure Agreement (the "NDA"). Mr. Ratz executed the NDA on CardiAQ's behalf in Massachusetts. A true and correct copy of the NDA is attached hereto as Exhibit B. By then, CardiAQ had already taken numerous steps in Massachusetts to preserve the secrecy of its TMVI technology, including obtaining confidentiality agreements with all employees and consultants, as well as with suppliers. CardiAQ entered into the NDA to secure Neovasc Inc.'s promise that Neovasc Inc. would protect, and would refrain from using for Neovasc Inc.'s own benefit or from disclosing, CardiAQ's confidential and proprietary TMVI technology, so that CardiAQ could disclose in confidence to Neovasc Inc. information needed to allow Neovasc Inc. to perform certain services for CardiAQ pertaining to that technology.

17. Beginning in June 2009, from its Massachusetts facilities, CardiAQ disclosed to Neovasc Inc. various aspects of CardiAQ's confidential and proprietary TAVI and TMVI technology, in accordance with the terms, and under the protection, of the NDA. CardiAQ's primary points of contact at Neovasc Inc. for the purpose of these confidential disclosures were Brian McPherson (who had initiated contact with CardiAQ

on behalf of Neovasc Inc. on June 4, 2009) and Randy Matthew Lane. CardiAQ's confidential disclosures to Messrs. McPherson and Lane included designs, specifications, frames, and other components of mitral valves incorporating CardiAQ's proprietary TAVI and TMVI technology. CardiAQ's confidential disclosures to Messrs. McPherson and Lane also included the inventions described in Paragraph 13 above, which Dr. Quadri and Mr. Ratz conceived and assigned to CardiAQ before CardiAQ began to work with Neovasc Inc. Those inventions were embodied in at least some of the frames that CardiAQ shipped from Massachusetts to Messrs. McPherson and Lane.

18. Specifically, Dr. Quadri traveled to Neovasc Inc.'s facilities in Richmond, British Columbia, Canada, and on June 23, 2009, Dr. Quadri met with Neovasc Inc.'s representatives, including Messrs. McPherson and Lane, regarding CardiAQ's confidential and proprietary TAVI and TMVI technology, in accordance with the terms, and under the protection, of the NDA. During that half-day meeting, Dr. Quadri disclosed to Messrs. McPherson and Lane at least some of the subject matter included in the claims of the '964 patent, as described in Paragraph 13 above.

19. Mr. Ratz also engaged in extensive and detailed telephonic and written communications with Neovasc Inc.'s representatives, including Messrs. McPherson and Lane, regarding CardiAQ's confidential and proprietary TAVI and TMVI technology, in accordance with the terms, and under the protection, of the NDA. Those communications included disclosures of the subject matter included in the claims of the '964 patent, as described in Paragraph 13 above. Specifically, Mr. Ratz exchanged with Neovasc Inc.'s representatives, including Messrs. McPherson and Lane, email messages, and attachments, containing those disclosures on dates including June 5, June 16, June 23,

June 25, June 26, June 29, July 1, July 2, July 24, August 7, August 10, August 11, August 12, August 14, August 31, October 12, October 15, November 10, November 12, November 18, and December 15, 2009; and on February 1, February 13, February 17, February 25, March 2, March 4, March 11, and March 15, 2010.

20. At no point during the relationship between CardiAQ and Neovasc Inc. did Mr. McPherson, Mr. Lane, nor anyone else at Neovasc Inc., ever state or suggest to CardiAQ that Neovasc Inc. was itself in the business of designing and developing transcatheter mitral valves in competition with CardiAQ or that Neovasc Inc. intended to enter that business.

21. However, CardiAQ has since learned through a public statement by Neovasc Inc. in 2014 that Neovasc Inc. had begun developing its own transcatheter mitral valve in 2009, while Neovasc Inc. was under the obligations of the NDA with CardiAQ and while CardiAQ continued to share its proprietary TMVI technology, trade secrets, and years of valve replacement know-how with Neovasc Inc.

22. On June 30, 2009, Neovasc Inc. provided to CardiAQ, in Massachusetts, Quote # 062609-01, which contained a proposal for Neovasc Inc. to perform certain services for CardiAQ involving the assembly of heart valves in accordance with CardiAQ's TMVI technology. A true and correct copy of Neovasc Inc.'s Quote # 062609-01 is attached hereto as Exhibit C.

23. On July 2, 2009, from its Massachusetts facilities, CardiAQ issued Purchase Order # 10009, which constituted a written contract for Neovasc Inc. to perform certain services for CardiAQ involving the assembly of heart valves in accordance with CardiAQ's TMVI technology. CardiAQ issued that Purchase Order to Neovasc Inc.

because, at that time, CardiAQ did not have a clean room in-house in Massachusetts in which CardiAQ could assemble its products. A true and correct copy of CardiAQ's Purchase Order # 10009 is attached hereto as Exhibit D.

24. As it had been doing for nearly four years, CardiAQ continued in work in Massachusetts, testing various heart valve designs and applying what it learned through those tests to improve those designs. These tests were critical in exposing what worked well and what did not work, leading to more refined and updated heart valve designs and helping CardiAQ to improve its proprietary TMVI technology, trade secrets, and know-how. Various iterations of mitral valve frame and valve designs resulted from those efforts. Meanwhile, as described in Paragraph 19 above, CardiAQ continued, from its Massachusetts facilities, to disclose to Neovasc Inc. various aspects of CardiAQ's confidential and proprietary TMVI technology, trade secrets, and know-how, in accordance with the terms, and under the protection, of the NDA. CardiAQ's confidential disclosures to Mr. Lane and to others at Neovasc Inc. included designs, drawings, frames, and specifications for successful devices that CardiAQ intended to develop further, as well as designs, drawings, frames, and specifications for unsuccessful devices that CardiAQ chose not to pursue. Thus, through these comprehensive proprietary disclosures by CardiAQ, Neovasc Inc. obtained the benefit of knowing not only what was working effectively, but also what had not been working as effectively. Although CardiAQ did not know it at the time, Neovasc Inc. had already begun research on TMVI technology in competition with CardiAQ while CardiAQ continued to share its highly confidential technology, trade secrets, and know-how with Neovasc Inc.

25. Over the course of the next several months, through April 2010, Neovasc Inc. performed services for CardiAQ involving the assembly of heart valves in accordance with CardiAQ's TMVI technology, trade secrets, and know-how. Ultimately Neovasc Inc. assembled more than 10 valves for CardiAQ pursuant to the parties' written Purchase Order contract, and under the confidentiality restrictions of the NDA.

26. In or about February 2010, CardiAQ notified Neovasc Inc. that CardiAQ intended to build out a valve assembly facility and that, therefore, CardiAQ would soon thereafter no longer need Neovasc Inc. as a valve manufacturer. While Neovasc Inc. responded by offering to continue the parties' business relationship by providing valve assembly support, Neovasc Inc. thereafter refused to allow CardiAQ to make any further visits to Neovasc Inc.'s facilities.

27. In March 2010, Neovasc Inc. inquired about the status and success of CardiAQ's first animal studies using CardiAQ's TMVI technology. Thus, while concealing the fact that it was developing its own competitive mitral valve product, Neovasc Inc. not only continued to accept confidential information regarding CardiAQ's technology, trade secrets, and know-how, but Neovasc Inc. also proactively sought to learn more about the outcome of testing that CardiAQ conducted using the proprietary mitral valve designs that CardiAQ developed.

28. By the end of April 2010, CardiAQ no longer sought the services of Neovasc Inc. for tissue manufacture. At no time during the parties' business relationship did Neovasc Inc. disclose to CardiAQ that Neovasc Inc. intended to develop its own TMVI technology or any form of competing mitral valve product.

29. On May 5, 2010, unbeknownst to CardiAQ, Neovasc Inc. filed its first U.S. patent application covering the TMVI technology that it had surreptitiously begun developing in 2009 while receiving confidential information from CardiAQ. The World Intellectual Property Organization ("WIPO") published that application on November 10, 2011. The United States Patent and Trademark Office published a related patent application on December 29, 2011. Neovasc Inc.'s published patent applications, including the application that issued as the '964 patent, disclose and claim various aspects of CardiAQ's TMVI technology and variations thereon that are based upon CardiAQ's TMVI technology, but those patent applications identify only Neovasc Inc. personnel, Randy Matthew Lane and Colin A. Nyuli, as inventors. Indeed, WIPO cited CardiAQ's own patent applications as prior art to Neovasc Inc.'s pending patent application, ostensibly because WIPO patent examiners believed that the two are related.

30. Neovasc Inc. failed to identify Dr. Quadri, Mr. Ratz, or any other CardiAQ personnel who were instrumental in developing the TMVI technology at CardiAQ, which technology CardiAQ disclosed to Neovasc Inc. under the NDA. In its patent applications, Neovasc Inc. also identified only itself as the owner; Neovasc Inc. did not list CardiAQ as a co-owner.

31. Prior to 2009, Neovasc Inc.'s share price hovered around $1 or less; it was evident that Neovasc Inc. needed a new product to make Neovasc Inc. more competitive and to raise Neovasc Inc.'s profile in the medical technology field. Not surprisingly, Neovasc Inc., sensing the industry buzz about TMVI, decided to enter the TMVI field. In the fourth quarter of 2011, when Neovasc Inc. put the public on notice of its efforts to enter the TMVI space, Neovasc Inc.'s share price spiked. Within about two years,

Neovasc Inc.'s share price rose from $1 to $4 per share—a quadruple increase that occurred simultaneously with Neovasc Inc.'s entry into the TMVI space. Six months later, by the first quarter of 2014, Neovasc Inc.'s share price shot up to $7 per share. By the end of the first quarter of 2014, Neovasc Inc. also managed to secure an additional $25 million in investment to further the development and ultimate sale of Neovasc Inc.'s mitral valve prosthetic.

32. In January 2012, CardiAQ learned of the first published Neovasc Inc. patent application. Shortly thereafter, CardiAQ notified Neovasc Inc. about CardiAQ's concerns that Neovasc Inc. was improperly using CardiAQ's TMVI technology, which Neovasc Inc. could only have learned from CardiAQ under the protection of the NDA. Despite CardiAQ's repeated protests in letter correspondence over the next several months, Neovasc Inc. proceeded on its course of action of using CardiAQ's TMVI technology, trade secrets, and know-how.

33. Based upon public disclosures by Neovasc Inc., in March 2013, Neovasc Inc. created Neovasc Tiara for the purpose of developing and owning intellectual property relating to TMVI technology. Neovasc Inc.'s act of purportedly transferring TMVI technology rights into a separate company—Neovasc Tiara—constitutes (a) an acknowledgement of the value of that TMVI technology, which Neovasc Inc. improperly obtained from CardiAQ; (b) an admission that the TMVI technology was significantly different from the other products that Neovasc Inc. misrepresented as its core business with which it would "partner" with CardiAQ; and (c) an effort to reduce the exposure to Neovasc Inc.'s tortious behavior by using a different legal entity to attempt to exploit CardiAQ's TMVI technology.

34. On February 3, 2014, Neovasc Inc. issued a press release announcing its "Successful First Human Implant of Tiara™ Transcatheter Mitral Valve." Defendants used CardiAQ's TMVI technology, trade secrets, and years of know-how in the design and development of the devices and activities that that are the subject of that press release. A true and correct copy of that press release is attached hereto as Exhibit E.

IV. FIRST CLAIM FOR RELIEF

For Correction of Inventorship – 35 U.S.C. § 256

Against Defendants

35. CardiAQ realleges and incorporates herein by reference each and every allegation set forth herein above in Paragraphs 1 through 34, inclusive.

36. Dr. Quadri and Mr. Ratz invented the subject matter of independent Claim 1 of the '964 Patent, either by themselves or in collaboration with Neovasc Inc.'s representatives, Messrs. Lane and Nyuli. Dr. Quadri and Mr. Ratz also invented the subject matter disclosed and claimed in dependent Claims 2 through 28 of the '964 Patent, either by themselves or in collaboration with Neovasc Inc.'s representatives, Messrs. Lane and Nyuli. However, Neovasc Inc., as the applicant for the '964 Patent, never named Dr. Quadri, Mr. Ratz, nor any other CardiAQ personnel as true and actual inventors of any claim of the '964 patent. To the extent that Messrs. Lane and Nyuli actually invented any of the subject matter claimed in the '964 patent, Messrs. Lane and Nyuli's contributions were made in collaboration with, and were based upon, the inventions of Dr. Quadri and Mr. Ratz.

37. Randy Matthew Lane and Colin A. Nyuli are the only named inventors of the patentable subject matter disclosed and claimed in the '964 Patent; however, Messrs. Lane and Nyuli did not invent all of the subject matter claimed in the '964 patent,

and Messrs. Lane and Nyuli are not the only individuals who invented the subject matter claimed therein. Indeed, the contributions of Dr. Quadri and Mr. Ratz to the subject matter claimed in the '964 patent were more significant in quality than the contributions, if any, of Messrs. Lane and Nyuli.

38. Therefore, CardiAQ seeks, and is entitled to, an Order requiring Defendants and the Director of the United States Patent and Trademark Office to take all steps necessary to correct the named inventor on the '964 Patent.

V. SECOND CLAIM FOR RELIEF

For Breach of Contract

Against Neovasc Inc.

39. CardiAQ realleges and incorporates herein by reference each and every allegation set forth herein above in Paragraphs 1 through 38, inclusive.

40. The NDA constitutes a valid and enforceable contract.

41. As set forth in more detail above, CardiAQ entered into the NDA with Neovasc Inc. on June 4, 2009. Pursuant to the NDA, Neovasc Inc. promised, among other things, (a) to "receive and hold all Confidential Information [of CardiAQ] in strict confidence and disclose such Confidential Information only to its employees and representatives who have agreed in writing to be bound by the terms of this [NDA] and who need to know the Confidential Information for the purpose of evaluating the proposed business relationship"; (b) "not, directly or indirectly, [to] disclose or use Confidential Information, in whole or in part, for any purpose other than evaluating the proposed business relationship"; and (c) "not, directly or indirectly, [to] disclose any Confidential Information to an third party or use the Confidential Information for its own benefit or for the benefit of any third party."

42. CardiAQ has performed all conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of the NDA.

43. Beginning about mid-2009, Neovasc Inc. breached the NDA by, among other things, using CardiAQ's confidential and proprietary technology in developing Neovasc Inc.'s Tiara product, by filing patent applications covering CardiAQ's confidential and proprietary information, and by disclosing CardiAQ's confidential and proprietary technology to Neovasc Tiara and to third parties.

44. As a result of Neovasc Inc.'s breach of the NDA, CardiAQ has suffered damages, with the specific amount subject to further evaluation and calculation, but, in any event, in excess of $75,000, exclusive of interest and costs.

VI. THIRD CLAIM FOR RELIEF

For Breach of the Implied Covenant of Good Faith and Fair Dealing

Against Neovasc Inc.

45. CardiAQ realleges and incorporates herein by reference each and every allegation set forth herein above in Paragraphs 1 through 44, inclusive.

46. Both the NDA and the Purchase Order between CardiAQ and Neovasc Inc. included an implied covenant of good faith and fair dealing. This covenant required, among other things, that Neovasc Inc. refrain from usurping from CardiAQ any intellectual property rights and business opportunities pertaining thereto.

47. CardiAQ performed all conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of the NDA and the Purchase Order.

48. Neovasc Inc., however, breached the implied covenant of good faith and fair dealing by, among other things, usurping from CardiAQ intellectual property rights

by misrepresenting that Messrs. Lane and Nyuli were the only inventors of the '964 Patent, by misrepresenting that Neovasc Inc. owned all rights in that intellectual property, by using CardiAQ's confidential technology in Neovasc Inc.'s Tiara product and in research and development related to the Tiara product, by disclosing CardiAQ's confidential technology, trade secrets, and know-how to third parties, and by purporting to transfer intellectual property rights in that technology to Neovasc Tiara.

49. By these actions, Neovasc Inc. has injured, and continues to injure, CardiAQ.

50. CardiAQ has suffered compensatory damages, with the specific amount subject to further evaluation and calculation, but, in any event, in excess of $75,000, exclusive of interest and costs.

VII. FOURTH CLAIM FOR RELIEF

For Fraud

Against Neovasc Inc.

51. CardiAQ realleges and incorporates herein by reference each and every allegation set forth herein above in Paragraphs 1 through 50, inclusive.

52. Beginning in June 2009, Neovasc Inc. represented to CardiAQ that Neovasc Inc.'s products were the Reducer Stent and pericardial tissue products. Neovasc Inc. represented that it would treat CardiAQ as a "partner" and that Neovasc Inc. would maintain the confidentiality of the technology that CardiAQ disclosed to Neovasc Inc.

53. Neovasc Inc. at all times knew that concealing the fact that Neovasc Inc. intended to compete with CardiAQ would encourage and mislead CardiAQ into sharing with Neovasc Inc. CardiAQ's confidential TMVI technology, trade secrets, and years of know-how.

54. The representations that Neovasc Inc. made were, in fact, false. The true facts were that Neovasc Inc. intended, and now has begun, to compete with CardiAQ by developing Neovasc Inc.'s own mitral valve product. Neovasc Inc. intended to use, and now has used, the same employees who had access to CardiAQ's technology to develop the competing Tiara product.

55. When Neovasc Inc. made these representations, it knew them to be false, and it made these representations with the intention to deceive and to defraud CardiAQ and to induce CardiAQ to act in reliance on these representations in the manner hereafter alleged.

56. CardiAQ, at the time that Neovasc Inc. made these representations and at the time that CardiAQ took the actions herein alleged, was ignorant of the falsity of Neovasc Inc.'s representations, and CardiAQ believed them to be true. In reliance on these representations, CardiAQ continued to reveal more confidential information about CardiAQ's TMVI technology, trade secrets, and years of know-how, including the evolution of various designs. If CardiAQ had known the actual facts, then CardiAQ would not have taken such action. CardiAQ's reliance on the representations of Neovasc Inc. was justified.

57. As a proximate result of the fraudulent conduct of Neovasc Inc. as herein alleged, CardiAQ was induced to share highly valuable information that enabled Neovasc Inc. to accelerate dramatically its development of the Tiara product and enabled Neovasc Inc. and Neovasc Tiara to compete with CardiAQ.

58. The aforementioned acts have injured CardiAQ and have damaged CardiAQ in an amount to be determined at trial, but, in any event, in excess of $75,000, exclusive of interest and costs.

59. Neovasc Inc.'s aforementioned conduct constitutes the intentional misrepresentation, deceit, or concealment of material facts known to Neovasc Inc. with the intention on Neovasc Inc.'s part of thereby depriving CardiAQ of property and legal rights, and it was despicable conduct that subjected CardiAQ to a cruel and unjust hardship in conscious disregard of CardiAQ's rights, so as to justify an award of exemplary and punitive damages.

VIII. FIFTH CLAIM FOR RELIEF

For Misappropriation of Trade Secrets – Mass. Gen. Laws c. 93, §§ 42 & 42A, and Common Law

Against Defendants

60. CardiAQ realleges and incorporates herein by reference each and every allegation set forth herein above in Paragraphs 1 through 59, inclusive.

61. CardiAQ and Neovasc Inc. were engaged in a confidential relationship by virtue of, among other things, the NDA.

62. CardiAQ is in possession of trade secrets, the confidentiality of which provides CardiAQ with a business advantage over its competitors because the information is not publicly known.

63. CardiAQ takes reasonable efforts to protect its trade secrets.

64. CardiAQ disclosed its trade secrets to Neovasc Inc., in confidence, during the term of their confidential relationship.

65. Without the knowledge or consent of CardiAQ, Neovasc Inc. disclosed CardiAQ's trade secrets to Neovasc Tiara.

66. Defendants each misappropriated CardiAQ's trade secrets through the unauthorized disclosure and use of CardiAQ's trade secrets for Defendants' own benefit and for the benefit of others. Defendants knew that the proprietary business information that they acquired encompassed CardiAQ's trade secrets, and each of these individual Defendants knew that it was under a duty to maintain the confidentiality of the information.

67. The aforementioned acts have injured CardiAQ and have damaged CardiAQ in an amount to be determined at trial, but, in any event, in excess of $75,000, exclusive of interest and costs.

68. By their actions, Defendants have irreparably injured CardiAQ. Such irreparable injury will continue unless Defendants are preliminarily and permanently enjoined by this Court from further violation of CardiAQ's rights, for which CardiAQ has no adequate remedy at law.

IX. SIXTH CLAIM FOR RELIEF

For Unfair and Deceptive Trade Practices – Mass. Gen. Laws c. 93A, § 11

Against Defendants

69. CardiAQ realleges and incorporates herein by reference each and every allegation set forth herein above in Paragraphs 1 through 68, inclusive.

70. CardiAQ and Defendants are and were at all material times persons engaged in trade or commerce within the meaning of Mass. Gen. Laws c. 93A § 1 *et seq.*

71. The aforementioned acts or practices of Defendants constitute unfair methods of competition or unfair or deceptive acts or practices that occurred primarily

and substantially within Massachusetts within the meaning of Mass. Gen. Laws c. 93A § 2 *et seq.*

72. Defendants' aforementioned unfair methods of competition or unfair or deceptive acts or practices were intentional and willful.

73. CardiAQ has suffered money loss as a result of Defendants' unfair methods of competition or unfair or deceptive acts or practices, in an amount to be determined at trial, but, in any event, in excess of $75,000, exclusive of interest and costs.

X. SEVENTH CLAIM FOR RELIEF

For Injunctive Relief

Against Defendants

74. CardiAQ realleges and incorporates herein by reference each and every allegation set forth herein above in Paragraphs 1 through 73, inclusive.

75. Defendants have refused and neglected to take the necessary steps in the United States Patent and Trademark Office to correct the named inventor on the '964 Patent to include CardiAQ personnel as the true and actual inventors.

76. Moreover, Defendants have misappropriated CardiAQ's trade secrets as more fully set forth herein.

77. Therefore, CardiAQ believes and therefore avers that it will be irreparably harmed if it does not seek the injunctive relief requested and that an injunction is required to preserve the status quo.

78. CardiAQ believes and therefore avers that it has demonstrated a likelihood of success on the merits and it knows of no legal or equitable defense to its claims.

79. CardiAQ believes and therefore avers that the balance of harms requires that an injunction issue against Defendants as more fully set forth in CardiAQ's Demand for Judgment.

XI. DEMAND FOR JUDGMENT

WHEREFORE, CardiAQ hereby respectfully demands that Judgment be entered in its favor, and against Defendants, and each of them, as follows:

A. That the Court enter judgment in favor of CardiAQ and against Defendants, and each of them, on all claims for relief alleged herein;

B. That the Court enter a preliminary and permanent mandatory injunction requiring Defendants, and each of them, and the Director of the United States Patent and Trademark Office to take all steps necessary to correct the named inventor to include CardiAQ's inventors on the '964 Patent;

C. That the Court enter a preliminary and permanent mandatory injunction requiring Defendants, and each of them, to take all steps necessary to assign to CardiAQ the '964 Patent and all patent applications claiming priority thereto;

D. That Neovasc Inc. be adjudged to have breached the NDA with CardiAQ;

E. That Neovasc Inc. be adjudged to have breached the implied covenant of good faith and fair dealing with CardiAQ;

F. That Neovasc Inc. be adjudged to have committed fraud against CardiAQ;

G. That Defendants, and each of them, be adjudged to have misappropriated CardiAQ's trade secrets;

H. That Defendants, and each of them, be adjudged to have engaged in unfair and deceptive trade practices with respect to CardiAQ;

I. That Defendants, and each of them, and their respective officers, agents, servants, employees, attorneys, successors, and assigns, and all other persons in active concert or participation with any of them who receive actual notice of the injunction by personal service or otherwise, be forthwith preliminarily and permanently enjoined from:

i. disclosing or using CardiAQ's trade secrets, or any other intellectual property of CardiAQ, in any manner without authorization from CardiAQ; and

ii. engaging in continued and future unfair or deceptive acts or practices in violation of Mass. Gen. Laws c. 93A;

J. That Defendants, and each of them, be directed to file with this Court and to serve on CardiAQ within thirty (30) days after the service of the injunction, a report, in writing, under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction;

K. That Defendants, and each of them, be required to account to CardiAQ for any and all profits derived by Defendants, and each of them, and all damages sustained by CardiAQ by virtue of Defendants' acts complained of herein;

L. That Defendants be ordered to pay over to CardiAQ all damages that CardiAQ has sustained as a consequence of the acts complained of herein, subject to proof at trial;

M. That CardiAQ be awarded double damages resulting from Defendants' misappropriation of CardiAQ's trade secrets pursuant to Mass. Gen. Laws c. 93, § 42;

N. That CardiAQ be awarded double or treble damages pursuant to Mass. Gen. Laws c. 93A, § 11, in an amount to be proved at trial;

O. That CardiAQ be awarded reasonable costs, expenses, and attorneys' fees; and

P. That CardiAQ be awarded such other and further relief as this Court may deem just and proper.

JURY DEMAND

CardiAQ hereby demands a trial by jury on all claims for relief so triable.

Respectfully Submitted,
Plaintiff,

CARDIAQ VALVE TECHNOLOGIES, INC.

By Its Attorneys,
KNOBBE, MARTENS, OLSON & BEAR, LLP

/s/ John W. Holcomb

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Dated: January 15, 2015

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and that paper copies will be sent to those indicated as non-registered participants on the 15th day of January, 2015.

/s/ John W. Holcomb

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