

**AngioDynamics' Third Counterclaim Against Counterclaim-Defendants**  
**(Declaratory Judgment of Patent Unenforceability)**

15. AngioDynamics repeats and re-alleges the allegations in paragraphs 1-14 above as if fully set forth herein.

16. The '777 patent identifies Luis Navarro, Nestor Navarro, Carlos Bone Salat, Joaquina Fructuso Gomez, and Robert J. Min as its inventors ("the inventors").

17. Upon information and belief, inventors Luis Navarro, Nestor Navarro, Carlos Bone Salat and Joaquina Fructuso Gomez assigned their interest in the '777 patent to Endolaser Associates, LLC, and inventor Robert J. Min assigned his interest in the '777 patent to Diomed.

18. In 1989, Dr. Ken Biegeleisen published a paper in *Phlebologie* entitled "Use of the venoscope for treatment of varicose veins" ("the Biegeleisen Paper").

19. In September 1999, Dr. Carlos Bone Salat, one of the inventors of the '777 patent, published a paper entitled "Endoluminal treatment of the varices with Laser of Diode" ("the Salat Paper"). In his paper, Dr. Salat referenced the Biegeleisen Paper.

20. In November 1999, the inventors filed their First Information Disclosure Statement in the United States Patent & Trademark Office in connection with the '777 patent application.

21. In September 2000, the inventors filed their Second Information Disclosure Statement in the United States Patent & Trademark Office in connection with the '777 patent application.

22. The inventors failed to disclose the Biegeleisen Paper as prior art in their Information Disclosure Statements. The Biegeleisen Paper contains information material to the patentability of the '777 patent application.

23. Such nondisclosure should have been cited and disclosed as being material prior art and was clearly within the purview of the inventors' knowledge.

24. During prosecution of the '777 patent application from August 13, 1999 through June 4, 2002, the inventors and/or those associated with the filing and prosecution of the patent application, committed inequitable conduct or fraud by knowingly withholding, and otherwise failing to bring to the attention of the U.S. Patent & Trademark Office prior art that was material to patentability, including without limitation, the 1989 Biegeleisen Paper.

25. As a result of the inequitable conduct committed by the inventors and/or those associated with the filing and prosecution of the '777 patent application, the '777 patent is unenforceable.