12-1128 MEDTRONIC INC. V. BOSTON SCIENTIFIC CORP.

DECISION BELOW: 695 F.3d 1266

LOWER COURT CASE NUMBER: 2011-1313, 2011-1372

QUESTION PRESENTED:

In *Medlmmune, Inc. v. Genentech*, *Inc.,* 549 U.S. 118, 137 (2007), this Court ruled that a patent licensee that believes that its products do not infringe the patent and accordingly are not subject to royalty payments is "not required ... to break or terminate its ... license agreement before seeking a declaratory judgment in federal court that the underlying patent is ... not infringed."

The question presented is whether, in such a declaratory judgment action brought by a licensee under *Medlmmune*, the licensee has the burden to prove that its products do *not* infringe the patent, or whether (as is the case in all other patent litigation, including other declaratory judgment actions), the patentee must prove infringement.

CERT. GRANTED 5/20/2013