UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANGIODYNAMICS, INC.,

Plaintiff, 1:17-cv-00598 (BKS/CFH)

v.

C.R. BARD, INC. and BARD ACCESS SYSTEMS, INC.,

Defendants.

Appearances:

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Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

Plaintiff AngioDynamics, Inc. ("AngioDynamics") brings this antitrust action against Defendants C.R. Bard, Inc. and Bard Access Systems, Inc. (collectively, "Bard"), asserting a claim of illegal tying in violation of section 1 of the Sherman Act (codified at 15 U.S.C. § 1) under "per se" and "rule of reason" theories of liability. (Dkt. No. 1). AngioDynamics seeks treble damages, a permanent injunction, and declaratory relief. (*Id.* at 29). Presently before the Court are: (1) AngioDynamics' motion for partial summary judgment on liability and antitrust injury, (Dkt. No. 134); (2) Bard's motion for summary judgment seeking dismissal of the complaint, (Dkt. No. 133); and (3) Bard's motion in limine to preclude the trial testimony of AngioDynamics' causation and damages expert, Dr. Alan Frankel, (Dkt. No. 132). The Court heard oral argument on the motions on April 6, 2021. For the reasons below, both parties' motions for summary judgment are denied, and Bard's motion in limine is granted.

II. FACTS[1]

This case centers on AngioDynamics' claim that Bard's policy of only selling the proprietary stylet for its Tip Location System ("TLS") preloaded into its own peripherally inserted central catheters ("PICCs"), and refusing to sell its TLS stylet separately for use with its competitors' PICCs, constitutes an illegal tie in violation of the Sherman Act. The facts and evidence relevant to the Court's resolution of the pending motions are summarized below.

[1] The following facts are drawn from the parties' statements of undisputed material facts and responses pursuant to Local Rule 56.1 (formerly Local Rule 7.1(a)(3)), (Dkt. Nos. 133-2, 134-2, 144-1, 146), to the extent those facts are well-supported by pinpoint citations to the record, as well as the exhibits attached thereto and cited therein to the extent they could "be presented in a form that would be admissible in evidence" at trial. Fed. R. Civ. P. 56(c)(2). In considering the parties' cross-motions for summary judgment, the Court "in each case construe[s] the evidence in the light most favorable to the non-moving party." *Krauss v. Oxford Health Plans, Inc.*, 517 F.3d 614, 621-22 (2d Cir. 2008).

A. Background on PICCs and TLSs

1. PICC and TLS Technology

Bard and AngioDynamics compete to develop, manufacture, market, and sell vascular access medical devices, including PICCs, to hospitals and other medical care providers. (Dkt. No. 133-2, ¶¶ 1-2; Dkt. No. 134-2, ¶ 1; Dkt. No. 144-1, ¶¶ 1-2; Dkt. No. 146, ¶ 1). PICCs are long, thin, soft, flexible catheters inserted into the body through a vein, most commonly the basilica vein in the upper arm, and navigated to the distal superior vena cava, the large vein leading to the right atrium of the heart. (Dkt. No. 133-2, ¶¶ 3-4; Dkt. No. 134-2, ¶ 2; Dkt. No. 144-1, ¶¶ 3-4; Dkt. No. 146, ¶ 2). Clinicians use PICCs to deliver medications, fluids, and nutrients into a patient's body, sample blood, and power-inject contrast media. (Dkt. No. 133-2, ¶ 3; Dkt. No. 134-2, ¶ 3; Dkt. No. 144-1, ¶ 3; Dkt. No. 146, ¶ 3). PICCs are generally suited for patients requiring long-term intravenous medical treatment. (Dkt. No. 134-2, ¶ 3; Dkt. No. 146, ¶ 3). PICCs can be placed either at a patient's bedside by a nurse or in an interventional radiology ("IR") suite, usually by a physician. (Dkt. No. 134-2, ¶ 14; Dkt. No. 146, ¶ 14).

During placement of a PICC, clinicians often use a guidewire (also known as a "stylet") inside the PICC to stiffen it so that it can be threaded through the patient's veins. (Dkt. No. 133-2, ¶ 5; Dkt. No. 144-1, ¶ 5). After completing the PICC placement procedure, the clinician will remove the stylet from the PICC and discard it. (Dkt. No. 133-2, ¶ 5; Dkt. No. 144-1, ¶ 5). Because there are several places where a patient's veins branch before reaching the superior vena cava, clinicians sometimes route PICCs incorrectly. (Dkt. No. 133-2, ¶ 6; Dkt. No. 144-1, ¶ 6). In addition, sometimes clinicians get the final placement incorrect. (Dkt. No. 133-2, ¶ 7; Dkt. No. 144-1, ¶ 7). Historically, clinicians used a chest x-ray or fluoroscopy (a medical imaging technique that uses x-rays) to confirm that a PICCs' final placement was correct. (Dkt. No. 133-2, ¶¶ 7, 12; Dkt. No. 134-2, ¶ 10; Dkt. No. 144-1, ¶¶ 7, 12; Dkt. No. 146, ¶ 10).

To assist with the PICC navigation process and minimize the complications associated with incorrect PICC placement, certain companies developed TLSs. (Dkt. No. 133-2, ¶ 8; Dkt. No. 144-1, ¶ 8). TLSs can offer two key functions: pinpointing the location of the stylet as it moves through the body ("navigation") and confirming the PICC's location once it has been placed ("confirmation"). (Dkt. No. 133-2, ¶ 8; Dkt. No. 144-1, ¶ 8). A TLS may feature navigation functionality, confirmation functionality, or both. (Dkt. No. 133-2, ¶ 9; Dkt. No. 144-1, ¶ 9). Navigation technology uses magnetic tracking or Doppler technology to provide information regarding directionality of the PICC as it moves through the patient's veins, assisting clinicians in threading the PICC. (Dkt. No. 133-2, ¶ 10; Dkt. No. 134-2, ¶ 13; Dkt. No. 144-1, ¶ 10; Dkt. No. 146, ¶ 13). Confirmation technology enables a clinician to confirm the final location of the PICC within the superior vena cava using a patient's electrocardiographic ("ECG") waveform. (Dkt. No. 133-2, ¶ 11; Dkt. No. 134-2, ¶ 11; Dkt. No. 144-1, ¶ 11; Dkt. No. 146, ¶ 11).

While many clinicians now use TLSs to place PICCs because doing so is less expensive, less time consuming, and more accurate than placing PICCs without TLSs, not all clinicians use TLSs. (Dkt. No. 133-2, ¶ 12; Dkt. No. 134-2, ¶ 10; Dkt. No. 144-1, ¶ 12; Dkt. No. 146, ¶ 10). For example, physicians placing PICCs in an IR suite still typically use fluoroscopy, rather than a TLS, to confirm PICC placement. (Dkt. No. 133-2, ¶ 12; Dkt. No. 134-2, ¶ 16; Dkt. No. 144-1, ¶ 12; Dkt. No. 146, ¶ 16). There are also some hospitals in which nurses continue to place PICCs without navigation assistance or use chest x-rays rather than TLSs for confirmation. (Dkt. No. 133-2, ¶ 12; Dkt. No. 134-2, ¶ 17; Dkt. No. 144-1, ¶ 12; Dkt. No. 146, ¶ 17). However, a majority of PICCs placed by nurses at a patient's bedside use TLSs with navigation capabilities. (Dkt. No. 133-2, ¶ 12; Dkt. No. 134-2, ¶ 17; Dkt. No. 144-1, ¶ 12; Dkt. No. 146, ¶ 17).

2. PICC Purchasing Decisions

PICCs differ from each other in a variety of ways, including with respect to the material they are made from, the number of lumens (tubes or channels), the outside diameter, whether the PICC is valved (which can help prevent the backflow of blood into the PICC) or non-valved, and whether the PICC is preloaded with a TLS stylet. (Dkt. No. 133-2, ¶ 13; Dkt. No. 144-1, ¶ 13). Manufacturers typically sell PICCs in a kit that also contains various accessories, which vary depending on, among other things, whether the PICC will be placed by a nurse at the patient's bedside or by a physician in an IR suite. (Dkt. No. 133-2, ¶¶ 14-15; Dkt. No. 144-1, ¶¶ 14-15).

The process by which hospitals decide whether to purchase a particular manufacturer's PICC is "complex," "not monolithic" and "varies by hospital." (Dkt. No. 133-2, ¶¶ 15-17; Dkt. No. 144-1, ¶¶ 15-17). Depending on the hospital, various constituencies may be involved in the purchasing decision, including doctors, nurses and representatives from the supply chain, risk management and infection control departments. (Dkt. No. 133-2, ¶ 15). In some cases, hospitals have "value analysis committees," or "VACs," which play a role in the procurement process and consist of representatives from various hospital departments. (*Id.*). Some hospitals are part of Group Purchasing Organizations ("GPOs") or Integrated Delivery Networks ("IDNs"), which negotiate pricing for their member hospitals and have played an increasingly larger role in influencing the purchasing decisions of their member hospitals. (Dkt. No. 133-2, ¶ 16).

Hospitals consider a variety of factors when deciding whether to purchase PICCs, or particular types of PICCs, from a given supplier, including, among other things, price, quality of the PICCs, clinical outcomes, safety, PICC functionality and features (including whether they are preloaded with a TLS stylet or not, whether they are valved or not, and whether they have a flare-tip or small diameter, among other factors), the components of the kit in which the PICCs come (or the potential kit options), the breadth of a manufacturer's product portfolio, the benefits

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