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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

BONUTTI SKELETAL
INNOVATIONS LLC,

Plaintiff,

vs.

ARTHREX, INC.,

Defendant.

Civil Action No.
6:13-CV-620-ORL-28 DAB
JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Bonutti Skeletal Innovations LLC ("Bonutti Skeletal") hereby asserts claims of patent infringement against Arthrex, Inc. ("Arthrex"), and alleges as follows:

THE PARTIES

1. Bonutti Skeletal is a Delaware limited liability company having a place of business at 2400 Dallas Parkway, Suite 200, Plano, Texas 75093.

2. Arthrex is a Delaware corporation having a principal place of business at 1370 Creekside Boulevard, Naples, Florida 34108-1945.

PATENTS-IN-SUIT

3. U.S. Patent No. 7,087,073 ("the '073 patent"), entitled "Method of Securing Body Tissue," was lawfully issued on August 8, 2006 to the inventor Dr. Bonutti. Bonutti Skeletal is the owner, through assignment, of the title, interest and rights to enforce and collect damages for all past, present and future infringements of the '073 patent by the accused products and the use thereof. A copy of the '073 patent is attached as **Exhibit A**.

4. U.S. Patent No. 6,569,187 (“the ’187 patent”), entitled “Method and Apparatus for Securing a Suture,” was lawfully issued on May 27, 2003 to the inventor Dr. Bonutti. Bonutti Skeletal is the owner, through assignment, of the title, interest and rights to enforce and collect damages for all past, present and future infringements of the ’187 patent by the accused products and the use thereof. A copy of the ’187 patent is attached as **Exhibit B**.

BACKGROUND

5. Dr. Bonutti is an orthopedic surgeon with experience in performing over 20,000 orthopedic surgical procedures.

6. Because of Dr. Bonutti’s expertise, insights, experience and research efforts, Dr. Bonutti is an inventor or co-inventor of over 150 U.S. patents, including the ’073 patent and the ’187 patent (collectively, “the patents-in-suit”).

7. The patents-in-suit involve specialized procedures, instruments, systems, kits and apparatuses invented by Dr. Bonutti relating to suture anchors and suture anchor related instruments used in certain surgical procedures, including, for example, bone and joint fixation and body-tissue re-attachment.

8. Arthrex designs, develops, manufactures, offers for sale, sells, uses, distributes and markets suture anchors and/or suture anchor related instruments and products used in such surgical procedures.

9. Arthrex creates, distributes and otherwise makes available to surgeons and the public at large instructions for use and/or videos on surgical techniques, including, but not limited to, TightRope Syndesmosis Fixation, AC Joint TightRope Fixation, SutureBridge and SpeedBridge Rotator Cuff Repair, Achilles SutureBridge, PushLock Bankart & SLAP Repair and Arthroscopic Meniscal Repair, which use Arthrex suture anchors and/or suture anchor related instruments and products, including, but not limited to, TightRope products, GraftRope

products, PushLock products, SwiveLock SP products, Corkscrew products, Suture Tak products, FASTak products and the Meniscal Cinch.

10. Arthrex also offers a comprehensive program of educational and support services to orthopaedic surgeons. This program of educational and support services includes surgeon courses offered in Naples, Florida, and other cities throughout the United States, including courses on distal extremities, hip courses, knee courses and shoulder courses. Arthrex also offers the opportunity to attend Arthrex surgeon observations pertaining to certain Arthrex techniques.

11. Arthrex is the assignee of at least 177 U.S. patents relating to arthroscopy, including suture anchors and/or suture anchor related instruments and products used in such surgical procedures. Arthrex has an in-house registered patent attorney and marks its products covered by U.S. patents. Arthrex is knowledgeable of patents and patent searching and utilizes patents as a necessary component of its business strategies. At least 12 of Arthrex's patents cite to at least one of the patents-in-suit or a family member of a patent-in-suit.

12. Arthrex U.S. Pat. No. 8,043,315 cites Bonutti U.S. Pat. Publication 2002/0052606A1, which issued as U.S. Pat. No. 6,770,078 and claims priority to the '187 patent.

13. Arthrex U.S. Pat. No. 7,959,649 cites Bonutti U.S. Patent No. 5,496,348, which belongs to the same International Patent Documentation Center ("INPADOC") patent family as the '073 patent and the '187 patent.

14. Arthrex U.S. Pat. No. 6,823,871 cites Bonutti U.S. Patent No. 5,716,325, which belongs to the same INPADOC patent family as the '073 patent and the '187 patent.

15. Arthrex U.S. Pat. No. 8,083,319 cites Bonutti U.S. Patent No. 5,888,196, which belongs to the same INPADOC patent family as the '073 patent and the '187 patent.

16. Arthrex U.S. Pat. No. 8,328,716 cites Bonutti U.S. Patent No. 5,716,325, which belongs to the same INPADOC patent family as the '073 patent and the '187 patent.

17. Arthrex U.S. Pat. Nos. 8,062,301; 8,083,746; 8,083,749; and 8,409,209 cite Bonutti U.S. Patent Nos. 6,086,593; 6,099,531; and 6,423,063, each of which belong to the same INPADOC patent family as the '073 patent and the '187 patent.

18. Arthrex U.S. Pat. No. 8,137,406 cites Bonutti U.S. Patent Nos. 6,086,593; 6,099,531; 6,423,063; and 6,575, 982, each of which belong to the same INPADOC patent family as the '073 patent and the '187 patent.

19. Arthrex U.S. Pat. No. 8,211,112 cites Bonutti U.S. Patent Nos. 6,086,593; 6,099,531; and 6,423,063, and Bonutti U.S. Publication 2004/0153072A1, each of which belong to the same INPADOC patent family as the '073 patent and the '187 patent.

20. The market for suture anchors and/or suture anchor related instruments and products used in such surgical procedures is relatively small. Arthrex is one of the biggest, if not the biggest, orthopedic manufacturer in the suture anchor market.

21. Arthrex monitors the patent literature including issued patents and published patent applications on suture anchors, surgical techniques and instruments using sutures and suture anchors, and throughout the cycle of researching, developing, commercializing, and marketing products, techniques and/or instrumentation systems, searches and monitors the patent literature and published patent applications in the suture anchor market in order to stay informed of what competitors are doing as well as to keep apprised as to technological developments in the suture anchor market. In addition, Arthrex obtains opinions and advice from patent counsel on the patents and published applications it finds as result of its monitoring and searching efforts.

22. Arthrex was aware of each and every one of the patents-in-suit at the latest and if not earlier than the filing of this Complaint as a result of Arthrex's monitoring and searching of patent literature in the suture anchor market.

23. Dr. Bonutti and Arthrex have interacted on numerous occasions.

24. Dr. Bonutti and Arthrex's President, Reihold D. Schieding, have had various interactions.

25. Arthrex's President extended an offer to Dr. Bonutti to become a consulting surgeon for Arthrex on bone grafting, suture anchors and multi-lock fasteners.

26. Dr. Bonutti met with sales representatives from Arthrex annually at the American Academy of Orthopedic Surgeons (AAOS) annual meeting beginning in 1988 and continuing to the most recent meeting of the AAOS in March 2013. Dr. Bonutti frequently walks the trade show floor and visit the trade show booths of orthopedic manufacturers including specifically Arthrex. Dr. Bonutti made a practice of showing suture anchor manufacturers his Multi-Tak brochures (Copies attached as **Exhibit C**). One Multi-Tak brochure states that the Multi-Tak is covered by U.S. Patent Nos. "5,464,426; 5,403,348; 5,522,846; 5,527,343; 5,534,012; 5,782,862. Other patents pending." Another Multi-Tak Brochure states that the Multi-Tak is covered "by one or more of the following U.S. Patents: 5,522,846; 5,948,002; 6,033,430[.] Dr. Bonutti and his representatives on several occasions showed the Arthrex representatives his Multi-Tak brochures.

27. In addition, Dr. Bonutti had a practice of discussing his then issued patents with Arthrex representatives at each AAOS meeting he attended. Specifically, Dr. Bonutti discussed the patents-in-suit with Chad Mueller, an Arthrex Team Leader on many occasions.

28. In February of 2011, Arthrex invited Dr. Bonutti to visit its Naples, Florida lab. Chad Mueller coordinated the invitation, provided a copy of the issued patents-in-suit to Arthrex management.

29. Although meetings between Dr. Bonutti and Arthrex were arranged, Dr. Bonutti never attended. The meeting between Dr. Bonutti and Arthrex did not take place at least in part because of discussions and concerns over Arthrex's infringement of the patents-in-suit.

30. As a result of the activities of Arthrex in the field of suture anchors; Arthrex's patent activities including patenting of its research and development efforts as well as its monitoring and searching of patent literature, including issued patents and published patent applications; and Arthrex's interactions with Dr. Bonutti where Dr. Bonutti and his representatives discussed the patents-in-suit; Arthrex was aware of the patenting activities of Dr. Bonutti and had knowledge of Dr. Bonutti's patent portfolio and specifically had knowledge of the patents-in-suit at the latest, if not earlier, by the filing date of this Complaint.

31. Bonutti Skeletal filed a Complaint against Arthrex charging Arthrex with infringement of the patents-in-suit and U.S. Patent Nos. 5,921,986; 8,147,514; 5,814,072; 5,782,862; and 5,980,559 on September 10, 2012 in Bonutti Skeletal Innovations LLC v. Arthrex, Inc., Civil Action No. 6:12-cv-1380-ACC-TBS (M.D. Fla.) ("Previous Arthrex Action"). Bonutti Skeletal filed a First Amended Complaint charging Arthrex with infringement of the patents-in-suit and U.S. Patent Nos. 5,921,986; 8,147,514; 5,814,072; 5,782,862; and 5,980,559 on September 21, 2012 in the Previous Arthrex Action. Arthrex was served with the First Amended Complaint at least as of September 25, 2012. Such filing and service of the First Amended Complaint constitutes notice of the patents-in-suit under 35 U.S.C. § 287 (a), and Defendant had notice and specific knowledge of the patents-in-suit since at least September 25, 2012, when Arthrex was served with the First Amended Complaint.

JURISDICTION AND VENUE

32. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.*

33. This Court has personal jurisdiction over Arthrex because, among other things, Arthrex has its principal place of business in this District and is engaged in substantial and not isolated activity within this District.

34. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

COUNT I - INFRINGEMENT OF THE '073 PATENT

35. Bonutti Skeletal realleges and incorporates by reference each of the preceding paragraphs.

36. Arthrex, directly or through the actions of its employees, divisions and/or subsidiaries, has infringed and continues to infringe the '073 patent directly, indirectly (by inducing infringement by others or contributing to infringement), jointly, literally and/or equivalently.

37. Arthrex has infringed and continues to infringe the '073 patent, directly, jointly, literally and/or by equivalents, by, among other things, making, using, offering for sale, selling and/or importing within the United States suture anchors and/or suture anchor related instruments and products for use in a manner that practices the method of at least claims 35 and/or 39 of the '073 patent. The suture anchors and products include, but are not limited to, Arthrex Pushlock products, including, but not limited to, the PEEK PushLock, the Bio-Pushlock, the Biocomposite PushLock, the Bio-PushLock SP and the PEEK PushLock SP; Arthrex SwiveLock products, including, but not limited to, the Bio-SwiveLock, the PEEK SwiveLock, the PEEK SwiveLock C, the Bio-SwiveLock C and the Bio-SwiveLock SP; and Arthrex Corkscrew products, including, but not limited to, the Bio-Corkscrew, the Corkscrew, the Corkscrew II, the Bio-Corkscrew FT, the PEEK Corkscrew FT, the Bio-Composite Corkscrew FT, the Corkscrew FT, the Corkscrew FT II and the Corkscrew FT III, and associated instruments, products and surgical technique guides, including, but not limited to, those for the

SutureBridge (and SpeedBridge) Rotator Cuff Repair and the Achilles SutureBridge surgical techniques.

38. Arthrex has infringed and continues to infringe the '073 patent, indirectly, jointly, literally and/or by equivalents, by, among other things, with knowledge of the '073 patent and specific intent, inducing, instructing and encouraging medical professionals to use Arthrex suture anchors and/or suture anchor related instruments and products, including, but not limited to, Arthrex PushLock products, including, but not limited to, the PEEK PushLock, the Bio-PushLock, the BioComposite PushLock, the Bio-PushLock SP and the PEEK PushLock SP; Arthrex SwiveLock products, including, but not limited to, the Bio-SwiveLock, the PEEK SwiveLock, the PEEK SwiveLock C, the Bio SwiveLock C and the Bio-SwiveLock SP; and Arthrex Corkscrew products, including, but not limited to, the Bio-Corkscrew, the Corkscrew, the Corkscrew II, the Bio-Corkscrew FT, the PEEK Corkscrew FT, the Bio-Composite Corkscrew FT, the Corkscrew FT, the Corkscrew FT II and the Corkscrew FT III, and Arthrex Corkscrew products, including, but not limited to, the Bio-Corkscrew, the Corkscrew, the Corkscrew II, the Bio-Corkscrew FT, the PEEK Corkscrew FT, the Bio-Composite Corkscrew FT, the Corkscrew FT, the Corkscrew FT II and the Corkscrew FT III, and associated instruments, products and surgical technique guides, including, but not limited to, those for the SutureBridge (and SpeedBridge) Rotator Cuff Repair and the Achilles SutureBridge surgical techniques, in a manner that practices the method of at least claims 35 and/or 39 of the '073 patent.

39. Surgeons, physicians and medical professionals have infringed and continue to infringe the '073 patent, directly, indirectly, jointly, literally and by equivalents, by, among other things, using Arthrex suture anchors and/or suture anchor related instruments and products, including, but not limited to, Arthrex PushLock products, including, but not limited to, the PEEK

PushLock, the Bio-PushLock, the BioComposite PushLock, the Bio-PushLock SP and the PEEK PushLock SP; Arthrex SwiveLock products, including, but not limited to, the Bio-SwiveLock, the PEEK SwiveLock, the PEEK SwiveLock C, the Bio SwiveLock C and the Bio-SwiveLock SP; and Arthrex Corkscrew products, including, but not limited to, the Bio-Corkscrew, the Corkscrew, the Corkscrew II, the Bio-Corkscrew FT, the PEEK Corkscrew FT, the Bio-Composite Corkscrew FT, the Corkscrew FT, the Corkscrew FT II and the Corkscrew FT III, in the United States in a manner that practices the method of at least claims 35 and/or 39 of the '073 patent.

40. Arthrex had and continues to have actual and/or constructive knowledge and is aware of Dr. Bonutti's patents, including the '073 patent.

41. Arthrex has infringed and continues to infringe the '073 patent, indirectly, jointly, literally and by equivalents, by, among other things, with knowledge of the '073 patent and specific intent, to induce, encourage, and instruct on the infringement of, Arthrex encouraged, promoted and induced surgeons, physicians and medical professionals to use within the United States Arthrex suture anchors and/or suture anchor related instruments and products in a manner that practices the method of at least claims 35 and/or 39 of the '073 patent, by, for example, creating and distributing instructions for use and surgical technique guides, including, but not limited to, the SutureBridge (and SpeedBridge) Rotator Cuff Repair and the Achilles SutureBridge surgical techniques, for Arthrex suture anchors and/or suture anchor related instruments and products, including, but not limited to, Arthrex PushLock products, including, but not limited to, the PEEK PushLock, the Bio-PushLock, the BioComposite PushLock, the Bio-PushLock SP and the PEEK PushLock SP; Arthrex SwiveLock products, including, but not limited to, the Bio-SwiveLock, the PEEK SwiveLock, the PEEK SwiveLock C, the Bio-SwiveLock C and the Bio-SwiveLock SP; and Arthrex Corkscrew products, including, but not

limited to, the Bio-Corkscrew, the Corkscrew, the Corkscrew II, the Bio-Corkscrew FT, the PEEK Corkscrew FT, the Bio-Composite Corkscrew FT, the Corkscrew FT, the Corkscrew FT II and the Corkscrew FT III, that instruct, encourage and induce use of these Arthrex products in a manner that practices the method of at least claims 35 and/or 39 of the '073 patent, and by designing, manufacturing, offering for sale, selling and instructing of surgeons, physicians and medical professionals in the use of suture anchor related instruments and products for use with Arthrex suture anchors, including, but not limited to, Arthrex PushLock products, including, but not limited to, the PEEK PushLock, the Bio-PushLock, the BioComposite PushLock, the Bio-PushLock SP and the PEEK PushLock SP; Arthrex SwiveLock products, including, but not limited to, the Bio-SwiveLock, the PEEK SwiveLock, the PEEK SwiveLock C, the Bio-SwiveLock C and the Bio-SwiveLock SP; and Arthrex Corkscrew products, including, but not limited to, the Bio-Corkscrew, the Corkscrew, the Corkscrew II, the Bio-Corkscrew FT, the PEEK Corkscrew FT, the Bio-Composite Corkscrew FT, the Corkscrew FT, the Corkscrew FT II and the Corkscrew FT III, that are specially designed for use in and are used in a manner that practices the method of at least claims 35 and/or 39 of the '073 patent.

42. Arthrex had and has actual and/or constructive knowledge of the infringement of the '073 patent by surgeons, physicians and medical professionals, and knowingly induced and possessed specific intent to encourage such infringement because of Arthrex's knowledge of the '073 patent; and Arthrex's creation and distribution of instructions for use and surgical technique guides, including, but not limited to, the SutureBridge (and SpeedBridge) Rotator Cuff Repair and the Achilles SutureBridge surgical techniques, for Arthrex suture anchors and/or suture anchor related instruments and products, including, but not limited to, the Bio-SwiveLock, the PEEK SwiveLock, the PEEK SwiveLock C, the Bio-SwiveLock C and the Bio-SwiveLock SP; and Arthrex Corkscrew products, including, but not limited to, the Bio-Corkscrew, the

Corkscrew, the Corkscrew II, the Bio-Corkscrew FT, the PEEK Corkscrew FT, the Bio-Composite Corkscrew FT, the Corkscrew FT, the Corkscrew FT II and the Corkscrew FT III, that instruct the use of those Arthrex instruments and products in a manner that practices the method of at least claim 35 and/or 39 of the '073 patent.

43. Arthrex had and has actual and/or constructive knowledge of the infringement of the '073 patent by surgeons, physicians and medical professionals, and knowingly induced and possessed specific intent to encourage such infringement because of: Arthrex's knowledge of the '073 patent; and Arthrex's design, manufacture, offer for sale, sale to and instruction of surgeons, physicians and medical professionals in the use of suture anchor related instruments and products, including, but not limited to, the Bio-SwiveLock, the PEEK SwiveLock, the PEEK SwiveLock C, the Bio-SwiveLock C and the Bio-SwiveLock SP; and Arthrex Corkscrew products, including, but not limited to, the Bio-Corkscrew, the Corkscrew, the Corkscrew II, the Bio-Corkscrew FT, the PEEK Corkscrew FT, the Bio-Composite Corkscrew FT, the Corkscrew FT, the Corkscrew FT II and the Corkscrew FT III, for use with Arthrex suture anchors that are specially designed for use in and are used in a manner that practices the method of at least claim 35 and/or 39 of the '073 patent.

44. At the very least, Arthrex was willfully blind as to the existence of the '073 patent, and therefore willfully blinded itself to its surgeons, physicians and medical professionals' direct infringement of the '073 patent resulting from their use of Arthrex's suture anchor related instruments and products as a result of Arthrex's creation and distribution of instructions for use and surgical technique guides that instruct, teach, encourage and induce surgeons to implant Arthrex suture anchor products, including, but not limited to, the Bio-SwiveLock, the PEEK SwiveLock, the PEEK SwiveLock C, the Bio-SwiveLock C and the Bio-SwiveLock SP; and Arthrex Corkscrew products, including, but not limited to, the Bio-

Corkscrew, the Corkscrew, the Corkscrew II, the Bio-Corkscrew FT, the PEEK Corkscrew FT, the Bio-Composite Corkscrew FT, the Corkscrew FT, the Corkscrew FT II and the Corkscrew FT III.

45. Arthrex's infringement of the '073 patent is and has been willful and deliberate.

46. Arthrex knew of the '073 patent, Arthrex ignored and/or disregarded that its actions constituted infringement of a valid patent, and Arthrex acted despite an objectively high likelihood that its actions constituted infringement of a valid patent.

COUNT II - INFRINGEMENT OF THE '187 PATENT

47. Bonutti Skeletal realleges and incorporates by reference each of the preceding paragraphs.

48. Arthrex, directly or through the actions of its employees, divisions and/or subsidiaries, has infringed and continues to infringe the '187 patent directly, indirectly (by inducing infringement by others or contributing to infringement), jointly, literally and/or equivalently.

49. Arthrex has infringed and continues to infringe the '187 patent, directly, jointly, literally and/or by equivalents, by, among other things, making, using, offering for sale, selling and/or importing within the United States suture anchors and/or suture anchor related instruments and products for use in a manner that practices the method of at least claim 14 of the '187 patent. The suture anchors and products include, but are not limited to, Arthrex PushLock products, including, but not limited to, the PEEK PushLock, the Bio-PushLock, the BioComposite PushLock, the Bio-PushLock SP and the PEEK PushLock SP and Arthrex SwiveLock products, including, but not limited to, the Bio-SwiveLock, the PEEK SwiveLock, the PEEK SwiveLock C, the Bio-SwiveLock C and the Bio-SwiveLock SP, and associated instruments, products and surgical technique guides, including, but not limited to, those for the

SutureBridge (and SpeedBridge) Rotator Cuff Repair and the Achilles SutureBridge surgical techniques.

50. Arthrex has infringed and continues to infringe the '187 patent, indirectly, jointly, literally and/or by equivalents, by, among other things, with knowledge of the '187 patent and specific intent, inducing, instructing and encouraging medical professionals to use Arthrex suture anchors and/or suture anchor related instruments and products, including but limited to, Arthrex PushLock products, including, but not limited to, the PEEK PushLock, the Bio-PushLock, the BioComposite PushLock, the Bio-PushLock SP and the PEEK PushLock SP and Arthrex SwiveLock products, including, but not limited to, the Bio-SwiveLock, the PEEK SwiveLock, the PEEK SwiveLock C, the Bio-SwiveLock C and the Bio-SwiveLock SP, and associated instruments, products and surgical technique guides, including, but not limited to, those for the SutureBridge (and SpeedBridge) Rotator Cuff Repair and the Achilles SutureBridge surgical techniques, in a manner that practices the method of at least claim 14 of the '187 patent.

51. Surgeons, physicians and medical professionals have infringed and continue to infringe the '187 patent, directly, indirectly, jointly, literally and by equivalents, by, among other things, using Arthrex suture anchors and/or suture anchor related instruments and products, including, but not limited to, Arthrex PushLock products, including, but not limited to, the PEEK PushLock, the Bio-PushLock, the BioComposite PushLock, the Bio-PushLock SP and the PEEK PushLock SP and Arthrex SwiveLock products, including, but not limited to, the Bio-SwiveLock, the PEEK SwiveLock, the PEEK SwiveLock C, the Bio-SwiveLock C and the Bio-SwiveLock SP, in the United States in a manner that practices the method of at least claim 14 of the '187 patent.

52. Arthrex had and continues to have actual and/or constructive knowledge and is aware of Dr. Bonutti's patents, including the '187 patent.

53. Arthrex has infringed and continues to infringe the '187 patent, directly, indirectly, jointly, literally and by equivalents, by, among other things, with knowledge of the '187 patent and specific intent, to induce, encourage, instruct on, and contribute to the infringement of, and Arthrex did encourage, promote and induce surgeons, physicians and medical professionals to use within the United States Arthrex suture anchors and/or suture anchor related instruments and products in a manner that practices the method of at least claim 14 of the '187 patent, by, for example, creating and distributing instructions for use and surgical technique guides, including, but not limited to, the SutureBridge (and SpeedBridge) Rotator Cuff Repair and the Achilles SutureBridge, for Arthrex suture anchors and/or suture anchor related instruments and products, including, but not limited to, Arthrex PushLock products, including, but not limited to, the PEEK PushLock, the Bio-PushLock, the BioComposite PushLock, the Bio-PushLock SP and the PEEK PushLock SP and Arthrex SwiveLock products, including, but not limited to, the Bio-SwiveLock, the PEEK SwiveLock, the PEEK SwiveLock C, the Bio-SwiveLock C and the Bio-SwiveLock SP, that instruct, encourage and induce use of these Arthrex products in a manner that practices the method of at least claim 14 of the '187 patent, and by designing, manufacturing, offering for sale, selling and instructing of surgeons, physicians and medical professionals in the use of suture anchor related instruments and products for use with Arthrex suture anchors, including, but not limited to, Arthrex PushLock products, including, but not limited to, the PEEK PushLock, the Bio-PushLock, the BioComposite PushLock, the Bio-PushLock SP and the PEEK PushLock SP and Arthrex SwiveLock products, including, but not limited to, the Bio-SwiveLock , the PEEK SwiveLock, the PEEK SwiveLock C, the Bio-SwiveLock C and the Bio-SwiveLock SP, that are specially designed for use in and are used in a manner that practices the method of at least claim 14 of the '187 patent.

54. Arthrex had and has actual and/or constructive knowledge of the infringement of the '187 patent by surgeons, physicians and medical professionals, knowingly induced and possessed specific intent to encourage such infringement, because of Arthrex's knowledge of the '187 patent; and Arthrex's creation and distribution of instructions for use and surgical technique guides, including, but not limited to, the SutureBridge (and SpeedBridge) Rotator Cuff Repair and the Achilles SutureBridge, for Arthrex suture anchors and/or suture anchor related instruments and products, including, but not limited to, Arthrex PushLock products, including, but not limited to, the PEEK PushLock, the Bio-PushLock, the BioComposite PushLock, the Bio-PushLock SP and the PEEK PushLock SP and Arthrex SwiveLock products, including, but not limited to, the Bio-SwiveLock, the PEEK SwiveLock, the PEEK SwiveLock C, the Bio-SwiveLock C and the Bio-SwiveLock SP, that instruct the use of those Arthrex instruments and products in a manner that practices the method of at least claim 14 of the '187 patent.

55. Arthrex had and has actual and/or constructive knowledge of the infringement of the '187 patent by surgeons, physicians and medical professionals, knowingly induced and possessed specific intent to encourage such infringement, because of Arthrex's knowledge of the '187 patent; and Arthrex's design, manufacture, offer for sale, sale to and instruction of surgeons, physicians and medical professionals in the use of suture anchor related instruments and products for use with Arthrex suture anchors, including, but not limited to, the PEEK PushLock, the Bio-PushLock, the BioComposite PushLock, the Bio-PushLock SP and the PEEK PushLock SP and Arthrex SwiveLock products, including, but not limited to, the Bio-SwiveLock, the PEEK SwiveLock, the PEEK SwiveLock C, the Bio-SwiveLock C and the Bio-SwiveLock SP, that are specially designed for use in and are used in a manner that practices the method of at least claim 14 of the '187 patent.

56. At the very least, Arthrex was willfully blind as to the existence of the '187 patent, and therefore willfully blinded itself to its surgeons, physicians and medical professionals' direct infringement of the '187 patent resulting from their use of with Arthrex suture anchors, as a result of its creation and distribution of instructions for use and surgical technique guides that instruct, teach, encourage and adduce surgeons to implant Arthrex suture anchor products, including, but not limited to, the PEEK PushLock, the Bio-PushLock, the BioComposite PushLock, the Bio-PushLock SP and the PEEK PushLock SP and Arthrex SwiveLock products, including, but not limited to, the Bio-SwiveLock, the PEEK SwiveLock, the PEEK SwiveLock C, the Bio-SwiveLock C and the Bio-SwiveLock SP, in a manner that practices the method of at least claim 14 of the '187 patent.

57. Arthrex suture anchors and/or suture anchor related instruments and products, including, but not limited to, Arthrex PushLock products, including, but not limited to, the PEEK PushLock, the Bio-PushLock, the BioComposite PushLock, the Bio-PushLock SP and the PEEK PushLock SP and Arthrex SwiveLock products, including, but not limited to, the Bio-SwiveLock, the PEEK SwiveLock, the PEEK SwiveLock C, the Bio-SwiveLock C and the Bio-SwiveLock SP, for use with Arthrex suture anchors that are specially designed for use in and are used in a manner that practices the method of at least claim 14 of the '187 patent, are not staple articles or commodities of commerce suitable for substantial noninfringing use to the extent that the instructions for use and surgical technique guides supplied by Arthrex only teach ways to use such instruments and products that infringe the method of at least claim 14 of the '187 patent.

58. Arthrex's infringement of the '187 patent is and has been willful and deliberate.

59. Arthrex knew of the '187 patent, Arthrex ignored and/or disregarded that its actions constituted infringement of a valid patent, and Arthrex acted despite an objectively high likelihood that its actions constituted infringement of a valid patent.

DAMAGES AND RELIEF

60. As a consequence of Arthrex's infringement of the patents-in-suit, Bonutti Skeletal has been damaged in an amount not yet determined and will suffer additional irreparable damage unless Arthrex's infringing acts are enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Bonutti Skeletal respectfully requests that the Court enter judgment against Arthrex:

A. Determining that Arthrex has infringed and continues to infringe one or more claims of the '073 patent; and

B. Determining that Arthrex has infringed and continues to infringe one or more claims of the '187 patent;

C. Preliminarily and permanently enjoining Arthrex, its respective officers, agents, servants, directors, employees and attorneys, and all persons acting in concert or participation with it, directly or indirectly, or any of them who receive actual notice of the judgment, from further infringing, inducing others to infringe, or contributing to the infringement of the patents-in-suit;

D. Ordering Arthrex to account for and pay to Bonutti Skeletal all damages suffered by Bonutti Skeletal as a consequence of Arthrex's infringement of the patents-in-suit, together with interest and costs as fixed by the Court;

E. Trebling or otherwise increasing Bonutti Skeletal's damages under U.S.C. § 284 on the grounds that Arthrex's infringement of the patents-in-suit was deliberate and willful;

F. Declaring that this case is exceptional and awarding Bonutti Skeletal its costs and attorneys' fees in accordance with 35 U.S.C. § 285; and

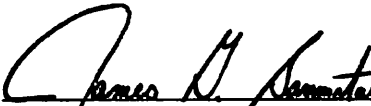
G. Granting Bonutti Skeletal such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Bonutti Skeletal hereby requests a trial by jury for all issues so triable.

Dated: April 16, 2013

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¹ Application for the *pro hac vice* admission of Messrs. Rothery, Pokotilow and Chatlynnne as well as Ms. Hankins will be filed in short order.