

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BICON, INC. and )  
 DIRO, INC. )  
 Plaintiffs )  
 vs. )  
 THE STRAUMANN COMPANY and )  
 INSTITUT STRAUMANN AG )  
 Defendants )

**01 10269 GAO**  
 Civil Action No.

RECEIPT # 28733  
 AMOUNT \$ 150.00  
 SUMMONS ISS. YES  
 LOCAL RULE 4.1 \_\_\_\_\_  
 WAIVER OF SERV. \_\_\_\_\_  
 MCF ISSUED \_\_\_\_\_  
 AO 120 OR 121 \_\_\_\_\_  
 BY DPTY CLK SS  
 DATE 2-13-01

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs, BICON, INC. and DIRO, INC., for their complaint against the above-named defendants, allege as follows:

**THE PARTIES**

1. Plaintiff, BICON, INC., is a duly organized Massachusetts corporation with a principal place of business at 501 Arborway, Boston, MA 02130.
2. Plaintiff, DIRO, INC, is a duly organized Massachusetts corporation with a principal place of business at 501 Arborway, Boston, MA 02130.
3. Upon information and belief, defendant, THE STRAUMANN COMPANY is a Delaware business corporation with a principal place of business at Reservoir Place, 1601 Trapelo Road, Waltham, MA 02451.
4. Upon information and belief, defendant, INSTITUT STRAUMANN AG, is a Swiss corporation with a principal place of business at CH-4437 Waldenburg, Switzerland.
5. Upon information and belief, THE STRAUMANN COMPANY is a wholly owned subsidiary of INSTITUT STRAUMANN AG and is entirely controlled, managed and

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(1)

operated by INSTITUT STRAUMANN AG and hence is the agent and alter ego of, and one and the same, as INSTITUT STRAUMANN AG which therefore is doing business within this district and is subject to the personal jurisdiction of this Court.

### **JURISDICTION AND VENUE**

6. This is an action for patent infringement arising under the Patent Laws of the United States, in particular 35 U.S.C. §§ 271 et seq. This Court has jurisdiction over the parties and the subject matter of this action under 28 U.S.C. §§ 1338(a) and 1391(c). Venue is proper before this Court under 28 U.S.C. §1400(b).

### **CAUSE OF ACTION**

7. On May 12, 1998, United States Patent No. 5,749,731 (the "'731 patent") for an invention entitled, "Apparatus for Preserving Interdental Papilla and Method for Using," was duly and legally issued to Vincent J. Morgan and Norman J. Shepherd. The patent was assigned to DIRO, INC. A copy of the '731 patent is attached hereto as "Exhibit A."

8. DIRO, INC. has granted the exclusive right to practice under the '731 patent to BICON, INC.

9. Upon information and belief, the defendants have infringed at least claim 5 of the '731 patent by their manufacture, use, sale, offers to sell and importation of products which incorporate the subject matter of claim 5, within this district and elsewhere in the United States, without the consent of the plaintiffs.

10. Upon information and belief, plaintiffs, DIRO, INC. and BICON, INC., have been, and will continue to be, damaged by defendants' infringing activities and will be irreparably harmed unless such infringing activities are enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against the defendants as follows:

- A. That the '731 patent is valid and enforceable;
- B. That the defendants have infringed the '731 patent and that those infringing activities have been willful and deliberate;
- C. That defendants and their officers, agents, servants, employees, and those persons in active concert or participation with any of them, be preliminarily and permanently enjoined from further infringement of the '731 patent;
- D. That an accounting be ordered to ascertain the damages caused to plaintiffs by the infringing activities of defendants and that such damages be paid to plaintiffs, together with the maximum allowable prejudgment and postjudgment interest;
- E. That this action be adjudged exceptional and that the aforesaid damages be increased to three times in view of defendants' willful and deliberate infringement.
- F. That the plaintiff be awarded its attorneys' fees, costs and expenses in this action;
- G. That plaintiff be awarded such further necessary and proper relief as this Court may deem equitable and just.

**JURY TRIAL DEMANDED**

In accordance with the provisions of Rule 38(b), Fed. R. Civ. P., plaintiff hereby demands a trial by jury of all issues so triable.

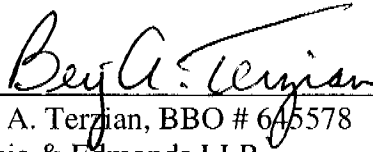
Plaintiffs, DIRO, Inc. and BICON, INC.

By their Attorneys,



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Dated: 2/12/01

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