

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

BONUTTI RESEARCH INC., and)	
JOINT ACTIVE SYSTEMS, INC.)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:14-cv-00609-SEB-MJD
)	
LANTZ MEDICAL, INC.,)	JURY TRIAL DEMANDED
)	
Defendant.)	

PLAINTIFFS' SECOND AMENDED COMPLAINT

Plaintiffs Bonutti Research, Inc. and Joint Active Systems, Inc., for their Second Amended Complaint against Defendant Lantz Medical, Inc., allege as follows:

Parties

1. Plaintiff Bonutti Research Inc. (“Bonutti”) is a Delaware corporation with its principal place of business at 1303 West Evergreen Avenue, Effingham, Illinois 62401.
2. Plaintiff Joint Active Systems, Inc. (“JAS”) is an Illinois corporation with a principal place of business at 1303 West Evergreen Avenue, Effingham, Illinois 62401. JAS also has a place of business at 2600 South Rainey Street, Effingham, Illinois 62401.
3. Defendant Lantz Medical, Inc. (“Lantz”) is an Indiana corporation with a principal place of business at 7750 Zionsville Road, #800, Indianapolis, Indiana 46268.

Jurisdiction and Venue

4. This is an action arising under the patent laws of the United States, 35 U.S.C. sections 101 *et seq.*, seeking damages and injunctive relief. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a). This Court has personal jurisdiction over Defendant because Defendant resides here and commits acts of infringement here.

5. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because Defendant resides here and commits acts of infringement here.

Background

6. On December 15, 1998, the United States Patent and Trademark Office duly and legally issued United States Patent No. 5,848,979 (“the ‘979 patent”), entitled “Orthosis.” A copy of the ‘979 patent is attached as Exhibit 1. The claims of the ‘979 patent generally cover apparatuses for use in effecting relative movement between bones in an arm of a patient.

7. On June 7, 2011, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,955,286 (“the ‘286 patent”), entitled “Elbow Orthosis.” A copy of the ‘286 patent is attached as Exhibit 2. The claims of the ‘286 patent generally cover apparatuses for stretching tissue around a joint of a patient between first and second relatively pivotable body portions.

8. On July 29, 2008, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,404,804 (“the ‘804 patent”), entitled “Finger Orthosis.” A copy of the ‘804 patent is attached as Exhibit 3. The claims of the ‘804 patent generally cover apparatuses for positioning a joint in a finger on a hand of a patient.

9. On September 26, 2006, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,112,179 (“the ‘179 patent”), entitled “Orthosis.” A copy of the ‘179 patent is attached as Exhibit 4. The claims of the ‘179 patent generally cover apparatuses for stretching tissue around a joint of a patient between first and second relatively pivotable body portions.

10. On July 22, 2014, the United States Patent and Trademark Office duly and legally issued United States Patent No. 8,784,343 (“the ‘343 patent”). A copy of the ‘343 patent is attached as Exhibit 5. The claims of the ‘343 patent generally cover apparatuses for increasing the range of motion of a tissue in a body of a patient.

11. Bonutti is the owner by assignment of the ‘979, ‘286, ‘804, ‘179 and ‘343 patents (collectively “the Asserted Patents”) and holds all rights to sue for past, present, and future infringement of the Asserted Patents.

12. JAS is the exclusive licensee of the Asserted Patents. JAS is an innovator and market leader of systems utilizing principles of Static Progressive Stretch (“SPS”) to achieve permanent restoration of joint range of motion (“ROM”).

13. Among the products that JAS develops and markets are products covered by the Asserted Patents, including the JAS Pro/Sup, JAS EZ Pro/Sup, JAS EZ Elbow, JAS EZ Wrist, JAS EZ Knee-Ext, JAS EZ Knee-Flex, and JAS EZ Finger products (collectively “the Licensed Products”).

14. JAS has complied with the marking requirements of 35 U.S.C. § 287 for the ‘979, ‘179 and ‘286 patents.

Defendant's Infringing Activities

15. Lantz manufactures and sells, among other products, the Stat-A-Dyne® ESP, Stat-A-Dyne® Pro/Sup, Stat-A-Dyne® Elbow, Stat-A-Dyne® Knee, and Stat-A-Dyne® WHFO products (“Accused Products”).

16. Each of the Accused Products is sold in direct competition with at least one of the Licensed Products.

17. Defendant has admitted it had knowledge of at least the ‘979, ‘179, and ‘804 patents since approximately May 2010.

18. The Stat-A-Dyne® ESP product is a tissue elongation device capable of treating flexion, extension, pronation, and/or supination loss.

19. The Stat-A-Dyne® ESP product is configured such that it can be operated to allow for a static-progressive or dynamic stretch.

20. The Stat-A-Dyne® ESP includes a base, which has a lower section and an upper section. The lower section of the base has two portions which are disposed in a telescopic relationship.

21. As explained on Defendant’s website, the Stat-A-Dyne® ESP product includes a “radial based pronation and supination cuff” (“radial cuff”) for securing the product to a hand, wrist and forearm of a user. The radial cuff is slidably mounted to a cuff arm member.

22. The cuff arm member of the Stat-A-Dyne® ESP product is connected to a drive assembly which is also connected to the lower section of the base. The drive assembly is operable to drive rotation of the cuff arm member and the radial cuff relative to the base.

23. The drive assembly of the Stat-A-Dyne® ESP product includes a gear that is connected to and rotatable with the cuff arm member. The gear includes teeth positioned along an arcuate path and the body of the gear includes arcuate slots.

24. The drive assembly of the Stat-A-Dyne® ESP product includes a worm that engages and drives rotation of the gear.

25. The drive assembly of the Stat-A-Dyne® ESP product includes a spring that applies a spring force to cuff arm member that urges movement of the cuff arm member relative to the lower section of the base.

26. The drive assembly of Stat-A-Dyne® ESP product includes a locking element that, when in the locked position, inhibits the spring from urging movement of cuff arm member relative to the lower section of the base.

27. The Stat-A-Dyne® ESP product includes a second cuff for securing the product to the upper portion of the user's arm. This second cuff is attached to the upper section of the base with an adjustable L-shaped bracket that allows the cuff to tilt, thereby increasing and/or decreasing the range of motion ("ROM") of the product.

28. The carry angle of the L-shaped bracket and second cuff of the Stat-A-Dyne® ESP product is adjustable to accommodate gender or pathological differences.

29. The upper and lower sections of the base of the Stat-A-Dyne® ESP are pivotally connected to one another.

30. The Stat-A-Dyne® ESP product includes a second drive assembly that is operable to drive rotation of the upper and lower sections of the base relative to one another. During operation, the upper and lower sections of the base can rotate relative to each other about the axis of rotation of the elbow.

31. The second drive assembly of the Stat-A-Dyne® ESP product includes a spring that applies a spring force to the lower section of the base that urges movement of the lower section of the base relative to the upper section of the base.

32. The second drive assembly of Stat-A-Dyne® ESP product includes a locking element that, when in the locked position, inhibits the spring from urging movement of the lower section of the base relative to the upper section of the base.

33. The Stat-A-Dyne® Pro/Sup product is a tissue elongation device capable of treating pronation and/or supination loss.

34. The Stat-A-Dyne® Pro/Sup product is configured such that it can be operated to allow for a static-progressive or dynamic stretch.

35. The Stat-A-Dyne® Pro/Sup includes a base, which has a lower section and an upper section. The lower section of the base has two portions that can telescope with respect to each other.

36. The Stat-A-Dyne® Pro/Sup product includes a radial based pronation and supination cuff (“radial cuff”) for securing the product to a hand, wrist and forearm of a user. The radial cuff is slidably mounted to a cuff arm member.

37. The cuff arm member of the Stat-A-Dyne® Pro/Sup product is connected to a drive assembly which is also connected to the lower section of the base. The drive assembly is operable to drive rotation of the cuff arm member and the radial cuff relative to the base.

38. The drive assembly of the Stat-A-Dyne® Pro/Sup product includes a gear that is connected to and rotatable with the cuff arm member. The teeth of the gear are positioned along an arcuate path and the gear body includes arcuate slots.

39. The drive assembly of the Stat-A-Dyne® Pro/Sup product includes a worm that engages and drives rotation of the gear.

40. The Stat-A-Dyne® Pro/Sup product includes a second cuff for securing the product to the upper portion of the user's arm. This second cuff is attached to the upper section of the base.

41. The drive assembly of the Stat-A-Dyne® Pro/Sup product includes a spring that applies a spring force to the cuff arm member that urges movement of the cuff arm member relative to the upper section of the base.

42. The drive assembly of Stat-A-Dyne® Pro/Sup product includes a locking element that, when in the locked position, inhibits the spring from urging movement of cuff arm member relative to the lower section of the base.

43. The Stat-A-Dyne® Elbow product is a tissue elongation device capable of treating flexion and extension of the elbow joint.

44. The Stat-A-Dyne® Elbow product is configured such that it can be operated to allow for a static-progressive or dynamic stretch.

45. The Stat-A-Dyne® Elbow product includes a lower arm member and an upper arm member. The lower and upper arm members are operatively connected and movable relative to one another.

46. During operation, the upper and lower arm members of the Stat-A-Dyne® Elbow product are rotatable relative to one another along a curved path about the axis of rotation of the elbow.

47. The Stat-A-Dyne® Elbow product includes a drive assembly that is operable to drive rotation of the upper and lower arm members relative to one another.

48. The drive assembly of the Stat-A-Dyne® Elbow product includes a gear that is connected to and rotatable with the lower arm member. The gear includes teeth positioned along an arcuate path and the body of the gear includes arcuate slots.

49. The drive assembly of the Stat-A-Dyne® Elbow product includes a worm that engages and drives rotation of the gear.

50. The drive assembly of the Stat-A-Dyne® Elbow product includes a spring that applies a spring force to the lower arm member that urges movement of the lower arm member relative to the upper arm member.

51. The drive assembly of Stat-A-Dyne® Elbow product includes a locking element that, when in the locked position, inhibits the spring from urging movement of the arm member relative to the upper arm member.

52. The Stat-A-Dyne® Elbow product includes a first cuff that is attached to the upper arm member for securing the product to the upper portion of the user's arm. This first cuff is attached to the upper arm member with an adjustable L-shaped bracket that allows the cuff to tilt, thereby increasing and/or decreasing the ROM of the product.

53. The Stat-A-Dyne® Elbow product includes a second cuff attachable to the lower arm member for securing the product to a hand, wrist and forearm of the user. This second cuff is attached to the lower arm member with an adjustable L-shaped bracket that allows the cuff to tilt, thereby increasing and/or decreasing the ROM.

54. The Stat-A-Dyne® WHFO product provides full ROM therapy for both wrist and finger extension and flexion.

55. The Stat-A-Dyne® WHFO product is configured such that it can be operated to allow for a static-progressive or dynamic stretch.

56. The Stat-A-Dyne® WHFO product has a first arm member affixable to a forearm of a user and second arm member affixable to a hand of the user. The first and second arm members are movable relative to one another.

57. The Stat-A-Dyne® WHFO product includes a hand cuff slidably mounted to the second arm member and affixable to the hand of the user.

58. The Stat-A-Dyne® WHFO product has a detachable finger gearing that allows the finger gearing to be removed from the rest of the product. The finger gearing includes first and second rotatable portions.

59. As explained on Defendant's website, the Stat-A-Dyne® WHFO includes "malleable spring finger attachments" that can be attached with Velcro® type fasteners to one or more fingers of the user. These finger attachments allow for different ROM considerations to be addressed for each finger.

60. The Stat-A-Dyne® WHFO includes a knob located between the first and second rotatable portions of the finger gearing. When the knob is rotated, a force is applied to rotate the first and second rotatable portions about first and second axes, respectively.

61. The Stat-A-Dyne WHFO® includes a drive assembly that is operable to drive rotation of the first and second arm members relative to one another. During operation, the first and second arm members of the Stat-A-Dyne® Elbow product are rotatable relative to one another along a curved path about the axis of rotation of the wrist.

62. The drive assembly of the Stat-A-Dyne® WHFO product includes a spring that applies a spring force to the first arm member that urges movement of the first arm member relative to the second arm member.

63. The drive assembly of Stat-A-Dyne® WHFO product includes a locking element that, when in the locked position, inhibits the spring from urging movement of the first member relative to the second arm member.

64. The Stat-A-Dyne® Knee product is a tissue elongation device capable of treating flexion and extension of the knee joint.

65. As explained on Defendant's website, "The Stat-A-Dyne knee also offers a bi-directional hinge for use in both flexion and extension that is capable of Dynamic and Static-Progressive stretch."

66. The Stat-A-Dyne® Knee product includes a lower arm member and an upper arm member.

67. The Stat-A-Dyne® Knee includes a drive assembly that is operable to drive rotation of the lower arm member and upper arm member relative to one another. During operation, the lower and upper arm members of the Stat-A-Dyne® Knee product are rotatable relative to one another along a curved path about the axis of rotation of the knee.

68. The drive assembly of the Stat-A-Dyne® Knee product includes a spring that applies a spring force to the lower arm member that urges movement of the lower arm member relative to the upper arm member.

69. The drive assembly of Stat-A-Dyne® Knee product includes a locking element that, when in the locked position, inhibits the spring from urging movement of the lower arm member relative to the upper arm member.

70. The Stat-A-Dyne® Knee product includes a first cuff that is attached to the upper arm member for securing the product to the upper portion of the user's leg. This first cuff is

attached to the upper arm member with an adjustable L-shaped bracket that allows the cuff to tilt, thereby increasing and/or decreasing the ROM of the product.

71. The Stat-A-Dyne® Knee product includes a second cuff attachable to the lower arm member for securing the product to a lower portion of the leg of the user. This second cuff is attached to the lower arm member with an adjustable L-shaped bracket that allows the cuff to tilt, thereby increasing and/or decreasing the ROM.

72. Lantz sells these Accused Products to distributors and individual customers throughout the United States. The distributors sell the Accused Products to individual customers.

Count I: Infringement of U.S. Patent No. 5,848,979

73. Plaintiffs incorporate by reference paragraphs 1 through 72 of this Second Amended Complaint as if more fully set forth herein.

74. Defendant's manufacture, use, offers for sale and sale of the Stat-A-Dyne® ESP product infringe claims 28, 29, 34, 37, 44, 45, 48, 52, 53, 56, 57, 63, 97, 98, 102, 106, 125, 126, and 128 of the '979 patent literally and/or under the doctrine of equivalents.

75. Defendant's manufacture, use, offers for sale and sale of the Stat-A-Dyne® Pro/Sup product infringe claims 28, 29, 34, and 37 of the '979 patent literally and/or under the doctrine of equivalents.

76. Defendant has made, used, offered for sale, and sold (and continues to make, use, offer for sale and sell) its infringing Stat-A-Dyne® Pro/Sup and ESP products within this judicial district and throughout the United States.

77. Plaintiffs are being damaged and irreparably harmed by Defendant's infringement of the '979 patent and are thus entitled to recover damages adequate to compensate them for the infringement complained of herein, but in no event less than a reasonable royalty.

78. Defendant has had actual knowledge of the '979 patent since approximately May 2010, before the filing of this action, and acted despite an objectively high likelihood that its actions constituted infringement of a valid patent. Notwithstanding its knowledge of the '979 patent, Defendant has continued to infringe the '979 patent as alleged herein and, thus, is acting in reckless disregard of Plaintiffs' patent rights. On information and belief, Defendant's infringement has been and continues to be knowing and willful.

79. Defendant's infringement has injured and will continue to injure Plaintiffs, unless and until such infringement is enjoined by this Court.

Count II: Infringement of U.S. Patent No. 7,955,286

80. Plaintiffs incorporate by reference paragraphs 1 through 72 of this Second Amended Complaint as if more fully set forth herein.

81. Defendant's manufacture, use, offers for sale and sale of the Stat-A-Dyne® ESP, Elbow, and Knee products infringe claims 26, 27, 28, 29, 30, 31, and 33 of the '286 patent literally and/or under the doctrine of equivalents.

82. Defendant has made, used, offered for sale, and sold (and continues to make, use, offer for sale and sell) its infringing Stat-A-Dyne® ESP, Elbow, and Knee products within this judicial district and throughout the United States.

83. Plaintiffs are being damaged and irreparably harmed by Defendant's infringement of the '286 patent and are thus entitled to recover damages adequate to compensate them for the infringement complained of herein, but in no event less than a reasonable royalty.

84. Defendant's infringement has injured and will continue to injure Plaintiffs, unless and until such infringement is enjoined by this Court.

Count III: Infringement of U.S. Patent No. 7,404,804

85. Plaintiffs incorporate by reference paragraphs 1 through 72 of this Second Amended Complaint as if more fully set forth herein.

86. Defendant's manufacture, use, offers for sale and sale of the Stat-A-Dyne® WHFO product infringe claim 1 of the '804 patent literally and/or under the doctrine of equivalents.

87. Defendant has made, used, offered for sale, and sold (and continues to make, use, offer for sale and sell) its infringing Stat-A-Dyne® WHFO product within this judicial district and throughout the United States.

88. Plaintiffs are being damaged and irreparably harmed by Defendant's infringement of the '804 patent and are thus entitled to recover damages adequate to compensate them for the infringement complained of herein, but in no event less than a reasonable royalty.

89. Defendant has had actual knowledge of the '804 patent since approximately May 2010, before the filing of this action, and acted despite an objectively high likelihood that its actions constituted infringement of a valid patent. Notwithstanding its knowledge of the '804 patent, Defendant has continued to infringe the '804 patent as alleged herein and, thus, is acting in reckless disregard of Plaintiffs' patent rights. On information and belief, Defendant's infringement has been and continues to be knowing and willful.

90. Defendant's infringement has injured and will continue to injure Plaintiffs, unless and until such infringement is enjoined by this Court.

Count IV: Infringement of U.S. Patent No. 7,112,179

91. Plaintiffs incorporate by reference paragraphs 1 through 72 of this Second Amended Complaint as if more fully set forth herein.

92. Defendant's manufacture, use, offers for sale and sale of the Stat-A-Dyne® Pro/Sup, ESP, Elbow, and WHFO products infringe claim 26 of the '179 patent literally and/or under the doctrine of equivalents.

93. Defendant has made, used, offered for sale, and sold (and continues to make, use, offer for sale and sell) its infringing Stat-A-Dyne® Pro/Sup, ESP, Elbow, and WHFO products within this judicial district and throughout the United States.

94. Plaintiffs are being damaged and irreparably harmed by Defendant's infringement of the '179 patent and are thus entitled to recover damages adequate to compensate them for the infringement complained of herein, but in no event less than a reasonable royalty.

95. Defendant has had actual knowledge of the '179 patent since approximately May 2010, before the filing of this action, and acted despite an objectively high likelihood that its actions constituted infringement of a valid patent. Notwithstanding its knowledge of the '179 patent, Defendant has continued to infringe the '179 patent as alleged herein and, thus, is acting in reckless disregard of Plaintiffs' patent rights. On information and belief, Defendant's infringement has been and continues to be knowing and willful.

96. Defendant's infringement has injured and will continue to injure Plaintiffs, unless and until such infringement is enjoined by this Court.

Count V: Infringement of U.S. Patent No. 8,784,343

97. Plaintiffs incorporate by reference paragraphs 1 through 72 of this Second Amended Complaint as if more fully set forth herein.

98. Defendant's manufacture, use, offers for sale and sale of the Stat-A-Dyne® Pro/Sup, ESP, Elbow, Knee, and WHFO products infringe claims 1-4 of the '343 patent literally and/or under the doctrine of equivalents.

99. Defendant has made, used, offered for sale, and sold (and continues to make, use, offer for sale and sell) its infringing Stat-A-Dyne® Pro/Sup, ESP, Elbow, Knee and WHFO products within this judicial district and throughout the United States.

100. Plaintiffs are being damaged and irreparably harmed by Defendant's infringement of the '343 patent and are thus entitled to recover damages adequate to compensate them for the infringement complained of herein, but in no event less than a reasonable royalty.

101. Defendant's infringement has injured and will continue to injure Plaintiffs, unless and until such infringement is enjoined by this Court.

Jury Demand

Plaintiffs request a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, on all issues triable to a jury.

Prayer for Relief

WHEREFORE, Plaintiffs seek a judgment against Defendant including the following:

A. An injunction ordering that Defendant, and each of its respective officers, agents, servants, employees, and attorneys, and all of those persons in active concert or participation with it, be enjoined permanently from directly or indirectly infringing U.S. Patent Nos. 5,848,979, 7,955,286, 7,404,804, 7,112,179, and 8,784,343, and from selling the Accused Products;

B. Plaintiffs be awarded damages against Defendant accrued from the date of issue of the Asserted Patents;

- C. Finding that Defendant has willfully infringed U.S. Patent Nos. 5,848,979, 7,404,804, and 7,112,179 and trebling the damages under 35 U.S.C. § 284;
- D. Pre-judgment and post-judgment interest;
- E. An assessment of Plaintiffs' costs against Defendant;
- F. An assessment of Plaintiffs' reasonable attorneys' fees under 35 U.S.C. § 285 against Defendant; and
- G. Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

SENNIGER POWERS LLP

By: /s/ Michael J. Hartley

Robert M. Evans, Jr.

Michael J. Hartley

Elizabeth F. Fabick

100 North Broadway, 17th Floor

St. Louis, MO 63102

Tel: (314) 345-7000

Fax: (314) 345-7600

revans@senniger.com

mhartley@senniger.com

efabick@senniger.com

Steven D. Groth (Atty. No. 17643-71)

BOSE McKINNEY & EVANS LLP

111 Monument Circle, Suite 2700

Indianapolis, IN 46204

317-684-5000

317-684-5173 fax

sgroth@boselaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the following counsel of record via the Court's electronic filing service this 30th day of September, 2014:

J. Blake Hike
Jacque R. Wilson
Jon A. Bragalone
CARSON BOXBERGER LLP
301 W. Jefferson Blvd., Suite 200
Fort Wayne, IN 46802
Wilson@carsonboxberger.com
bragalone@carsonboxberger.com
hike@carsonboxberger.com

/s/ Michael J. Hartley