

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE**

DANFORTH S. DESENA, D.P.M. and  
SOLSTICE CORPORATION,

Plaintiffs,

v.

BEEKLEY CORPORATION,

Defendant.

Civil Action No.: 2:09-cv-00352-DBH

**INJUNCTIVE RELIEF SOUGHT**

**AMENDED COMPLAINT AND JURY TRIAL DEMAND  
LEAVE TO FILE GRANTED ON NOVEMBER 23, 2009**

For its Amended Complaint, Plaintiffs allege as follows:

**THE PARTIES**

1. Plaintiff Danforth S. DeSena, D.P.M. (“Dr. DeSena”) is a board-certified foot and ankle surgeon practicing at Portland Foot & Ankle in Portland, Maine. He resides in Cape Elizabeth, Maine.

2. Plaintiff Solstice Corporation (“Solstice”) is a company organized and existing under the laws of the State of Maine and has its principal place of business in Portland, Maine.

3. Defendant Beekley Corporation (“Beekley”), upon information and belief, is a corporation incorporated under the laws of the State of Connecticut, having a place of business at One Prestige Lane, Bristol, Connecticut 06010.

**JURISDICTION AND VENUE**

4. This is an action for patent infringement, arising under the patent laws of the United States, Title 35 of the United States Code.

5. This Court has jurisdiction over the subject matter of this action pursuant to 28

U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this court under 28 U.S.C. §§ 1391 and 1400(b).

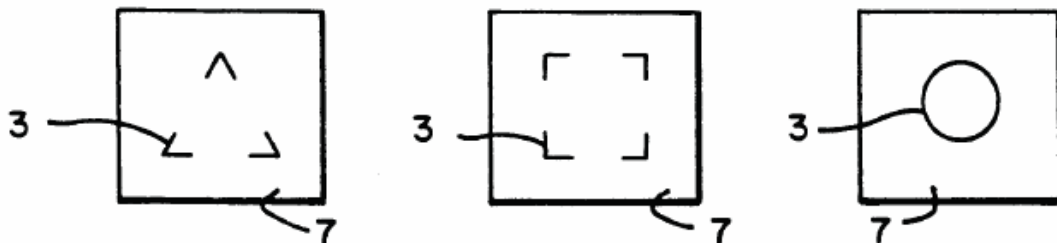
7. This Court has personal jurisdiction over Beekley because, upon information and belief, Beekley transacts business in the State of Maine.

**COUNT I**  
**INFRINGEMENT OF U.S. PATENT NO. 5,193,106**

8. Plaintiffs reaffirm and incorporate by reference each and every allegation contained in paragraphs 1 through 7 as if fully set forth herein.

9. On March 9, 1993, the United States Patent and Trademark Office duly and legally issued United States Patent No. 5,193,106, titled "X-Ray Identification Marker" ("the '106 patent"). A copy of the '106 patent is attached as Exhibit 1 to this Complaint.

10. The '106 patent discloses novel devices for providing cutaneous-based, i.e., skin surface, markings for use with x-ray examinations. The markers are made by mounting radiopaque material onto tape in shapes that are designed to encompass small skin surface landmarks. Shapes such as circles, triangles and squares are disclosed. Figure 2 of the '106 patent, showing a top view of three marker configurations invented by Dr. DeSena, is reproduced below:



11. Dr. DeSena is the sole inventor and owner of the '106 patent.

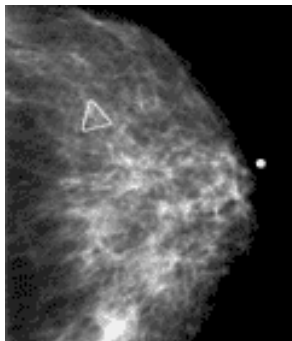
12. Solstice is the sole authorized manufacturer and seller of the inventions claimed by

the '106 patent.

13. Plaintiffs have given proper notice of their patent rights by marking their products covered by the claims of the '106 patent with the word "patent" or the abbreviation "pat.," together number of the '106 patent, in compliance with the requirements of 35 U.S.C. § 287(a). Plaintiffs' marking has been substantially consistent and continuous since introduction of their products covered by the claims of the '106 patent.

14. Upon information and belief, Beekley is infringing Plaintiffs' patent rights by making, using, offering to sell, selling, and/or importing at least its O-SPOT® and A-SPOT® products without permission from Plaintiffs.

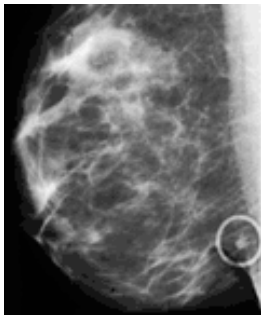
15. Pictures of representative samples of Beekley's O-SPOT® and A-SPOT® products captured from Beekley's website, [www.beekley.com](http://www.beekley.com), are set forth below:



**radiopaque palpable mass marker**



**A-SPOTS® triangle**  
order code: 157  
contents per box: 120  
burnout-resistant radiopaque triangle



**see-through mole marker**



**Florals O-SPOTS® light image™ ring**  
order code: 652  
contents per box: 58  
see-through ring

16. Upon information and belief, Beekley has and continues to infringe the '106 patent

by making, using, offering to sell, selling and/or importing products embodying the inventions claimed by the '106 patent.

17. Upon information and belief, Beekley will continue to infringe the '106 patent unless and until it is enjoined by this Court to stop the infringement.

18. Beekley has caused and will continue to cause Plaintiffs irreparable injury and damage by infringing the '106 patent. Plaintiffs will suffer further irreparable injury, for which Plaintiffs have no adequate remedy at law, unless and until Beekley is enjoined from infringing the '106 patent.

#### **Willful Infringement**

19. Upon information and belief, Beekley's infringement of the '106 patent has been and continues to be taking place with full knowledge of the '106 patent.

20. Upon information and belief, Beekley's infringement of the '106 patent has been and continues to be willful.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court:

- A. Enter judgment that Beekley has infringed United States Patent No. 5,193,106.
- B. Enter an order preliminarily and permanently enjoining Beekley, its officers, agents, servants, employees, attorneys, and all persons acting in concert or participation with it, from infringing United States Patent No. 5,193,106.
- C. Award Plaintiffs their damages resulting from Beekley's patent infringement pursuant to 35 U.S.C. § 284.
- D. Find that Beekley's infringement has been willful and increase the damages awarded to Plaintiffs to three times the amount assessed, pursuant to 35 U.S.C. § 284.

E. Find this to be an exceptional case and award Plaintiffs their attorneys' fees and costs, pursuant to 35 U.S.C. § 285.

F. Award Plaintiffs such other and further relief as this Court deems just and proper.

**JURY TRIAL DEMAND**

Plaintiffs hereby demands a trial by jury.

Dated: November 23, 2009

Respectfully submitted,

/s/ Patricia M. Mathers

Patricia M. Mathers

Maine Bar No. 008760

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D.P.M. and Solstice Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent via first class mail to non-registered participants on this 23rd day of November, 2009.

/s/ Andrea B. Reed  
Andrea B. Reed