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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

Straumann USA, LLC, a Delaware limited liability company, Plaintiff, v. TruAbutment Inc., a California corporation, Defendant.	Case No. **COMPLAINT:** **1. INFRINGEMENT OF U.S. PATENT NO. 8,408,904** **2. INFRINGEMENT OF U.S. PATENT NO. 8,968,002** **3. FALSE ADVERTISING (Lanham Act § 43(a))** **4. UNFAIR BUSINESS PRACTICES (Cal. Bus. & Prof. Code § 17200 *et seq.*)** **DEMAND FOR JURY TRIAL**

Plaintiff hereby alleges as follows:

PRELIMINARY STATEMENT

1. By this Complaint, Plaintiff Straumann USA, LLC ("Straumann") seeks injunctive relief, damages, and other remedies provided by law to remedy injuries caused by Defendant TruAbutment Inc. ("TruAbutment") for patent infringement pursuant to the Patent Act, false advertising pursuant to the Lanham Act and unfair business practices under California Business & Professions Code §17200 et seq.,

2. Straumann is the leading supplier of premium dental implants in the United States. Dental implants are an implantable medical device used, together with

other components including abutments, to replace natural teeth. Straumann's dental implants are designed and engineered to work safely and effectively with Straumann's genuine abutments. Straumann has patented the innovative connection between these implants and abutments, which is a key feature of the overall design ensuring safe and reliable tooth replacement.

3. Dental implants and abutments are medical devices governed and regulated by the Food and Drug Administration (FDA) to ensure that they are safe and effective for patients.

4. TruAbutment sells abutments that it markets as cheap replacements that are "compatible" with Straumann's dental implants. TruAbutment knows that these products copy Straumann's patented connection. Moreover, TruAbutment has failed to comply with the FDA's requirements designed to ensure that TruAbutment abutments are safe and effective, and (on information and belief) TruAbutment's products appear to be failing at an unacceptably high rate. TruAbutment's abutments are therefore not actually compatible with Straumann's implants. TruAbutment's non-compatible abutments' failures present serious safety risks to patients and cause irreparable harm to Straumann.

5. Straumann brings this complaint to seek appropriate relief for TruAbutment's willful patent infringement and unfair competition, and to ensure that patients and doctors continue to have access to safe and reliable dental components.

PARTIES

6. Plaintiff Straumann USA is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business located at 60 Minuteman Road, Andover, Massachusetts 01810.

7. Defendant TruAbutment Inc., on information and belief, is a corporation organized and existing under the laws of the State of California with its principal place of business located at 17742 Cowan, Irvine, California 92614.

JURISDICTION AND VENUE

8. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101, *et seq*., for false advertising under the Lanham Act, 15 U.S.C. §1125(a) and unfair business practices under California Business & Professions Code §17200 *et seq*.

9. Jurisdiction properly exists with this Court pursuant to 28 U.S.C. §§ 1331, 1338, and 1367, in that this case arises under the Patent Act. The Court has jurisdiction over the California unfair competition and common law claims pursuant to 28 U.S.C. § 1338(b).

10. Venue is proper in this district under 28 U.S.C. §1400(b) in that Defendant TruAbutment is a corporation organized under the laws of the State of California, whose principal place of business is located in this district and where it has committed acts of infringement.

11. Defendants are therefore subject to specific personal jurisdiction in this district under Federal Rules of Civil Procedure Rule 4(k)(1)(A) and California Code of Civil Procedure § 410.10.

FACTUAL BACKGROUND

12. Straumann is part of the Straumann Group, a global leader in implant, restorative and regenerative dentistry. In collaboration with leading clinics, research institutes and universities, Straumann conducts research, develops and manufactures dental implants, instruments, prosthetics, tissue and bone regeneration biomaterials for use in tooth replacement and restoration, or to prevent tooth loss.

13. Straumann is the leading provider in the United States of premium dental implants. More than three million people in the United States have one or more dental implants. Dental implants are implantable medical devices that are surgically implanted in a patient's maxilla or mandible (upper or lower jaw bone) to replace natural teeth, and function as artificial tooth roots. After being placed in a patient's maxilla or mandible, those implants are integrated into the patient's natural bone

(referred to in the field as "osseointegration"). Dental implants may be designed so that the top is level with the surrounding bone (a "bone-level" implant) or so that the top extends past the pone into the surrounding gum tissue (a "tissue-level" implant).

14. A connector – known as an abutment – is then placed on inside of the dental implant. Placing the abutment is usually done only after the patient has had time to heal from the implant surgery, and enough time has passed to allow osseointegration. This abutment may be secured to the implant with a small screw. An abutment holds and supports a dental restoration, such as a crown or bridge.

STRAUMANN'S PATENTS

15. The Straumann Group has patented several aspects of its dental implant systems. In particular, the Straumann Group has obtained patents on the innovative CrossFit® connection between its bone-level implants and their corresponding abutments.

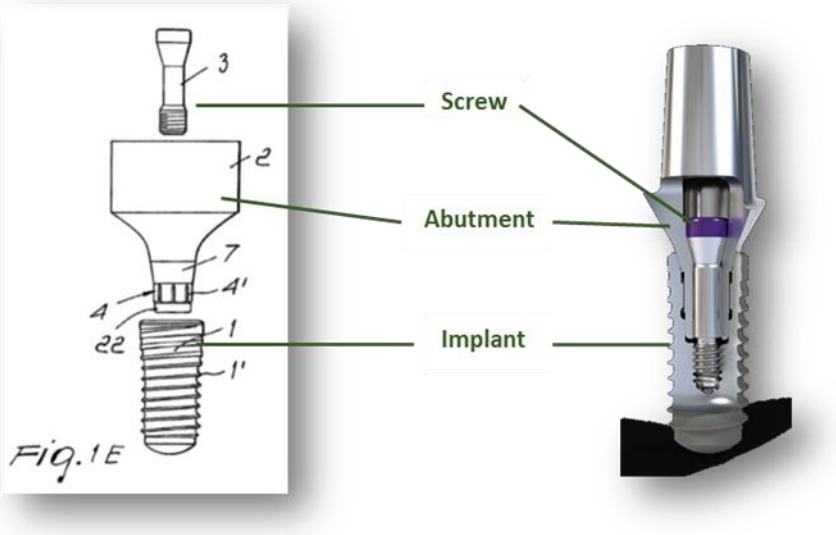
16. The patents-in-suit are US Patent Nos. 8,968,002 (the "'002 Patent") and 8,408,904 (the "'904 Patent"), both titled "Coupling for a Multi-Part Dental Implant System." The '904 Patent (a true and correct copy is attached hereto as Exhibit A) was duly and legally issued by the United States Patent and Trademark Office on April 2, 2015. The '002 Patent (a true and correct copy is attached hereto as Exhibit B) was duly and legally issued by the United States Patent and Trademark Office on March 3, 2015.

17. Plaintiff Straumann is the exclusive licensee of the patents-in-suit and has all substantial rights to the patents-in-suit, including the right and standing to sue and recover for damages for past, present, and future infringement of the patent.

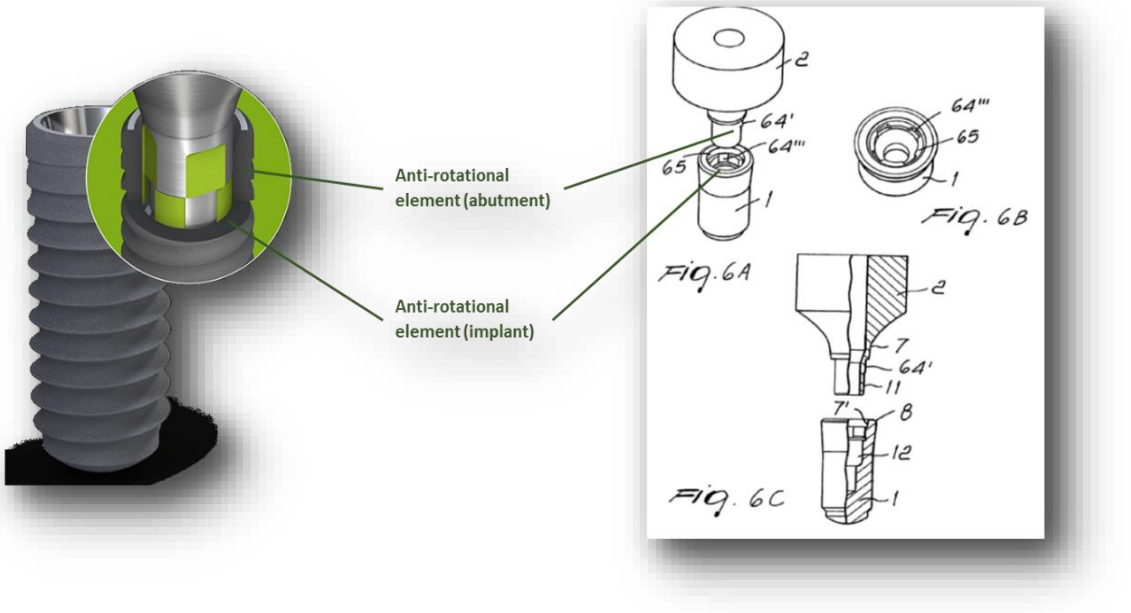
18. Doctors and patients demand confidence in the stability of the implant/abutment connection. As the patents-in-suit explain, before the CrossFit connection, "a frequent problem arising" with conventional implants "is the correct positioning of the abutment or the secondary part within the dental implant already placed in the bone tissue." The patented CrossFit connection solves this problem by

"avoiding the drawbacks of the prior art devices, and thus allowing a stable and sterile coupling between the dental implant and the abutment."

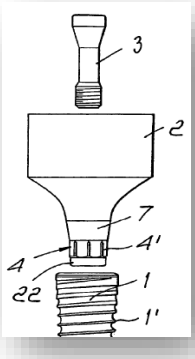
19. A picture of a Straumann bone-level implant, abutment, and screw is shown in cross-section below, as is a drawing of the same assembly from one of the patents-in-suit.



20. One advantage of the patented inventions is the innovative anti-rotational features in the implant and abutment. It is important that an abutment be stable and unable to rotate when it is fixed within an abutment. One of the innovative aspects of the patented CrossFit connection is the addition of anti-rotational elements in the abutment and implant: these elements mate precisely with each other when the abutment is correctly aligned and inserted, sealing the abutment and preventing rotational movement. These anti-rotational elements in abutments and implants are shown in the figures below, which are images of a Straumann CrossFit implant/abutment connection and figure 6 of the '904 Patent.



21. Another advantage of the patented CrossFit connection is the anti-jamming feature. The patent claims a system in which the abutment cannot be fully inserted into the implant unless these anti-rotational features are aligned. The screw cannot grip the threads of the implant if the abutment is not fully inserted. This feature therefore prevents a doctor from securing the assembly without proper rotational alignment. As shown in Figure 1E (below) and as explained in the patents-in-suit: "the fastening (or threading) of the screw 3 to a dental implant is only possible once the second section 4 along with the third section 22 are fully inserted into their complementary sections of the dental implant, as will be described hereinafter. In this way a wedging of the screw can be avoided." ('904 Patent, 4:64-5:2.)



22. One of Straumann's newest products is the 2.9 mm diameter bone level tapered implant (referred to as the "BLT Ø 2.9mm"). This is the smallest-diameter implant Straumann has ever offered, and has provided new options for patients who need strong, reliable implants that can be used in very small spaces (which is particularly important when replacing incisors). The Straumann Group spent significant resources researching, developing, and testing the BLT Ø 2.9mm. This BLT Ø 2.9mm uses a version of the CrossFit connection designated as the Small CrossFit (or SC), as opposed to the Regular or Narrow Crossfit (RC and NC, respectively).

23. Straumann also sells tissue-level implants using a different connection (the SynOcta® connection), as well as the Neodent line of dental implants. These implants use different designs to achieve the same goal – safe, reliable tooth replacement.

TruAbutment Knowingly Copies Straumann's Products

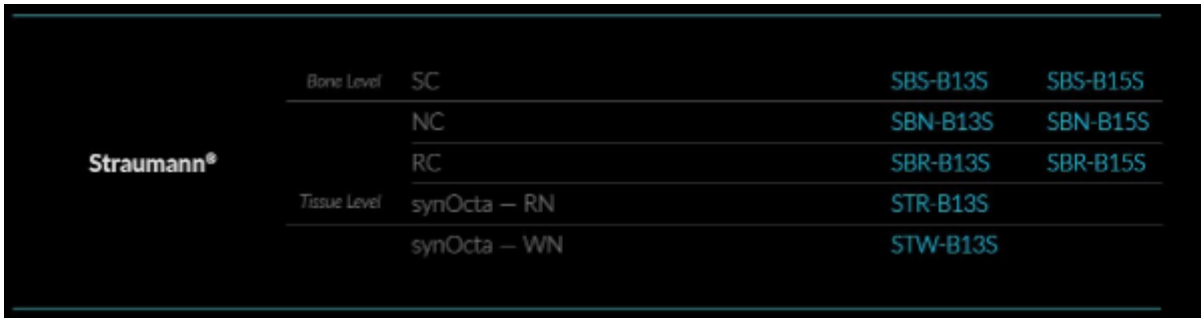
24. TruAbutment sells abutments that they market as "compatible" with other manufacturers' implants, including Straumann's. TruAbutment's website[1] advertises several groups of products (listed below and referred to as the "Accused Products") which include abutments advertised as "compatible with" Straumann implants, including bone-level implants using Straumann's patented CrossFit connection, as well as Straumann's tissue-level implants and Neodent implants:

- "DS" custom abutments,
- "angulated screw channel" line,
- An "All-on-T" line of multi-unit abutments,
- "T:Loc" overdenture abutments, and

[1] https://truabutment.com/pages/tru-abutment-ds; https://truabutment.com/pages/angulated-screw-channel; https://truabutment.com/pages/all-on-t; https://truabutment.com/pages/t-loc; https://truabutment.com/pages/tru-scan-body; https://truabutment.com/pages/ti-base; https://truabutment.com/collections/cerec%C2%AE-scan-post-kits/products/cerec%C2%AE-ti-base.

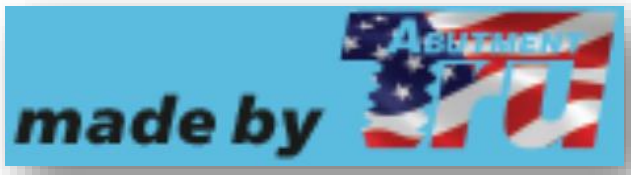
- "Tru Base" and Cerec® Ti-Base titanium abutments.

25. An exemplary screenshot from TruAbutment's website[2] promoting their abutments' compatibility with Straumann's bone- and tissue-level implants is set forth below.



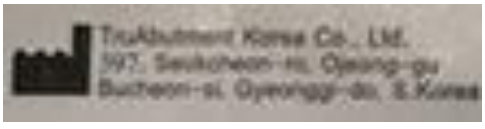
Straumann®	Bone Level	SC	SBS-B13S	SBS-B15S
		NC	SBN-B13S	SBN-B15S
		RC	SBR-B13S	SBR-B15S
	Tissue Level	synOcta – RN	STR-B13S	
		synOcta – WN	STW-B13S	

26. TruAbutment displays its logo superimposed over an American flag on its website (see below), and does not identify any foreign affiliates on its website.



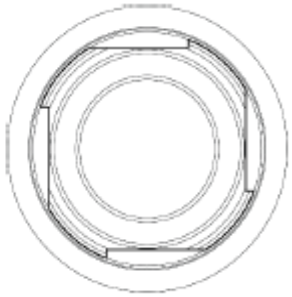
27. However, based on TruAbutment's filings with the FDA and the return address on its packaging (both copied below), TruAbutment's products are actually manufactured in the Republic of Korea by TruAbutment Co., Ltd.

Establishment Name		Registration Number	Current Registration Yr
TruAbutment Korea Co., Ltd.	KOREA, REPUBLIC OF	3012422333	2019
• Abutment, Implant, Dental, Endosseous - TruAbutment DS			Manufacturer



[2] https://truabutment.com/pages/tru-abutment-ds

28. TruAbutment knows that it is copying existing Straumann products. For example, in its regulatory filings (a true and correct copy is attached hereto as Exhibit C) TruAbutment lists Straumann's products (see below) as "predicate devices" and explicitly notes that its products copy the CrossFit connection (Exhibit C, at 4-7.)

Straumann® Bone Level Implants	3.3	NC	Internal Cross Fit® 
	4.1	RC	
	4.8	RC	

29. TruAbutment goes on to note in its regulatory filings that "TruAbutment DS incorporates the same material, indicates for use, dimension, design, abutment seat, screw seat, anatomical site, connection, type of retention, and technological characteristics of the predicate device [including the Straumann predicate devices]." (*Id*. at 9.)

TruAbutment Knowingly Infringes Straumann Holding's Patents

30. On information and belief, TruAbutment also knows and has known that the CrossFit connection is covered by the asserted patents. In 2015, a Straumann salesperson saw a TruAbutment booth at an industry trade show. He noticed that the TruAbutment booth was advertising CrossFit-"compatible" abutments, and asked how they could sell these abutments without a patent license from Straumann. Without responding to his question, the TruAbutment representative put the Straumann-compatible abutments in his pocket and refused to answer any other questions.

31. Finally, TruAbutment has had actual notice of its infringement of the patents-in-suit since at least May 9, 2019, when Straumann sent and cease and desist letter to TruAbutment. (A true and correct copy is attached hereto as Exhibit D.)

32. TruAbutment has been and is now infringing, and/or will continue to infringe, the patents-in-suit in this Judicial District and elsewhere in the United States by, among other things, making, using, importing, selling, and/or offering for sale abutments along with the requisite locking screw for use with the Straumann Bone Level line of implants.

33. In addition to directly infringing the patents-in-suit pursuant to 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, or both, TruAbutment indirectly infringes the patents-in-suit, either by inducing infringement, contributing to infringement, or both, by instructing, directing, and/or encouraging others, including its customers, purchasers and users, to purchase and use the Accused Products, which have no substantial non-infringing use, and which practice the inventions claimed in the patents-in-suit, either literally or under the doctrine of equivalents, or both, when combined with the Straumann Bone Level line of implants.

TruAbutment has Ignored Important Regulatory and Safety Requirements

34. Implanting a dental implant is a significant medical procedure involving at least one surgery, and there are strict federal regulatory requirements in place to ensure that the medical devices sold for this procedure are safe and effective. On information and belief, TruAbutment has repeatedly ignored those requirements.

35. Abutments for use in dental implants are classified as a Class II medical device by the FDA (Code of Federal Regulations 21 872.3630). That means that these are considered "medium to moderate risk devices" by the FDA. Section 510(k) of the Food, Drug and Cosmetic Act requires those device manufacturers who must register to notify FDA their intent to market a medical device. For devices like these, this process is known as obtaining a 510(k) clearance. Before a manufacturer can obtain a 510k clearance to market a medical device in the United States, they must

demonstrate to FDA's satisfaction that it is substantially equivalent to (meaning, as safe and effective as) a device already on the market.

36. Before marketing or selling a dental implant or abutment in the United States, the manufacturer is required to seek 510k clearance. The FDA considers selling a product without a 510k clearance to be the same as selling an adulterated product. It is a federal crime to knowingly sell a product that requires a 510k clearance without obtaining that clearance. 21 U.S. Code § 333.

37. The FDA displays limited information to the public about the 510k filings made by medical device companies. From the information available on this website, it appears that TruAbutment has failed to follow this process for almost any of the abutments it markets in the United States and does not appear to have obtained 510k clearances for dozens of Straumann-compatible products.

38. Of particular note is that TruAbutment does not appear to have even attempted to get 510k clearance for its abutments "compatible" with Straumann's BLT Ø 2.9mm implant (among many other Straumann products). On information and belief, TruAbutment began selling these products almost immediately after the BLT Ø 2.9mm implant was brought to market in the Spring of 2017. It took Straumann half a year to obtain a 510k clearance for this innovative new product: Straumann submitted over 1,400 pages of material to the FDA, including engineering drawings and mechanical test data, to prove to the FDA that its new product was safe and effective. On information and belief, rather than prove that its "compatible" abutments were also safe and effective, as they were legally required to do, TruAbutment just started offering them to dental laboratories as soon as they could start manufacturing them.

39. Straumann has notified the FDA of this apparent failure to comply with the FDA's regulations.

TruAbutment's Products are Unsafe

40. On information and belief, TruAbutment's products fail at an unusually and unacceptably high rate. Indeed, as TruAbutment has very recently become a significant presence in the market, Straumann's representatives have heard repeatedly from doctors and dental laboratories about TruAbutment abutment failures. Although Straumann has a very limited ability to learn about abutment failures, Straumann has learned about two significant abutment fractures that required surgical intervention involving TruAbutment components in the last few months, which is unusual and deeply concerning.

41. Poorly made third-party abutments present serious safety risks to patients. When an abutment is poorly made – because it is not manufactured to the exact specifications of the original product, and/or because it is made of inferior materials – there is an increased chance that some combination of the implant, abutment, or screw will break. Even relatively small imperfections can eventually lead to breakage, because the patient's chewing force creates extreme strain on an implant and abutment. When one of these components breaks, doctors are usually forced to perform emergency surgery to remove the failed component. The most common approach for implant removal has been trephination, which involves using a drill bit wider than the implant and removing the whole assembly (while trying to avoid removing or damaging as much other surrounding and bone as possible). Trephination carries serious risks of permanent damage to the patient's bone, tissue, nerves, and other oral structures.

42. The failure of a knockoff abutment may unfairly cast doubt on the reliability of a safe and effective implant. In most cases, the dentist performing the implant surgery will not choose or even know what kind of abutment is used in the procedure. Instead, that dentist will submit the case to a dental laboratory, who will select (within the doctor's guidance) what abutment and restoration components to use. Because the dental laboratory will typically be paid a flat fee for each case, labs

may use cheaper, non-original components like TruAbutment's. If those abutments cause the overall surgical procedure to fail, the doctor may only know that the combination of implant, abutment and screw failed in some way: they may not know which component was at fault.

43. This concern is particularly acute with the Accused Products sold as "compatible" with Straumann's BLT Ø 2.9mm implant. Because this innovative product is so small, there is even less margin for error than normal. And while exact failure rate data for the Accused Products is not publicly available, Straumann has recently learned that there is an impression among dentists that the BLT Ø 2.9mm implant is failing at an unusually high rate. This is in spite of the extensive testing Straumann performed, using authentic original components, which proved to the FDA that these products are safe and effective. Straumann has learned that in at least two very recent failures, it was actually a TruAbutment abutment that failed.

FIRST CLAIM

Direct Patent Infringement of the '904 Patent (35 U.S.C. § 271(a))

44. Straumann realleges and incorporate by reference all paragraphs above as if fully set forth herein.

45. At all times herein mentioned the '904 Patent was and is valid and fully enforceable.

46. As set forth in detail in the claim chart attached hereto as Exhibit E, TruAbutment has and continues to directly infringe the '904 Patent, including claim 1, by making and using the Accused Products in conjunction with the Straumann Bone Level line of implants. On information and belief, TruAbutment could not develop its Accused Products nor could TruAbutment assert that its Accused Products are "substantially equivalent" as set forth in the few FDA filings TruAbutment actually made without actually testing the purported compatibility with the Straumann Bone Level line of implants.

47. TruAbutment's infringement is based upon literal infringement or infringement under the doctrine of equivalents, or both.

48. At no time has Straumann granted TruAbutment authorization, license, or permission to practice the inventions claimed in the '904 Patent.

49. Straumann has been damaged by TruAbutment's acts of infringement of the '904 Patent and Straumann will continue to be damaged by such infringement unless enjoined by this Court. Straumann is entitled to recover damages adequate to compensate for the infringement under 35 U.S.C. § 284.

50. TruAbutment's acts of direct infringement have been, and continue to be, willful and deliberate and therefore warrant the award of attorney's fees pursuant to 35 U.S.C. § 285 and the enhancement of damages pursuant to 35 U.S.C. § 284.

SECOND CLAIM

Inducement of Patent Infringement of the '904 Patent (35 U.S.C. § 271(b))

51. Straumann repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs, as set forth above.

52. TruAbutment has induced and continues to induce infringement of at least Claims 1 of the '904 Patent under 35 U.S.C. § 271(b).

53. TruAbutment indirectly infringes the '904 Patent by instructing, directing, and/or encouraging others, including its customers, purchasers and users, to purchase and use the Accused Products, which have no substantial non-infringing use, and which practice the inventions claimed in the '904 Patent, either literally or under the doctrine of equivalents, or both, when combined with the Straumann Bone Level line of implants. TruAbutment knew that it was inducing others, including customers, purchasers, dental laboratories and dentists, to infringe, or contribute to such infringement, by practicing, either themselves or in conjunction with TruAbutment, one or more claims of the '904 Patent, including Claim 1.

54. TruAbutment instructed and encouraged its customers, purchasers, dental laboratories and dentists to use the Accused Products in combination with

Straumann CrossFit implants. Such instructions and encouragement included, but are not limited to, advising third parties to use the Accused Products in an infringing manner, providing a mechanism through which third parties may infringe the '904 Patent, and by advertising and promoting the use of the Accused Products in an infringing manner, and distributing guidelines and instructions to third parties on how to use the Accused Products in an infringing manner.

55. TruAbutment knew that the induced act to combine Straumann CrossFit implants with the Accused Products would result in the infringement the '904 Patent.

56. TruAbutment intended through its advertising and promotional efforts in connection with the Accused Devices coupled with selling the Accused Devices in commerce, including in this District, to bring about infringement of the '904 Patent.

57. Straumann has been damaged by TruAbutment's acts of inducement of infringement of the '904 Patent and Straumann will continue to be damaged by such infringement unless enjoined by this Court. Straumann is entitled to recover damages adequate to compensate for the infringement under 35 U.S.C. § 284.

58. On information and belief, various third parties, including TruAbutment customers, purchasers, dental laboratories and dentists have infringed the '904 Patent by combining an Accused Device with a Straumann CrossFit implant.

59. TruAbutment's acts of indirect infringement, as set forth herein, have been, and continue to be, willful and deliberate and therefore warrant the award of attorney's fees pursuant to 35 U.S.C. § 285 and the enhancement of damages pursuant to 35 U.S.C. § 284.

THIRD CLAIM

Contributory Infringement of the '904 Patent (35 U.S.C. § 271(c))

60. Straumann repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs, as set forth above.

61. TruAbutment has contributed and continues to contribute to infringement of at least Claims 1 of the '904 Patent under 35 U.S.C. § 271(c) by

making and selling the Accused Products, which have no substantial non-infringing use, and which practice the inventions claimed in the '904 Patent, either literally or under the doctrine of equivalents, or both, when combined with the Straumann Bone Level line of implants.

62. The Accused Devices are a material part of the patented invention claimed in the '904 Patent.

63. TruAbutment knew that the Accused Devices were especially made or especially adapted for use in combination with Straumann CrossFit implants.

64. On information and belief, various third parties, including TruAbutment customers, purchasers, dental laboratories and dentists have infringed the '904 Patent by combining an Accused Device with a Straumann CrossFit implant.

65. Straumann has been damaged by TruAbutment's acts of contributory infringement of the '904 Patent and Straumann will continue to be damaged by such infringement unless enjoined by this Court. Straumann is entitled to recover damages adequate to compensate for the infringement under 35 U.S.C. § 284.

66. TruAbutment's acts of indirect infringement, as set forth herein, have been, and continue to be, willful and deliberate and therefore warrant the award of attorney's fees pursuant to 35 U.S.C. § 285 and the enhancement of damages pursuant to 35 U.S.C. § 284.

FOURTH CLAIM

Direct Patent Infringement of the '002 Patent (35 U.S.C. § 271(a))

67. Straumann realleges and incorporate by reference all paragraphs above as if fully set forth herein.

68. At all times herein mentioned the '002 Patent was and is valid and fully enforceable.

69. As set forth in detail in the claim chart attached hereto as Exhibit F, TruAbutment has and continues to directly infringe the '002 Patent, including claim 1, by making and using the Accused Products in conjunction with the Straumann Bone

Level line of implants. On information and belief, TruAbutment could not develop its Accused Products nor could TruAbutment assert that its Accused Products are "substantially equivalent" as set forth in the few FDA filings TruAbutment actually made without actually testing the purported compatibility with the Straumann Bone Level line of implants.

70. TruAbutment's infringement is based upon literal infringement or infringement under the doctrine of equivalents, or both.

71. At no time has Straumann granted TruAbutment authorization, license, or permission to practice the inventions claimed in the '002 Patent.

72. Straumann has been damaged by TruAbutment's acts of infringement of the '002 Patent and Straumann will continue to be damaged by such infringement unless enjoined by this Court. Straumann is entitled to recover damages adequate to compensate for the infringement under 35 U.S.C. § 284.

73. TruAbutment's acts of direct infringement have been, and continue to be, willful and deliberate and therefore warrant the award of attorney's fees pursuant to 35 U.S.C. § 285 and the enhancement of damages pursuant to 35 U.S.C. § 284.

FIFTH CLAIM

Inducement of Patent Infringement of the '002 Patent (35 U.S.C. § 271(b))

74. Straumann repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs, as set forth above.

75. TruAbutment has induced and continues to induce infringement at least Claims 1 of the '002 Patent under 35 U.S.C. § 271(b).

76. TruAbutment indirectly infringes the '002 Patent, by instructing, directing, and/or encouraging others, including its customers, purchasers and users, to purchase and use the Accused Products, which have no substantial non-infringing use, and which practice the inventions claimed in the '002 Patent, either literally or under the doctrine of equivalents, or both, when combined with the Straumann Bone Level line of implants. TruAbutment knew that it was inducing others, including

customers, purchasers, dental laboratories and dentists, to infringe, or contribute to such infringement, by practicing, either themselves or in conjunction with TruAbutment, one or more claims of the '002 Patent, including Claim 1.

77. TruAbutment instructed and encouraged its customers, purchasers, dental laboratories and dentists to use the Accused Products in combination with Straumann CrossFit implants. Such instructions and encouragement included, but are not limited to, advising third parties to use the Accused Products in an infringing manner, providing a mechanism through which third parties may infringe the '002 Patent, and by advertising and promoting the use of the Accused Products in an infringing manner, and distributing guidelines and instructions to third parties on how to use the Accused Products in an infringing manner.

78. TruAbutment knew that the induced act to combine Straumann CrossFit implants with the Accused Products would result in the infringement the '002 Patent.

79. TruAbutment intended through its advertising and promotional efforts in connection with the Accused Devices coupled with selling the Accused Devices in commerce, including in this District, to bring about infringement of the '002 Patent.

80. On information and belief, various third parties, including TruAbutment customers, purchasers, dental laboratories and dentists have infringed the '904 Patent by combining an Accused Device with a Straumann CrossFit implant.

81. Straumann has been damaged by TruAbutment's acts of inducement of infringement of the '002 Patent and Straumann will continue to be damaged by such infringement unless enjoined by this Court. Straumann is entitled to recover damages adequate to compensate for the infringement under 35 U.S.C. § 284.

82. TruAbutment's acts of indirect infringement, as set forth herein, have been, and continue to be, willful and deliberate and therefore warrant the award of attorney's fees pursuant to 35 U.S.C. § 285 and the enhancement of damages pursuant to 35 U.S.C. § 284.

SIXTH CLAIM

Contributory Infringement of the '002 Patent (35 U.S.C. § 271(c))

83. Straumann repeats, realleges, and incorporates by reference, as if fully set forth herein, the allegations of the preceding paragraphs, as set forth above.

84. TruAbutment has contributed and continues to contribute to infringement of at least Claims 1 of the '002 Patent under 35 U.S.C. § 271(c) by making and selling the Accused Products, which have no substantial non-infringing use, and which practice the inventions claimed in the '002 Patent, either literally or under the doctrine of equivalents, or both, when combined with the Straumann Bone Level line of implants.

85. The Accused Devices are a material part of the patented invention claimed in the '002 Patent.

86. TruAbutment knew that the Accused Devices were especially made or especially adapted for use in combination with Straumann CrossFit implants.

87. On information and belief, various third parties, including TruAbutment customers, purchasers, dental laboratories and dentists have infringed the '002 Patent by combining an Accused Device with a Straumann CrossFit implant.

88. Straumann has been damaged by TruAbutment's acts of contributory infringement of the '002 Patent and Straumann will continue to be damaged by such infringement unless enjoined by this Court. Straumann is entitled to recover damages adequate to compensate for the infringement under 35 U.S.C. § 284.

89. TruAbutment's acts of indirect infringement, as set forth herein, have been, and continue to be, willful and deliberate and therefore warrant the award of attorney's fees pursuant to 35 U.S.C. § 285 and the enhancement of damages pursuant to 35 U.S.C. § 284.

SEVENTH CLAIM

False Advertising (Lanham Act § 43(a), 15 U.S.C. §1125(a) and (d))

90. Straumann realleges each and every allegation set forth above and incorporates them as though fully set forth by this reference herein.

91. TruAbutment has made false statements in its advertisements and FDA submissions that its Accused Products are compatible with, or equivalent to, Straumann's authentic products.

92. TruAbutment's statements and advertisements actually deceived or have the tendency to deceive a substantial segment of its audience including dental laboratories, dentists and the FDA.

93. TruAbutment's deception is material, in that it is likely to influence the purchasing decision of dentists and dental laboratories.

94. TruAbutment caused its falsely advertised goods to enter interstate commerce.

95. As a direct and proximate result of the foregoing Straumann has suffered diversion of sales from itself to TruAbutment and a lessening of goodwill which its products enjoy with the buying public has been and continues to be injured as a result of the foregoing either by direct diversion of sales from itself to TruAbutment, or by lessening of the goodwill which its products enjoy with the buying public.

96. As a direct and proximate result of TruAbutment's wrongful conduct, Straumann has been and will continue to be damaged.

97. The aforementioned activities of TruAbutment are continuing and as a result thereof, Straumann will continue to suffer additional damages unless and until such activities are enjoined by this Court.

98. The aforementioned activities of TruAbutment continue to cause Straumann to suffer loss of goodwill and interference with customer relationships. The damages caused by these losses cannot be adequately calculated in monetary

terms and therefore such losses constitute a basis for injunctive relief pursuant to 17 U.S.C. § 1116(a).

99. Pursuant to 15 U.S.C. §1117(a), Straumann is entitled to an order: (a) requiring TruAbutment to account to Straumann for any and all profits derived by TruAbutment from its actions, to be increased in accordance with the applicable provisions of law; and (b) awarding all damages sustained by Straumann caused by TruAbutment's conduct.

100. TruAbutment's conduct was intentional and without foundation in law, and pursuant to 15 U.S.C. § 1117(a), Straumann is as a result entitled to an award of treble damages against Defendants.

101. TruAbutment's acts make this an exceptional case under 15 U.S.C. § 1117(a), and Straumann is thus entitled to an award of attorneys' fees and costs.

EIGHTH CLAIM

Unfair Business Practices (Cal. Bus & Prof. Code § 17200 *et seq.*)

102. Straumann realleges each and every allegation set forth above and incorporates them as though fully set forth by this reference herein.

103. The above-described acts and practices by TruAbutment consist of direct and indirect patent infringement, and therefore constitute unfair business practices in violation of California Business & Professions Code § 17200, *et seq*

104. The above-described acts are also likely to are likely to confuse, mislead or deceive the general public as to the compatibility of its products with those of Straumann, as to the safety of its products, and as to the extent of FDA approval of its products, and therefore constitutes unfair and fraudulent business practices in violation of California Business & Professions Code § 17200, *et seq*.

105. The above-described acts further constitute business acts that violate Sections 32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a), and the Patent Act, 35 U.S.C. §§ 271(a) and (b), and are therefore unlawful.

106. The unfair, unlawful, and fraudulent business practices of TruAbutment described above present a continuing threat and are meant to deceive members of the public.

107. As a direct and proximate result of TruAbutment's wrongful conduct, Straumann has been injured in fact and has lost money and profits, and has suffered irreparable injury to its reputation and goodwill. Such harm will continue unless TruAbutment's acts are enjoined by the Court. Straumann has no adequate remedy at law. No action by Straumann can restore the status quo and an award of restitution alone will be insufficient to adequately compensate Straumann for the conduct of TruAbutment constituting an unlawful and unfair business practice. Accordingly, Straumann is entitled to an injunction prohibiting TruAbutment from continuing the practices described above.

108. As a direct and proximate cause of TruAbutment's conduct as set forth hereinabove, TruAbutment has obtained ill-gotten gains, including, but not limited to, money belonging to Straumann. Accordingly, Straumann is entitled to restitution of said amounts in an amount to be shown at the time of trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against TruAbutment on Claims One through Six as follows:

a. For compensatory damages according to proof;

b. For enhanced damages pursuant to 35 U.S.C. § 284;

c. For attorneys' fees pursuant to 35 U.S.C. § 285; and

d. For a preliminary and permanent injunction pursuant to 35 U.S.C. § 283 restraining TruAbutment and its officers, employees, agents, servants, attorneys, instrumentalities, and/or those in privity with them, from infringing, directly or indirectly, the '904 Patent and the '002 Patent restraining any further infringement of the patents-in-suit.

WHEREFORE, Plaintiffs pray for judgment against TruAbutment on Claim Seven as follows:

a. For compensatory damages according to proof;

b. For enhanced damages pursuant to 15 U.S.C. § 1117(a);

c. For attorneys' fees pursuant to 15 U.S.C. § 1117(a);

d. For a preliminary and permanent injunction restraining TruAbutment and its officers, employees, agents, servants, attorneys, instrumentalities, and/or those in privity with them, from making any further false statements in TruAbutment's advertisements, FDA submissions or other statements of any nature or type whatsoever that its Accused Products are compatible with or equivalent to Straumann's authentic products, and further restraining the selling or offering for sale of any abutment which is not in compliance with FDA requirements;

e. For a mandatory injunction compelling TruAbutment to deliver up for destruction all products, brochures, marketing materials, and so forth that bear untrue, false, or misleading statements to the consuming public; and

f. For a mandatory injunction compelling TruAbutment to engage in corrective advertising to restore, to the fullest extent possible, the value of Straumann's goodwill and reputation.

WHEREFORE, Plaintiffs pray for judgment against TruAbutment on Claim Eight as follows:

a. For restitution as allowed by law;

b. For a preliminary and permanent injunction restraining TruAbutment and its officers, employees, agents, servants, attorneys, instrumentalities, and/or those in privity with them, from making any further false statements in TruAbutment's advertisements, FDA submissions or other statements of any nature or type whatsoever that its Accused Products are compatible with or equivalent to Straumann's authentic products, and further restraining the

selling or offering for sale of any abutment which is not in compliance with FDA requirements;

c. For a mandatory injunction compelling TruAbutment to deliver up for destruction all products, brochures, marketing materials, and so forth that bear untrue, false, or misleading statements to the consuming public; and

d. For a mandatory injunction compelling TruAbutment to engage in corrective advertising to restore, to the fullest extent possible, the value of Straumann's goodwill and reputation.

WHEREFORE, Plaintiffs pray for the following additional relief on all Claims:

a. For costs of suit incurred herein; and

b. Such other and further relief as this Court deems just and proper.

DATED: May 9, 2019

EASTMAN MCCARTNEY DALLMANN LLP

By: /s/ Andrew S. Dallmann
Andrew S. Dallmann
Attorneys for Plaintiff
Straumann USA, LLC

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury in the instant action.

DATED: May 9, 2019

EASTMAN MCCARTNEY DALLMANN LLP

By: /s/ Andrew S. Dallmann
Andrew S. Dallmann
Attorneys for Plaintiffs
Straumann USA, LLC