

1 Jennifer Seraphine (State Bar No. 245463)
seraphine@turnerboyd.com
2 Keeley Vega (State Bar No. 259928)
vega@turnerboyd.com
3 Jacob Zweig (State Bar No. 296129)
zweig@turnerboyd.com
4 TURNER BOYD LLP
702 Marshall Street, Suite 640
5 Redwood City, California 94063
Telephone: (650) 521-5930
6 Facsimile: (650) 521-5931

7 *Attorneys for Plaintiff*
Vincent Systems GmbH
8

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 VINCENT SYSTEMS GMBH,)	CASE NO. 8:19-CV-02157 JLS
)	(DFMx)
12 Plaintiff,)	
)	
13 v.)	
)	AMENDED COMPLAINT FOR
14 ÖSSUR HF. AND ÖSSUR AMERICAS,)	PATENT INFRINGEMENT
15 INC.,)	
)	DEMAND FOR JURY TRIAL
16 Defendants.)	

1 Plaintiff Vincent Systems GmbH (“Vincent Systems”) hereby sets forth its
2 Amended Complaint against Defendants Össur hf. (“Össur”) and Össur Americas,
3 Inc. (“Össur Americas”) (collectively, “Defendants”) for patent infringement, and
4 alleges as follows:

5 **THE PARTIES**

6 1. Plaintiff Vincent Systems is a corporation existing under the laws of
7 Germany, with its address at Breite Straße 155, 76135 Karlsruhe, Germany.

8 2. Upon information and belief, Defendant Össur is an Icelandic company
9 with its main office at Grjothals 1–5, 110 Reykjavik, Iceland.

10 3. Upon information and belief, Defendant Össur Americas is a California
11 corporation with its address at 27051 Towne Centre Drive, Foothill Ranch, CA 92610.

12 **JURISDICTION AND VENUE**

13 4. This is a civil action for patent infringement, arising under 35 U.S.C. §
14 271, et seq.

15 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331
16 and 1338(a). Additionally, this Court has diversity jurisdiction pursuant to 28 U.S.C.
17 § 1332, as the parties are, respectively, citizens of a foreign state and this state, and the
18 amount in controversy exceeds \$75,000.

19 6. This Court has personal jurisdiction over Defendant Össur based on
20 Defendant Össur’s contacts in this District, including with and through its wholly
21 owned subsidiary Defendant Össur Americas, and/or also pursuant to Federal Rule of
22 Civil Procedure 4(k)(2).

23 7. This Court has personal jurisdiction over Defendant Össur Americas as,
24 upon information and belief, it is a California corporation with its principal place of

1 business in this District.

2 8. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391 and 1400.
3 Defendant Össur Americas, upon information and belief, resides in this District, and
4 has committed acts of infringement and has a regular and established place of business
5 in this District. Defendant Össur, upon information and belief, resides in a foreign
6 country.

7 **FACTUAL ALLEGATIONS**

8 **Vincent Systems' Finger Element and U.S. Patent 8,491,666**

9 9. Plaintiff Vincent Systems is a medical technology company that designs,
10 develops, and makes innovative and highly functional prostheses for the upper
11 extremities, especially prosthetic hands. Plaintiff Vincent Systems has been engaged
12 in this work for over a decade, and has received numerous awards for its life-changing
13 inventions and products.

14 10. As would be expected, a finger element is an essential and critical part of
15 any hand prosthesis. Through its significant research efforts, Plaintiff Vincent
16 Systems has created a finger element that is unparalleled in its active and passive
17 functions, as well as in its dimensions, which mimic natural fingers.

18 11. Plaintiff Vincent Systems' finger element is incorporated into its full and
19 partial hand prostheses, including but not limited to the Vincent Evolution 3 and
20 Vincent Partial 3 Active products, images of which are shown below:
21
22
23
24

VINCENTevolution3**VINCENT partial 3 active**

12. Plaintiff Vincent Systems sells its products throughout the world, including in the United States.

13. Plaintiff Vincent Systems owns the entire right, title, and interest in U.S. Patent No. 8,491,666 entitled “Finger Element” (“the ’666 Patent”). The ’666 Patent issued on July 23, 2013 to inventor Dr. Stefan Schulz, founder and Chief Executive Officer of Vincent Systems. Dr. Schulz assigned his rights in the ’666 Patent to Vincent Systems on April 10, 2010. A true and correct copy of the ’666 Patent is attached as Exhibit A to this Complaint.

14. The invention of the ’666 Patent represents a revolutionary change in prosthetic fingers. Although hand prostheses have long been available, significant challenges have existed as it relates to moveable finger elements for those prostheses. For example, individual finger elements have traditionally been passive, including because the mechanical features of an actively functioning finger were large and therefore required placement in an associated prosthetic hand or arm. Traditional finger elements that did have independent movement capability, in turn, were too

1 large for small hands, such as prosthetic hands designed for women and children.

2 15. As explained in the '666 Patent, a challenge faced by Dr. Schulz was "to
3 modify a finger element in a way, so that it is generally usable as an autarkic element
4 that means also as a single-finger prosthesis. In particular, the finger element may be
5 in its active and passive function as well as in its dimensions close to a natural finger,
6 in particular also very close to smaller fingers and thereby comprise a long lifetime."
7 (Exhibit A, 1:66-2:5.)

8 16. The invention of the '666 Patent solves these problems, and discloses a
9 novel design and mechanical solution that allow for a small, active finger element, as
10 well as increased life-span and less maintenance intervals through optimized design.

11 17. Claim 1 of the '666 Patent reads as follows:

12 "1. A finger element, comprising:

13 a) a carrier component,

14 b) a first phalanx with a first hinge connection to the carrier
15 component,

16 c) a second phalanx with a second hinge connection to the first
17 phalanx,

18 d) a servo drive for the first hinge connection with a motor
19 with a drive shaft and a worm gearing with a threaded screw
20 and a cog segment that engages to the threaded screw, and

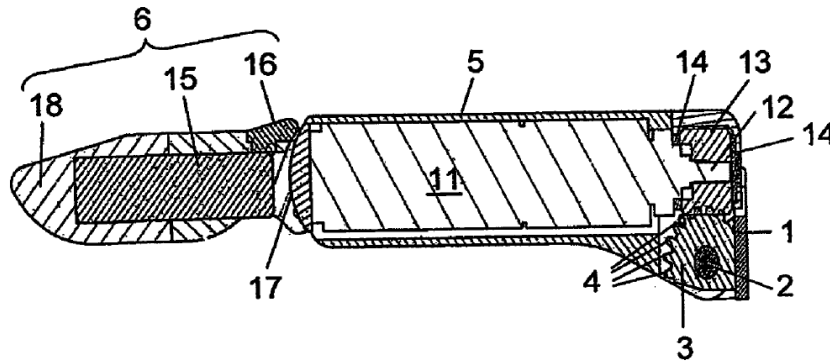
21 e) a coupling mechanism between the first hinge connection
22 and the second hinge connection, wherein

23 f) the threaded screw is supported on the drive shaft form
24 fittingly and axially movable as well as guided in axial

direction by separate guidances.”

(Exhibit A, 5:40-6:11.)

18. Figure 2 of the '666 Patent is shown here:



(Exhibit A, Fig. 2.)

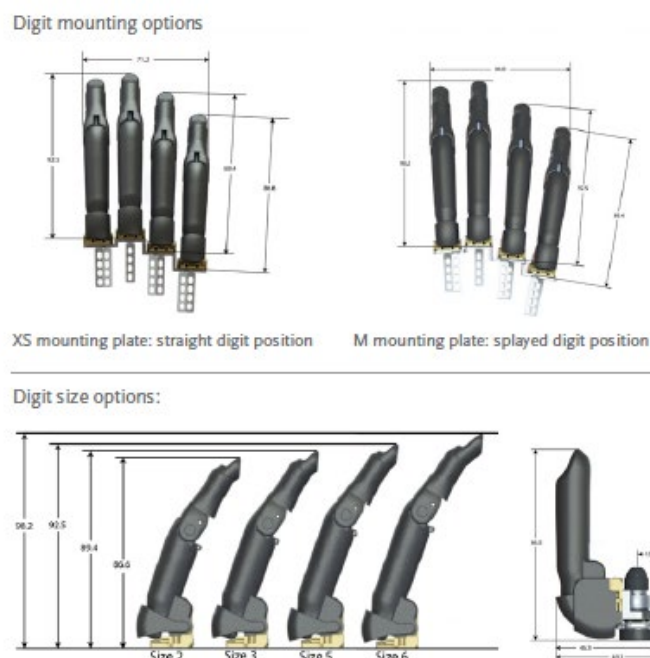
Defendants' Infringement of the '666 Patent

19. According to Defendant Össur's 2019 Annual Report, Defendant Össur Americas is a wholly-owned subsidiary of Defendant Össur, with principal activities of “[s]ales, R&D, distribution and services” for Össur. According to the Össur corporate website, Defendant Össur Americas is an operations center and distribution partner for its parent corporation, Defendant Össur. Defendants Össur and Össur Americas share the same Chief Executive Officer, at least some if not all of the same Directors, a common corporate website, and consolidated financial statements.

20. Upon information and belief, Defendants infringe at least claim 1 of the '666 Patent, directly and/or indirectly, by using, making, selling, offering to sell, and/or importing into the United States their “i-Digits” and “i-Limb” products. Relevant pages of Defendants' Prosthetics Product Catalogue showing an overview of the i-Digits and i-Limb products are attached as Exhibit B.

21. Defendants' i-Digits products (e.g., i-Digits, i-Digits Quantum, and i-Digits Access) are partial hand, including single finger, prostheses and corresponding

1 systems. A product information sheet showing the i-Digits and i-Digits Quantum
 2 products is attached as Exhibit C. A Clinician Manual for the i-Digits and i-Digits
 3 Quantum products is attached as Exhibit D. A product information sheet showing the
 4 i-Digits Access product is attached as Exhibit E. A Clinician Manual for the i-Digits
 5 Access product is attached as Exhibit F. An image from the i-Digits Quantum and i-
 6 Digits Access product sheets is shown here:

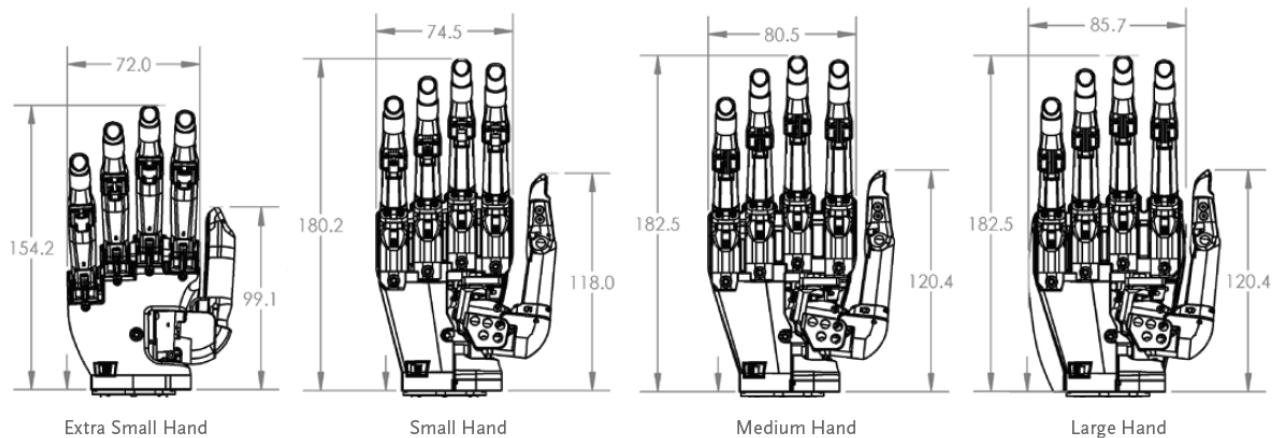


17 (Exhibits C and E, pg. 2.)

18 22. Upon information and belief, Defendants' i-Digits products meet each
 19 and every element of at least claim 1 of the '666 Patent.

20 23. Defendants' i-Limb products (*e.g.*, i-Limb, i-Limb Quantum, and i-Limb
 21 Access) are complete hand prostheses and corresponding systems. Defendants'
 22 product information sheet showing the i-Limb and i-Limb Quantum products is
 23 attached as Exhibit G. A Clinician Manual for the i-Limb and i-Limb Quantum
 24 products is attached as Exhibit H. A product information sheet showing the i-Limb

Access product is attached as Exhibit I. A Clinician Manual for the i-Limb Access product is attached as Exhibit J. An image from the i-Limb Quantum and i-Limb Access product sheets is shown here:



(Exhibits G and I, pg. 2.)

24. Upon information and belief, at least certain sizes of Defendants' i-Limb products meet each and every element of at least claim 1 of the '666 Patent.

25. Upon information and belief, the products described in paragraphs 20-24 above have the same fundamental structure and configuration in the finger elements. These products and any other of Defendants' products that constitute or incorporate finger elements that also share the same fundamental structure and configuration are collectively referred to herein as the "Accused Products."

26. Upon information and belief, Össur Americas has directly infringed and continues to directly infringe Vincent Systems' '666 Patent by making, using, selling, offering to sell within, and/or or importing into the United States, without authority or license, the Accused Products.

27. Upon information and belief, Össur Americas has also indirectly infringed and continues to indirectly infringe the '666 Patent at least by inducing its

1 customers and/or end-users to directly infringe the claimed inventions. Össur
2 Americas induces its customers and/or end-users to infringe the patent at least by
3 encouraging and instructing them to make, use, sell, offer to sell, or import one or
4 more of the Accused Products in a manner that Össur America knows infringes the
5 '666 Patent. Upon information and belief, Össur Americas has knowledge of the '666
6 Patent and engages in such inducing acts with the specific intent of encouraging its
7 customers and/or end-users to infringe.

8 28. Upon information and belief, Defendant Össur is responsible for Össur
9 Americas' direct infringement of the '666 Patent based on the parent-subsiary
10 relationship between Össur and Össur Americas, and Össur's effective control of
11 Össur Americas.

12 29. Upon information and belief, Defendant Össur has also indirectly
13 infringed and continues to indirectly infringe Vincent Systems' '666 Patent, including
14 by inducing Össur Americas' direct infringement, and by inducing customers and/or
15 end-users to directly infringe. Össur induces Össur Americas to infringe at least by
16 encouraging and instructing it to make, use, sell, offer to sell, or import one or more of
17 the Accused Products in a manner that Össur knows infringes the '666 Patent, and by
18 supporting Össur Americas' efforts in doing so. Össur also induces direct
19 infringement by customers and/or end-users of the Accused Products, at least by
20 encouraging and instructing them to make, use, sell, offer to sell, or import one or
21 more of the Accused Products in a manner that Össur knows infringes the '666 Patent.
22 Upon information and belief, Össur has knowledge of the '666 Patent and engages in
23 such inducing acts with the specific intent of encouraging Össur Americas and its
24 customers and/or end-users to infringe.

1 30. Upon information and belief, Defendants have and continue to induce
2 infringement of Vincent Systems' '666 Patent, at least through activities such as
3 designing, making, selling, offering to sell, importing, marketing, advertising and
4 promoting the infringing products; creating and distributing technical, marketing,
5 promotional, educational, and other product literature for the infringing products;
6 providing instructions for use of the infringing products; and offering technical
7 support, training, education, repair, and other services for the infringing products.

8 31. Defendants have had notice and knowledge of the '666 Patent since at
9 least 2016, including based on prior patent litigation between the parties.

10 32. In November 2016, Plaintiff Vincent Systems filed a complaint for patent
11 infringement in Germany against companies Touch Bionics Limited and Touch
12 Bionics GmbH (the "German Litigation"). Prior to filing that complaint, Plaintiff
13 Vincent Systems provided notice to these parties, including regarding the '666 Patent
14 and infringement thereof.

15 33. Upon information and belief, Touch Bionics Limited is a subsidiary of
16 Defendant Össur, following Defendant Össur's acquisition of Touch Bionics GmbH in
17 April 2016; and further, effective May 2017, Defendant Össur Americas acquired and
18 expressly assumed all liabilities and obligations of Touch Bionics, Inc., the United
19 States subsidiary of Touch Bionics GmbH.

20 34. In the complaint in the German Litigation, Vincent Systems alleged
21 infringement of European Patent 2,364,129 ("EP '129 Patent") by the i-Digits and i-
22 Limb products. The EP '129 Patent corresponds to the US '666 Patent, and shares
23 materially the same specification, images, and claims.

24 35. The German Litigation was ultimately resolved in 2018 by a settlement.

1 Discussions at that time also provided notice and knowledge of the '666 Patent to
2 Defendants.

3 36. Upon information and belief, the i-Digits and i-Limb products offered by
4 Defendants in the United States are materially the same as the products that were at
5 issue in the German Litigation.

6 37. Additionally, Touch Bionics Limited (under its former name Touch
7 EMAS Limited) unsuccessfully challenged the validity of the EP '129 Patent before
8 the European Patent Office, which found the '129 Patent valid over the prior art.

9 38. Alternatively, Defendants have had notice and knowledge of the '666
10 Patent since August 2019, when Vincent Systems notified them in writing regarding
11 its claims.

12 39. Accordingly, Defendants' infringement, direct and indirect, has and
13 continues to be willful under 35 U.S.C. § 284.

14 **COUNT I**

15 **INFRINGEMENT OF U.S. PATENT NO. 8,491,666**

16 40. Plaintiff Vincent Systems realleges and incorporates by reference as if
17 fully set forth herein the allegations of the preceding paragraphs.

18 41. Plaintiff Vincent Systems owns all right, title, and interest in the '666
19 Patent.

20 42. Upon information and belief, Defendant Össur Americas has, directly
21 and/or indirectly, infringed and continues to infringe Vincent Systems' '666 Patent
22 under 35 U.S.C. § 271 et seq., either literally or under the doctrine of equivalents, by
23 making, using, offering for sale, selling, and/or importing into the United States the
24 Accused Products.

43. Upon information and belief, Defendant Össur has, directly and/or indirectly, infringed and continues to infringe Vincent Systems' '666 Patent under 35 U.S.C. § 271 et seq., either literally or under the doctrine of equivalents, by making, using, offering for sale, selling, and/or importing into the United States the Accused Products.

44. Plaintiff Vincent Systems has and will continue to suffer harm due to Defendants' infringing acts, thereby justifying an award of damages in an amount adequate to compensate Vincent Systems for Defendants' infringement as provided in 35 U.S.C. § 284.

45. Upon information and belief, Defendants' infringement of the '666 Patent has been willful, thereby justifying treble damages and attorneys' fees, including under 35 U.S.C. §§ 284 and 285.

46. As a result of Defendants' infringement of the '666 Patent, Vincent Systems has suffered and will continue to suffer irreparable injury, thereby also justifying permanent injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Vincent Systems prays for relief and judgment as follows:

1. A determination that Defendants have infringed one or more claims of the '666 Patent under 35 U.S.C. § 271, et seq.;
2. An injunction permanently enjoining Defendants, and all parties acting in concert with them, from further infringement of the '666 Patent;
3. Damages in an amount adequate to compensate Plaintiff Vincent Systems for Defendants' infringement pursuant to 35 U.S.C. § 284;

4. A determination that Defendants' infringement has been willful, and an award of treble damages pursuant to 35 U.S.C. § 284;
5. A determination that this case is exceptional and an award of reasonable attorney fees pursuant to 35 U.S.C. § 285;
6. A determination that Vincent Systems is entitled to pre-suit damages pursuant to 35 U.S.C. § 287;
7. An award of pre- and post-judgment interest on its damages, together with all costs and expenses; and
8. An order granting Plaintiff Vincent Systems such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury of all claims for which it has the right thereto.

Dated: April 15, 2020

Respectfully submitted,

/s/ Jennifer Seraphine

Jennifer Seraphine (State Bar No. 245463)
 seraphine@turnerboyd.com
 Keeley Vega (State Bar No. 259928)
 vega@turnerboyd.com
 Jacob Zweig (State Bar No. 296129)
 zweig@turnerboyd.com
 TURNER BOYD LLP
 702 Marshall Street, Suite 640
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 Telephone: (650) 521-5930
 Facsimile: (650) 521-5931

*Attorneys for Plaintiff
 Vincent Systems GmbH*