

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

OSTEOPLASTICS, LLC,

Plaintiff,

v.

CONFORMIS, INC.,

Defendant.

C.A. No. _____

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Osteoplastics, LLC, files this First Amended Complaint and demand for a jury trial seeking relief for patent infringement by Defendant ConforMIS, Inc. Plaintiff states and alleges the following:

THE PARTIES

1. Plaintiff Osteoplastics, LLC is a limited liability company organized and existing under the laws of the state of Ohio, with its principal place of business located at 675 Alpha Drive, Suite E, Highland Heights, Ohio 44143.

2. Plaintiff Osteoplastics, LLC owns several patents related to methods for designing custom medical devices, such as implants. These patents stem from the work of several prominent researchers associated with Case Western Reserve University (“CWRU”) in the 1990s. Two of the inventors include the former Chairman of Neurological Surgery at CWRU Medical School, Dr. Robert Ratcheson, and Dr. David Dean, Ph.D., an expert in regenerative medicine.

3. A group of the inventors formed Osteoplastics Company, which practiced the patented inventions to successfully produce custom implants for human patients. Later, CWRU

assigned its rights in the patents to the inventors, who in turn assigned their rights to Plaintiff Osteoplastics, LLC.

4. On information and belief, Defendant ConforMIS, Inc. (“ConforMIS”) is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 600 Technology Park Drive, Billerica, Massachusetts 01821.

5. On information and belief, ConforMIS provides virtual surgical planning (“VSP”) services in the United States and performs the computer-aided design of custom medical devices, such as implants, as part of those services.

THE ASSERTED PATENTS

6. On July 15, 2014, United States Patent No. 8,781,557 (“the ’557 patent”) entitled “Producing a Three Dimensional Model of an Implant” was duly and legally issued by the United States Patent and Trademark Office. Osteoplastics owns the ’557 patent by assignment. A true and correct copy of the ’557 patent is attached as Exhibit 1.

7. On March 22, 2016, United States Patent No. 9,292,920 (“the ’920 patent”) entitled “Methods and Systems for Producing an Implant” was duly and legally issued by the United States Patent and Trademark Office. Osteoplastics owns the ’920 patent by assignment. A true and correct copy of the ’920 patent is attached as Exhibit 2.

8. On May 3, 2016, United States Patent No. 9,330,206 (“the ’206 patent”) entitled “Producing a Three Dimensional Model of an Implant” was duly and legally issued by the United States Patent and Trademark Office. Osteoplastics owns the ’206 patent by assignment. A true and correct copy of the ’206 patent is attached as Exhibit 3.

9. On April 18, 2017, United States Patent No. 9,626,756 (“the ’756 patent”) entitled “Methods and Systems for Producing an Implant” was duly and legally issued by the United

States Patent and Trademark Office. Osteoplastics owns the '756 patent by assignment. A true and correct copy of the '756 patent is attached as Exhibit 4.

10. On June 6, 2017, United States Patent No. 9,672,617 (“the '617 patent”) entitled “Methods and Systems for Producing an Implant” was duly and legally issued by the United States Patent and Trademark Office. Osteoplastics owns the '617 patent by assignment. A true and correct copy of the '617 patent is attached as Exhibit 5.

11. On June 6, 2017, United States Patent No. 9,672,302 (“the '302 patent”) entitled “Producing a Three-Dimensional Model of an Implant” was duly and legally issued by the United States Patent and Trademark Office. Osteoplastics owns the '302 patent by assignment. A true and correct copy of the '302 patent is attached as Exhibit 6.

12. On March 1, 2016, United States Patent No. 9,275,191 (“the '191 patent”) entitled “Methods and Systems for Producing an Implant” was duly and legally issued by the United States Patent and Trademark Office. Osteoplastics owns the '191 patent by assignment. A true and correct copy of the '191 patent is attached as Exhibit 7.

13. The '557, '920, '206, '756, '617, '302, and '191 patents are collectively referred to as the Asserted Patents.

JURISDICTION AND VENUE

14. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

15. This Court has personal jurisdiction over ConforMIS because it regularly conducts business in the State of Delaware and therefore has substantial and continuous contacts within this judicial district; because it has purposefully availed itself to the privileges of

conducting business in this judicial district; and/or because it has committed acts of patent infringement in this judicial district.

16. Venue is proper in this District pursuant to 28 U.S.C. § 1400(b).

COUNT I
(Patent Infringement)

17. Plaintiff restates and realleges the preceding paragraphs of this Complaint.

18. On information and belief, ConforMIS has made, used, sold, offered for sale and/or imported into the United States and is currently making, using, selling, offering for sale and/or importing into the United States systems and methods for designing and manufacturing medical devices that infringe the Asserted Patents (the “Accused Systems” and “Accused Methods”). The Accused Systems include, but are not limited to, ConforMIS’s proprietary software such as ConforMIS’s iFit software platform and/or software that is materially similar. The Accused Methods include, but are not limited to, the use of these Accused Systems for designing and manufacturing medical devices, such as implants.

19. Through these Accused Systems and Accused Methods, ConforMIS has been and is infringing at least one or more claims of each of the Asserted Patents under 35 U.S.C. §§ 271(a) and/or (g). For example, the claim charts attached hereto as Exhibit 8 describe how the Accused Systems and Accused Methods practice claim 1 of each of the Asserted Patents.

20. ConforMIS has caused and will continue to cause Osteoplastics irreparable injury and damage by infringing the Asserted Patents. Osteoplastics will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until ConforMIS is enjoined from infringing the Asserted Patents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Enter judgment that ConforMIS has infringed one or more claims of the Asserted Patents;
- (2) Enter an order permanently enjoining ConforMIS and its officers, agents, employees, attorneys, and all persons in active concert or participation with any of them, from infringing the Asserted Patents;
- (3) Award Plaintiff damages in an amount sufficient to compensate it for ConforMIS's infringement of the Asserted Patents, together with pre-judgment and post-judgment interest and costs, and all other damages permitted under 35 U.S.C. § 284;
- (4) Award Plaintiff an accounting for acts of infringement not presented at trial and an award by the Court of additional damage for any such acts of infringement;
- (5) Declare this case to be "exceptional" under 35 U.S.C. § 285 and award Plaintiff its attorneys' fees, expenses, and costs incurred in this action; and
- (6) Award Plaintiff such other and further relief as this Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a jury trial on all issues so triable.

Dated: April 2, 2020

FISH & RICHARDSON P.C.

By: /s/ Martina Tyreus Hufnal

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