

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

ARTHRODESIS TECHNOLOGY LLC,

Plaintiff,

v.

WRIGHT MEDICAL TECHNOLOGY, INC.,

Defendant.

C.A. No. 1:21-CV-00011-MN

DEMAND FOR JURY TRIAL

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Arthrodesis Technology LLC (“Arthrodesis”) brings this action against defendant Wright Medical Technology, Inc. (“Wright”) and hereby alleges as follows:

THE PARTIES

1. Arthrodesis is a limited liability corporation organized and existing under the laws of California having a principal place of business at 4201 Torrance Blvd., Torrance, CA 90503.

2. Wright is a corporation organized and existing under the laws of Delaware having a principal place of business at 1023 Cherry Road, Memphis, Tennessee 38117. Wright may be served with process through its registered agent, Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

JURISDICTION AND VENUE

3. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.* This Court accordingly has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2202.

4. This Court has personal jurisdiction over Wright in this action, at least because Wright is incorporated in the State of Delaware, and has a registered agent for service of process.

In addition, Wright regularly does or solicits business in the State of Delaware and has committed one or more acts of patent infringement in this District.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1400(b), and 1404(a).

FACTS

The '293 Patent

6. On June 17, 2003, U.S. Patent No. 6,579,293 (the "'293 Patent"), entitled "Intramedullary Rod with Interlocking Oblique Screw for Tibio-Calcaneal Arthrodesis," a copy of which is attached hereto as Exhibit A, was duly and legally issued by the United States Patent and Trademark Office ("USPTO") to Dr. Rama E. Chandran as inventor.

7. Plaintiff is the owner of the '293 Patent by assignment, having received all right, title, and interest of the '293 Patent from the inventor. Arthrodesis's sole member, Dr. Rama E. Chandran, is the inventor of the '293 Patent and is a practicing orthopedic surgeon, with a practice in southern California.

8. The '293 Patent relates to a surgical rod-and-screw kit for use in ankle arthrodesis. ('293 Patent at Abstract.)

Wright's Infringing System and Services

9. Wright made, used, sold, and/or offered to sell various medical devices for orthopedic uses, including, but not limited to, the Valor® Hindfoot Fusion System with its oblique screw to establish ankle arthrodesis by compressing the tibia bone directly or indirectly against the calcaneal bone (the "Accused System").

10. Wright infringed at least claims 1, 6, and 11 (the “Asserted Claims”) of the ’293 Patent. A general description of how the Accused System infringed an exemplary claim of the ’293 Patent is attached as Exhibit B, which is incorporated by reference herein in its entirety.

11. Wright marketed, sold, and offered to sell the Accused System to, without limitation, medical professionals, hospitals, and medical centers (“Customers”).

12. On information and belief, the Accused System was not a staple article of commerce and was not suitable for substantial non-infringing use because the Accused System was designed to provide infringing features and was intended for use that would infringe the ’293 Patent, as shown in Exhibit B.

13. Wright provided instructions and guidance to its Customers regarding using the Accused System in a manner that infringed the ’293 Patent on Wright’s website, <https://www.wright.com/footandankleproducts/valor-hindfoot-fusion-nail-system>, the Valor® Hindfoot Fusion System Surgical Technique Guide (Exhibit C), the contact a sale rep page (<https://www.wright.com/find-my-sales-rep>), and phone number (800-238-7117). On information and belief, when customers or potential customers contacted Wright through the contact page or phone, Wright provided instruction and guidance regarding using the Accused System in a manner that infringed the ’293 Patent.

Wright’s Knowledge of Arthrodesis and the ’293 Patent

14. In January 2015, Wright was notified by Dr. Chandran via letter that the products made, used, sold, or offered for sale by Wright, including the Accused System, infringed the ’293 Patent. Thus, Wright has been aware of the ’293 Patent and its relevance to the Accused System, including the Asserted Claims, since at least January 2015.

15. On April 17, 2015, Dr. Chandran filed a lawsuit against Wright in the United States District Court for the Central District of California (15-cv-02852), alleging infringement of the '293 Patent (the "Prior Action").

16. On July 10, 2015, Dr. Chandran filed a Notice of Voluntary Dismissal that dismissed the Prior Action *without* prejudice. Wright did not file a responsive pleading in the Prior Action.

17. The alleged infringing system in the Prior Action was the Valor® Hindfoot Fusion System as well.

18. The parties did not reach a settlement in the Prior Action.

19. In the Prior Action, Chandran did not provide any assurances to Wright that its infringement was excused nor did Chandran forego any infringement claims.

20. Wright will not be materially prejudiced in proceeding here as the Prior Action was dismissed *without* prejudice.

21. On March 18, 2020, Arthrodesis, through its counsel, formally notified Wright's counsel at Duane Morris LLP, via letter that products made, used, sold, or offered for sale by Wright, including the Accused System, continued to infringe the '293 Patent even after the Prior Action was dismissed without prejudice. Upon information and belief, Wright received the March 18, 2020 letter on or about the same day.

22. After becoming aware of the '293 Patent at least as early as January 2015, Wright continued to make, use, sell, and offer to sell the Accused System to Customers, thereby willfully infringing the '293 Patent.

COUNT 1

23. Arthrodesis repeats the allegations contained in the preceding paragraphs 1 through 22 as though fully set forth herein.

24. Upon information and belief, Wright has in the past infringed the '293 Patent, directly and/or by inducement of infringement and/or by contributory infringement, by making, using, selling and/or offering to sell, in this judicial district, throughout the United States, and elsewhere, the Accused System, which embodies the patented inventions of the '293 Patent.

25. Pursuant to 35 U.S.C. § 271(a), Wright was liable for direct infringement of the '293 Patent by having made, used, offered to sell, or sold the Accused System in the United States. Wright's infringement included, but was not limited to, the manufacture, use, sale, importation, and/or offer for sale of the Accused System that embodied the patented invention of the '293 Patent. Wright had contracted to sell and had sold the Accused System (in configurations generally similar to the allegations previously made herein) to, *inter alia*, Customers. Wright continued to make, use, sell, offer to sell, and/or import Accused System despite having knowledge of the infringement of the '293 Patent as discussed *supra*.

26. Wright had been aware of the '293 Patent and the manner of infringing the '293 Patent since at least as early as January 2015. Pursuant to 35 U.S.C. § 271(b), Wright was liable for inducement of infringement by having knowingly caused (or intended to cause) the direct infringement of the '293 Patent by Customers and users of the Accused System. Moreover, by having marketed and sold the Accused System, Wright was liable for inducement of infringement. By further having provided instructions on how to use the Accused System, Wright was liable for inducement of infringement. *See, e.g.*, Paragraphs 13-15 above.

27. Wright had been aware of the '293 Patent and the manner of infringing the '293 Patent since at least as early as January 2015. Pursuant to 35 U.S.C. § 271(c), Wright was liable for contributory infringement of the '293 Patent by having sold or offered to sell the Accused System, and the components thereof, that comprised a material component of the invention embodied in the '293 Patent, that were especially made or adapted for use in infringing the '293 Patent, and that were not suitable for any substantial non-infringing use having knowledge that the '293 Patent was being directly infringed by Customers and users. Wright was therefore liable for contributory infringement of the '293 Patent. *See, e.g.*, Paragraphs 13-15, 20-21 above.

28. Wright had been aware of the '293 Patent and the manner of infringing the '293 Patent since at least as early as January 2015. Pursuant to 35 U.S.C. § 271(f), Wright was liable for infringement of the '293 Patent by knowingly supplying Customers outside of the United States with components of the Accused System, the components had no other substantial non-infringing use, and the components were not staple articles or commodities of commerce. Further, the combination of components supplied by Wright to foreign entities would have infringed the '293 Patent if such combination occurred within the United States. *See, e.g.*, Paragraphs 13-15, 20-21 above.

29. Upon information and belief, at least since learning of the '293 Patent and the basis for infringement at least as early as January 2015, Wright's infringement of the '293 Patent was willful, deliberate, and intentional by continuing its acts of infringement with knowledge of the '293 Patent through the expiration of the '293 Patent and thus having acted in reckless disregard of Arthrodesis's patent rights. *See, e.g.*, Paragraph 21 above.

30. Upon information and belief, Wright took no steps to avoid infringement after learning of its infringement at least as early as January 2015, thereby willfully and knowingly infringing, directly and indirectly, the '293 Patent.

31. Therefore, in view of the actions set forth in Paragraphs 28-29, Wright's infringement was willful, deliberate, and intentional by continuing its acts of infringement with knowledge of the '293 Patent and thus acting in reckless disregard of Arthrodesis's patent rights since at least as early as January 2015.

32. As a result of Wright's acts of infringement of the '293 Patent, Arthrodesis had suffered injury to its business and property in an amount to be determined as damages.

JURY DEMAND

33. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Arthrodesis demands trial by jury on all claims and issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Arthrodesis prays for judgment and relief as follows:

A. A declaration that Wright had infringed, had induced, and had contributed to the infringement of the '293 Patent;

B. An award of damages adequate to compensate Arthrodesis for the infringement of the '293 Patent by Wright and its Customers and users;

C. A declaration that Wright's continued infringement of the '293 Patent was willful, justifying a trebling of the award of damages under 35 U.S.C. § 284, or such other enhancement of the award of damages that the Court deems appropriate;

D. An award of pre-judgment interest on the damages caused by reason of Wright's infringement of the '293 Patent;

E. A declaration that this an exceptional case and that Arthrodesis be granted its reasonable attorneys' fees and expenses in accordance with 35 U.S.C. § 285;

G. An award of costs and expenses to Arthrodesis; and

H. A grant to Arthrodesis of such other and further relief as the Court may deem just and proper.

Dated: February 24, 2021

BAYARD, P.A.

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