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Howmedica Osteonics Corp.

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U.S. DISTRICT COURT  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

HOWMEDICA OSTEONICS CORP.,

Plaintiff,

vs.

ZIMMER, INC.,  
CENTERPULSE ORTHOPEDICS, INC.,  
(formerly known as SULZER  
ORTHOPEDICS, INC.)  
and  
SMITH & NEPHEW, INC.,

Defendants.

Civil Action No. 05-897(WHW)

**COMPLAINT FOR PATENT  
INFRINGEMENT AND DEMAND  
FOR JURY TRIAL**

Plaintiff Howmedica Osteonics Corp. ("Plaintiff"), for its complaint for patent infringement against Defendants, Zimmer, Inc., Centerpulse Orthopedics, Inc., formerly known

as Sulzer Orthopedics, Inc., and Smith & Nephew, Inc. (collectively "Defendants") alleges as follows:

### **THE PARTIES**

1. Plaintiff Howmedica Osteonics Corp. is a corporation organized and existing under the laws of the State of New Jersey and has its principal office in Mahwah, New Jersey.

2. On information and belief, Defendant Zimmer, Inc. is a corporation organized and existing under the laws of the State of Delaware having its principal offices in Warsaw, Indiana.

3. On information and belief, Defendant Centerpulse Orthopedics, Inc. is a corporation organized and existing under the laws of the State of Delaware having its principal offices in Austin, Texas.

4. On information and belief, Defendant Smith & Nephew, Inc. is a corporation organized and existing under the laws of the State of Delaware having its principal offices in Memphis, Tennessee.

### **JURISDICTION AND VENUE**

5. This is an action for patent infringement that arises under the patent laws of the United States, Title 35 U.S.C. §1 et seq. and seeks damages and injunctive relief as provided in 35 U.S.C. §§281 and 283-285. This Court has subject matter jurisdiction under 28 U.S.C. §§1331 and 1338(a).

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

7. This Court has personal jurisdiction over Defendants because Defendants have done and are doing substantial business in this judicial District, both generally and with respect to the allegations in this Complaint, and Defendants have committed one or more acts of infringement in this District.

**COUNT I –  
INFRINGEMENT OF U.S. PATENT NO. 6,174,934**

8. Plaintiff incorporates paragraphs 1 through 7 as if fully set forth herein.

9. On January 16, 2001, United States Patent No. 6,174,934 (the “‘934 patent”), entitled “NON-OXIDIZING POLYMERIC MEDICAL IMPLANT” (Exhibit A), duly and legally issued. Plaintiff owns all rights, title, and interest in and to the ‘934 patent and the right to sue for past infringement.

10. Defendants have manufactured, used, imported, offered for sale, or sold medical implants and employed methods of making them that infringe, either literally or under the doctrine of equivalents, at least one claim of the ‘934 patent, either directly, contributorily, by inducement or otherwise, in violation of 35 U.S.C. §271. Plaintiff has complied with the requirements of 35 U.S.C. §287. Defendants’ infringement will continue unless enjoined by this Court.

11. Defendants’ infringement has damaged and continues to damage and injure Plaintiff. The injury to Plaintiff is irreparable and will continue unless and until Defendants are enjoined from further infringement.

12. Defendants are engaging in willful and deliberate infringement of the ‘934 patent which justifies an increase of three times the damages to be assessed pursuant to 35 U.S.C. §284 and further qualifies this action as an exceptional case supporting an award of reasonable attorneys’ fees pursuant to 35 U.S.C. §285.

**COUNT II –  
INFRINGEMENT OF U.S. PATENT NO. 6,372,814**

13. Plaintiff incorporates paragraphs 1 through 12 as if fully set forth herein.

14. On April 16, 2002, United States Patent No. 6,372,814 (the “‘814 patent”), entitled “NON-OXIDIZING POLYMERIC MEDICAL IMPLANT” (Exhibit B), duly and legally issued. Plaintiff owns all rights, title, and interest in and to the ‘814 patent and the right to sue for past infringement.

15. Defendants have manufactured, used, imported, offered for sale, or sold medical implants and employed methods of making them that infringe, either literally or under the doctrine of equivalents, at least one claim of the ‘814 patent, either directly, contributorily, by inducement or otherwise, in violation of 35 U.S.C. § 271. Plaintiff has complied with the requirements of 35 U.S.C. § 287. Defendants’ infringement will continue unless enjoined by this Court.

16. Defendants’ infringement has damaged and continues to damage and injure Plaintiff. The injury to Plaintiff is irreparable and will continue unless and until Defendants are enjoined from further infringement.

17. Defendants are engaging in willful and deliberate infringement of the ‘814 patent which justifies an increase of three times the damages to be assessed pursuant to 35 U.S.C. §284 and further qualifies this action as an exceptional case supporting an award of reasonable attorneys’ fees pursuant to 35 U.S.C. §285.

**COUNT III –  
INFRINGEMENT OF U.S. PATENT NO. 6,664,308**

18. Plaintiff incorporates paragraphs 1 through 17 as if fully set forth herein.

19. On December 16, 2003, United States Patent No. 6,664,308 (the “‘308 patent”), entitled “NON-OXIDIZING POLYMERIC MEDICAL IMPLANT” (Exhibit C), duly and legally issued. Plaintiff owns all rights, title, and interest in and to the ‘308 patent and the right to sue for past infringement.

20. Defendants have manufactured, used, imported, offered for sale, or sold medical implants and employed methods of making them that infringe, either literally or under the doctrine of equivalents, at least one claim of the ‘308 patent, either directly, contributorily, by inducement or otherwise, in violation of 35 U.S.C. § 271. Plaintiff has complied with the requirements of 35 U.S.C. § 287. Defendants’ infringement will continue unless enjoined by this Court.

21. Defendants’ infringement has damaged and continues to damage and injure Plaintiff. The injury to Plaintiff is irreparable and will continue unless and until Defendants are enjoined from further infringement.

22. Defendants are engaging in willful and deliberate infringement of the ‘308 patent which justifies an increase of three times the damages to be assessed pursuant to 35 U.S.C. §284 and further qualifies this action as an exceptional case supporting an award of reasonable attorneys’ fees pursuant to 35 U.S.C. §285.

**COUNT IV–  
INFRINGEMENT OF U.S. PATENT NO. 6,818,020**

23. Plaintiff incorporates paragraphs 1 through 22 as if fully set forth herein.

24. On November 16, 2004, United States Patent No. 6,818,020 (the "'020 patent"), entitled "NON-OXIDIZING POLYMERIC MEDICAL IMPLANT" (Exhibit D), duly and legally issued. Plaintiff owns all rights, title, and interest in and to the '020 patent and the right to sue for past infringement.

25. Defendants have manufactured, used, imported, offered for sale, or sold medical implants and employed methods of making them that infringe, either literally or under the doctrine of equivalents, at least one claim of the '020 patent, either directly, contributorily, by inducement or otherwise, in violation of 35 U.S.C. § 271. Plaintiff has complied with the requirements of 35 U.S.C. § 287. Defendants' infringement will continue unless enjoined by this Court.

26. Defendants' infringement has damaged and continues to damage and injure Plaintiff. The injury to Plaintiff is irreparable and will continue unless and until Defendants are enjoined from further infringement.

27. Defendants are engaging in willful and deliberate infringement of the '020 patent which justifies an increase of three times the damages to be assessed pursuant to 35 U.S.C. §284 and further qualifies this action as an exceptional case supporting an award of reasonable attorneys' fees pursuant to 35 U.S.C. §285.

**JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays:

A. That United States Patent Nos. 6,174,934, 6,372,814, 6,664,308, and 6,818,020 be judged valid, enforceable, and infringed by Defendants, and that Defendants' infringement be judged to be willful;

B. That the Court preliminarily and permanently enjoin Defendants, their subsidiaries, parent, divisions, agents, servants, and employees from making, using, selling, offering for sale, importing or distributing any infringing medical implants and infringing methods and from infringing, contributing to the infringement of, and inducing infringement of United States Patent Nos. 6,174,934, 6,372,814, 6,664,308, and 6,818,020 and for all further and proper injunctive relief;

C. That Plaintiff be awarded judgment against Defendants for damages, together with interest and costs;

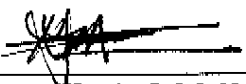
D. That Plaintiff be awarded treble damages pursuant to 35 U.S.C. §284;

E. That Plaintiff be awarded its reasonable costs, expenses, attorneys' fees pursuant to 35 U.S.C. §285 or other applicable law; and

F. That Plaintiff be awarded other and further relief as this Court may deem just and proper under the circumstances.

Respectfully submitted,

**GIBBONS, DEL DEO, DOLAN,  
GRIFFINGER & VECCHIONE, P.C.**

By:   
Kevin J. McKenna

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Howmedica Osteonics Corp.

Dated: February 15, 2005  
Newark, New Jersey

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