IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Robert Holmes Bell
Chief, U.S. District Judge

STRYKER CORPORATION, STRYKER SALES CORPORATION and HOWMEDICA OSTEONICS CORP.

Plaintiffs,

v.

ZIMMER TECHNOLOGY, INC., ACUMED, INC. and ACUMED LLC

Defendants.

Civil Action No. 4:04CV0068

JURY TRIAL REQUESTED

DECLARATORY JUDGMENT COMPLAINT

For its Complaint herein, Plaintiffs allege as follows:

1. Plaintiff Stryker Corporation ("Stryker") is a Michigan corporation having its principal place of business in Kalamazoo, Michigan. Stryker is engaged in the manufacture and sale of medical products.

2. Plaintiff Stryker Sales Corporation ("Stryker Sales") is a Michigan corporation having its principal place of business in Kalamazoo, Michigan. Stryker Sales is a wholly owned subsidiary of Stryker.

3. Plaintiff Howmedica Osteonics Corp. ("Howmedica") is a New Jersey corporation having its principal place of business in Mahwah, New Jersey. Howmedica is a wholly owned subsidiary of Stryker. Howmedica sells a line of proximal humeral nail implants under the name "T2."

4. On information and belief, Defendant Zimmer Technology, Inc. ("Zimmer Tech") is a Delaware corporation having its principal place of business in Chicago, Illinois. On information and belief, Zimmer Tech is a wholly owned subsidiary of Zimmer Holdings Inc. ("Zimmer"), a Delaware corporation having its principal place of business in Warsaw, Indiana. Zimmer competes with Stryker in the manufacture and sale of certain medical products. In connection with that business, Zimmer has both continuous and systematic contacts with Michigan and specific contacts with Michigan that warrant the exercise of personal jurisdiction over Zimmer Tech by this Court.

5. On information and belief, Defendant Acumed, Inc. is an Oregon corporation having a place of business in Beaverton, Oregon.

6. On information and belief, Defendant Acumed LLC is a Delaware limited liability company having a place of business in Hillsboro, Oregon. Acumed LLC competes with Stryker in the manufacture and sale of certain medical products, including implants for the treatment of bone fractures.

7. This Court has jurisdiction pursuant to 28 U.S.C. §§1331, 1338(a), 2201(a) and 2202.

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

9. In accordance with the official records of the U.S. Patent and Trademark Office, Zimmer Tech is an assignee of U.S. Patent No. 5,472,444, ("the '444 patent") which issued on December 5, 1995.

10. According to Patent Office records, Acumed, Inc. is or has been an assignee of the '444 patent.

11. Acumed LLC alleges that it has rights to the '444 patent.

12. Zimmer Tech, Acumed, Inc. and Acumed LLC have each represented at some point in time that it owns rights in the '444 patent, either through a recordation of assignments in the U.S. Patent and Trademark Office or in statements set forth in a Complaint for patent infringement filed against Stryker and Stryker Sales.

13. Acumed LLC's prior conduct has created an objectively reasonable apprehension on the part of Stryker, Stryker Sales, and Howmedica that any party holding rights to the '444 patent will charge one of Stryker's orthopedic implant products, the T2 proximal humeral nail products, with infringing one or more claims of the '444 patent.

14. The conduct giving rise to Stryker, Stryker Sales, and Howmedica's apprehension of suit includes Acumed LLC's filing of a patent infringement lawsuit against Stryker and Stryker Sales on April 14, 2004 in the United States District Court for the District of Oregon ("the Oregon litigation"), alleging that Stryker's T2 proximal humeral nail products infringe at least claim 1 of the '444 patent.

15. Acumed LLC's Complaint for patent infringement alleges that it is the owner of the '444 patent, but according to U.S. Patent and Trademark Office records, the '444 patent was assigned to Defendant Zimmer Tech on June 28, 2002. As such, while Acumed LLC does not currently have standing to sue Stryker or Stryker Sales in the District of Oregon, Stryker and Stryker Sales reasonably apprehend that Acumed LLC, if it obtains rights to the '444 patent, will again attempt to sue Stryker and Stryker Sales.

16. Zimmer recently sued Howmedica in the U.S. District Court for the Northern District of Indiana ("the Indiana litigation"). In that lawsuit, Zimmer alleged that various prosthesis products manufactured and sold by Howmedica infringed U.S. Patent No. 5,290,313

("the 313 patent"). Howmedica sells the T2 proximal nail products at issue in the Oregon litigation.

17. Based upon the Oregon litigation, the Indiana litigation, and the records of the U.S. Patent and Trademark Office, Stryker, Stryker Sales, and Howmedica have a reasonable apprehension that Zimmer Tech, Acumed, Inc. and/or Acumed LLC will bring suit against Stryker, Stryker Sales, and/or Howmedica on the '444 patent.

18. Stryker, Stryker Sales, and Howmedica have not infringed and do not infringe any validly-issued claim of the '444 patent, either literally or under the doctrine of equivalents.

19. The claims of the '444 patent are invalid under 35 U.S.C. §§102, 103 and/or 112.

20. Accordingly, a justiciable case or controversy exists between Stryker, Stryker Sales, Howmedica, Zimmer Tech, Acumed LLC, and Acumed, Inc. regarding the infringement of the '444 patent.

21. Stryker, Stryker Sales, and Howmedica claim trial by jury with respect to any issues so triable.

WHEREFORE, Stryker, Stryker Sales, and Howmedica demand judgment as follows:

A. That United States Patent No. 5,472,444 are invalid and not infringed, either literally or under the doctrine of equivalents, by any of Stryker's, Stryker Sales', or Howmedica's products;

B. That Acumed LLC, its agents, employees, and assigns be permanently enjoined from asserting any charge of infringement of the '444 patent against Stryker, Stryker Sales, Howmedica, their agents, employees, successors, assigns, and customers;

C. That Acumed, Inc., its agents, employees, and assigns be permanently enjoined from asserting any charge of infringement of the '444 patent against Stryker, Stryker Sales, Howmedica, their agents, employees, successors, assigns, and customers;

D. That Zimmer Tech, its agents, employees, and assigns be permanently enjoined from asserting any charge of infringement of the '444 patent against Stryker, Stryker Sales, Howmedica, their agents, employees, successors, assigns, and customers;

E. That, pursuant to 35 U.S.C. §285, Stryker, Stryker Sales, and Howmedica be awarded their reasonable costs and attorney's fees in maintaining this action;

F. That Stryker, Stryker Sales, and Howmedica be awarded such other and further legal and equitable relief as the Court may deem proper and just.

Respectfully submitted,

Dated: May 11, 2004

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