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10	Attorneys for Plaintiff TRIMED, INCORPORATED	
11	UNITED STATES DISTRICT COURT	
12	CENTRAL DISTRICT OF CALIFORNIA	
13	TRIMED, INCORPORATED, A	Case No. CV-06-1918-SVW (SHx)
14	California Corporation,	
15	Plaintiff,	FIRST AMENDED COMPLAINT
16	v.	[DEMAND FOR JURY TRIAL]
17		
18	STRYKER CORPORATION, A Michigan Corporation,	)
19		
<ul><li>20</li><li>21</li></ul>	Defendant.	
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	First Amended Complaint	

# AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND DECLARATORY RELIEF

NOW COMES TriMed, Incorporated ("TriMed"), by its attorneys, for its Amended Complaint against Stryker Corporation ("Stryker"), and states as follows:

#### **Jurisdiction And Venue**

- 1. The Court has personal jurisdiction over Stryker because Stryker regularly conducts business in this District, has an agent for service of process in this district, and sells the infringing product in this District.
- 2. The Court has subject matter jurisdiction because this is an action for patent infringement arising under the patent laws of the United States. 35 U.S.C. §§ 1 et seq. Accordingly, this Court has jurisdiction under 28 U.S.C. §§ 1338(a) and 1331. This Court also has jurisdiction because the parties are citizens of different states and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a).
- 3. Venue is proper because the Stryker may be found in this District, has committed acts of infringement giving rise to this case in the District, and the situs of the patent at issue is in this District. 28 U.S.C. §§ 1391(b) and 1400(b).

### The Parties

- 4. TriMed, Incorporated ("TriMed") is a corporation organized and existing under the laws of the State of California with its principle place of business in Valencia, California.
- 5. TriMed is in the business of designing and selling orthopedic medical devices primarily for the fixation of fractures.
- 6. Stryker is a corporation organized and existing under the laws of the State of Michigan with its principle place of business in Kalamazoo, Michigan.
- 7. Stryker is in the business of selling medical devices primarily in the field of orthopedics.

1 **COUNT I Patent Infringement** 2 3 8. On August 3, 1999, the United States Patent Office duly issued United States Patent No. 5,931,839 ("the '839 Patent"). 4 The '839 Patent discloses an implantable orthopedic fixation device for a 5 9. bone fracture. 6 All right title and interest to the '839 Patent was assigned to TriMed, and 10. 7 TriMed remains the sole owner of the '839 Patent. 8 9 TriMed has been selling products covered by the '839 Patent, and has been 11. duly marking the covered products with the '839 Patent number. 10 12. Stryker is a medical supplier that sells products for treating various 11 orthopedic injuries, including bone fractures. 12 Stryker has been selling and offering to sell Radial Column Plates and 13 13. Ulnar Column Plates (part numbers 54-25400, 54-35401, 54-25402, 54-25403, 54-14 25404 and 54-25405) used in conjunction with Kirschner wires and bone screws ("the 15 Accused Products") which infringe Claims 1, 2 and 7-11 of the '839 Patent ("the 16 Asserted Claims"). 17 Stryker admits that the Accused Products meet all of the limitations of 14. 18 Claims 1, 2 and 7-11 of the '839 Patent. 19 TriMed put Stryker on notice of Stryker's infringing sales, and Stryker has 20 15. continued to infringe the '839 Patent despite TriMed's notice. Upon information and 21 22 belief, Stryker's infringement has been willful. Stryker's infringement has irreparably damaged TriMed, and unless 23 Stryker's continued infringement is permanently enjoined, TriMed will continue to be 24 irreparably damaged. 25 26

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## Declaratory Relief for a Finding of Patent Validity

- 17. TriMed incorporates preceding paragraphs 1-16 as though set forth herein.
- 18. An actual controversy between TriMed and Stryker exists as to the validity of the Asserted Claims of the '839 Patent, thus, this Court has jurisdiction over this Count for declaratory relief pursuant 28 U.S.C. § 2201 et seq.

**COUNT II** 

- 19. Stryker claims that the Asserted Claims of the '839 Patent are invalid pursuant to 35 U.S.C. §§102, 103 and 112.
- 20. Concurrent to this case and Stryker's counterclaim of patent invalidity, Stryker has also filed a request for examination in the Patent and Trademark Office seeking to cancel the claims of the '839 Patent for failure to meet the requirements as set forth in 35 U.S.C. §§102 and 103.
- 21. Due to Stryker's ongoing claims of invalidity of the '839 Patent, TriMed seeks a Declaratory Judgment that the Asserted Claims of the '839 Patent are not invalid under 35 U.S.C. §§102, 103 and 112.
- 22. Further, due to Stryker's admission that its Accused Products meet all of the limitations of the asserted claims of the '839 Patent, but that it does not infringe the '839 Patent because Stryker believes the Asserted Claims are invalid pursuant to 35 U.S.C. §§102, 103 and 112, TriMed seeks a Declaratory Judgment that the Asserted Claims of the '839 Patent are not invalid under 35 U.S.C. §§102, 103 and 112.

### **Prayer**

WHEREFORE, TriMed prays for judgment against Stryker as follows:

- 1. Stryker's accused products infringe Claims 1, 2 and 7-11 of U.S. Patent No. 5,931,839 as admitted by Stryker in open court;
- 2. U.S. Patent No. 5,931,839 is not invalid under 35 U.S.C. §§102, 103 or 112;
- 3. The Court enjoin Stryker from making, using, offering to sell or selling a product that infringes U.S. Patent No. 5,931,839;

TriMed be compensated for the infringement under 35 U.S.C. § 284; 1 4. 5. The Court award TriMed increased damages of an amount of up to three 2 time the compensatory damages for Stryker's willful infringement under 35 U.S.C. § 3 284; 4 The Court award TriMed its attorney fees because this is an exceptional 6. 5 case under 35 U.S.C. § 285; 6 The Court award TriMed its costs and prejudgment interest under 35 7 7. U.S.C. § 284; 8 Any other relief the Court deems is just and reasonable. 9 8. 10 Dated: October 21, 2010 **KNEAFSEY & FRIEND LLP** 11 12 13 14 Attorney for Plaint 15 Incorporated 4 16 17 18 19 20 21 22 23 24 25 26 27 28

**DEMAND FOR JURY TRIAL** Plaintiffs hereby demands a trial by jury of any issue triable by right of a jury pursuant to Local Rule 38-1 and Rule 38 of the Federal Rules of Civil Procedure. Dated: October 21, 2010 KNEAFSEY & FRIEND LLP Sean M. Kneafs Attorney for Plaintiff, Fri Incorporated 

Palmieri, Tyler, Wiener Wilhelm & Waldron LLP Attorneys at Law

PROOF OF SERVICE 1 2 I am employed in the aforesaid county, State of California; I am over the age of 3 18 years and not a party to the within action; my business address is 800 Wilshire Blvd., Suite 710, Los Angeles, California 90017 4 On October 21, 2010 I served the foregoing: FIRST AMENDED COMPLAINT 5 **IDEMAND FOR JURY TRIAL** on the following as set forth below: 6 William Ross Overend Gregory J. Vogler gvogler@mcandrews-ip.com woverend@reedsmith.com Reed Smith LLP Robert A. Surrette 101 Second Street, Suite 1800 San Francisco, California 94105 Telephone: (415) 543-8700 Facsimile: (415) 391-8269 bsurrette@mcandrews-ip.com McAndrews, Held & Malloy Ltd. 500 West Madison Street, 34th Floor Chicago, Illinois 60661 Telephone: (312) 775-8000 Facsimile: (312) 775-8100 10 11 Michael A. Garabed mgarabed@reedsmith.com 12 Tamara M. Rowles trowles@reedsmith.com Reed Smith LLP 13 355 South Grand Avenue, Suite 2900 14 Los Angeles, California 90071 Telephone: (213) 457-8000 15 Facsimile: (213) 457-8080 16 (BY MAIL) I placed such envelope with postage thereon fully paid in the United [X]17 States mail at Los Angeles, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited 18 with U.S. Postal Service on that same day in the ordinary course of business. I 19 am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for 20 mailing in affidavit. 21 (BY EMAIL) I served a copy of the foregoing document by emailing it to the X 22 individuals at the email addresses listed above. 23 I declare under penalty of perjury under the laws of the United States of America 24 the foregoing is true and correct. 25 Executed on October 21, 2010, in Los Angeles, California. 26 27 Katrina Perez 28 First Amended Complaint almieri, Tyler, Wiene

Attorneys at Law