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FILED
2010 OCT 21 PM 3:50
CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES, CALIF.

16 Attorneys for Plaintiff TRIMED, INCORPORATED

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 TRIMED, INCORPORATED, A
20 California Corporation,

21 Plaintiff,

22 v.

23 STRYKER CORPORATION, A
24 Michigan Corporation,

25 Defendant.

) Case No. CV-06-1918-SVW (SHx)

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) **FIRST AMENDED COMPLAINT**

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) **[DEMAND FOR JURY TRIAL]**

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COUNT I

Patent Infringement

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3 8. On August 3, 1999, the United States Patent Office duly issued United
4 States Patent No. 5,931,839 (“the ‘839 Patent”).

5 9. The ‘839 Patent discloses an implantable orthopedic fixation device for a
6 bone fracture.

7 10. All right title and interest to the ‘839 Patent was assigned to TriMed, and
8 TriMed remains the sole owner of the ‘839 Patent.

9 11. TriMed has been selling products covered by the ‘839 Patent, and has been
10 duly marking the covered products with the ‘839 Patent number.

11 12. Stryker is a medical supplier that sells products for treating various
12 orthopedic injuries, including bone fractures.

13 13. Stryker has been selling and offering to sell Radial Column Plates and
14 Ulnar Column Plates (part numbers 54-25400, 54-35401, 54-25402, 54-25403, 54-
15 25404 and 54-25405) used in conjunction with Kirschner wires and bone screws (“the
16 Accused Products”) which infringe Claims 1, 2 and 7-11 of the ‘839 Patent (“the
17 Asserted Claims”).

18 14. Stryker admits that the Accused Products meet all of the limitations of
19 Claims 1, 2 and 7-11 of the ‘839 Patent.

20 15. TriMed put Stryker on notice of Stryker’s infringing sales, and Stryker has
21 continued to infringe the ‘839 Patent despite TriMed’s notice. Upon information and
22 belief, Stryker’s infringement has been willful.

23 16. Stryker’s infringement has irreparably damaged TriMed, and unless
24 Stryker’s continued infringement is permanently enjoined, TriMed will continue to be
25 irreparably damaged.

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COUNT II

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.

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;

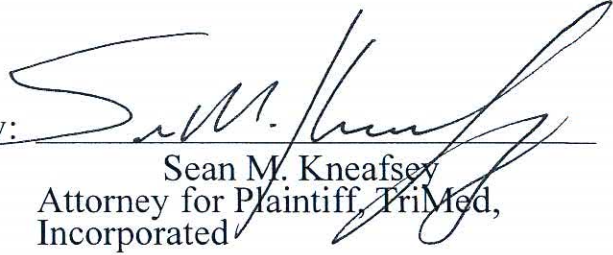
3. The Court enjoin Stryker from making, using, offering to sell or selling a product that infringes U.S. Patent No. 5,931,839;

- 1 4. TriMed be compensated for the infringement under 35 U.S.C. § 284;
- 2 5. The Court award TriMed increased damages of an amount of up to three
- 3 time the compensatory damages for Stryker's willful infringement under 35 U.S.C. §
- 4 284;
- 5 6. The Court award TriMed its attorney fees because this is an exceptional
- 6 case under 35 U.S.C. § 285;
- 7 7. The Court award TriMed its costs and prejudgment interest under 35
- 8 U.S.C. § 284;
- 9 8. Any other relief the Court deems is just and reasonable.

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Dated: October 21, 2010

KNEAFSEY & FRIEND LLP

By: 
Sean M. Kneafsey
Attorney for Plaintiff, TriMed,
Incorporated

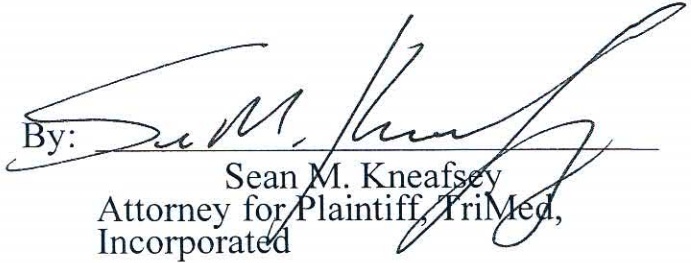
DEMAND FOR JURY TRIAL

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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

By: 
Sean M. Kneafsey
Attorney for Plaintiff, TriMed,
Incorporated

PROOF OF SERVICE

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 800 Wilshire Blvd., Suite 710, Los Angeles, California 90017

On October 21, 2010 I served the foregoing: **FIRST AMENDED COMPLAINT [DEMAND FOR JURY TRIAL]** on the following as set forth below:

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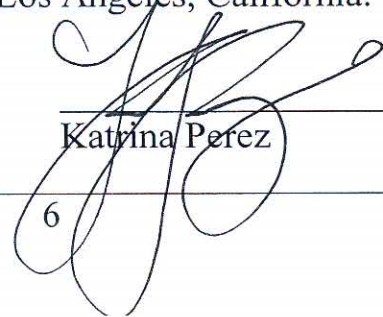
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[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Los Angeles, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I 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 mailing in affidavit.

[X] (BY EMAIL) I served a copy of the foregoing document by emailing it to the individuals at the email addresses listed above.

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct.

Executed on October 21, 2010, in Los Angeles, California.



Katrina Perez