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Attorneys for Plaintiff, Karl Storz
Endoscopy-America, Inc.:

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

KARL STORZ ENDOSCOPY-AMERICA,
INC.

Plaintiff,

v.

STRYKER CORPORATION, AND
STRYKER COMMUNICATIONS, INC.

Defendants.

Case No. C 09-0355 (VRW)

**SECOND AMENDED COMPLAINT
FOR INFRINGEMENT**

Hon. Vaughn R. Walker

SECOND AMENDED COMPLAINT FOR INFRINGEMENT

Plaintiff files its Second Amended Complaint for Infringement pursuant to Federal Rule of Civil Procedure 15(a)(2).

Parties

1. Plaintiff Karl Storz Endoscopy-America, Inc., ("KSEA") is a California corporation having a principal place of business at 600 Corporate Pointe, 5th Floor, Culver City, California 90230.

2. Upon information and belief, Defendant Stryker Corporation is a Michigan corporation having a principal place of business at 2825 Airview Boulevard, Kalamazoo, Michigan 49002.

3. Upon information and beliefs, Defendant Stryker Communications, Inc. is a Delaware corporation having a principal place of business at 1410 Lakeside Parkway, #100, Flower Mound, Texas 75028.

4. Defendants Stryker Corporation and Stryker Communications, Inc. are collectively referred to as "Stryker," or "Defendant."

Jurisdiction and Venue

7. This action by Plaintiff is for damages and injunctive relief from patent infringement by Defendant, and arises under the United States Patent Laws, particularly 35 U.S.C. § 271 *et seq.*

8. This Court has subject matter jurisdiction based on 28 U.S.C. § 1331 and 1338(a).

9. Venue is proper and based on 28 U.S.C. §§ 1391(b), 1391(c), and/or 1400(b).

10. Upon information and belief, Stryker has a place of business at 5900 Optical Court, San Jose, CA 95138.

11. Upon information and belief, Stryker has offered products and/or services, and/or

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1 sold products and/or services, and/or supplied products and/or services, including but not limited
 2 to integrated operating rooms, integrated operating room components, and/or service and support
 3 for integrated operating rooms, in the Northern District of California.

4 12. Upon information and belief, Stryker is subject to personal jurisdiction in this
 5 District.

6 **COUNT I**
 7 **Infringement of U.S. Patent No. 5,788,688**

8 13. Plaintiff KSEA is the owner of the entire right, title and interest in and to United
 9 States Patent No. 5,788,688 ("the '688 patent"), entitled "Surgeon's Command And Control,"
 10 which was duly and legally issued by the United States Patent and Trademark Office on August
 11 4, 1998 in the name of the inventors, James D. Bauer and Donald W. Laux. A copy of the patent
 12 is attached as Exhibit A.

13
 14 14. Upon information and belief, Defendant Stryker has been and still is directly
 15 infringing, contributing to infringement, and/or inducing infringement of one or more claims of
 16 the '688 patent pursuant to 35 U.S.C. § 271 *et. seq.* by making, using, selling, offering for sale,
 17 importing, supplying, maintaining, servicing, supporting, supplying a component of, and/or
 18 causing the supply of a component of the following products and/or services, without the
 19 authorization of the Plaintiff KSEA: integrated operating rooms, including but not limited to i-
 20 Suite, EndoSuite, NavSuite OR, OrthoSuite OR, TotalSuite, CardioSuite and/or i-Suite for
 21 Cardiovascular OR's; integrated operating room components, including but not limited to i-Suite
 22 Technology Products, SwitchPoint and SwitchPoint Infinity control systems, Sidne control
 23 systems, Sidne enabled devices; and related products, services, and components (hereinafter
 24 referred to as "infringing Stryker products").
 25

26 15. Plaintiff has been and continues to be damaged by the loss of sales and customers
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1 by Defendant's infringement of the '688 patent, and claims all damages, including but not
2 limited to lost profits and reasonable royalties, to which it is entitled.

3 16. As a result of the Defendant's actions, Plaintiff has suffered and continues to
4 suffer substantial injury, including irreparable injury, and will result in damages to Plaintiff,
5 including loss of sales and profits, which Plaintiff would have made but for the infringement by
6 Defendant, unless Defendant is enjoined by this Court.

7
8 **COUNT II**
Infringement of U.S. Patent No. 6,397,286

9 17. Plaintiff KSEA is the owner of the entire right, title and interest in and to United
10 States Patent No. 6,397,286 ("the '286 patent"), entitled "Arrangement for the Central
11 Monitoring and/or Control of at Least One Apparatus," which was duly and legally issued by the
12 United States Patent and Trademark Office on May 28, 2002 in the name of the inventors, David
13 Chatenever, Klaus Irion, Pavel Novak, and Hans-Uwe Hilzinger. A copy of the patent is
14 attached as Exhibit B.

15
16 18. Upon information and belief, Defendant Stryker has been and still is directly
17 infringing, contributing to infringement, and/or inducing infringement of one or more claims of
18 the '286 patent pursuant to 35 U.S.C. § 271 *et. seq.* by making, using, selling, offering for sale,
19 importing, supplying, maintaining, servicing, supporting, supplying a component of, and/or
20 causing the supply of a component of the infringing Stryker products, without the authorization
21 of the Plaintiff KSEA.

22
23 19. Plaintiff has been and continues to be damaged by the loss of sales and customers
24 by Defendant's infringement of the '286 patent, and claims all damages, including but not
25 limited to lost profits and reasonable royalties, to which it is entitled.

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27 20. As a result of the Defendant's actions, Plaintiff has suffered and continues to
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1 suffer substantial injury, including irreparable injury, and will result in damages to Plaintiff,
2 including loss of sales and profits, which Plaintiff would have made but for the infringement by
3 Defendant, unless Defendant is enjoined by this Court.

4 **COUNT III**
5 **Infringement of U.S. Patent No. 6,824,539**

6 21. Plaintiff KSEA is the owner of the entire right, title and interest in and to United
7 States Patent No. 6,824,539 ("the '539 patent"), entitled "Touchscreen Controlling Medical
8 Equipment from Multiple Manufacturers," which was duly and legally issued by the United
9 States Patent and Trademark Office on November 30, 2004 in the name of the inventor Pavel
10 Novak. A copy of the patent is attached as Exhibit C.

11 22. Upon information and belief, Defendant Stryker has been and still is directly
12 infringing, contributing to infringement, and/or inducing infringement of one or more claims of
13 the '539 patent pursuant to 35 U.S.C. § 271 *et. seq.* by making, using, selling, offering for sale,
14 importing, supplying, maintaining, servicing, supporting, supplying a component of, and/or
15 causing the supply of a component of the infringing Stryker products, without the authorization
16 of the Plaintiff KSEA.

17 23. Plaintiff has been and continues to be damaged by loss of sales and customers by
18 Defendant's infringement of the '539 patent, and claims all damages, including but not limited
19 to lost profits and reasonable royalties, to which it is entitled.

20 24. As a result of the Defendant's actions, Plaintiff has suffered and continues to
21 suffer substantial injury, including irreparable injury, and will result in damages to Plaintiff,
22 including loss of sales and profits, which Plaintiff would have made but for the infringement by
23 Defendant, unless Defendant is enjoined by this Court.
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PRAYERS FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. That a judgment be entered that Defendant has directly infringed, actively induced others to infringe, and/or contributorily infringed the '688 patent, the '286 patent, and the '539 patent.

B. That a permanent injunction be entered against the Defendant, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with the Defendant who receive actual notice of the injunction by personal service or otherwise, from any further infringement of the '688 patent pursuant to 35 U.S.C. § 283;

C. That a permanent injunction be entered against the Defendant, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with the Defendant who receive actual notice of the injunction by personal service or otherwise, from any further infringement of the '286 patent pursuant to 35 U.S.C. § 283;

D. That a permanent injunction be entered against the Defendant, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with the Defendant who receive actual notice of the injunction by personal service or otherwise, from any further infringement of the '539 patent pursuant to 35 U.S.C. § 283;

E. That Plaintiff be awarded its damages, suffered by reason of the infringements by Defendant, together with prejudgment interest;

F. That this be declared an exceptional case pursuant to 35 U.S.C. § 285;

G. That Plaintiff be awarded its attorney's fees and costs; and

H. That Plaintiff be awarded any other and further relief that this Court may deem just and proper.

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JURY DEMAND

Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: November 10, 2009

/s/Alfredo Bismonte

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