

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

	)	
ARTHREX, INC.,	)	
a Delaware Corporation,	)	Civ. Action No. 2:08-cv-48-FTM
	)	
Plaintiff,	)	
v.	)	<b>SECOND AMENDED COMPLAINT</b>
	)	
DEPUY MITEK, INC.,	)	(Jury Trial Demanded)
a Massachusetts Corporation,	)	
	)	
Defendant.	)	
	)	

Pursuant to Fed. R. Civ. P. 15(a)(2), Plaintiff, Arthrex, Inc. (“Arthrex”), hereby files its Second Amended Complaint. Defendant, DePuy Mitek, Inc. (“DePuy Mitek”) consents to the filing of this Second Amended Complaint. For its Second Amended Complaint, Arthrex avers as follows:

**JURISDICTION AND VENUE**

1. The claims alleged below are brought under the Patent Laws of the United States, 35 U.S.C. § 1 et. seq. This Court has jurisdiction over these claims pursuant to 28 U.S.C. § 1338(a). Venue is based on 28 U.S.C. §§ 1391(b), 1391(c), 1391(d) and 1400(b).

**PARTIES**

2. Arthrex is a corporation duly organized and existing under the laws of the State of Delaware, with its corporate headquarters and principal place of business at 1370 Creekside Boulevard, Naples, Florida 34108.

3. DePuy Mitek is a corporation organized under the laws of the Commonwealth of Massachusetts, with its corporate headquarters and principal place of business at 325 Paramount Drive, Raynham, Massachusetts 02767.

**FIRST CLAIM FOR RELIEF**

(Infringement of U.S. Patent No. 7,306,626)

4. Arthrex incorporates by reference the allegations contained in paragraphs 1 through 3 above.

5. Arthrex is the owner by assignment of U.S. Patent No. 7,306,626 entitled “Method of Loading Tendons Into the Knee” (“the ‘626 patent”). A copy of the ‘626 patent is attached as Exhibit A. The ‘626 patent issued on December 11, 2007. In general, the claims of the ‘626 patent relate to a surgical procedure for cross-pin arthroscopic fixation of ligament grafts to replace anterior cruciate ligaments in human knees.

6. DePuy Mitek has made, or had made for its account, and sold devices to be used in the same cross-pin surgical procedure for arthroscopic fixation of ligament grafts to replace anterior cruciate ligaments in human knees which is claimed in claims 1-3 of the '626 patent. These devices include the surgical instruments offered and sold by DePuy Mitek under the trade name "Sling Shot™ ACL Cross Pin System," as evidenced by the DePuy Mitek surgical technique provided as Exhibit B hereto and incorporated herein by reference. On information and belief, the DePuy Mitek Sling Shot™ system has been used in the United States in surgical procedures that infringe claims 1-3 of the '626 patent, either literally or under the doctrine of equivalents. DePuy Mitek promotes and sells its "Sling Shot™" system in this District and elsewhere in the United States. DePuy Mitek knows and intends for the instrumentation and implants of the "Sling Shot™" system will be used in the surgical procedures claimed in claims 1-3 of the '626 patent, and thus has induced infringement of claims 1-3 of the '626 patent by others.

7. DePuy Mitek has made, or had made for its account, and sold instrumentation and implants of the "Sling Shot™" system set forth in Exhibit B in this District and elsewhere in the United States, that are material components of the surgical procedure claimed in claims 1-3 of the '626 patent, with the knowledge that such components are made or especially adapted for use to infringe claims 1-3 of the '626 patent, and not staple articles or commodities of commerce suitable for substantial noninfringing use, and thus DePuy Mitek has contributed to the infringement of claims 1-3 of the '626 patent by others, either literally or under the doctrine of equivalents.

8. The manner of intended use of the instrumentation and implants of the SlingShot™ system made and sold by DePuy Mitek represent a faithful duplication of the surgical procedure claimed in claims 1-3 of the '626 patent. Since DePuy Mitek has had knowledge of the existence of the '626 patent since it issued on December 11, 2007, DePuy Mitek's continued infringement of claims 1-3 of the '626 patent is willful and deliberate.

**SECOND CLAIM FOR RELIEF**

(Infringement of U.S. Patent No. 7,500,990)

9. Arthrex incorporates by reference the allegations contained in paragraphs 1 through 3 above.

10. Arthrex is the owner by assignment of U.S. Patent No. 7,500,990 entitled "Method of Loading Tendons Into the Knee" ("the '990 patent"). A copy of the '990 patent is attached as Exhibit C. The '990 patent issued on March 10, 2009. In general, the claims of the '990 patent relate to a surgical procedure for cross-pin arthroscopic fixation of ligament grafts to replace anterior cruciate ligaments in human knees.

11. DePuy Mitek has made, or had made for its account, and sold devices to be used in the same cross-pin surgical procedure for arthroscopic fixation of ligament grafts to replace anterior cruciate ligaments in human knees which is claimed in claims 1, 2, 5, 6 and 8-12 of the '990 patent. These devices include the surgical instruments offered and sold by DePuy Mitek under the trade name "Sling Shot™ ACL Cross Pin System," as evidenced by the DePuy

Mitek surgical technique provided as Exhibit B hereto and incorporated herein by reference. On information and belief, the DePuy Mitek Sling Shot™ system has been used in the United States in surgical procedures that infringe claims 1, 2, 5, 6 and 8-12 of the ‘990 patent, either literally or under the doctrine of equivalents. DePuy Mitek promotes and sells its “Sling Shot™” system in this District and elsewhere in the United States. DePuy Mitek knows and intends for the instrumentation and implants of the “Sling Shot™” system will be used in the surgical procedures claimed in claims 1, 2, 5, 6 and 8-12 of the ‘990 patent, and thus has induced the infringement of claims 1, 2, 5, 6 and 8-12 of the ‘990 patent by others.

12. DePuy Mitek has made, or had made for its account, and sold instrumentation and implants of the “Sling Shot™” system set forth in Exhibit B in this District and elsewhere in the United States, that are material components of the surgical procedure claimed in claims 1, 2, 5, 6 and 8-12 of the ‘990 patent, with the knowledge that such components are made or especially adapted for use to infringe claims 1, 2, 5, 6 and 8-12 of the ‘990 patent, and not staple articles or commodities of commerce suitable for substantial noninfringing use, and thus DePuy Mitek has contributed to the infringement of claims 1, 2, 5, 6 and 8-12 of the ‘990 patent by others, either literally or under the doctrine of equivalents.

13. The manner of intended use of the instrumentation and implants of the SlingShot™ system made and sold by DePuy Mitek represent a faithful duplication of the surgical procedure claimed in claims 1, 2, 5, 6 and 8-12 of the ‘990 patent. Since DePuy Mitek has had knowledge of the existence of the ‘990 patent since March 12, 2009, DePuy Mitek’s continued infringement of claims 1, 2, 5, 6 and 8-12 of the ‘990 patent is willful and deliberate.

14. This case is related to Case No. 2:04-cv-328-FtM, currently pending in the United States District Court for the Middle District of Florida, Fort Myers division. Pursuant to Local Rule 1.04 of the Middle District of Florida, a Notice of Pendency of Related Actions was filed in this case with the original Complaint on January 22, 2008.

**PRAYER FOR RELIEF**

WHEREFORE, Arthrex prays for the following relief:

1. Pursuant to 35 U.S.C. § 271, a Judgment that claims 1-3 of the '626 patent and claims 1, 2, 5, 6 and 8-12 of the '990 patent have been infringed by Depuy Mitek, and that Depuy Mitek has induced infringement of claims 1-3 of the '626 patent and claims 1, 2, 5, 6 and 8-12 of the '990 patent;

2. Pursuant to 35 U.S.C. § 283, a permanent injunction restraining DePuy Mitek from committing further acts of contributory infringement of, and inducement to infringe, claims 1-3 of the '626 patent and claims 1, 2, 5, 6 and 8-12 of the '990 patent;

3. Pursuant to 35 U.S.C. § 284, compensatory damages based on lost profits, reduced profits, prejudgment interest, and/or for any other available damages based on any form of recoverable economic injury sustained by Arthrex as a result of DePuy Mitek's infringement;

4. Pursuant to 35 U.S.C. § 284, that the award of damages be trebled;
5. Pursuant to 35 U.S.C. § 285, an award of Arthrex's costs and attorneys' fees incurred in this action; and
6. For such other and further relief as this Court deems just and proper.

DATED this 5th day of June 2009.

Respectfully submitted,

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Counsel for Plaintiff Arthrex, Inc.

**DEMAND FOR JURY TRIAL**

Plaintiff, Arthrex, Inc., hereby demands trial by jury.

Dated: June 5, 2009

Respectfully submitted,

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Counsel for Plaintiff Arthrex, Inc.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing SECOND AMENDED COMPLAINT was served by the Court's email notification system on June 5, 2009 upon the following counsel of record for DePuy Mitek:

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**s/ Salvatore P. Tamburo**

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