

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

ARTHREX, INC.,
a Delaware Corporation,

Plaintiff,

v.

DEPUY MITEK, INC.
a Massachusetts Corporation,

Defendant.

Civ. Action No. 2:04-cv-328-FTM

AMENDED COMPLAINT

(Jury Trial Demanded)

As its Amended Complaint, Plaintiff, Arthrex, Inc. ("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. Plaintiff 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. Defendant Depuy Mitek, Inc. is a corporation organized under the laws of the State of Massachusetts, with its corporate headquarters and principal place of business at 249 Vanderbilt Avenue, Norwood, Massachusetts 02062.

FIRST CLAIM FOR RELIEF

(Patent Infringement of U.S. Patent No. 6,733,529)

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

5. Arthrex is the owner by assignment of United States Patent No. 6,733,529 entitled "Method of Loading Tendons Into the Knee" (the "'529 patent"). A copy of the '529 patent is attached as Exhibit A. The '529 patent issued on May 11, 2004. In general, the '529 patent claims 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 has 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 the '529 patent. These devices include the surgical instruments offered and sold by Innovasive Devices under the trade name "Sling Shot Cross™ Pin ACL Fixation 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 one or more of the claims of the '529 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 knowing and intending that the instrumentation and implants of the "Sling Shot™" system will be used in one or more of the surgical procedures claimed in the '529 patent, and thus has induced the direct infringement of that patent by others, as evidenced, among other things, by Exhibit B, the surgical technique distributed by Depuy Mitek.

7. Depuy Mitek has made, or had made for its account, and sold instrumentation and implants of the "Sling Shot™" system listed in the brochure of Exhibit B in this District and elsewhere in the United States, that are material components of the surgical procedure claimed in the '529 patent with the knowledge that such components are made or especially adapted for use in infringement of that patent, and not staple articles or commodities of commerce suitable for substantial noninfringing use, and thus Depuy Mitek has contributed to the infringement of the '529 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, referenced above, represent a faithful duplication of the surgical procedure claimed in the '529 patent. Also, Depuy Mitek has had knowledge of the existence of the '529 patent since it issued on May 11, 2004. Accordingly, Depuy Mitek's continued infringement of the '529 patent is willful and deliberate.

SECOND CLAIM FOR RELIEF

(Patent Infringement of U.S. Patent No. 6,974,477)

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

10. Arthrex is the owner by assignment of United States Patent No. 6,974,477 entitled "System for Loading Tendons Into the Knee" (the "'477 patent"). A copy of the '477 patent is attached as Exhibit C. The '477 patent issued on December 13, 2005. In general, the '477 patent claims 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 has 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 the '477 patent. These devices include the surgical instruments offered and sold by Innovasive Devices under the trade name "Sling Shot Cross™ Pin ACL Fixation 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 one or more of the claims of the '477 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 knowing and intending that the instrumentation and

implants of the "Sling Shot™" system will be used in one or more of the surgical procedures claimed in the '477 patent, and thus has induced the direct infringement of that patent by others, as evidenced, among other things, by Exhibit B, the surgical technique distributed by Depuy Mitek.

12. Depuy Mitek has made, or had made for its account, and sold instrumentation and implants of the "Sling Shot™" system listed in the brochure of Exhibit B in this District and elsewhere in the United States, that are material components of the surgical procedure claimed in the '477 patent with the knowledge that such components are made or especially adapted for use in infringement of that patent, and not staple articles or commodities of commerce suitable for substantial noninfringing use, and thus Depuy Mitek has contributed to the infringement of the '477 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, referenced above, represent a faithful duplication of the surgical procedure claimed in the '477 patent. Also, Depuy Mitek has had knowledge of the existence of the '477 patent since at least as early as December 16, 2005, when it was sent written notice of infringement. Accordingly, Depuy Mitek's continued infringement of the '477 patent is willful and deliberate.

PRAYER FOR RELIEF

WHEREFORE, Arthrex prays for the following relief:

1. Pursuant to 35 U.S.C. § 271, a Judgment that the '529 and '477 patents have been infringed by Depuy Mitek, and that Depuy Mitek has induced infringement of that patent;
2. Pursuant to 35 U.S.C. § 283, a preliminary injunction restraining Depuy Mitek during the pendency of this action and permanently thereafter from committing further acts of contributory infringement of, and inducement to infringe, the '529 and '477 patents;
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 6th day of January 2006.

Respectfully submitted,

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Counsel for Plaintiff Arthrex, Inc.

DEMAND FOR JURY TRIAL

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

Dated: January 6, 2006

Respectfully submitted,

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