

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DePuy Mitek, Inc.)	
a Massachusetts Corporation)	
)	
Plaintiff.)	
)	
)	
V.)	
)	Civil Action No. 04-12457 PBS
Arthrex, Inc.)	
a Delaware Corporation,)	
)	
and)	
)	
Pearsalls Limited,)	<u>AMENDED COMPLAINT</u>
a Private Limited Company of the)	
United Kingdom)	
)	
Defendants.)	

COMPLAINT

Plaintiff, DePuy Mitek, Inc. (“DePuy Mitek”) for its complaint against Defendants, Arthex, Inc. (“Arthrex”) and Pearsalls Ltd. (“Pearsalls”) alleges:

PARTIES, JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the United States Patent Laws, Title 35 of the United States Code. This Court has jurisdiction over this action’s subject matter under 28 U.S.C. §§ 1331 and 1338(a). Venue is proper in this judicial district under 28 U.S.C. § 1400(b) and §1391.

2. Plaintiff DePuy Mitek is a corporation organized and existing under the laws of the State of Massachusetts and has a principal place of business at 249 Vanderbilt Avenue, Norwood, Massachusetts 02602.

3. Defendant Arthrex is a corporation organized and existing under the laws of the State of Delaware and has a principal place of business at 1370 Creekside Boulevard, Naples, Florida 34108.

4. Defendant Pearsalls is a private limited company organized and existing under the laws of the United Kingdom and has a principal place of business at Tancred Street, Taunton, Somerset TA1 1RY.

CLAIM FOR RELIEF

5. On May 24, 1994, United States Letters Patent No. 5,314,446 (“446 Patent”) entitled “Sterilized Heterogeneous Braids” was duly and legally issued by the United States Patent and Trademark Office to Ethicon, Inc. as assignee. Ethicon, Inc. assigned the 446 patent to DePuy Mitek, Inc. A true and correct copy of the 446 Patent is attached as Exhibit A to this Complaint.

6. On information and belief, without license or authorization, Arthrex has been and is infringing claims of the 446 Patent in the United States by making, using, selling, and offering for sale in the United States, including within this judicial district, sutures and sutures having attached needles, anchors, or other products, that are claimed in the 446 Patent, including at least the sutures sold under the trade name FiberWire™. On information and belief, without license or authorization, Arthrex has been and is inducing others to directly infringe the 446 Patent in the United States, including within this judicial district, by inducing distributors to sell and surgeons to use sutures and sutures having attached needles, anchors, or other products, that are claimed in the 446 Patent, including at least the sutures sold under the trade name FiberWire™.

7. On information and belief, Pearsalls has infringed and continues to infringe the 446 Patent by contributing to and inducing Arthrex’s infringement of the 446 Patent by

providing Arthrex with sutures that are incorporated into the commercial TigerWire® and FiberWire™ products, which sutures are not a staple article of commerce and have no use other than to practice the invention claimed in the 446 Patent. These sutures and products incorporating the same are sold throughout the United States.

8. On information and belief, Pearsalls has acted in concert with Arthrex to design, develop, and commercialize FiberWire™ and TigerWire® sutures with full knowledge that these products will be sold throughout the United States.

9. On information and belief, Arthrex has known of the 446 patent's existence since at least shortly after its issuance. On information and belief, Arthrex's infringing acts as set forth above have been deliberate, willful, and in reckless disregard of DePuy Mitek's patent rights.

10. On information and belief, Pearsalls has known of the 446 patent's existence since at least shortly after this lawsuit was filed in November 2004.

11. DePuy Mitek has been damaged by Arthrex's and Pearsalls' infringing activities. On information and belief, Arthrex and Pearsalls will continue their infringing activities, and continue to damage DePuy Mitek, unless enjoined by this Court. DePuy Mitek has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DePuy Mitek respectfully demands judgment for it and against Defendants Arthrex and Pearsalls as follows:

- (a) That this Court adjudge that DePuy Mitek owns the 446 Patent and that DePuy Mitek has all rights of recovery under the 446 patent;
- (b) That this Court adjudge that Arthrex and Pearsalls have been infringing the 446 patent;
- (c) That this Court issue an injunction enjoining Arthrex and Pearsalls and their officers, agents, servants and employees, privies, distributors and all persons in active concert or participation with them from further infringement of the 446 patent;
- (d) That this Court ascertain and award DePuy Mitek damages sufficient to compensate it for Arthrex's and Pearsalls' infringement and that the damages so ascertained be trebled and awarded to DePuy Mitek with interest;
- (e) That this Court find this case to be exceptional and award DePuy Mitek its attorneys fees, costs and expenses in this action; and
- (f) That this Court award DePuy Mitek such other relief as the Court may deem just and proper.

JURY DEMAND

DePuy Mitek demands a jury trial on all issues so triable.

Dated: September 9, 2005

DEPUY MITEK, INC.,

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