

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

_____	)	
<u>MARCTEC, LLC,</u>	)	
	)	
an Illinois limited liability company	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 05-4216-JLF
	)	
ARTHROCARE CORPORATION,	)	
	)	JURY TRIAL DEMANDED
a Delaware Corporation	)	
	)	
Defendant.	)	
_____	)	

**SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND  
JURY DEMAND**

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, Plaintiff MarcTec, LLC ("MarcTec"), asserts this Second Amended Complaint For Patent Infringement against Defendant ArthroCare Corporation ("ArthroCare") and alleges as follows:

**I. THE PARTIES**

1. Plaintiff MarcTec is an Illinois limited liability company with a principal place of business at 2600 South Raney, Effingham, Illinois 62401. MarcTec holds title to, among other intellectual property assets, and/or has the right to enforce the patents at issue here. The President of MarcTec is Dr. Peter Bonutti. Dr. Peter Bonutti is a pioneering orthopedic surgeon, inventor and entrepreneur. Dr. Bonutti is a named

inventor on numerous patents in the field of orthopedic devices, implants and instrumentation.

2. Upon information and belief, Defendant ArthroCare is a Delaware corporation with a principal place of business at 111 Congress Avenue, Suite 511, Austin, Texas 78701.

3. ArthroCare's businesses include the manufacture, distribution, and sale of medical and surgical devices and instrumentation throughout the United States, including in this district, and worldwide.

## **II. JURISDICTION AND VENUE**

4. This is an action arising under the patent laws of the United States, 35 U.S.C. § 1 et. seq. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338.

5. Defendant ArthroCare has sold infringing products, and has induced and contributed to infringement, in the Southern District of Illinois or has sold such products, and has directed its inducing and contributory infringement activities, under circumstances in which it was reasonably foreseeable that such products would be shipped into, and such infringement would occur in, the Southern District. As such, Defendant ArthroCare resides in the Southern District as the term "reside" is defined in 28 U.S.C. § 1391(c) and, therefore, venue in the Southern District is proper under 28 U.S.C. §§ 1391(b) and 1400(b).

6. Defendant ArthroCare is subject to personal jurisdiction in Illinois and this district.

### III. THE PATENTS IN SUIT

7. MarcTec is the assignee of U.S. Patent No. 5,527,343, entitled “Suture Anchor”, which duly and legally issued on June 18, 1996 and lists Dr. Peter Bonutti as the sole inventor (“the ‘343 patent”). A true and correct copy of the ‘343 patent is attached at Exhibit A.<sup>1</sup>

8. MarcTec is the assignee of U.S. Patent No. 5,534,012, entitled “Method and Apparatus for Anchoring a Suture”, which duly and legally issued on July 9, 1996 and lists Dr. Peter Bonutti as the sole inventor (“the ‘012 patent”). A true and correct copy of the ‘012 patent is attached at Exhibit B.

9. MarcTec is the assignee of U.S. Patent No. 5,948,002, entitled “Apparatus and Method for Use in Positioning a Suture Anchor”, which duly and legally issued on September 7, 1999 and lists Dr. Peter Bonutti as the sole inventor (“the ‘002 patent”). A true and correct copy of the ‘002 patent is attached at Exhibit C.

10. MarcTec is the assignee of U.S. Patent No. 6,010,525, entitled “Method and Apparatus for Securing a Suture”, which duly and legally issued on January 4, 2000 and lists Dr. Peter Bonutti as an inventor (“the ‘525 patent”). A true and correct copy of the ‘525 patent is attached at Exhibit D.

11. MarcTec is the assignee of U.S. Patent No. 6,117,160, entitled “Bone Suture”, which duly and legally issued on September 12, 2000 and lists Dr. Peter Bonutti as the sole inventor (“the ‘160 patent”). A true and correct copy of the ‘160 patent is attached at Exhibit E.

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<sup>1</sup> Exhibits A through J were previously filed as Exhibits to the Original Complaint or the First Amended Complaint and have not been re-filed with the Second Amended Complaint.

12. MarcTec is the assignee of U.S. Patent No. 6,464,713, entitled “Body Tissue Fastening”, which duly and legally issued on October 15, 2002 and lists Dr. Peter Bonutti as the sole inventor (“the ‘713 patent”). A true and correct copy of the ‘713 patent is attached at Exhibit F.

13. MarcTec is the assignee of U.S. Patent No. 6,569,187, entitled “Method and Apparatus for Securing a Suture”, which duly and legally issued on May 27, 2003 and lists Dr. Peter Bonutti as an inventor (“the ‘187 patent”). A true and correct copy of the ‘187 patent is attached at Exhibit G.

14. MarcTec is the assignee of U.S. Patent No. 6,638,279, entitled “Method of Positioning Body Tissue Relative to a Bone”, which duly and legally issued on October 28, 2003 and lists Dr. Peter Bonutti as the sole inventor (“the ‘279 patent”). A true and correct copy of the ‘279 patent is attached at Exhibit H.

15. MarcTec is the assignee of U.S. Patent No. 5,814,072, entitled “Method and Apparatus for Use in Anchoring a Suture”, a reexamination certificate for which duly and legally issued on March 29, 2005 and lists Dr. Peter Bonutti as the sole inventor (U.S. Patent No. 5,814,072 and its reexamination certificate are collectively referred to as “the ‘072 patent”). A true and correct copy of the ‘072 patent is attached at Exhibit I.

16. MarcTec has the exclusive right to enforce, including the right to recover past damages and seek other appropriate relief for infringement of U.S. Patent No. 5,948,001, entitled “System For Suture Anchor Placement”, which duly and legally issued on September 7, 1999 and lists Scott Larsen as the sole inventor (“the ‘001 patent”). A true and correct copy of the ‘001 patent is attached at Exhibit J.

17. The '343 patent, the '012 patent, the '002 patent, the '525 patent, the '160 patent, the '713 patent, the '187 patent, the '279 patent, and the '072 patent, and the '001 patent are collectively referred to as the "MarcTec Patents". MarcTec has the right to bring legal action to enforce the MarcTec Patents, and to collect damages for past infringement of the MarcTec Patents.

#### IV. GENERAL ALLEGATIONS

18. Upon information and belief, in or about November 2004, defendant ArthroCare acquired Opus Medical, Inc ("Opus") and Opus' product line. Prior to the acquisition by ArthroCare, Opus manufactured, used, sold and offered for sale what is now known as the AutoCuff<sup>TM</sup> anchoring system. The AutoCuff<sup>TM</sup> anchoring system is designed for, and promoted to be used in, certain surgical procedures, including total arthroscopic rotator cuff surgical repair.

19. The AutoCuff<sup>TM</sup> anchoring system and its method of use, infringe one or more claims of each of the MarcTec Patents.

20. Upon information and belief, Opus learned of the MarcTec Patents prior to or soon after the introduction of the AutoCuff<sup>TM</sup> anchoring system. After learning of the MarcTec Patents, Opus took no action to withdraw the AutoCuff<sup>TM</sup> anchoring system but instead continued to manufacture, use, offer to sell and sell such systems, and to encourage and induce physicians to use such systems in a manner that infringes one or more claims of each of the MarcTec Patents.

21. On information and belief, prior to or soon after ArthroCare's acquisition of Opus, ArthroCare learned of the MarcTec Patents. Thereafter, ArthroCare took no

action to withdraw the AutoCuff<sup>TM</sup> anchoring system but instead proceeded to manufacture, use, offer to sell and sell such anchoring system, and to encourage and induce physicians to use such anchoring system in a manner that infringes one or more claims of each of the MarcTec Patents.

**V. INFRINGEMENT OF THE MARCTEC PATENTS**

22. Defendant ArthroCare, without permission, has been and still is infringing one or more claims of each of the MarcTec Patents as infringement is defined in 35 U.S.C. § 271. Plaintiff MarcTec requests an award of its actual damages caused by such infringement pursuant to 35 U.S.C. § 284.

23. To the extent that Defendant ArthroCare has continued or does continue its infringing activities after receiving notice of the MarcTec Patents, such infringement is willful, entitling MarcTec to the recovery of treble damages pursuant to 35 U.S.C. § 284. In addition, this is an “exceptional case” justifying an award of attorneys’ fees and costs to MarcTec pursuant to 35 U.S.C. § 285.

24. MarcTec believes that defendant ArthroCare will continue to infringe the MarcTec Patents unless enjoined by the Court. MarcTec requests, in addition to an award of its actual damages that have accrued to the date of Judgment, a permanent injunction against infringement from the date of the Judgment until the expiration of the MarcTec Patents.

**PRAYER FOR RELIEF**

WHEREFORE, MarcTec respectfully requests that Judgment be entered in its

favor granting the following relief;

(i) a permanent injunction restraining ArthroCare and its officers, directors, agents, servants, affiliates, employees, attorneys and all persons in active concert or participation with them from further acts of infringement, inducement of infringement, or contributory infringement of the MarcTec Patents;

(ii) an award of damages sufficient to compensate MarcTec for infringement, inducement of infringement, and contributory infringement by ArthroCare and Opus of the MarcTec Patents, including costs, prejudgment interest, and post-judgment interest;

(iii) trebling of damages for willful infringement;

(iv) a finding that this is an exceptional case and an award of MarcTec's reasonable attorneys' fees and costs;

(v) a declaration that the MarcTec Patents are valid, enforceable, and infringed by ArthroCare;

(vi) an order requiring ArthroCare, its officers, directors, agents, servants, affiliates, employees, and attorneys to deliver up to this Court for destruction all products that infringe upon, directly or indirectly or otherwise, any claim of the MarcTec Patents; and

(vii) such other and further relief as the Court deems just.

#### **JURY DEMAND**

Plaintiff hereby demands a trial by jury.

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that that on July 11, 2006, a true and accurate copy of the foregoing pleading was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

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