

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JO VONNA HILL,
Relator,
v.

Civil Action No. 4:10-04174

(1) MICHAEL GLYN BROWN, M.D.;
(2) BROWN MEDICAL CENTER, INC. F/K/A
SURGEON'S MANAGEMENT CO., INC.
(3) NORTHWEST HOUSTON HAND
CENTER, P.A. D/B/A BROWN HAND
CENTER, HOUSTON;
(4) ALLIED ORTHOPEDICS & HAND
DFW, P.A. D/B/A BROWN HAND CENTER,
DFW, F/K/A BHCFFH, DFW, P.A. F/D/B/A
BROWN HAND CENTER;
(5) DEFENDANT ALLIED HAND &
ORTHOPEDICS, AUSTIN, P.A. D/B/A
BROWN HAND CENTER, AUSTIN;
(6) DEFENDANT ALLIED HAND &
ORTHOPEDICS, SAN ANTONIO, P.A. D/B/A
BROWN HAND CENTER, SAN ANTONIO
(7) ALLIED ORTHOPEDICS & HAND,
PHOENIX, LLC D/B/A BROWN HAND
CENTER, PHOENIX F/K/A BHCFFH,
PHOENIX, LLC AND F/K/A BROWN HAND
CENTER, PHOENIX LLC;
(8) JON SORELLE SURGICAL, P.C. D/B/A
BROWN HAND CENTER LAS VEGAS; AND
(9) ALLIED HAND & ORTHOPEDICS,
LAS VEGAS, (LOPEZ) P.C. D/B/A BROWN
HAND CENTER LAS VEGAS.

JURY TRIAL DEMANDED

Defendants.

ORIGINAL COMPLAINT FOR FALSE PATENT MARKING

Relator Jo Vonna Hill ("Relator") makes the following allegations against
Defendants Michael Glyn Brown, M.D.; Brown Medical Center, Inc. f/k/a Surgeon's

Management Co., Inc.; Northwest Houston Hand Center, P.A. d/b/a Brown Hand Center Houston; Allied Orthopedics & Hand DFW, P.A. d/b/a Brown Hand Center, DFW f/k/a BHCFH, DFW, P.A. f/d/b/a Brown Hand Center; Allied Hand & Orthopedics, Austin, P.A., a/k/a Allied Orthopedic, Austin, P.A., d/b/a Brown Hand Center, Austin; Allied Hand & Orthopedics, San Antonio, P.A., d/b/a Brown Hand Center, San Antonio; Allied Orthopedic & Hand, Phoenix, LLC d/b/a Brown Hand Center, Phoenix f/k/a BHCFH, Phoenix, LLC and f/k/a Brown Hand Center, Phoenix LLC; Jon Sorelle Surgical, P.C. d/b/a Brown Hand Center Las Vegas; and Allied Hand & Orthopedics, Las Vegas, (Lopez) P.C. d/b/a Brown Hand Center Las Vegas.

NATURE OF THE ACTION

1. This is a *qui tam* action for false patent marking under 35 U.S.C. § 292.

PARTIES

2. Relator is an individual who resides in Houston, Harris County, Texas.
3. On information and belief, Defendant Michael Glyn Brown, M.D. is an individual residing at 16406 FM 3 South, Normangee, Texas 77871, and may be served at the same address. On information and belief, Defendant Michael Glyn Brown, M.D. is the owner, president, director and/or officer of several of the below listed entities or has individually engaged in the acts detailed herein.
4. On information and belief, Defendant Brown Medical Center, Inc. formerly known as Surgeon's Management Co., Inc., is a Texas corporation with its principal place of business at P.O. Box 924587, Houston, Texas 77292-4587. Defendant Brown Medical Center, Inc. has appointed CT Corporation System, at 350 N. St. Paul St., Suite 2900, Dallas, Texas 75201-4234, as its registered agent for service of process. On

information and belief, Defendant Brown Medical Center, Inc. is the affiliated parent company of, or operates, one or more of the below-listed entities.

5. On information and belief, Defendant Northwest Houston Hand Center, P.A., with an assumed name of Brown Hand Center, Houston, is a Texas professional association with its principal place of business at 3726 Dacoma St., Houston, Texas 77092. Defendant Northwest Houston Hand Center, P.A. has appointed CT Corporation System, at 350 N. St. Paul St., Suite 2900, Dallas, Texas 75201-4234, as its registered agent for service of process.

6. On information and belief, Defendant Allied Orthopedics & Hand DFW, P.A., with an assumed name of Brown Hand Center, DFW, formerly known as BHCFH, DFW, P.A. with a former assumed name of Brown Hand Center, is a Texas professional association with its principal place of business at 1605 Airport Freeway, Bedford, Texas 76021 and registered office address of 350 N. St. Paul St., Dallas, Texas 75201. Defendant Allied Orthopedics & Hand DFW, P.A. has appointed CT Corporation System, at 350 N. St. Paul St., Suite 2900, Dallas, Texas 75201-4234 as its registered agent for service of process.

7. On information and belief, Defendant Allied Hand & Orthopedics, Austin, P.A., with an assumed name of Brown Hand Center, Austin, is a Texas professional association with its principal place of business at 3107 Oak Creek Dr., Ste. 120, Austin, Texas 78727. Defendant Allied Hand & Orthopedics, Austin, P.A. has appointed CT Corporation System, at 350 N. St. Paul St., Ste. 2900, Dallas, Texas 75201-4234, as its registered agent for service of process.

8. On information and belief, Defendant Allied Hand & Orthopedics, San Antonio, P.A., with an assumed name of Brown Hand Center, San Antonio, is a Texas professional association with its principal place of business at 18518 Hardy Oak Blvd #205 San Antonio, TX 78258. Defendant Allied Hand & Orthopedics, San Antonio, P.A., has appointed CT Corporation System, at 350 N. St. Paul St., Ste. 2900, Dallas, Texas 75201-4234, as its registered agent for service of process.

9. On information and belief, Defendant Allied Orthopedics & Hand, Phoenix, LLC with an assumed name of Brown Hand Center, Phoenix, formerly known as BHCFH, Phoenix, LLC and Brown Hand Center, Phoenix, LLC, is an Arizona limited liability company with its principal place of business at 20940 Tatum Blvd. #290, Bldg B, Phoenix, AZ 85050. Defendant Allied Orthopedic and Hand, Phoenix, LLC has appointed CT Corporation System, at 2394 E. Camelback Rd., Phoenix, AZ 85016, as its registered agent for service of process.

10. On information and belief, Defendant Jon Sorelle Surgical, P.C. with a current assumed name of Brown Hand Center Las Vegas, is a Nevada professional corporation with its current or former principal place of business at 2865 Siena Heights Dr., Suite 200, Henderson, NV 89052. On information and belief, the company filed for dissolution on March 2, 2010. Defendant Jon Sorelle Surgical, P.C. has appointed Gregory S. Smith Ltd., at 2520 St. Rose Parkway, Suite 201, Henderson, NV 89704, as its registered agent for service of process.

11. On information and belief, Defendant Allied Hand & Orthopedics, Las Vegas, (Lopez) P.C. with a current assumed name of Brown Hand Center Las Vegas, is a Nevada professional corporation with its principal place of business at 2865 Siena

Heights Dr., Suite 200, Henderson, NV 89052. Defendant Allied Hand and Orthopedics Las Vegas (Lopez) P.C. has appointed The Corporation Trust Company of Nevada, at 311 S. Division St., Carson City, NV 89703, as its registered agent for service of process.

12. All of the foregoing defendants shall be herein referenced collectively as “Defendant.”

JURISDICTION AND VENUE

13. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

14. Defendant is subject to this Court’s specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this Forum, including: (i) at least a portion of the false marking, affixing, or advertising alleged herein; and/or (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and/or services provided to individuals in Texas and in this District.

15. Venue is proper in this district under 28 U.S.C. §§1391(b), 1391(c), and 1395(a). Defendant has and/or continues (and/or has and continues to cause others) to transact business in this District, and has and/or continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising, in this District, the product(s) subject to this Complaint, which Defendant has and/or continues (and/or has and continues to cause others) to make, use, offer for sale, or sell in, and/or import into, this District.

FACTS

16. Defendant has and/or continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising false markings, including, by way of example only, the words “patented”, “patent”, “U.S. patented”, or “United States patents” in connection with an unpatented endoscopic open carpal tunnel release surgical procedure (known as the “Brown Procedure”) in connection with Defendant’s products/articles and/or related advertisements, including, by way of example only, the Brown Procedure, as illustrated in Exhibits A-G.

17. Defendant has never received a patent for the “Brown Procedure”, nor has the Brown Procedure ever been patented. At all times, the Brown Procedure has been an unpatented surgical procedure. Yet, Defendant touts the “patented” or “U.S. patented” nature of the Brown Procedure and claims to have received “United States patents” on the Brown Procedure in numerous advertisements, including those on television, its websites, literature, and radio.

18. Defendant has never had the right to assert that the Brown Procedure was “patented” or “U.S. patented” in any way because the Brown Procedure has never been patented and Defendant does not hold any patent to or on the Brown Procedure. Further Defendant does not hold any patent on any particular technique or claim of the Brown Procedure.

19. Nonetheless, Defendant has and/or continues (and/or has and/or continues to cause others) to mark upon, affix to, and/or use in advertising the words “patented” and “U.S. patented” in combination with the “Brown Procedure.” *See, e.g., Exhibit A*, (claiming on its homepage to be the “[d]evelopers of the patented Brown Procedure for

endoscopic CTS treatment.”);¹ Exhibit B (claiming on its website, for instance, “We developed the patented Brown Procedure” (p. 1); “We use the patented Brown Procedure” (p. 1); “Dr. Brown has gone on to invent many new techniques, including the Brown Procedure . . . for which he holds two U.S. patents” (p. 2); and “Michael G. Brown, M.D. holds United States patents on the Brown Procedure” (p. 15));² Exhibit C (claiming the Brown Hand Center to be “[d]evelopers of the patented Brown Procedure for endoscopic CTS treatment.”);³ Exhibit D (claiming “Dr. Brown has received international acclaim for his patented Brown Procedure”);⁴ Exhibit E, p. 2 (claiming “Michael G. Brown, M.D., developed . . . the Brown Procedure [and] holds United States patents on the Brown Procedure” and “Michael G. Brown, M.D., Founder (retired) is internationally acclaimed for his patented BROWN PROCEDURE for carpal tunnel as reported in the prestigious *Journal of Plastic and Reconstructive Surgery*.”);⁵ Exhibit F, p. 2 (claiming “Michael G. Brown, M.D., Founder (retired) is internationally acclaimed for his patented BROWN PROCEDURE for carpal tunnel as reported in the prestigious *Journal of Plastic and Reconstructive Surgery*.”);⁶ Exhibit G, (announcing via voice-over in its television advertisement, “The doctors at the Brown Hand Center . . . developed the U.S. patented Brown Procedure for endoscopic

¹ Ex. A, Brown Hand Center – Homepage, *available at* <http://www.brownhandcenter.com/home/> (last visited Sept. 15, 2010).

² Ex. B, Brown Hand Center – Information for Patients, *available at* <http://www.brownhandcenter.com/patients/index-new.php> (last visited Sept. 15, 2010).

³ Ex. C, Brown Hand Center – Locations, *available at* <http://www.brownhandcenter.com/locations/index-new.php> (last visited Sept. 15, 2010).

⁴ Ex. D, Brown Hand Center – News, *available at* <http://www.brownhandcenter.com/news/index-new.php> (last visited Sept. 15, 2010).

⁵ Ex. E, Brown Hand Center – Carpal Tunnel Facts, *available at* <http://www.carpaltunnelfacts.com/> (last visited Sept. 15, 2010).

⁶ Ex. F, Brown Hand Center – The Brown Procedure, *available at* <http://www.thebrownprocedure.com/> (last visited Oct. 18, 2010).

carpal tunnel treatment”⁷; Exhibit J, p. 1 (writing that Dr. Michael Brown has run the television advertisement in Phoenix) and p. 3 (containing a comment by a purported employee of a Brown Hand Center that its hand surgeons are “trained by Dr. Brown on the patented Brown Endoscopic Carpal Tunnel and Tigger Finger Release”);⁸ Exhibit K, p. 1 (indicating that the same television advertisement has been playing on TV in the Houston market since at least 2002);⁹ Exhibit L, p. 2 (repeating the oft-claimed falsehood that Dr. Brown “gained national renown for inventing a surgical technique for patients suffering carpal tunnel syndrome”);¹⁰ Exhibit M (writing in 2010 that the ubiquitous television advertisements “run often in Phoenix and his other markets”, including Dallas)¹¹; Exhibit N (writing in 2010 that “Brown is well-known to Houstonians for television commercials touting his high-profile carpal tunnel clinic, the Brown Hand Center”).¹²

20. Defendant is a large, sophisticated company. *See, e.g.*, Exhibit C (indicating several Brown Hand Center locations across the western United States);¹³ *see also* Exhibit D, p. 1 (noting that “Dr. and Brown employs hundreds through their companies . .

⁷ Ex. G, Exemplary Brown Hand Center television advertisement, *available at* <http://dl.dropbox.com/u/7574434/BHC.mp4>. On information and belief, this advertisement has run for years on network and cable television in all markets where Defendant operates.

⁸ Ex. J, James King, *Michael Brown – Family Man/ Former Hand-Surgeon – Arrested for Beating His Wife...Again*, PHOENIX NEW TIMES BLOGS (Aug. 26, 2010), *available at* http://blogs.phoenixnewtimes.com/valleyfever/2010/08/dr_michael_brown_-_the_family.php (last visited Oct. 27, 2010).

⁹ Ex. K, Tim Fleck, *The Good Doctor*, HOUSTON PRESS (Jan. 24, 2002), *also available at* <http://www.houstonpress.com/2002-01-24/news/the-good-doctor/> (last visited Oct. 27, 2010).

¹⁰ Ex. L, Craig Malisow, *Taking His Medicine*, HOUSTON PRESS (Feb. 3, 2005), *also available at* <http://www.houstonpress.com/2005-02-03/news/taking-his-medicine/> (last visited Oct. 27, 2010).

¹¹ Ex. M, *Brown Hand Center Founder Faced DV Charge*, PHOENIX BUSINESS JOURNAL (Aug. 26, 2010), *also available at* http://www.bizjournals.com/phoenix/morning_call/2010/08/brown_hand_center_founder_faces_dv_charge.html (last visited Oct. 27, 2010).

¹² Ex. N, Brian Rogers, *Ex-Houston Hand Surgeon Accused in Wife’s Assault*, HOUSTON CHRONICLE (Aug. 24, 2010), *also available at* <http://www.chron.com/disp/story.mpl/metropolitan/7169419.html> (last visited Oct. 27, 2010).

¹³ Ex. C, *Brown Hand Center – Locations*, *available at* <http://www.brownhandcenter.com/locations/index-new.php> (last visited Sept. 15, 2010).

. . .”¹⁴; Exhibit K, p. 1 (writing that even back in 2002, Dr. Brown’s hand center practice “earned him an estimated \$2.5 million annually”);¹⁵ Exhibit L, p. 2 (writing in 2005 that Dr. Brown “claims to have operated on more than 13,000 patients . . .”).¹⁶

21. Defendant has or routinely retains, sophisticated legal counsel. *See, e.g.*, Exhibit B, pp. 15-16 (noting that Michael G. Brown holds certain patents on surgical instruments.);¹⁷ Exhibit E, p. 2 (same);¹⁸ Exhibit F, p. 2 (noting “Dr. Brown holds multiple United States Patents.”).¹⁹

22. Defendant knows that the Brown Procedure was never patented. *See, e.g.*, Exhibit H (hosting an research article on Defendant’s website listing Michael G. Brown, M.D. as lead author of the article and stating that “the Brown Procedure . . . was developed in 1990” as well as citing articles authored by Michael G. Brown, M.D. in 1992 and 1993 in which he reports on the efficacy of the Brown Procedure);²⁰ Exhibit I (quoting the president of the American Society of Surgery of the Hand as stating, “There’s nothing unique provided by the Brown Hand Center in regards to the surgeries they perform . . . [and] [a]ny hand surgeon can perform all those surgeries.”).²¹

¹⁴ Ex. D, Brown Hand Center – News, *available at* <http://www.brownhandcenter.com/news/index-new.php> (last visited Sept. 15, 2010).

¹⁵ Ex. K, Tim Fleck, *The Good Doctor*, HOUSTON PRESS (Jan. 24, 2002), *also available at* <http://www.houstonpress.com/2002-01-24/news/the-good-doctor/> (last visited Oct. 27, 2010).

¹⁶ Ex. L, Craig Malisow, *Taking His Medicine*, HOUSTON PRESS (Feb. 3, 2005), *also available at* <http://www.houstonpress.com/2005-02-03/news/taking-his-medicine/> (last visited Oct. 27, 2010).

¹⁷ Ex. B, Brown Hand Center – Information for Patients, *available at* <http://www.brownhandcenter.com/patients/index-new.php> (last visited Sept. 15, 2010).

¹⁸ Ex. E, Brown Hand Center – Carpal Tunnel Facts, *available at* <http://www.carpaltunnelfacts.com/> (last visited Sept. 15, 2010).

¹⁹ Ex. F, Brown Hand Center – The Brown Procedure, *available at* <http://www.thebrownprocedure.com/> (last visited Oct. 18, 2010).

²⁰ Ex. H, Brown, Michael G., et al., *The Brown Procedure Endoscopic Carpal Tunnel Release: A Comprehensive Review of 14,722 Patient Cases Over 12 Years*, 121(1) PLAST. RECONSTR. SURG. 347 (Jan. 2008); *also available at* <http://www.brownhandcenter.com/physicians/cts-scientific-data/documents/THC%20Journal%20Paper%20-%20Carpal%20tunn.pdf> (last visited Oct. 18, 2010).

²¹ Ex. I, Todd Ackerman, *Troubles Contradict Former Surgeon’s Persona*, HOUSTON CHRONICLE (Sept. 7, 2010), *also available at* <http://www.chron.com/disp/story.mpl/health/7187923.html> (last visited Oct. 18, 2010).

23. Defendant has years of experience applying for and obtaining, licensing, and/or litigating patents. *See, e.g.*, Exhibit B, pp. 15-16 (noting that Michael G. Brown holds certain patents on surgical instruments.);²² Exhibit E, p. 2 (same);²³ Exhibit F, p. 2 (noting “Dr. Brown holds multiple United States Patents.”).²⁴

24. Defendant knows that the Brown Procedure was never “patented” or “U.S. patented” whatsoever because, *inter alia*, Defendant claims to have “invented” or “developed” the Brown Procedure and if such Procedure had ever been patented, Defendant would have been the owner of such patent and/or would have sought a patent on such Procedure. In short, Defendant would necessarily have been integrally involved in obtaining any patent on the Brown Procedure if one ever would have been obtained. Further, Defendant knows and at least reasonably should know, that the Brown Procedure or an identical or substantially similar procedure can be performed and is performed by other surgeons not affiliated with Defendant using unpatented surgical instruments or instruments with patents not held by Defendant.

25. Defendant has intended and intends to continue to deceive the public by using the words “patented”, “patent”, “U.S. patented”, or “United States patents” in connection with the “Brown Procedure.” *See, e.g.*, Exhibits A-G.

26. As a result of its false marking, Defendant has injured the United States Government, including its sovereign interest, and Defendant’s existent and potential

²² Ex. B, Brown Hand Center – Information for Patients, *available at* <http://www.brownhandcenter.com/patients/index-new.php> (last visited Sept. 15, 2010).

²³ Ex. E, Brown Hand Center – Carpal Tunnel Facts, *available at* <http://www.carpaltunnelfacts.com/> (last visited Sept. 15, 2010).

²⁴ Ex. F, Brown Hand Center – The Brown Procedure, *available at* <http://www.thebrownprocedure.com/> (last visited Oct. 18, 2010).

competitors, as well as the general public, including Relator—a member of the general public incurring the time and expense associated of enforcement.

CLAIM

27. Relator incorporates paragraphs 1–26 as if fully set forth herein. Defendant has violated 35 U.S.C. § 292 by falsely marking, affixing, and/or advertising its products, including the Brown Procedure, with intent to deceive the public.

PRAAYER FOR RELIEF

WHEREFORE, Relator respectfully requests that this Court enter:

- (a). A judgment in favor of Relator that Defendant has falsely marked items in violation of 35 U.S.C. § 292;
- (b). A monetary award pursuant to 35 U.S.C. § 292 in the form of a civil fine of \$500 per falsely marked article, or an alternative amount, as set by the Court, one-half of any such award to be paid to the United States;
- (c). An accounting for any falsely marked articles not presented at trial and a monetary award set by the Court for such falsely marked articles;
- (d). An award of pre-judgment and post-judgment interests on any monetary award;
- (e). An injunction prohibiting Defendant, and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from violating 35 U.S.C. §292; and
- (f). Any and all other relief, at law or equity, to which Relator may show herself to be entitled.

DEMAND FOR JURY TRIAL

Relator, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: October 28, 2010

Respectfully submitted,

PAGEL, DAVIS & HILL, P.C.

/s/ Martyn B. Hill
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