

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

SMITH & NEPHEW, INC.,

Plaintiff,

v.

DEPUY MITEK, INC.,

Defendant.

Civil Action No.: 1:06-cv-10064-NG

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Smith & Nephew, Inc. for its First Amended Complaint against Defendant DePuy Mitek, Inc. alleges the following:

1. Plaintiff Smith & Nephew, Inc. (“Smith & Nephew”) is a Delaware corporation having its principal place of business at 1450 Brooks Road, Memphis, Tennessee and having a further place of business at 150 Minuteman Road, Andover, Massachusetts, in this judicial District.
2. Defendant DePuy Mitek, Inc. (“DePuy Mitek”) is, upon information and belief, a Massachusetts Corporation having its principal place of business at 325 Parmount Drive, Raynham, MA 02767, in this judicial District.
3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.
4. This Court has subject matter jurisdiction over this action pursuant to 28 U. S. C. §§ 1331 and 1338.

5. DePuy Mitek resides in this judicial District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

6. Plaintiff Smith & Nephew is the owner by assignment of United States Letters Patent No. 6,984,237 (“the ‘237 Patent”) entitled “Suture Passing Surgical Instrument,” which was duly and legally issued by the United States Patent and Trademark Office on January 10, 2006, a copy of which is attached as Exhibit A.

7. On information and belief, Defendant DePuy Mitek markets and sells its EXPRESSEW Suture Passer within this judicial District and elsewhere in the United States.

8. DePuy Mitek is infringing, actively inducing infringement of, and/or contributing to the infringement of, the ‘237 Patent, in this judicial District and elsewhere.

9. DePuy Mitek’s acts of infringement are injuring Smith & Nephew and thus Smith & Nephew is entitled to recover damages adequate to compensate for the infringement.

10. DePuy Mitek’s acts of infringement are causing irreparable injury to Smith & Nephew and will continue to cause irreparable injury unless and until enjoined by this Court.

11. Upon information and belief, DePuy Mitek’s infringement of the ‘237 patent has been, and is continuing to be, willful.

WHEREFORE, plaintiff Smith & Nephew prays as follows:

1. That this Court preliminarily and permanently enjoin defendant DePuy Mitek, its officers, agents, employees, representatives, successors and assigns, and any others acting in concert with it, from infringing U.S. Patent No. 6,984,237;

2. That this Court award plaintiff Smith & Nephew damages resulting from defendant DePuy Mitek’s infringement, and award up to treble damages for DePuy Mitek’s willful infringement;

3. That this Court declare this to be an exceptional case within the meaning of 35 U.S.C. § 285.

4. That this Court award plaintiff Smith & Nephew its costs in this action, together with reasonable attorneys' fees and pre-judgment and post-judgment interest; and

5. That this Court grant plaintiff Smith & Nephew such other relief as is just and proper.

6. Plaintiff demands a trial by jury.

By its attorneys,

/s/: Mark J. Hebert
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Certificate of Service

I hereby certify that a true copy of the above document is in the process of being served, together with the Summons, by a process server, upon DePuy Mitek, Inc. at: DePuy Mitek, 325 Paramount Drive, Raynham, MA 02767 (with service expected to be completed on 4-14-06) and that a courtesy copy is being sent by Federal Express to DePuy Mitek's counsel John DiMatteo, Esq.

April 13, 2006
Date

/s/: Mark J. Hebert
Mark J. Hebert