

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

AOB PROPERTIES, LTD., a
Nevada Limited Partnership,

Plaintiff,

Case No.:

vs.

LASER SPINE INSTITUTE, LLC, a Florida Limited
Partnership, LASER SPINE MEDICAL CLINIC, LLC,
a Florida Limited Partnership, LASER SPINE PHYSICAL
THERAPY, LLC, a Florida Limited Partnership,
LASER SPINE SURGICAL CENTER, LLC, a Florida Limited
Partnership, JAMES S. ST. LOUIS, D.O., individually,
MICHAEL PERRY, M.D., individually, CRAIG R.
WOLFF, M.D., individually, and GLEN HAMBURG, M.D.,
individually,

Defendants.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, AOB PROPERTIES, LTD., sues the Defendants, LASER SPINE INSTITUTE, LLC, LASER SPINE MEDICAL CLINIC, LLC, LASER SPINE PHYSICAL THERAPY, LLC, LASER SPINE SURGICAL CENTER, LLC, JAMES S. ST. LOUIS, D.O., MICHAEL PERRY, M.D., CRAIG R. WOLFF, M.D. and GLEN HAMBURG, M.D. for patent infringement as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction in this cause pursuant to 28 USC §1338(a), and the patent laws of the United States, 35 USC §101, et seq.

2. The Court has personal jurisdiction over the Defendants because the Defendants are transacting business within the judicial district, and are infringing AOB's patents within the judicial district.

3. Venue is proper in this district pursuant to 28 USC §1391(b) and §1400(b).

THE PARTIES

4. AOB PROPERTIES LTD. ("AOB") is a Nevada limited partnership with its principal place of business located at 7315 Hudson Avenue, Hudson, Florida. AOB is the owner of all right, title and interest in U.S. Patent Nos. 5241972 ("the '972 Patent"), 5269797 ("the '797 Patent"), 5290279 ("the '279 Patent") and 5472426 ("the '426 Patent").

5. LASER SPINE INSTITUTE, LLC ("LSI"), is a Florida limited liability company located at 3001 N. Rocky Point Drive, Suite 400, Tampa, Florida. Upon belief, LSI is engaging in, or has engaged in, conduct that infringes AOB's patented medical techniques, embodied in the '972 Patent (referenced hereafter as "the Procedure Patent"). In addition, LSI is engaging in, or has engaged in, conduct that infringes AOB's patented medical devices embodied in the '797 Patent, the '279 Patent and the '426 Patent (collectively referenced as "the Device Patents").

6. LASER SPINE MEDICAL CLINIC, LLC ("LSMC"), is a Florida limited liability company located at 3001 N. Rocky Point Drive, Suite 400, Tampa, Florida. Upon belief, LSMC is engaging in, or has engaged in, conduct that infringes the "Procedure Patent" and the "Device Patents".

7. LASER SPINE PHYSICAL THERAPY, LLC ("LSPT"), is a Florida limited liability company located at 3001 N. Rocky Point Drive, Suite 400, Tampa, Florida. Upon belief, LSPT is engaging in, or has engaged in, conduct that infringes the "Procedure Patent" and the

“Device Patents”.

8. LASER SPINE SURGICAL CENTER, LLC (“LSSC”), is a Florida limited liability company located at 3001 N. Rocky Point Drive, Suite 400, Tampa, Florida. Upon belief, LSSC is engaging in, or has engaged in, conduct that infringes the “Procedure Patent” and the “Device Patents”.

9. JAMES S. ST. LOUIS, M.D. is an individual residing within the jurisdiction of this Court. Upon belief, ST. LOUIS is engaging in, or has engaged in, conduct that infringes the “Procedure Patent” and the “Device Patents”.

10. MICHAEL PERRY, M.D., is an individual residing within the jurisdiction of this Court. Upon belief, DR. PERRY is participating in, or has induced participation in, conduct that infringes the “Procedure Patent” and the “Device Patents”.

11. CRAIG WOLFF, M.D., is an individual residing within the jurisdiction of this Court. Upon belief, DR. WOLFF is engaging in, or has engaged in, conduct that infringes the “Procedure Patent” and the “Device Patents”.

12. GLEN HAMBURG, M.D., is an individual residing within the jurisdiction of this Court. Upon belief, DR. HAMBURG is participating in, or has induced participation in, conduct that infringes the “Procedure Patent” and the “Device Patents”.

BACKGROUND

13. During the early 1990's, Dr. Alfred O. Bonati developed several spine surgery procedures and designed specific surgical instruments to correct certain cervical, thoracic and lumbar spinal conditions. He also introduced the use of a laser to remove intervertebral disc tissue during back surgery and to assist in neural decompression.

14. Previous surgical methods for these conditions involved cutting a large incision and removing the tissue, often with a substantial risk of injury to the nerves.

15. On September 7, 1993, the United States Patent and Trademark Office (“USPTO”) issued the ‘972 Patent to Dr. Bonati regarding an arthroscopic “method for debulking tissue to remove pressure on a nerve”. (A copy of the ‘972 Patent is attached as Exhibit “A”).

16. On December 14, 1993, the USPTO issued the ‘797 Patent to Dr. Bonati regarding “cervical discectomy instruments”. (A copy of the ‘797 Patent is attached as Exhibit “B”).

17. On March 1, 1994, the USPTO issued the ‘279 Patent to Dr. Bonati regarding an “arthroscopic tool combining five functions in one”. (A copy of the ‘279 Patent is attached as Exhibit “C”).

18. On December 5, 1995, the USPTO issued the ‘426 Patent to Dr. Bonati regarding “cervical discectomy instruments”. (A copy of the ‘426 Patent is attached as Exhibit “D”).¹

19. On October 1, 1992, Dr. Bonati assigned the ‘972 Patent, the ‘797 Patent and ‘279 Patent to Meditron Devices, Inc. In July 1993, Dr. Bonati assigned the ‘426 Patent to BEI Medical.

20. On April 20, 2001, Meditron Devices, Inc. assigned the ‘972 Patent, ‘797 Patent and ‘279 Patent to Dr. Bonati. On the same date, BEI Medical assigned the ‘426 Patent to Dr. Bonati.

21. On July 12, 2002, Dr. Bonati assigned the Procedure Patent and the Device Patents

¹ The ‘426 Patent was the subject of an *Ex-Parte Reexamination*, which was requested on February 12, 2002. The Ex Parte Reexamination Certificate is attached to Exhibit “D”.

to AOB. (A printout from the USPTO website showing the assignments is attached as Exhibit "E").

22. DR. ST. LOUIS worked for Dr. Bonati at the Gulf Coast Orthopedic Center ("GCOC") in Hudson, Florida, from May 6, 2002, through February 6, 2004. While employed at GCOC, DR. ST. LOUIS was trained in and participated in the patented procedures using the patented surgical devices.

23. In November 2004, after leaving employ at GCOC, DR. ST. LOUIS founded LSI in Tampa, Florida. DR. ST. LOUIS is currently the Chief Spine Surgeon at LSI. (See Exhibit "F", printout from LSI website introducing its physicians).

24. As Chief Spine Surgeon at LSI, DR. ST. LOUIS is performing the patented procedure using the patented surgical devices without license or permission from AOB.

25. Upon information and belief, DR. ST. LOUIS founded, and/or has a financial interest in, LSMC, LSPT, and LSSC. Upon belief, LSI, LSMC, LSPT, and LSSC are affiliated companies that are all performing the patented procedure using the patented surgical devices without license or other permission from AOB.

26. DR. PERRY was employed by GCOC from March 13, 1989 to August 19, 2004. While employed at GCOC, DR. PERRY was trained in the patented procedure using the patented surgical devices. One of DR. PERRY's roles at GCOC was to evaluate patients to determine whether they were appropriate candidates for the proposed surgery.

27. DR. PERRY is currently the Medical Director at LSI, where he evaluates patients to determine whether they are appropriate candidates for the procedures being performed by LSI, LSMC, LSPT, LSSC, DR. ST. LOUIS or DR. WOLFF. (See Exhibit "F").

28. DR. WOLFF was employed by GCOC from February 2, 1999 to August 12, 2003. While employed at GCOC, DR. WOLFF was trained in and participated in the patented procedures using the patented surgical devices. DR. WOLFF is currently employed as an orthopedic surgeon at LSI. (See Exhibit "F").

29. DR. HAMBURG was employed by GCOC from January 1, 2000 to August 19, 2004. While employed at GCOC, DR. HAMBURG was the anesthesiologist who administered anesthesia during surgical procedures. DR. HAMBURG is currently employed as an anesthesiologist at LSI. (See Exhibit "F").

30. According to the LSI website (www.laserspineinstitute.com), the arthroscopic spine procedures offered to LSI's patients include Foraminotomy, Laminotomy, Percutaneous Laproscopic Discectomy, Facet Thermal Ablation, and Spinal Fusion Alternative. (See Exhibit "G", printout from LSI website describing the procedures offered).

31. According to the LSI website (www.laserspineinstitute.com), a "Foraminotomy" is described, in laymen's terms, as follows:

After a local anesthetic is administered, a small incision is made and a round Depuy tube is put into the incision. A series of tubes of increasing size are placed over this first tube, one at a time, to slowly create a small opening to the spine. That allows us to perform foraminotomies with minimal damage to the surrounding muscles. The muscles are pushed out of the way and are not torn or cut. The last tube is about 18 millimeters in diameter (about as big as a small marker) and through this working tube we insert the laser, camera, suction, irrigation and other surgical instruments.

Once everything is in place, the surgeon can begin removing the bone and tissue that is compressing the nerve without distress to the patient. Some patients feel immediate relief during the procedure as the nerve is released. When the procedure is complete, the tube is slowly removed, allowing the muscles to move back into place.

Occasionally, a stitch or two is needed for the incision.

(See Exhibit "H", printout from LSI website describing the Foraminotomy procedure).

32. According to the LSI website (www.laserspineinstitute.com), a "Laminotomy" is described, in laymen's terms, as follows:

After a local anesthetic is administered, a small incision is made and a round Depuy tube is put into the incision. A series of tubes of increasing size are placed over this first tube, one at a time, to slowly create a small opening to the spine. That allows us to perform laminotomies with minimal damage to the surrounding muscles. The muscles are pushed out of the way and are not torn or cut. The last tube is about 18 millimeters in diameter (about as big as a small marker) and through this working tube we insert the laser, camera, suction, irrigation and other surgical instruments.

Once everything is in place, the surgeon can begin the procedure. Some patients feel immediate relief during the laminotomy as the nerve(s) are released. By decompressing the spinal canal the patient's symptoms of back and/or leg pain will resolve.

When the procedure is complete, the tube is slowly removed, allowing the muscles to move back into place. Occasionally, a stitch or two is needed for the incision. After 1-2 hours of monitoring, the patient (with a companion) is free to go.

(See Exhibit "I", printout from LSI website describing the Laminotomy procedure).

33. The LSI website contains a printable brochure describing the step-by-step procedure of a "Micro Endoscopic Discectomy". (See Exhibit "J", printout from LSI website describing Micro Endoscopic Discectomy).

34. The website content, videos and brochures indicate the Defendants and their physicians and employees are improperly performing the patented procedures utilizing the patented surgical devices without the consent of AOB.

35. Advertisements describing the laser spine procedures offered by the Defendant entities also reveal that several of the procedures performed by Defendants and their physicians and employees are identical to the procedures identified in the Procedure Patent. In addition, the instruments necessary to perform the patented procedures are likewise identical to the patented instruments embodied in the Device Patents owned by AOB. (See Exhibit "K", newspaper article quoting Dr. Perry).

36. The Defendants have misrepresented to the public that Dr. St. Louis developed the minimally invasive spine procedures, which were actually developed by Dr. Bonati, as evidenced by the '972 Patent. (See Exhibit "L", Advertisement entitled "*Gentle Healing*", December 2006).

COUNT I - PATENT INFRINGEMENT OF THE '972 PATENT

37. AOB repeats and realleges paragraphs 1 - 36 above, as if set forth herein.

38. This count alleges patent infringement of the '972 Patent against all of the Defendants.

39. On September 7, 1993, the '972 Patent was duly and legally issued to Dr. Bonati for a "method for debulking tissue to remove pressure on a nerve". The '972 Patent was assigned to AOB on July 12, 2002. AOB is the current legal owner of the '972 Patent.

40. As described above, the Defendants are, and have been since at least November 2004, infringing the '972 Patent by performing surgical procedures outlined in and protected by the '972 Patent, and by utilizing the instruments described in and protected by the Device Patents.

41. DR. ST. LOUIS, DR. PERRY, DR. WOLFF and DR. HAMBURG, who are presently employed by LSI, LSMC, LSPT, and/or LSSC, were all previously employed by GCOC where they were introduced to and trained in procedures protected by the '972 Patent.

42. Without license, permission or consent by AOB, owner of the '972 Patent and Device Patents, Defendants founded their own corporate entities and proceeded to perform surgical procedures that infringe the '972 Patent. Defendants are continuing to infringe the '972 Patent by advertising, performing and/or inducing performance of the infringing surgical procedures.

43. AOB has been irreparably damaged by Defendants continuing infringement of the '972 Patent, and will continue to be irreparably damaged unless and until Defendants are enjoined from performing procedures that infringe the procedures embodied in the '972 Patent.

WHEREFORE, Plaintiff, AOB Properties Limited, prays that this Court:

a. Enter an order that the Defendants, their subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation with them, or any of them, be temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter, from infringing, contributing to the infringement of, and/or inducing infringement of, the '972 Patent, and specifically from directly or indirectly making, using, selling, or offering for sale, any products or services embodying the inventions of the patents-in-suit during the life of the claims of the patents-in-suit, without the express written authority of Plaintiff.

b. Enter a judgment of infringement of the '972 Patent against all Defendants;

c. Enter a judgment that the Defendants be directed to fully compensate Plaintiff for all damages attributable to Defendants' infringement of the '972 Patent in an amount according to proof at trial;

- d. Order the Defendants to account for all gains, profits, advantages, and unjust enrichment derived from its infringement of the '972 Patent;
- e. Enter Judgment that the Defendants' infringement of the '972 Patent was wilful and malicious;
- f. Enter Judgment against Defendants for treble damages as a result of the wilful patent infringements;
- g. Determine that this case is "exceptional" under 35 USC §285, as a result of the wilful infringements, and award Plaintiff its reasonable attorney's fees and costs;
- h. Award such other relief as the Court deems appropriate.

COUNT II - PATENT INFRINGEMENT OF THE '797 PATENT

- 44. AOB repeats and realleges paragraphs 1 - 43 above, as if set forth herein.
- 45. This count alleges patent infringement of the '797 Patent against all of the Defendants.
- 46. On December 14, 1993, the '797 Patent was duly and legally issued to Dr. Bonati for a "Cervical discectomy instruments". The '797 Patent was assigned to AOB on July 12, 2002.
- 47. As described above, the Defendants are, and have been since at least November 2004, infringing the '797 Patent by making, using, selling, or offering for sale, instruments embodied in and protected by the '797 Patent.
- 48. DR. ST. LOUIS, DR. PERRY, DR. WOLFF and DR. HAMBURG, who are presently employed by LSI, LSMC, LSPT, and/or LSSC, were all previously employed by GCOC where they were introduced to and trained in the instruments embodied in the '797 Patent.

49. Without license, permission or consent by AOB, owner of the '797 Patent, Defendants founded their own corporate entities and proceeded to make, use and/or sell surgical instruments that infringe the '797 Patent. Defendants are continuing to infringe the '797 Patent by performing the infringing surgical procedures utilizing the infringing surgical instruments.

50. AOB has been irreparably damaged by Defendants continuing infringement of the '797 Patent, and will continue to be irreparably damaged unless and until Defendants are enjoined from performing the patented surgical procedure utilizing surgical devices embodied in the '797 Patent.

WHEREFORE, Plaintiff, AOB Properties Limited, prays that this Court:

a. Enter an order that the Defendants, their subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation with them, or any of them, be temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter, from infringing, contributing to the infringement of, and/or inducing infringement of, the Procedure Patent and Device Patents, and specifically from directly or indirectly making, using, selling, or offering for sale, any products or services embodying the inventions of the patents-in-suit during the life of the claims of the patents-in-suit, without the express written authority of Plaintiff.

b. Enter a judgment of infringement of the '797 Patent against all Defendants;

c. Enter a judgment that the Defendants be directed to fully compensate Plaintiff for all damages attributable to Defendants' infringement of the '797 Patent in an amount according to proof at trial;

- d. Order the Defendants to account for all gains, profits, advantages, and unjust enrichment derived from its infringement of the '797 Patent;
- e. Enter Judgment that the Defendants' infringement of the '797 Patent was wilful and malicious;
- f. Enter Judgment against Defendants for treble damages as a result of the wilful patent infringements;
- g. Determine that this case is "exceptional" under 35 USC §285, as a result of the wilful infringements, and award Plaintiff its reasonable attorney's fees and costs;
- h. Award such other relief as the Court deems appropriate.

COUNT III - PATENT INFRINGEMENT OF THE '279 PATENT

- 51. AOB repeats and realleges paragraphs 1 - 50 above, as if set forth herein.
- 52. This count alleges patent infringement of the '279 Patent against all of the Defendants.
- 53. On March 1, 1994, the '279 Patent was duly and legally issued to Dr. Bonati for a "Arthroscopic tool combining five functions in one". The '279 Patent was assigned to AOB on July 12, 2002.
- 54. As described above, the Defendants are, and have been since at least November 2004, infringing the '279 Patent by making, using, selling, or offering for sale, instruments embodied in and protected by the '279 Patent.
- 55. DR. ST. LOUIS, DR. PERRY, DR. WOLFF and DR. HAMBURG, who are presently employed by LSI, LSMC, LSPT, and/or LSSC, were all previously employed by GCOC where they were introduced to and trained in the instrument embodied in the '279 Patent.

56. Without license, permission or consent by AOB, owner of the '279 Patent, Defendants founded their own corporate entities and proceeded to make, use and/or sell surgical instruments that infringe the '279 Patent. Defendants are continuing to infringe the '279 Patent by performing the infringing surgical procedures utilizing the infringing surgical instruments.

57. AOB has been irreparably damaged by Defendants continuing infringement of the '279 Patent, and will continue to be irreparably damaged unless and until Defendants are enjoined from performing the patented surgical procedure utilizing surgical devices embodied in the '279 Patent.

WHEREFORE, Plaintiff, AOB Properties Limited, prays that this Court:

a. Enter an order that the Defendants, their subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation with them, or any of them, be temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter, from infringing, contributing to the infringement of, and/or inducing infringement of, the Procedure Patent and Device Patents, and specifically from directly or indirectly making, using, selling, or offering for sale, any products or services embodying the inventions of the patents-in-suit during the life of the claims of the patents-in-suit, without the express written authority of Plaintiff.

b. Enter a judgment of infringement of the '279 Patent against all Defendants;

c. Enter a judgment that the Defendants be directed to fully compensate Plaintiff for all damages attributable to Defendants' infringement of the '279 Patent in an amount according to proof at trial;

d. Order the Defendants to account for all gains, profits, advantages, and unjust enrichment derived from its infringement of the '279 Patent;

e. Enter Judgment that the Defendants' infringement of the '279 Patent was wilful and malicious;

f. Enter Judgment against Defendants for treble damages as a result of the wilful patent infringements;

g. Determine that this case is "exceptional" under 35 USC §285, as a result of the wilful infringements, and award Plaintiff its reasonable attorney's fees and costs;

h. Award such other relief as the Court deems appropriate.

COUNT IV - PATENT INFRINGEMENT OF THE '426 PATENT

58. AOB repeats and realleges paragraphs 1 - 57 above, as if set forth herein.

59. This count alleges patent infringement of the '426 Patent against all of the Defendants.

60. On December 5, 1995, the '426 Patent was duly and legally issued to Dr. Bonati for "Cervical Discectomy Instruments". The '426 Patent was assigned to AOB on July 12, 2002.

61. As described above, the Defendants are, and have been since at least November 2004, infringing the '426 Patent by making, using, selling, or offering for sale, instruments embodied in and protected by the '426 Patent.

62. DR. ST. LOUIS, DR. PERRY, DR. WOLFF and DR. HAMBURG, who are presently employed by LSI, LSMC, LSPT, and/or LSSC, were all previously employed by GCOC where they were introduced to and trained in the instruments embodied in the '426 Patent.

d. Order the Defendants to account for all gains, profits, advantages, and unjust enrichment derived from its infringement of the '279 Patent;

e. Enter Judgment that the Defendants' infringement of the '279 Patent was wilful and malicious;

f. Enter Judgment against Defendants for treble damages as a result of the wilful patent infringements;

g. Determine that this case is "exceptional" under 35 USC §285, as a result of the wilful infringements, and award Plaintiff its reasonable attorney's fees and costs;

h. Award such other relief as the Court deems appropriate.

COUNT IV - PATENT INFRINGEMENT OF THE '426 PATENT

58. AOB repeats and realleges paragraphs 1 - 57 above, as if set forth herein.

59. This count alleges patent infringement of the '426 Patent against all of the Defendants.

60. On December 5, 1995, the '426 Patent was duly and legally issued to Dr. Bonati for "Cervical Discectomy Instruments". The '426 Patent was assigned to AOB on July 12, 2002.

61. As described above, the Defendants are, and have been since at least November 2004, infringing the '426 Patent by making, using, selling, or offering for sale, instruments embodied in and protected by the '426 Patent.

62. DR. ST. LOUIS, DR. PERRY, DR. WOLF and DR. HAMBURG, who are presently employed by LSI, LSMC, LSPT, and/or LSSC, were all previously employed by GCOC where they were introduced to and trained in the instruments embodied in the '426 Patent.

63. Without license, permission or consent by AOB, owner of the '797 Patent, Defendants founded their own corporate entities and proceeded to make, use and/or sell surgical instruments that infringe the '797 Patent. Defendants are continuing to infringe the '426 Patent by performing the infringing surgical procedures utilizing the infringing surgical instruments.

64. AOB has been irreparably damaged by Defendants continuing infringement of the '797 Patent, and will continue to be irreparably damaged unless and until Defendants are enjoined from performing the patented surgical procedure utilizing surgical devices embodied in the '797 Patent.

WHEREFORE, Plaintiff, AOB Properties Limited, prays that this Court:

a. Enter an order that the Defendants, their subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation with them, or any of them, be temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter, from infringing, contributing to the infringement of, and/or inducing infringement of, the Procedure Patent and Device Patents, and specifically from directly or indirectly making, using, selling, or offering for sale, any products or services embodying the inventions of the patents-in-suit during the life of the claims of the patents-in-suit, without the express written authority of Plaintiff.

b. Enter a judgment of infringement of the '426 Patent against all Defendants;

c. Enter a judgment that the Defendants be directed to fully compensate Plaintiff for all damages attributable to Defendants' infringement of the '426 Patent in an amount according to proof at trial;

- d. Order the Defendants to account for all gains, profits, advantages, and unjust enrichment derived from its infringement of the '426 Patent;
- e. Enter Judgment that the Defendants' infringement of the '426 Patent was wilful and malicious;
- f. Enter Judgment against Defendants for treble damages as a result of the wilful patent infringements;
- g. Determine that this case is "exceptional" under 35 USC §285, as a result of the wilful infringements, and award Plaintiff its reasonable attorney's fees and costs;
- h. Award such other relief as the Court deems appropriate.

JURY DEMAND

COMES NOW the Plaintiff, AOB PROPERTIES, LTD, by and through its undersigned attorneys, hereby demands a trial by jury of all issues so triable in this cause.

This is the 12th day of February, 2008.


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