

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MEDTRONIC SOFAMOR DANEK USA, INC.;
WARSAW ORTHOPEDIC, INC.; MEDTRONIC
PUERTO RICO OPERATIONS CO.; and
MEDTRONIC SOFAMOR DANEK
DEGGENDORF, GmbH,

Plaintiffs,

v.

BLACKSTONE MEDICAL, INC.,

Defendant.

Civil Action No. 06-30165-MAP

FIRST AMENDED COMPLAINT

Plaintiffs Medtronic Sofamor Danek USA, Inc. (“Medtronic USA”), Warsaw Orthopedic, Inc. (“Warsaw”), Medtronic Puerto Rico Operations Co. (“Medtronic Puerto Rico”), and Medtronic Sofamor Danek Deggendorf, GmbH (“Medtronic Deggendorf”) bring this First Amended Complaint against defendant Blackstone Medical, Inc. (“Blackstone”), alleging as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Medtronic USA is a Tennessee corporation, with its principal place of business in Memphis, Tennessee. Medtronic USA is a leading manufacturer of medical devices and instruments for use in the spine, including cervical and lumbar plates, rods, and other spinal implants.

2. Plaintiff Warsaw is an Indiana corporation, with its principal place of business in Winona Lake, Indiana.

3. Plaintiff Medtronic Puerto Rico is a Cayman Islands corporation, with its principal place of business in Villalba, Puerto Rico.

4. Plaintiff Medtronic Deggendorf is a German corporation, with its principal place of business in Deggendorf, Germany.

5. Defendant Blackstone is a Massachusetts corporation, with its principal place of business in Springfield, Massachusetts. Blackstone manufactures and markets various medical devices and instruments for use in the spine, including plates and other implants.

6. This action arises under the patent laws of the United States, Title 35 of the United States Code.

7. This Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1338(d).

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and/or 1400(b).

COUNT I

9. United States Patent No. 6,926,718 B1 (the “‘718 patent,” a copy of which is attached hereto as Exhibit A), entitled “Multilock Anterior Cervical Plating System,” issued on August 9, 2005. Plaintiff Warsaw is the exclusive licensee of the ‘718 patent. Plaintiffs Medtronic USA, Medtronic Puerto Rico, and Medtronic Deggendorf are co-exclusive licensees of the ‘718 patent from Plaintiff Warsaw and, together with Plaintiff Warsaw, share the exclusive right to bring suit for infringement of the patent.

10. Blackstone is infringing and has infringed the ‘718 patent, including, without limitation, by making, selling, offering for sale, and using within the United States its Anterior Cervical Plate, 3° Anterior Cervical Plate, and Hallmark products.

11. Blackstone's infringement of the '718 patent is and has been willful and deliberate, has caused and will continue to cause Plaintiffs substantial damages, and has caused and will continue to cause Plaintiffs irreparable harm for which there is no adequate remedy at law.

COUNT II

12. United States Patent No. 6,936,050 B2 (the "'050 patent," a copy of which is attached hereto as Exhibit B), entitled "Multilock Anterior Cervical Plating System," issued on August 30, 2005. Plaintiff Warsaw is the exclusive licensee of the '050 patent. Plaintiffs Medtronic USA, Medtronic Puerto Rico, and Medtronic Deggendorf are co-exclusive licensees of the '050 patent from Plaintiff Warsaw and, together with Plaintiff Warsaw, share the exclusive right to bring suit for infringement of the patent.

13. Blackstone is infringing and has infringed the '050 patent, including, without limitation, by making, selling, offering for sale, and using within the United States its Anterior Cervical Plate and 3° Anterior Cervical Plate products.

14. Blackstone's infringement of the '050 patent is and has been willful and deliberate, has caused and will continue to cause Plaintiffs substantial damages, and has caused and will continue to cause Plaintiffs irreparable harm for which there is no adequate remedy at law.

COUNT III

15. United States Patent No. 6,936,051 B2 (the "'051 patent," a copy of which is attached hereto as Exhibit C), entitled "Multilock Anterior Cervical Plating System," issued on August 30, 2005. Plaintiff Warsaw is the exclusive licensee of the '051 patent. Plaintiffs Medtronic USA, Medtronic Puerto Rico, and Medtronic Deggendorf are co-exclusive licensees

of the '051 patent from Plaintiff Warsaw and, together with Plaintiff Warsaw, share the exclusive right to bring suit for infringement of the patent.

16. Blackstone is infringing and has infringed the '051 patent, including, without limitation, by making, selling, offering for sale, and using within the United States its Anterior Cervical Plate and 3° Anterior Cervical Plate products.

17. Blackstone's infringement of the '051 patent is and has been willful and deliberate, has caused and will continue to cause Plaintiffs substantial damages, and has caused and will continue to cause Plaintiffs irreparable harm for which there is no adequate remedy at law.

COUNT IV

18. United States Patent No. 6,398,783 (the "783 patent," a copy of which is attached hereto as Exhibit D), entitled "Multilock Anterior Cervical Plate," issued on Jun. 4, 2002. Plaintiff Warsaw is the exclusive licensee of the '783 patent. Plaintiffs Medtronic USA, Medtronic Puerto Rico, and Medtronic Deggendorf are co-exclusive licensees of the '783 patent from Plaintiff Warsaw and, together with Plaintiff Warsaw, share the exclusive right to bring suit for infringement of the patent.

19. Blackstone is infringing and has infringed the '783 patent, including, without limitation, by making, selling, offering for sale, and using within the United States its Hallmark products.

20. Blackstone's infringement of the '783 patent is and has been willful and deliberate, has caused and will continue to cause Plaintiffs substantial damages, and has caused and will continue to cause Plaintiffs irreparable harm for which there is no adequate remedy at law.

COUNT V

21. United States Patent No. 7,066,961 B2 (the “‘961 patent,” a copy of which is attached hereto as Exhibit E), entitled “Spinal Implant,” issued on June 27, 2006. Plaintiff Warsaw is the owner, by assignment, of the ‘961 patent. Plaintiffs Medtronic USA, Medtronic Puerto Rico, and Medtronic Deggendorf are co-exclusive licensees of the ‘961 patent and, together with Plaintiff Warsaw, share the exclusive right to bring suit for infringement of the patent.

22. Blackstone is infringing and has infringed the ‘961 patent, including, without limitation, by making, selling, offering for sale, and using within the United States certain sizes of its Construx Mini PEEK VBR System products.

23. Blackstone’s infringement of the ‘961 patent is and has been willful and deliberate, has caused and will continue to cause Plaintiffs substantial damages, and has caused and will continue to cause Plaintiffs irreparable harm for which there is no adequate remedy at law.

WHEREFORE, Plaintiffs request that the Court:

- A. Adjudge that the ‘718, ‘050, ‘051, ‘783, and ‘961 patents are valid and enforceable;
- B. Adjudge that Blackstone is infringing and has infringed the ‘718, 050, ‘051, ‘783, and ‘961 patents;
- C. Preliminarily and permanently enjoin Blackstone and its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, and assigns, and all those acting for it and on its behalf, or acting in concert with it, from further infringement of the ‘718, ‘050, ‘051, ‘783, and ‘961 patents;
- D. Award compensatory damages to Plaintiffs, together with interest;

E. Award treble damages to Plaintiffs for Blackstone's willful infringement of the '718, '050, '051, '783, and '961 patents;

F. Award Plaintiffs their costs and reasonable attorneys fees under 35 U.S.C. § 285; and

G. Award Plaintiffs any other such relief as the Court deems just and proper.

JURY DEMAND

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted,

MEDTRONIC SOFAMOR DANEK USA, INC.;
WARSAW ORTHOPEDIC, INC.; MEDTRONIC
PUERTO RICO OPERATIONS CO.; and
MEDTRONIC SOFAMOR DANEK
DEGGENDORF, GmbH,

By their attorneys,

/s/ Cynthia D. Vreeland

Cynthia D. Vreeland (BBO #635143)
Timothy R. Shannon (BBO #655325)
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

David L. Cavanaugh (BBO #566162)
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 663-6000

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