



IN THE CIRCUIT COURT FOR JEFFERSON COUNTY, ALABAMA
CIVIL ACTION NO. CV-2008-900173

**APPLIED SURGICAL, LLC; and
DAVE ALEXANDER,**

Plaintiff

vs.

STRYKER, INC.;
STRYKER CORPORATION;
STRYKER ENDOSCOPY;
STRYKER SALES CORPORATION
LARRY FILIPPINI; and

Fictitious Party Defendants No. 1, whether singular or plural, that individual or entity or those individuals or entities who or which learned about the Gemini System and/or its specifics and disclosed that information to agents of Stryker or to others that disclosed the information to agents of Stryker; **No. 2**, whether singular or plural, that individual or entity or those individuals or entities who or which aided Stryker in the development of its competing product with actual or constructive knowledge of the fraud, misappropriation of trade secrets or conversion); whose more correct names and identities are unknown to plaintiff after diligent search, but who will be correctly named and identified when ascertained; **No. 3**, whether singular or plural, is that individual or entity or those individuals or entities who or which were involved in any way in the development of the system marketed by Stryker as the iSWITCH Wireless Universal Footswitch or its previous or subsequent versions or adaptations; **No. 4**, whether singular or plural, is that individual or entity or those individuals or entities who or which contacted or communicated with Applied Surgical or its representatives; **No. 5**, whether singular or plural, is that individual or entity or those individuals or entities who or which were involved in any way in the decision(s) to contact or communicate with Applied Surgical or its representatives; **No. 6**, whether singular or plural, is that individual or entity or those individuals or entities who or which were involved behind the scenes in the development of Stryker's competing system or the decisions to contact or communicate with Applied Surgical or its representatives; **and No. 7**, whether singular or plural, is that entity or those entities which are or were subsidiaries, partners, affiliates, agents, corporations or business entities, which are the proper corporate/business defendants to this lawsuit.

Defendants

AMENDED COMPLAINT

This amendment simply adds as defendants the following Stryker entities: Stryker Corporation, Stryker Endoscopy, Stryker Sales Corporation and Fictitious Defendant No. 7.

THE PARTIES

Plaintiffs

1. Plaintiff, **APPLIED SURGICAL, LLC, at times d/b/a ADS, Inc., (hereinafter, "Applied Surgical")**, is a local Alabama company formed in partnership with the UAB Research Foundation to develop innovative solutions and products for the healthcare industry.
2. Plaintiff, **DAVE ALEXANDER (hereinafter, "Alexander")**, is the president of Applied Surgical, the controlling stockholder, and the primary inventor and developer of the Gemini System.

Defendants

3. Defendant, **STRYKER, INC.** is a global company that manufactures and markets orthopedic replacement parts, surgical equipment and other medical products. Defendant, **STRYKER CORPORATION**, is one Stryker entity headquartered in Kalamazoo, Michigan. Defendant, **STRYKER ENDOSCOPY**, is another Stryker entity headquartered in San Jose, California. Defendant, **STRYKER SALES CORPORATION**, is another Stryker entity, headquartered in Kalamazoo, and registered with the Alabama Secretary of State. Hereinafter, all the Stryker defendants will be referred to collectively as "**Stryker.**"
4. Defendant, **LARRY FILIPPINI (hereinafter, "Filippini")**, is an agent of Stryker and its chief salesperson in Alabama.

Fictitious Party Defendants

5. **No. 1**, whether singular or plural, is that individual or entity or those individuals or entities who or which learned about the Gemini System and/or its specifics and disclosed that information to agents of Stryker or to others that disclosed the information to agents of Stryker.

6. **No. 2**, whether singular or plural, is that individual or entity or those individuals or entities who or which aided Stryker in the development of its competing product with actual or constructive knowledge of the fraud, misappropriation of trade secrets or conversion.

7. **No. 3**, whether singular or plural, is that individual or entity or those individuals or entities who or which were involved in any way in the development of the system marketed by Stryker as the iSWITCH Wireless Universal Footswitch or its previous or subsequent versions or adaptations.

8. **No. 4**, whether singular or plural, is that individual or entity or those individuals or entities who or which contacted or communicated with Applied Surgical or its representatives.

9. **No. 5**, whether singular or plural, is that individual or entity or those individuals or entities who or which were involved in any way in the decision(s) to contact or communicate with Applied Surgical or its representatives.

10. **No. 6**, whether singular or plural, is that individual or entity or those individuals or entities who or which were involved behind the scenes in the development of Stryker's competing system or the decisions to contact or communicate with Applied Surgical or its representatives.

11. **No. 7**, whether singular or plural, is that entity or those entities which are or were subsidiaries, partners, affiliates, agents, corporations or business entities, which are the proper corporate/business defendants to this lawsuit.

12. Plaintiffs aver that, after diligent search, the identities of the Fictitious Party Defendants are otherwise unknown to the Plaintiffs at this time, or if their names are known to the Plaintiffs at this time, their identities as proper party defendants are not known to Plaintiffs at this time, but their true names will be substituted by amendment when ascertained.

SUMMARY OF FACTS

13. In September 2001, at the request of UAB surgeons and in cooperation with the UAB Research Foundation (UABRF), Applied Surgical began to develop a product, now known as the Gemini Surgical Control and Display System (hereinafter, "Gemini System"), which greatly increases efficiency and safety during surgery by integrating multiple surgical devices through one central control unit, using Intelligent Interface Assembly (IIA) cables to interface with the various devices and a single master foot control to operate each attached device.

14. Agents and representatives of Applied Surgical first began work on the Gemini System in September of 2001, had the first prototype of the central control unit built and working by January 2003, and filed their first patent application on October 28, 2003. The design required intense investment, testing, creative development and labor. The product received FDA 510(k) clearance in September of 2005, and the first completed product was shipped for use at U.C. Irvine Medical Center in November 2005.

15. While development of the Gemini System continued, agents of Applied Surgical were at the same time attempting to market the product and the company for sale or other partnership-like ventures. Because of the sensitive nature of the intellectual property involved, Alexander and Applied Surgical made every effort to keep the information confidential, including continued use of signed confidentiality agreements. Applied Surgical ultimately hired an investment bank to promote its product confidentially. The investment firm constructed financial models

predicting multi-billion dollar profits, and potential purchasers valued the company and its unique intellectual property as an opportunity worth a multi-million dollar investment.

16. At some in or before June 2003, agents of Stryker learned that Applied Surgical was developing the Gemini System. Under the guise that Stryker was interested in purchasing the company, purchasing the technology, and/or partnering to develop the product, agents of Stryker repeatedly endeavored to discover and did discover insights into the Gemini System from UAB doctors, Alexander and other agents of Applied Surgical. Stryker made affirmative misrepresentations and concealed material facts in numerous phone conversations, emails and in-person meetings.

17. The scheme to defraud, misappropriate trade secrets and convert intellectual property took place in three primary series of events:

17.1. The 2003 scheme:

17.1.1. Sometime in or before June 2003, agents of Stryker – through a process still unknown to plaintiffs – discovered the general concept behind the Gemini System and approached UAB inventor and surgeon Dr. Rizk El-Galley to inquire further about the product.

17.1.2. Based on information they learned, agents of Stryker on June 27, 2003, filed an application attempting – through crude drawings and scant description – to patent portions of the Gemini System.

17.2. The 2004 scheme:

17.2.1. During the summer and fall of 2004, agents of Stryker continued to question Alexander and UAB surgeons regarding the specifics of the system, while at the same time, refusing to sign confidentiality agreements.

17.2.2. Based on information it learned, Stryker continued to develop a competing product and filed two more patent applications – one in November 2004 and another in December 2004 – attempting to gain exclusive rights to the concepts underlying the Gemini System.

17.3. And the 2005 scheme:

17.3.1. In a meeting held on November 10, 2005, agents of Stryker – after signing confidentiality agreements – viewed a demonstration of the Gemini System, were able to inspect the product, and repeatedly questioned representatives of Applied Surgical about the specifics of the system, including how Applied Surgical was able to develop the IIA cables, which are the core of a system that controls multiple and various surgical devices through one central control unit.

17.3.2. By the Summer of 2007, Stryker had begun to market and sell a product that now included a version of the Gemini IIA cables, which is capable of integrating surgical devices manufactured by other companies through the Stryker control unit.

18. In or about February 2007, Applied Surgical discovered that Stryker was marketing and selling a product to compete with the Gemini System that could have only been developed under such a schedule with assistance from the proprietary information, intellectual property and trade secrets obtained by Stryker agents during their numerous conversations with Applied Surgical representatives. A few months later, Applied Surgical learned that Stryker had been attempting to gain exclusive patent rights to such a product while it continued to obtain information about the Gemini System from Alexander and other representatives of Applied Surgical.

19. Because potentially competing patent applications have been filed and Stryker's competing product exists on the market, the market value and marketability of Applied Surgical

and its Gemini System have been drastically reduced. Stryker is and will continue to profit and benefit immensely from the sale of this product.

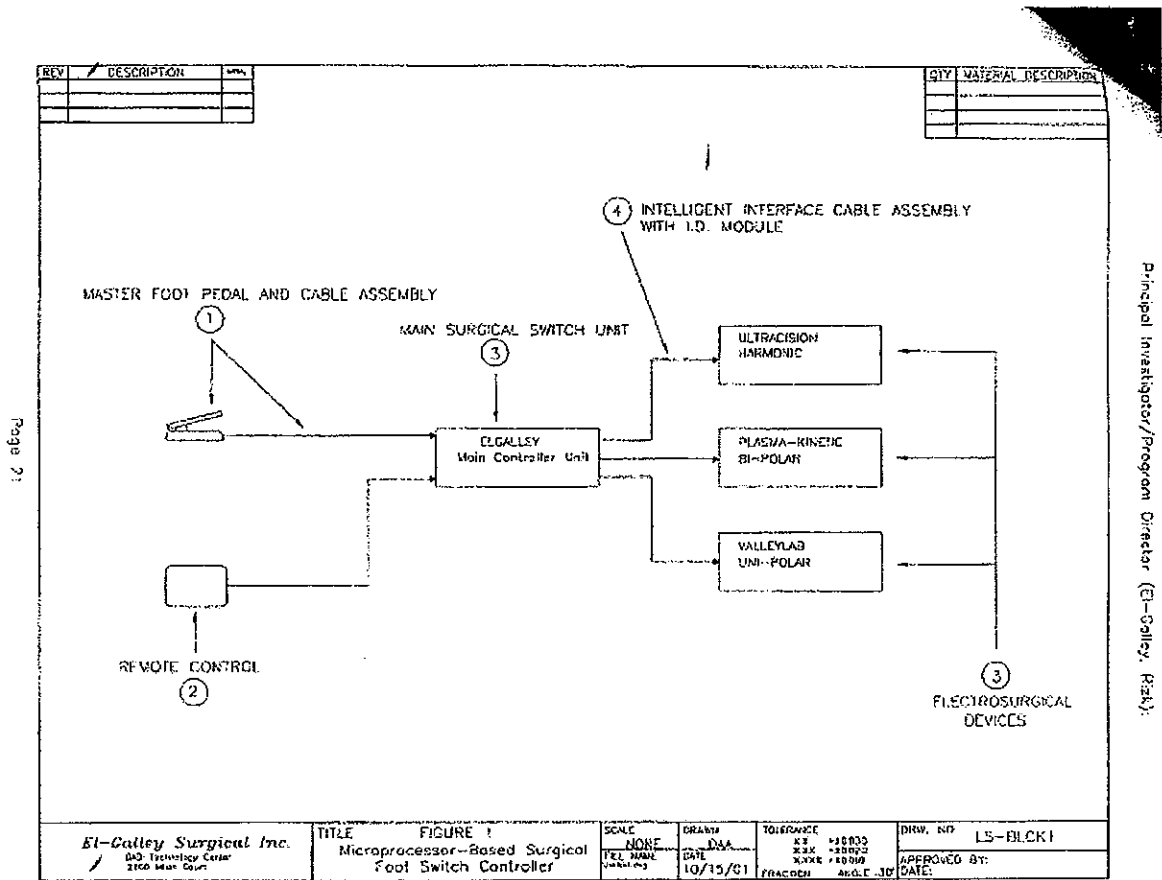
FACTS

20. In or about September 2001, Alexander began his initial development of the Gemini System after conversations and requests from UAB surgeons, specifically Dr. El-Galley, and representatives of the UAB Research Foundation.

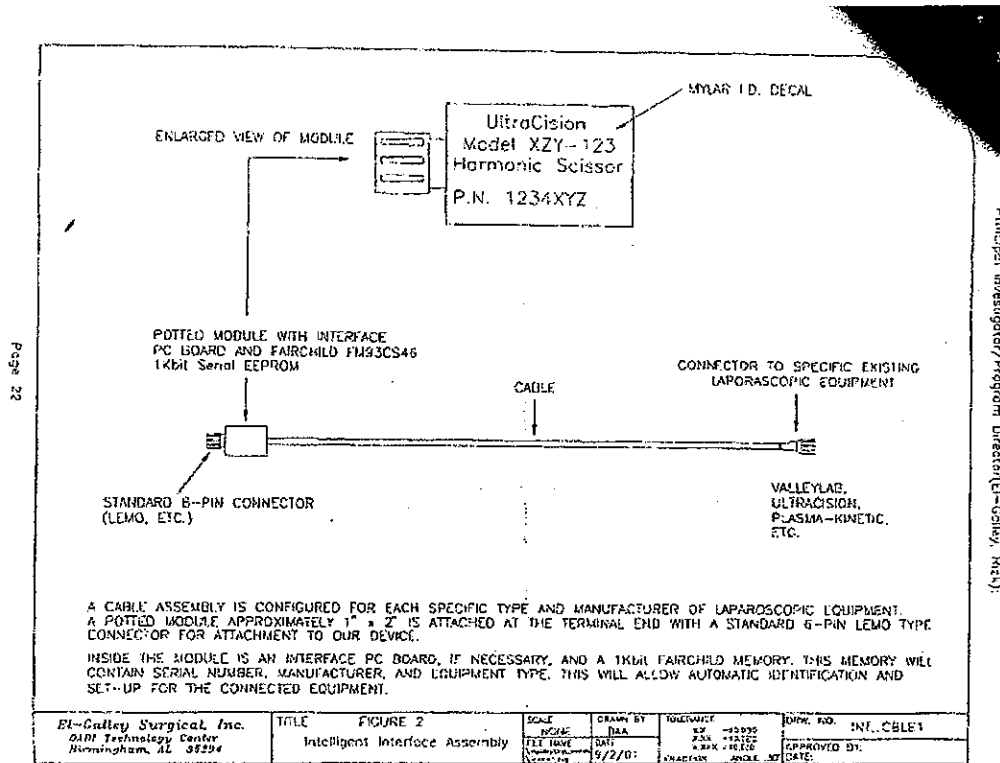
21. The system is designed to solve a decades-old and very common problem in laparoscopic or other procedures where doctors are required to use multiple surgical devices during one surgery. Each device, whether it is a laser, ultrasonic or other surgical device, usually comes into the operating room with its own cart, set of cables and footswitches. As doctors switch back and forth among each surgical device, safety and efficiency decrease dramatically. The Gemini System allows each of those surgical devices to integrate through one central control unit – somewhat analogous to a universal remote control for your TV, VCR, DVD and stereo – so that the doctor is still able to use each device but also control each device through one video screen and through one footswitch. The Gemini System also incorporates an integrated automatic smoke evacuator system, know as SurgiClear, by which surgical smoke, steam, and debris are removed automatically while patients remain insufflated to accommodate surgery. But the core of the Gemini System is the central control unit and integrated IIA cables, which allow multiple pieces of surgical equipment – with various operating processes, produced by various manufacturers – to seamlessly interface through the one control unit via the IIA cables.

22. On or about April 1, 2002, Alexander, Dr. El-Galley and the UAB Research Foundation filed their Small Business Technology Transfer (STTR) grant application.

22.1. The application included advanced and detailed descriptions and drawings (exemplified below) of what would become the Gemini System.



22.2. The application also included a detailed description and drawing (exemplified below) describing and depicting how the IIA cables would allow integration of various surgical devices through the Gemini's control unit.



23. By January 2003, Alexander had the first prototype of the Gemini System's central control unit built and working.

24. On a date in time after Applied Surgical's April 2002 grant application was filed and after the Gemini prototype was built and working in January 2003, but before June 25, 2003, agents of Stryker learned about the general concept behind the Gemini System and that Dr. El-Galley was involved in its development.

24.1. It is not known at this time how agents of Stryker first heard about the development of the Gemini System or the involvement of Dr. El-Galley.

24.2. The date on which agents of Stryker learned about the Gemini System and the involvement of Dr. El-Galley will be represented henceforth as "*Date A*."

25. At some time after *Date A* (when agents of Stryker learned about the Gemini System) but prior to June 25, 2003, agents of Stryker approached Dr. El-Galley to question him about the Gemini System.

25.1. The contact between Dr. El-Galley and Stryker involved a series of communications, including at least one face-to-face meeting.

25.2. During the communication, agents of Stryker told Dr. El-Galley that they had heard he was working on a system to control multiple surgical devices from a single control unit and wanted more details.

25.3. Dr. El-Galley refused to discuss the system in detail, but did provide some insight into the product.

25.4. During the communications, agents of Stryker told Dr. El-Galley that they were trying to develop a wireless footswitch, not a central control unit. They specifically told him that their footswitch product would not be a competitor to the universal control system Dr. El-Galley and Alexander were developing.

26. On June 27, 2003, following *Date A* and the communication with Dr. El-Galley, Stryker filed an application with the U.S. Patent and Trademark Office attempting to patent the concept of the central control unit that would eventually become the Gemini System.

26.1. The patent application itself reveals the nature of the Stryker fraud. The patent is entitled "Foot-Operated Control Console for Wirelessly Controlling Medical Devices" and is primarily focused on detailed descriptions of a wireless footswitch and charging apparatus with very little description of the multi-device control function of the system.

26.1.1. The portions of the patent dealing with the wireless footswitch (exemplified below) are clearly further along in development than the other portions.

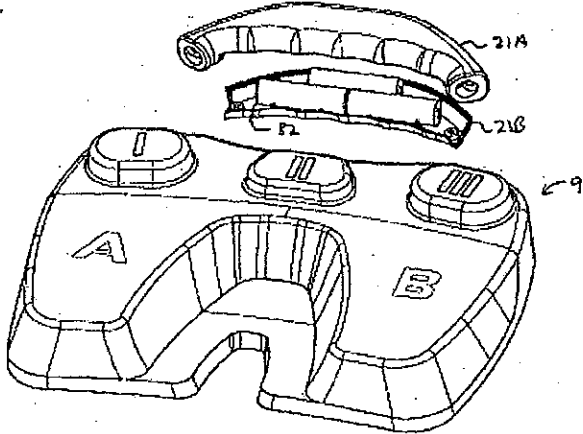


FIG. 2A

26.1.2. The portions dealing with the concept of a central control unit that will control multiple devices (exemplified below) are clearly hurried: hand-drawn without any detailed description of how the control unit would work internally.

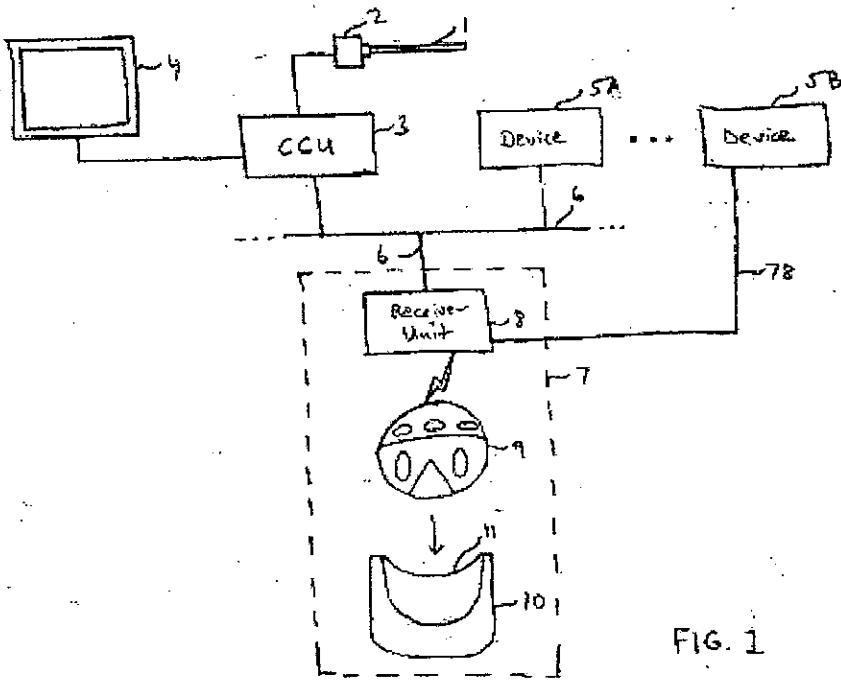


FIG. 1

26.1.3. This patent application refers to the central control unit as a “receiver unit.” It does not include any realistic, intelligent or effective description of how the receiver unit would function (as exemplified below).

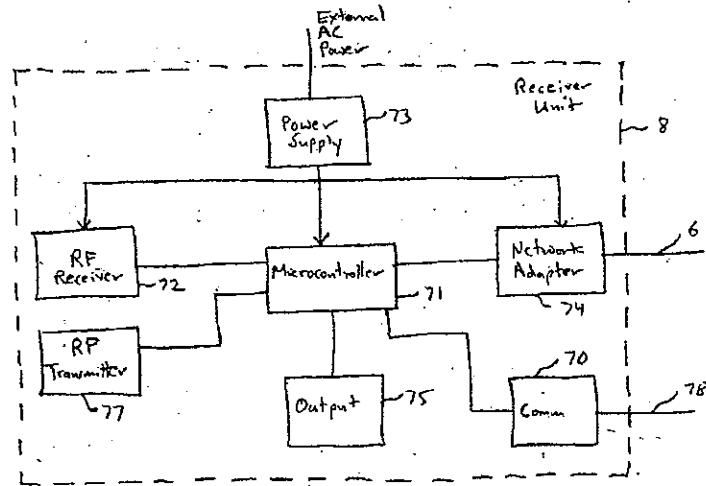


FIG. 7A

26.1.4. While the patent application includes a drawing, which depicts wires connecting the “receiver unit” to multiple other devices, it includes absolutely no discussion of how these connection devices would function. Ultimately, these connection devices – called IIA cables or intelligent adapters in the Gemini System and referred to as “dongles” in later patent applications filed by Stryker – are at the heart of a system that controls multiple surgical devices from one station.

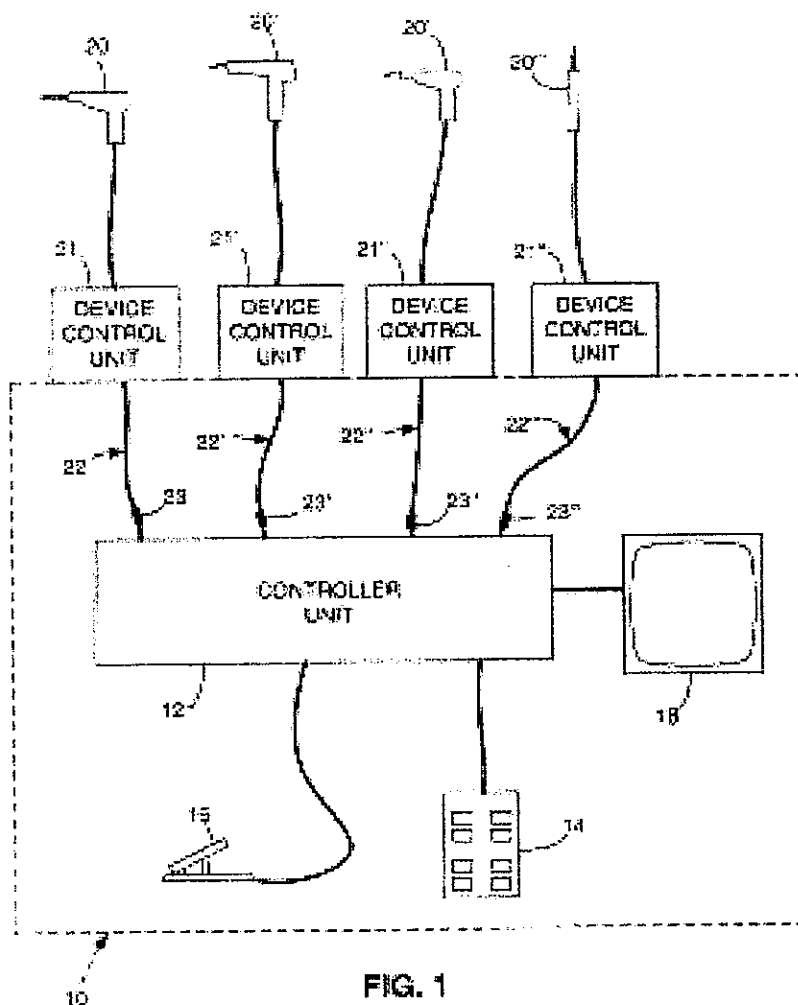
26.2. Stryker filed this 2003 patent application as “hidden,” so that other companies or inventors (i.e., Applied Surgical or Alexander) could not access the application publicly. By filing a hidden application, a company such as Stryker sacrifices its chance for international patent rights.

26.3. As part of the application, each of the six claimed inventors swore the following:

“I do not know and do not believe that the claimed invention was ever known or used in the United States of America before my invention thereof....”

27. On or about October 28, 2003, Applied Surgical filed its first provisional patent application for the Gemini System.

27.1. Like the April 2002 grant application, this October 2003 patent application included advanced and detailed descriptions and drawings (exemplified below) of what would become the Gemini System.



27.2. Like the April 2002 grant application, this October 2003 patent application also included a detailed description and drawing (exemplified below) describing and depicting how the IIA cables would allow integration of varied surgical devices through the Gemini's control unit.

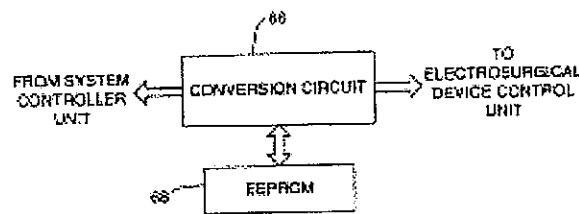
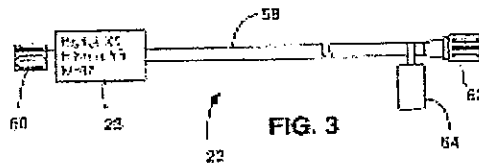


FIG. 4

28. In the Summer and Fall of 2004, with the knowledge that Stryker had already filed a hidden patent application in June 2003, agents of Stryker again engaged in communications with Alexander and other representatives of Applied Surgical.

28.1. During this time, Stryker agents (including, but not limited to Larry Filippini, William Chang and Michael Pierce) repeatedly requested more information about the Gemini System while also repeatedly refusing to sign a confidentiality agreement – all under the guise that Stryker was interested in purchasing the company, purchasing the technology, and/or partnering to develop the product.

28.2. At no point during these discussions did any representative of Stryker ever mention or indicate that Stryker was developing a competitive product and had already

filed a patent application attempting to gain exclusive rights to market and manufacture that product. Alexander ultimately ended this series of communications, in large part due to Stryker's refusal to sign a confidentiality agreement.

28.3. During this same time, Stryker agents – including but not limited to Larry Filippini – continued to gain more insight into the Gemini System through conversations with UAB surgeons, such as Dr. Mary Hawn, who was also a representative of Applied Surgical.

29. On November 1, 2004, in the midst of its continuing communications with Alexander and other Applied Surgical representatives, Stryker filed a more detailed provisional patent application.

29.1. By now, the title had changed to “Apparatus and Method for Synchronizing a Wireless Remote Control to a Central Control Unit so as to Allow Remote Control of a Medical Device over a Secure Wireless Connection.”

29.2. This application focused in large part on the security of the wireless connections.

29.3. While this application included a more detailed discussion of how Stryker's central control unit would work, it still included absolutely no substantive description whatsoever of how its version of the Gemini IIA cables would function.

30. On December 29, 2004, after Alexander had ended the 2004 communications between Stryker and Applied Surgical, Stryker filed another patent application.

30.1. By now, the title had morphed into “System for Remotely Controlling Two or More Medical Devices” and embodied the tension between Stryker's simple wireless footswitch and the much more complicated and useful concept of a device to integrate multiple surgical devices that Stryker was continuing to pilfer from Applied Surgical.

30.2. This application, which included much more detail than the first two Stryker applications and professional drawings of the system (exemplified below) revealed how Stryker was attempting to “catch up” with Applied Surgical following the discussions Stryker agents had with numerous representatives of Applied Surgical.

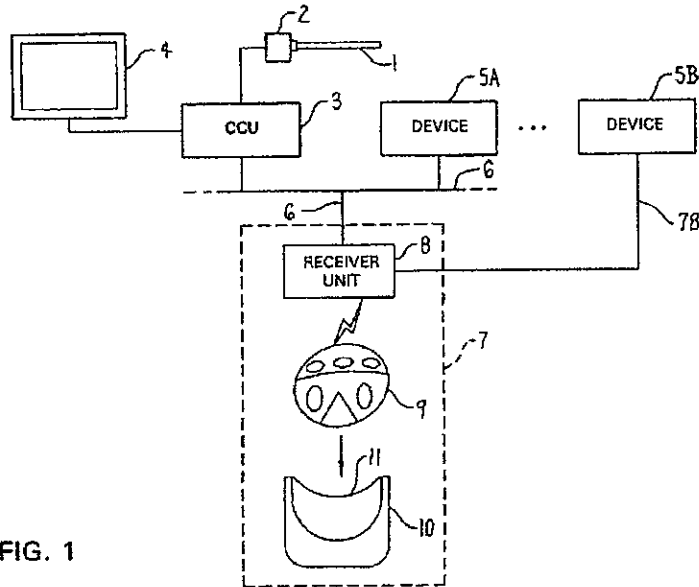


FIG. 1

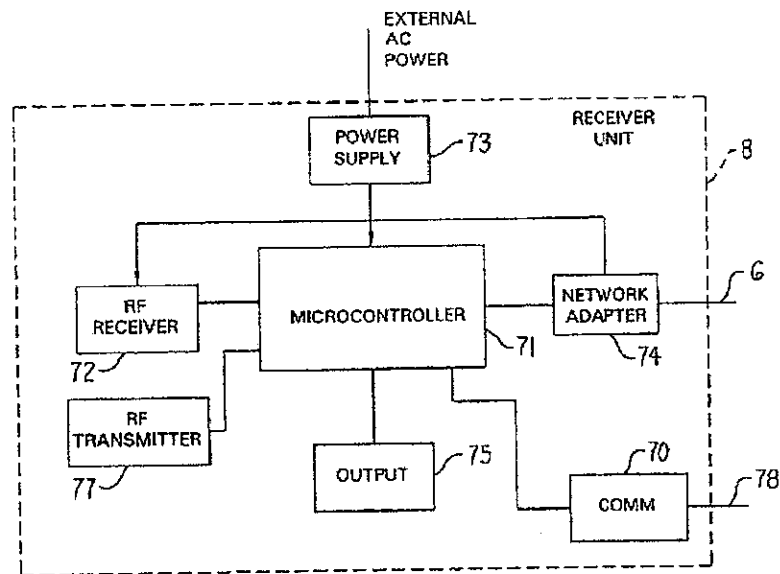


FIG. 7A

30.3. On the other hand, this application revealed that Stryker's technology is still far behind even where Applied Surgical was at the time of its April 2002 grant application and its October 2003 provisional patent application.

30.4. Most significantly, this patent included absolutely no drawings depicting how Stryker's version of the IIA cables would function. Paragraph 47 referred generically to the need for a "communication adapter" or "dongle," but provided no detail of how such a device would work.

30.5. By contrast, Applied Surgical's October 2004 patent application, made use of four full paragraphs, three drawings and approximately 500 words to describe in detail how its "intelligent adapter" would function.

31. In March 2005, a Stryker agent, Chris Donnelly observed the Gemini System during animal testing conducted by Dr. Hawn at UAB in Jefferson County.

32. On October 31, 2005, Stryker filed yet another patent application.

32.1. This title was the same as the November 2004 title on Stryker's application.

32.2. By this time, Stryker had begun to develop its technology somewhat and now began to refer to its "receiver unit" primarily as a "central control unit."

32.3. However, at this point, the application still included no drawings or any detailed description of how Stryker's "communication adapter" would function.

33. On November 3, 2005, three days after Stryker filed its most recent patent application and nearly a year after Alexander had cut off communication with Stryker, Filippini made an unsolicited contact (shown below) to Dr. Mary Hawn in an attempt to view the Gemini System.

From: Filippini, Larry [mailto:larry.filippini@stryker.com]
Sent: Thursday, November 03, 2005 5:22 PM
To: Mary Hawn, M.D.
Subject: Gemini

Mary

We have product managers that want to come in and see the tealswitch...perhaps next Thursday. Are you interested?

Larry Filippini

Larry Filippini
Director of Sales
Stryker Endoscopy
ph. (205) 961-6102
larry.filippini@stryker.com

34. Dr. Hawn asked Filippini to contact Alexander, and ultimately, a meeting was scheduled for one week later in which Applied Surgical was demonstrate the Gemini System to Stryker in hopes the two companies could reach a business agreement to market the product.

35. On November 10, 2005, under the guise that Stryker was interested in purchasing the company, purchasing the technology, and/or partnering to develop the product, Stryker visited Applied Surgical to see a demonstration of the Gemini System.

35.1. This meeting was attended on behalf of Stryker by Filippini, Molly Nicolet, and Brannon Wells.

35.1.1. Each of the Stryker participants signed confidentiality agreements.

35.1.2. One of the attendees, Brannon Wells, is listed as an inventor of the Stryker system on both a) Stryker's provisional patent application filed in November of 2004, and b) the application filed by Stryker 10 days before the meeting on October 31, 2005, which still includes no description or depiction of the communication adapter/dongle Stryker plans to use in its system.

- 35.2. At the meeting, Stryker was able to observe the entire Gemini System.
- 35.3. At the meeting, Stryker agents asked repeatedly about the IIA cables. They were interested in how Applied Surgical dealt with FDA issues regarding the IIA cables, technical information required and how they obtained it, how Applied Surgical formed relationships with other surgical device producers to integrate their input/output devices, and specifically, how the IIA cables functioned.
- 35.4. At the meeting, Stryker agents questioned Applied Surgical regarding its future plans for the Gemini System.
- 35.5. Stryker agents expressed without equivocation interest in purchasing the product, purchasing the company or partnering with Applied Surgical to market the product and/or integrate the product into Stryker's operating room control system.
- 35.6. Stryker agents never disclosed that they were developing a competing product, never disclosed that they had filed a patent application for a competing product only 10 days before the meeting and never disclosed that Brannon Wells, an attendee on behalf of Stryker, was in fact listed as an inventor on that application.
- 35.7. Because confidentiality agreements had been signed, Applied Surgical representatives answered questions fully and without hesitation. During the course of the meeting, Stryker obtained a wealth of proprietary information, intellectual property and trade secrets that later enabled them to improve their competing system.
36. Communications between Stryker agents and representatives of Applied Surgical continued for several months.

36.1. During this time, Stryker agents continued to express interest in purchasing the product or partnering with Applied Surgical, requesting “a sense of direction” and hoping to better “understand timelines.”

36.2. At one point, a Stryker agent did disclose to Alexander that the company was working on a master foot control. Alexander then asked the Stryker agent if the company’s intent was to use the master foot control with the Gemini System. The Stryker agent responded that, “yes,” that was Stryker’s intent because Linemaster -- the company producing the master foot control for the Gemini System at the time -- was one of Stryker’s competitors. The Stryker agent did not disclose that Stryker was in fact developing a competitive system and had filed numerous applications attempting to gain patent rights to such a system.

37. On February 7, 2006, representatives of Applied Surgical met with Filippini in Jefferson County to discuss Stryker’s interest in the Gemini System.

37.1. At the meeting, Filippini was dismissive and no longer acted interested in purchasing the product or partnering with Applied Surgical.

37.2. However, he did not disclose that Stryker was developing any competitive product or had filed applications attempting to patent a competing system.

38. Applied Surgical continued to market the product to other potential purchasers. In part, because negotiations with Stryker had seemed to cool, Applied Surgical in September 2006, contracted with an investment banking firm to market the company and the product to potential investors and purchasers.

38.1. The investment bank conducted a detailed analysis, constructed financial models that predicted multi-billion dollar profits and felt the company represented a multi-million dollar value to potential purchasers.

38.2. The investment bank communicated with potential purchasers such as Stryker, Smith & Nephew, Storz, Steute and others.

38.3. Several potential purchasers indicated during negotiations their agreement that Applied Surgical and its Gemini System had significant market value.

39. In February 2007, a representative of Applied Surgical discovered that Stryker had placed a competitive product at Brookwood Hospital in Birmingham. Around this same time, the investment bank discovered that Stryker may have a competing product on the market.

39.1. The plaintiff believes that Stryker placed its first unit in a hospital at some point near the very end of 2006 or the beginning of 2007. Some of the early systems in Alabama were still incapable of interfacing with surgical devices produced by other manufacturers.

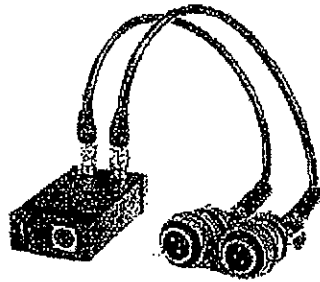
39.2. To this day (January 18, 2008), despite its function as a device to control multiple surgical devices via one control unit and footswitch, Stryker still markets its product as the "iSWITCH Wireless Universal Footswitch."

39.3. By contrast, in November 2005, Applied Surgical shipped its first working Gemini System, complete with IIA interface capabilities, to U.C. Irvine Medical Center in California, where it was used on human patients shortly thereafter.

40. The first Stryker units placed in hospitals, including the unit at Brookwood Hospital, were only compatible with other Stryker products.

40.1. As of February 2007, Stryker was placing in Alabama hospitals a version of its system that still lacked the technology to allow integration with surgical devices manufactured by companies other than Stryker.

40.2. As of today (January 18, 2008), the Stryker system is now able to interface its product – through use of an IIA-like cable – with surgical devices manufactured by at least one company other than Stryker. The “integration kit,” a.k.a. communication adaptor, a.k.a. dongle, used to accomplish this interface (shown below) is nearly identical to the IIA cables Stryker agents were shown by representatives of Applied Surgical during the November 10, 2005, meeting at Applied Surgical.



40.2.1. However, it appears from Stryker marketing materials that, as of today (January 18, 2007), Stryker is still only able to integrate with one other manufacturer: ValleyLab (exemplified below).

By giving the ISWITCH™ the ability to control the Valleylab Force FX ESU, the ISWITCH™ Valleylab Integration Kit makes it possible for complete footswitch standardization across specialties in the OR.

40.3. By contrast, when Applied Surgical shipped its first Gemini System to U.C. Irvine in November 2005, the system was already able to integrate with devices manufactured by AutoSuture, Bovie, CONMED, Ethicon, Gyrus, Olympus, Plasma Surgical, SurgRX, ValleyLab and Wolf.

40.4. The information on Stryker's "ValleyLab Integration Kit" depicted above is available in a brochure distributed by Stryker directly to potential customers. However, Stryker still maintains on its website a nearly identical brochure that does not include any mention of the integration kit for use with ValleyLab products.

41. In April 2007, one potential purchaser of Applied Surgical, as part of a thorough due diligence investigation, discovered that Stryker had previously filed applications attempting to patent a competing product.

41.1. The existence of a competing product and potentially competing patent applications have made the purchase of Applied Surgical or its technology too risky to potential purchasers or distribution and marketing partners.

41.2. As long as the potentially competing product and patents exist, Applied Surgical and its Gemini System are not realistically marketable, and the company is virtually worthless.

42. Independent of the damage sustained by Alexander and Applied Surgical, Stryker and Filippini are profiting and benefiting – and will continue to do so – from sales of Stryker's competitive product, which Stryker was only able to conceptualize, develop or improve through the confidential information, intellectual property and trade secrets it gained from Alexander and Applied Surgical.

COUNTS

43. This complaint makes no claims for patent infringement or interference and is limited to the claims set forth below: fraud, suppression, misappropriation of trade secrets, conversion and breach of contract.

COUNT I: Fraud/Deceit, Ala. Code § 6-5-101 et seq.

44. As detailed above, Applied Surgical and Alexander were negotiating with Stryker regarding the potential sale of Applied Surgical to Stryker.

45. During those negotiations, Stryker, Filippini and one or more of Fictitious Parties Nos. 1-7 made numerous representations (detailed above) to Alexander and Applied Surgical, including representations that Stryker was interested in purchasing Applied Surgical and/or rights to the Gemini System.

46. These (and other representations detailed above) were false; and Stryker, Filippini, and one or more Fictitious Parties Nos. 1-7 willfully, recklessly and/or negligently represented them as true.

47. Alexander and the agents and/or representatives of Applied Surgical to whom these representations were made believed them and relied on them in disclosing Applied Surgical's confidential information, intellectual property and trade secrets to Stryker, Filippini and one or more of Fictitious Parties Nos. 1-7.

48. As a proximate result of the above-described fraud, Applied Surgical was caused to suffer compensatory damages as more fully described above. As a proximate result of the above-described fraud, Alexander was caused to suffer compensatory damages and mental anguish.

WHEREFORE, Plaintiffs demand judgment against defendants named and referenced herein, including each named and each fictitious defendant, for compensatory damages, mental anguish damages, and punitive damages, plus interest and all costs of this proceeding.

COUNT II: Suppression/Concealment, Ala. Code § 6-5-102

49. As detailed above, Alexander and Applied Surgical were negotiating with Stryker regarding the potential sale of Applied Surgical to Stryker.

50. During those negotiations, Stryker, Filippini and one or more Fictitious Parties Nos. 1-7, because of the confidential relations of the parties, were under an obligation to disclose certain material facts, as detailed above, to Alexander and agents and representatives of Applied Surgical; for example, that Stryker was not interested in purchasing the Gemini System and/or was developing a potentially competitive product and filing patent applications to obtain exclusive rights to that product.

51. Stryker, Filippini and one or more Fictitious Parties Nos. 1-7 never disclosed those material facts but instead concealed them from Alexander and other representatives of Applied Surgical.

52. Because these facts were concealed, Alexander and Applied Surgical were induced to and did disclose their confidential information, intellectual property and trade secrets to Stryker, Filippini and one or more Fictitious Parties Nos. 1-7.

53. As a proximate result of the above-described suppression, Applied Surgical was caused to suffer compensatory damages as more fully described above. As a proximate result of the suppression, Alexander was caused to suffer compensatory damages and mental anguish.

WHEREFORE, Plaintiffs demand judgment against defendants named and referenced herein, including each named and each fictitious defendant, for compensatory damages, mental anguish damages and punitive damages, plus interest and all costs of this proceeding.

COUNT III: Misappropriation of Trade Secret, Ala. Code § 8-27-3

54. The confidential information, detailed above, regarding the innovation and development of the Gemini System, were trade secrets as defined by Ala. Code § 8-27-2(1).

55. Stryker, Filippini and one or more Fictitious Parties Nos. 1-7 obtained the trade secrets through improper means and/or otherwise as described in Alabama Code § 8-27-3.

56. Stryker, Filippini and one or more Fictitious Parties Nos. 1-7 used and/or disclosed the trade Secrets of Applied Surgical in ways they were not privileged to disclose, for example, to conceptualize, develop or improve its own competitive product.

57. As a proximate result of the above-described misappropriation of trade secrets, Applied Surgical was caused to suffer damages as more fully described above.

WHEREFORE, Plaintiff demands judgment against defendants named and referenced herein, including each named and each fictitious defendant, for all amounts allowed under Ala. Code § 8-27-4, including any profits and other benefits conferred on Stryker by the misappropriation and actual damages to Applied Surgical.

COUNT IV: Conversion

58. Applied surgical owned, possessed and had the exclusive right to use the confidential information, intellectual property and trade secrets regarding the innovation and development of the Gemini System, as detailed above.

59. Stryker, Filippini and one or more Fictitious Parties Nos. 1-7 appropriated this property to their own use and benefit through a wrongful taking, an illegal assumption of ownership, an illegal misuse of Applied Surgical's property, and/or a wrongful detention or interference with Applied Surgical's property.

60. As a proximate result of the above-described conversion, Applied Surgical was caused to suffer damages as more fully described above.

WHEREFORE, Plaintiff demands judgment against defendants named and referenced herein, including each named and each fictitious defendant, for compensatory and punitive damages, plus interest and all costs of this proceeding.

COUNT V: Breach of Contract

61. As detailed above, Stryker, Filippini and one or more Fictitious Parties Nos. 1-7 entered into valid oral and written contracts, promising not to disclose or misappropriate confidential information, intellectual property and trade secrets they learned from Applied Surgical.

62. Applied Surgical fulfilled its obligations under the agreements by providing the confidential information to Stryker, Filippini and one or more Fictitious Parties Nos. 1-7.

63. Stryker, Filippini and one or more Fictitious Parties Nos. 1-7 breached the agreement by disclosing or misappropriating the information in various ways that violated the terms of the agreements.

64. As a proximate result of the above-described breach of contract, Applied Surgical was caused to suffer damages as more fully described above.

WHEREFORE, Plaintiff demands judgment against defendants named and referenced herein, including each named and each fictitious defendant, for compensatory and punitive damages, plus interest and all costs of this proceeding.

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JURY DEMAND

Plaintiff hereby demands a struck jury for the trial of this cause.

s/Rip Andrews
Attorney for the Plaintiff

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