

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ARTHROCARE CORPORATION,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 2:07-cv-92 (TJW)
v.	§	
	§	
CARDINAL HEALTH, INC.,	§	<u>JURY TRIAL DEMANDED</u>
ALLEGIANCE CORPORATION, and	§	
CARDINAL HEALTH 200, INC.,	§	
	§	
Defendants.	§	

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW ArthroCare Corporation and files this its First Amended Complaint for patent infringement against Cardinal Health, Inc., Allegiance Corporation and Cardinal Health 200, Inc. and would show the Court as follows:

I.
PARTIES

1. Plaintiff ArthroCare Corporation (“ArthroCare”) is a Delaware corporation with its principal place of business at 7500 Rialto Blvd., Building Two, Suite 100, Austin, Texas 78735.

2. Defendant Cardinal Health, Inc. (“Cardinal Health”) is an Ohio corporation with its principal place of business at 7000 Cardinal Place, Dublin, Ohio 43017.

3. Defendant Allegiance Corporation (“Allegiance”) is a Delaware corporation with its principal place of business at 7000 Cardinal Place, Dublin, Ohio 43017.

4. Defendant Cardinal Health 200, Inc. (“Cardinal 200”) is a Delaware corporation with its principal place of business at 1400 Waukegan Rd., McGaw Park, IL 60085.

II.
JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the Patent and Trademark Act, 35 U.S.C. § 1 *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). Personal jurisdiction exists generally over the Defendants because they have sufficient minimum contacts with the forum as a result of business conducted within the State of Texas and within this district.

7. Defendant Cardinal Health does business in the State of Texas and in this district. TEX. CIV. PRAC. & REM. CODE §17.042. Personal jurisdiction also exists specifically over Defendant Cardinal Health because of its conduct in making, using, selling, offering to sell and/or importing products within the State of Texas, and within this district.

8. In addition, upon information and belief, Defendant Cardinal Health is the alter ego of its subsidiaries operating in Texas and in this district and/or Defendant Cardinal Health’s subsidiaries operating in Texas and in this district are the agents of Defendant Cardinal Health.

9. Defendant Allegiance has a place of business in this district and/or owns property in this district, and upon information and belief, regularly and systematically conducts business in Texas and in this district.

10. Personal jurisdiction exists generally over Cardinal 200 because it has sufficient minimum contacts with the forum as a result of business conducted within the State of Texas and within this district.

11. Defendant Cardinal 200 has a place of business in this district and/or owns property in this district, and upon information and belief, regularly and systematically conducts business in Texas and in this district.

III.
THE ARTHROCARE PATENTS

12. On May 15, 2001, United States Patent No. 6,231,615 B1 (the “‘615 Patent”), entitled “Enhanced Visibility Materials For Implantation In Hard Tissue” was duly and legally issued by the United States Patent and Trademark Office (the “USPTO”) to Howard Preissman who assigned his rights in the ‘615 Patent to Parallax Medical, Inc. (“Parallax”). Parallax was acquired by ArthroCare on January 29, 2004, and by virtue of such acquisition ArthroCare obtained all rights, interests and title in and to the ‘615 Patent. ArthroCare is the owner of the entire right, title and interest in and to the ‘615 Patent. A true and correct copy of the ‘615 Patent is attached hereto as Exhibit A.

13. On October 30, 2001, United States Patent No. 6,309,420 B1 (the “‘420 Patent”), entitled “Enhanced Visibility Materials For Implantation In Hard Tissue” was duly and legally issued by the USPTO to Howard Preissman who assigned his rights in the ‘420 Patent to Parallax. Parallax was acquired by ArthroCare on January 29, 2004, and by virtue of such acquisition ArthroCare obtained all rights, interests and title in and to the ‘420 Patent. ArthroCare is the owner of the entire right, title and interest in and to the ‘420 Patent. A true and correct copy of the ‘420 Patent is attached hereto as Exhibit B.

14. On February 19, 2002, United States Patent No. 6,348,055 B1 (the “‘055 Patent”), entitled “Non-Compliant System For Delivery Of Implant Material” was duly and legally issued by the USPTO to Howard Preissman who assigned his rights in the ‘055 Patent to Parallax. Parallax was acquired by ArthroCare on January 29, 2004, and by virtue of such acquisition ArthroCare obtained all rights, interests and title in and to the ‘055 Patent. ArthroCare is the owner of the entire right, title and interest in and to the ‘055 Patent. A true and correct copy of the ‘055 Patent is attached hereto as Exhibit C.

15. On May 7, 2002, United States Patent No. 6,383,190 B1 (the “‘190 Patent”), entitled “High Pressure Applicator” was duly and legally issued by the USPTO to Howard Preissman who assigned his rights in the ‘190 Patent to Parallax. Parallax was acquired by ArthroCare on January 29, 2004, and by virtue of such acquisition ArthroCare obtained all rights, interests and title in and to the ‘190 Patent. ArthroCare is the owner of the entire right, title and interest in and to the ‘190 Patent. A true and correct copy of the ‘190 Patent is attached hereto as Exhibit D.

16. On May 23, 2006, United States Patent No. 7,048,743 B2 (the “‘743 Patent”), entitled “Methods For Delivering Tissue Implant Material With A High Pressure Applicator” was duly and legally issued by the USPTO to Scott H. Miller and Howard Preissman who assigned their rights in the ‘743 Patent to ArthroCare. ArthroCare is the owner of the entire right, title and interest in and to the ‘743 Patent. A true and correct copy of the ‘743 Patent is attached hereto as Exhibit E.

17. The ‘615 Patent, ‘420 Patent, ‘055 Patent, ‘190 Patent, and the ‘743 Patent are collectively referred to herein as the “ArthroCare Patents.”

IV.
NOTICE OF INFRINGEMENT

18. ArthroCare has placed the required statutory notice on all products manufactured, sold or offered for sale by it under the ArthroCare Patents, and has given written notice to Defendants of their infringement.

V.
FIRST CLAIM FOR RELIEF

(PATENT INFRINGEMENT OF THE '615 PATENT)
(35 U.S.C. § 271)

19. ArthroCare incorporates the allegations set forth above in paragraphs 1 through 18.

20. ArthroCare alleges on information and belief that Defendants have infringed and continue to infringe, have induced and continue to induce others to infringe, and/or have committed and continue to commit acts of contributory infringement of one or more claims of the '615 Patent by importing, making, using, selling and/or offering for sale products in the United States and this district. Such infringing activities violate 35 U.S.C. § 271.

21. Upon information and belief, ArthroCare alleges that Defendants' infringement has been and continues to be intentional and willful.

22. As a consequence of Defendants' infringement of the '615 Patent, ArthroCare has suffered monetary damages in an amount not yet determined, and ArthroCare will continue to suffer harm (including irreparable harm) in the future unless and until Defendants' infringing activities are enjoined by this Court.

WHEREFORE, ArthroCare prays for judgment as set forth below.

VI.
SECOND CLAIM FOR RELIEF

(PATENT INFRINGEMENT OF THE '420 PATENT)
(35 U.S.C. § 271)

23. ArthroCare incorporates the allegations set forth above in paragraphs 1 through 22.

24. ArthroCare alleges on information and belief that Defendants have infringed and continue to infringe, have induced and continue to induce others to infringe, and/or have committed and continue to commit acts of contributory infringement of one or more claims of the '420 Patent by importing, making, using, selling and/or offering for sale products in the United States and this district. Such infringing activities violate 35 U.S.C. § 271.

25. Upon information and belief, ArthroCare alleges that Defendants' infringement has been and continues to be intentional and willful.

26. As a consequence of Defendants' infringement of the '420 Patent, ArthroCare has suffered monetary damages in an amount not yet determined, and ArthroCare will continue to suffer harm (including irreparable harm) in the future unless and until Defendants' infringing activities are enjoined by this Court.

WHEREFORE, ArthroCare prays for judgment as set forth below.

VII.
THIRD CLAIM FOR RELIEF

(PATENT INFRINGEMENT OF THE '055 PATENT)
(35 U.S.C. § 271)

27. ArthroCare incorporates the allegations set forth above in paragraphs 1 through 26.

28. ArthroCare alleges on information and belief that Defendants have infringed and continue to infringe, have induced and continue to induce others to infringe, and/or have committed and continue to commit acts of contributory infringement of one or more claims of the '055 Patent by importing, making, using, selling and/or offering for sale products in the United States and this district. Such infringing activities violate 35 U.S.C. § 271.

29. Upon information and belief, ArthroCare alleges that Defendants' infringement has been and continues to be intentional and willful.

30. As a consequence of Defendants' infringement of the '055 Patent, ArthroCare has suffered monetary damages in an amount not yet determined, and ArthroCare will continue to suffer harm (including irreparable harm) in the future unless and until Defendants' infringing activities are enjoined by this Court.

WHEREFORE, ArthroCare prays for judgment as set forth below.

VIII.
FOURTH CLAIM FOR RELIEF

(PATENT INFRINGEMENT OF THE '190 PATENT)
(35 U.S.C. § 271)

31. ArthroCare incorporates the allegations set forth above in paragraphs 1 through 30.

32. ArthroCare alleges on information and belief that Defendants have infringed and continue to infringe, have induced and continue to induce others to infringe, and/or have committed and continue to commit acts of contributory infringement of one or more claims of the '190 Patent by importing, making, using,

selling and/or offering for sale products in the United States and this district. Such infringing activities violate 35 U.S.C. § 271.

33. Upon information and belief, ArthroCare alleges that Defendants' infringement has been and continues to be intentional and willful.

34. As a consequence of Defendants' infringement of the '190 Patent, ArthroCare has suffered monetary damages in an amount not yet determined, and ArthroCare will continue to suffer harm (including irreparable harm) in the future unless and until Defendants' infringing activities are enjoined by this Court.

WHEREFORE, ArthroCare prays for judgment as set forth below.

IX.
FIFTH CLAIM FOR RELIEF

(PATENT INFRINGEMENT OF THE '743 PATENT)
(35 U.S.C. § 271)

35. ArthroCare incorporates the allegations set forth above in paragraphs 1 through 34.

36. ArthroCare alleges on information and belief that Defendants have infringed and continue to infringe, have induced and continue to induce others to infringe, and/or have committed and continue to commit acts of contributory infringement of one or more claims of the '743 Patent by importing, making, using, selling and/or offering for sale products in the United States and this district. Such infringing activities violate 35 U.S.C. § 271.

37. Upon information and belief, ArthroCare alleges that Defendants' infringement has been and continues to be intentional and willful.

38. As a consequence of Defendants' infringement of the '743 Patent, ArthroCare has suffered monetary damages in an amount not yet determined, and ArthroCare will continue to suffer harm (including irreparable harm) in the future unless and until Defendants' infringing activities are enjoined by this Court.

WHEREFORE, ArthroCare prays for judgment as set forth below.

X.
PRAYER FOR RELIEF

1. That Defendants be declared to have infringed, induced others to infringe and/or committed acts of contributory infringement with respect to the claims of the ArthroCare Patents as alleged above;

2. that Defendants and their respective officers, agents, servants, employees, and attorneys, and all those persons acting in concert or participation with them or acting on their behalf, be immediately, preliminarily and permanently enjoined and restrained from infringement of the ArthroCare Patents;

3. that Defendants be ordered to account for and pay to ArthroCare all damages caused to ArthroCare by reason of each of their infringement of the ArthroCare Patents pursuant to 35 U.S.C. § 284, including any enhanced damages;

4. that ArthroCare be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Defendants' infringement of the ArthroCare Patents;

5. that this be declared an "exceptional case" pursuant to 35 U.S.C. § 285 and that Defendants be ordered to pay ArthroCare's attorney fees and costs; and

6. that the Court grant such other and further relief as the Court deems just and proper under the circumstances.

XI.
DEMAND FOR JURY TRIAL

ArthroCare demands trial by jury for all claims for relief herein pursuant to Federal Rule of Civil Procedure 38.

Respectfully submitted,

Dated: April 10, 2007

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