

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

ZIMMER HOLDINGS INC. and ZIMMER
GMBH

Plaintiffs,

v.

SMITH & NEPHEW, INC.,

Defendant.

No.

2 09 CV 021

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Zimmer Holdings, Inc. and Zimmer GmbH by and through its undersigned counsel, for its Complaint against Defendant Smith & Nephew, Inc. (“S&N”) allege the following:

PARTIES

1. Zimmer GmbH is a corporation organized under Swiss law with a principal place of business in Winterthur, Switzerland.

2. Zimmer Holdings, Inc. is a Delaware corporation with a principal place of business in Warsaw, Indiana. Zimmer GmbH is an entity 100% controlled by Zimmer Holdings, Inc. (both collectively herein “Zimmer”).

3. S&N is a Delaware corporation with a principal place of business in Memphis, Tennessee.

JURISDICTION AND VENUE

4. This action arises under the Patent Act, 35 U.S.C. § 1, *et seq.*, and is within this Court's exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, S&N does business throughout the United States, and in this judicial District, and has committed acts of patent infringement in the State of Indiana, including in this judicial District, and has transacted business in the form of importing, offering for sale, selling, making, using, and/or causing to be used infringing products in the State of Indiana, including in this judicial District. Further, upon information and belief, S&N causes, urges, directs, and/or encourages surgeons, medical personnel, or other customers to use S&N's products in an infringing manner in the State of Indiana, including in this judicial District. Thus, S&N is subject to the jurisdiction of this Court.

6. Venue is proper in this Court under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b).

FACTS

7. On March 12, 2002, U.S. Patent No. 6,355,043 ("the '043 Patent", a copy of which is attached hereto as Exhibit A) was duly and legally issued to Sulzer Orthopedics Ltd. for a "Bone Screw For Anchoring A Marrow Nail". Zimmer now holds all right, title and interest to the '043 Patent, including the right to sue for any acts of infringement thereof past, present and future, and currently possesses all such rights. The '043 Patent is valid and subsisting.

8. Defendant S&N without right, license or authorization has infringed and still is infringing, and inducing and contributing to infringement of the '043 Patent, by making, using, offering to sell and selling bone screws for anchoring marrow nails covered by one or more of

the claims of the '043 Patent, and will continue to do so unless enjoined by this Court. Such infringement includes, but may not be limited to, bone screws used with the TRIGENTM nail system.

9. On information and belief, S&N's actions have been undertaken and continued with knowledge of the '043 Patent and such actions constitute willful infringement thereof.

10. Zimmer has been damaged by the infringing activities of S&N, and will continue to be damaged. Zimmer has no adequate remedy at law.

11. This is an exceptional case under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Zimmer requests the following relief:

(a) A judgment declaring that the '043 Patent has been infringed by S&N, and that such infringement has been done willfully;

(b) A preliminary and permanent injunction against any infringement of the '043 Patent by S&N, their officers, agents, attorneys, and employees, and those acting in privity or concert with them;

(c) A judgment that this is an exceptional case, and that Zimmer is entitled to an award of reasonable attorney fees pursuant to 35 U.S.C. § 285;

(d) An award of damages for such acts of infringement by S&N, in an amount no less than a reasonable royalty, to be determined at trial; which this Court should treble pursuant to 35 U.S.C. § 284 in view of the willful and deliberate nature of the infringement;

(e) Costs and expenses in this action; and

(f) Such other relief as this Court may deem proper.

Zimmer hereby requests a trial by jury on all issues and claims so triable.

Respectfully Submitted,

Date: 1/30/09


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