

substantial activities within this judicial district, including substantial marketing and sales of products in this judicial district. Upon information and belief, Parcus markets and sells products through a distributorship named ERHM Orthopedics, Inc. located within this judicial district. Furthermore, upon information and belief, this Court has personal jurisdiction over Parcus in this case because Parcus has committed acts giving rise to Arthrex's claim for patent infringement within and directed to this judicial district.

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

ARTHREX'S PATENTS

7. On November 30, 1999, the United States Patent and Trademark Office duly and lawfully issued United States Patent No. 5,993,451 ("the '451 patent"), entitled "Cannulated Suture Anchor Drill Guide." A true and correct copy of the '451 patent is attached hereto as Exhibit 1.

8. The '451 patent names Stephen S. Burkhart as an inventor.

9. Arthrex is the owner by assignment of all right, title and interest in the '451 patent.

10. The '451 patent generally relates to, *inter alia*, a novel suture anchor drill guide.

11. On November 4, 2003, the United States Patent and Trademark Office duly and lawfully issued United States Patent No. 6,641,597 ("the '597 patent") entitled "Interference Fit Knotless Suture Anchor Fixation." A true and correct copy of the '597 patent is attached hereto as Exhibit 2.

12. The '597 patent names Stephen S. Burkhart, R. Donald Grafton and Peter J. Dreyfuss as inventors.

13. Arthrex is the owner by assignment of all right, title and interest in the '597 patent.

14. The '597 patent generally relates to, *inter alia*, a novel suture anchor and method of reattaching tissue to bone using a suture anchor.

COUNT I

(Parcus' Direct Infringement of the '451 Patent)

15. Arthrex incorporates by reference paragraphs 1 through 14 as though fully set forth herein.

16. The '451 patent remains valid, enforceable and unexpired.

17. Upon information and belief, Parcus is directly infringing and has directly infringed the '451 patent, including, without limitation, by making, using, selling, offering for sale, and/or importing, without license or authority, suture anchor instrumentation covered by the '451 patent, including but not limited to Parcus' V-Mouth Drill Guide (Part No. 10330) and 8-Point Drill Guide (Part No. 10446) (hereinafter the "accused drill guide products").

18. The accused drill guide products fall within the scope of one or more claims of the '451 patent. Upon information and belief, Parcus directly infringes at least claims 1, 3, 5-7, 9 and 11 of the '451 patent.

19. Upon information and belief, Parcus has actual knowledge of the '451 patent.

20. Upon information and belief, Parcus' infringement has been and continues to be willful and deliberate.

21. As a result of Parcus' infringement, Arthrex will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages.

COUNT II

(Parcus' Contributory Infringement of the '451 Patent)

22. Arthrex incorporates by reference paragraphs 1 through 14 and 16-21 as though fully set forth herein.

23. As described in Count I, the accused drill guide products fall within the scope of at least claims 1, 3, 5-7, 9 and 11 of the '451 patent.

24. Upon information and belief, with knowledge of the '451 patent, Parcus has also contributed and continues to contribute to the infringement of the '451 patent under 35 U.S.C. § 271(c) by selling, offering to sell and/or importing the accused drill guide products for use by its orthopedic surgeon customers. These orthopedic surgeon customers directly infringe the '451 patent by using the accused drill guide products during their surgeries.

25. Upon information and belief, Parcus markets and sells the accused drill guide products to orthopedic surgeons who use the accused drill guide products in their surgeries to practice the invention of the '451 patent.

26. Upon information and belief, the accused drill guide products have no substantial, non-infringing uses for at least the reason that the accused drill guide products are advertised, sold and/or offered for sale only for installing suture anchors. *See* Parcus' Directions For Use 30532, Rev. 3 (attached as Exhibit 3) and 30982, Rev. 1 (attached as Exhibit 4). In other words, Parcus only promotes the accused drill guide products for use by surgeons in a manner that infringes the '451 patent.

27. Upon information and belief, the accused drill guide products also constitute a material part of the invention of the '451 patent for at least the reason that the accused drill guide products are the very surgical instruments that are used to practice the invention of the '451 patent.

28. Upon information and belief, Parcus knows that the accused drill guide products are especially made or especially adapted for use in an infringement of the '451 patent for at least the reason that the accused drill guide products are advertised, sold and/or offered for sale only to install suture anchors in a manner covered by the '451 patent.

29. Upon information and belief, Parcus has actual and/or constructive knowledge of the '451 patent and that the surgeons' use of the accused drill guide products directly infringe the claims of the '451 patent. Parcus has this knowledge by virtue of at least producing the '451 patent as part of its discovery in co-pending civil action no. 2:10-cv-151-FtM-99DNF and by virtue of the fact that several Parcus executives were previously employed by Arthrex during the time in which the invention of the '451 patent was conceived, reduced to practice, patented and marked with a patent number. Upon information and belief, Mark Brunsvold, who is now Parcus' President, was involved with manufacturing embodiments of the '451 patent for Arthrex.

30. Upon information and belief, Parcus also has actual knowledge of Dr. Burkhart and his patent portfolio, which would include the '451 patent, as well as knowledge of the patent landscape of orthopedic devices in general. Parcus also has actual and/or constructive knowledge of the '451 patent because Arthrex marks its commercial embodiments with the patent number of the '451 patent. Upon information and belief, at the very least, Parcus was willfully blind as to the existence of the '451 patent, and therefore willfully blinded itself to its surgeons customers' direct infringement of the '451 patent resulting from their use of the accused drill guide products.

31. As a result of Parcus' contributory infringement, Arthrex will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages.

COUNT III

(Parcus' Induced Infringement of the '451 Patent)

32. Arthrex incorporates by reference paragraphs 1 through 14, 16-21 and 23-31 as though fully set forth herein.

33. As described in Count I, the accused drill guide products fall within the scope of at least claims 1, 3, 5-7, 9 and 11 of the '451 patent.

34. Upon information and belief, with knowledge of the '451 patent, Parcus has also induced and continues to induce the infringement of the '451 patent under 35 U.S.C. § 271(b) by selling, offering to sell and/or importing the accused drill guide products for use by its orthopedic surgeon customers. In light of Parcus' inducement, these orthopedic surgeon customers directly infringe the '451 patent by using the accused drill guide products in their surgeries.

35. Parcus specifically intended its customers to infringe the '451 patent and knew that its customers' acts constituted infringement. Upon information and belief, despite a high likelihood that its actions would result in the surgeon customers' direct infringement of the '451 patent, Parcus marketed and sold the accused drill guide products to orthopedic surgeons for use in their surgeries. *See* Parcus' Directions For Use 30532, Rev. 3 (attached as Exhibit 3) and 30982, Rev. 1 (attached as Exhibit 4). Parcus knew that the surgeons' use of the accused drill guide products would directly infringe the '451 patent. At the very least, based at least in part on its knowledge and possession of the '451 patent, its advertisement of its products, and Arthrex's marking of its commercial embodiments with the '451 patent number, Parcus believed that there was a high probability that its acts, if taken, would result in the surgeon customers' direct infringement of the '451 patent, yet deliberately avoided confirming that belief. In other words, Parcus remained willfully blind of its surgeons customers' direct infringement of the '451 patent.

36. Upon information and belief, Parcus has not made changes to any of the accused drill guide products in view of the '451 patent.

37. Upon information and belief, Parcus has not made changes to any of its publically available product literature in view of the '451 patent.

38. Upon information and belief, despite having actual knowledge of the '451 patent, Parcus continues to actively induce infringement by releasing and promoting additional products subsequent to the filing of this lawsuit. For example, Parcus has recently induced additional infringements of the '451 patent by intentionally releasing additional products that it intended its customers use to infringe the '451 patent. For example, Parcus has advertised and sold the accused drill guide products with other products with knowledge that these acts would result in direct infringements of the '451 patent when surgeon customers use the accused products.

39. Upon information and belief, Parcus has actual and/or constructive knowledge of the '451 patent. Parcus has this knowledge by virtue of at least producing the '451 patent as part of its discovery in co-pending civil action no. 2:10-cv-151-FtM-99DNF and by virtue of the fact that several Parcus executives were previously employed by Arthrex during the time in which the invention of the '451 patent was conceived, reduced to practice, patented and marked with a patent number. Upon information and belief, Mark Brunsvold was involved with manufacturing embodiments of the '451 patent for Arthrex.

40. Upon information and belief, Parcus also has actual knowledge of Dr. Burkhart's patent portfolio, which would include the '451 patent, as well as knowledge of the patent landscape of orthopedic devices in general. Parcus also has actual and/or constructive knowledge of the '451 patent because Arthrex marks its commercial embodiments with the patent number of the '451 patent. Upon information and belief, at the very least, Parcus was

willfully blind as to the existence of the '451 patent, and therefore willfully blinded itself to the surgeons customers' direct infringement of the '451 patent resulting from their use of the accused drill guide products.

41. As a result of Parcus' induced infringement, Arthrex will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages.

COUNT IV

(Parcus' Direct Infringement of the '597 Patent)

42. Arthrex incorporates by reference paragraphs 1 through 14, 16-21, 23-31 and 33-41 as though fully set forth herein.

43. The '597 patent remains valid, enforceable and unexpired.

44. Upon information and belief, Parcus is directly infringing and has directly infringed the '597 patent, including, without limitation, by making, using, selling, offering for sale, and/or importing, without license or authority, suture anchors which are used to directly infringe the '597 patent, including but not limited to Parcus' Series 3 Suture Anchors (Part Nos. 10323T and 10313), Parcus' 45 Knotless Peek CF Suture Anchors [Product No. 10314], and Parcus' V-LoX Hybrid Suture Anchors (Part No. 10354T) (hereinafter the "accused suture anchor products").

45. The use of the accused suture anchor products falls within the scope of one or more claims of the '597 patent. Upon information and belief, Parcus has directly infringed at least claims 7, 10 and 12-14 of the '597 patent.

46. Upon information and belief, Parcus has actual knowledge of the '597 patent.

47. Upon information and belief, Parcus' infringement has been and continues to be willful and deliberate.

48. As a result of Parcus' infringement, Arthrex will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages.

COUNT V

(Parcus' Contributory Infringement of the '597 Patent)

49. Arthrex incorporates by reference paragraphs 1-14, 16-21, 23-31, 33-41, and 43-48 as though fully set forth herein.

50. As described in Count IV, the use of the accused suture anchor products falls within the scope of at least claims 7, 10 and 12-14 of the '597 patent.

51. The '597 patent includes method claims that have been and continue to be indirectly infringed by Parcus.

52. Upon information and belief, with knowledge of the '597 patent, Parcus has contributed to and continues to contribute to the infringement of '597 patent under 35 U.S.C. § 271(c) by selling, offering to sell and/or importing the Series 3 Suture Anchors (Part Nos. 10323T and 10313) and 45 Knotless Peek CF Suture Anchors [Product No. 10314] for use by its orthopedic surgeon customers. These orthopedic surgeon customers directly infringe the '597 patent by using the accused suture anchor products in their surgeries.

53. Upon information and belief, the accused suture anchor products are marketed and sold to orthopedic surgeons who use the accused suture anchor products to reattach tissue to bone. By following the instructions provided by Parcus in its instructional materials, orthopedic surgeons who use the accused suture anchor products in their surgeries directly infringe the claims of the '597 patent.

54. Upon information and belief, Parcus' Series 3 Suture Anchors (Part Nos. 10323T and 10313) and Knotless Peek CF Suture Anchors [Product No. 10314] have no substantial non-infringing uses for at least the reason that these suture anchors can only be used to directly

infringe the '597 patent. In other words, when Parcus' instructions are followed, these devices are only used in an infringing manner, and are only advertised by Parcus for such an infringing use. *See* Directions for Use 30521, Rev. 5 (attached as Exhibit 5); 30521, Rev. 6 (attached as Exhibit 6), also available at www.parcusmedical.com.

55. Upon information and belief, the accused suture anchor products constitute a material part of the invention of the '597 patent for at least the reason that the accused suture anchor products are advertised, sold and/or offered for sale for use in a method that is covered by the '597 patent. The surgeries Parcus promotes through its instructional materials require the use of the accused suture anchor products.

56. Upon information and belief, Parcus knows that the accused suture anchor products are especially made or especially adapted for use in an infringement of the '597 patent for at least the reason that the publically available literature Parcus promotes for using the accused suture anchor devices, including the directions for use for these products, promotes a use that includes each step of the inventive method of the '597 patent. *See* Exhibits 5-6.

57. Upon information and belief, Parcus has actual and/or constructive knowledge of the '597 patent. Parcus has this knowledge by virtue of at least producing the '597 patent as part of its discovery in co-pending civil action no. 2:10-cv-151-FtM-99DNF and by virtue of the fact that several Parcus executives were previously employed by Arthrex during the time in which the invention of the '597 patent was conceived, reduced to practice and patented. Upon information and belief, Mark Brunsvold was involved with manufacturing prototypes of the '597 patent for Arthrex in 2001 while at Machined Metals. Upon information and belief, Parcus also has knowledge of the patent landscape of the suture anchor industry in general. At the very least, Parcus had knowledge of the '597 patent at least as early as the filing date of the original

complaint in this case yet continues to contribute to the infringement of the '597 patent for the reasons stated above. Upon information and belief, at the very least, Parcus willfully blinded itself to the existence of the '597 patent, and therefore willfully blinded itself to surgeons' direct infringement of the '597 patent resulting from their use of the accused suture anchor products.

58. As a result of Parcus' contributory infringement, Arthrex will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages.

COUNT VI

(Parcus' Induced Infringement of the '597 Patent)

59. Arthrex incorporates by reference paragraphs 1-14, 16-21, 23-31, 33-41, 43-48 and 50-58 as though fully set forth herein.

60. Upon information and belief, with knowledge of the '597 patent, Parcus has also induced and continues to induce the infringement of the '597 patent under 35 U.S.C. § 271(b) by selling, offering to sell and/or importing the accused suture anchor products for use by its orthopedic surgeon customers. In light of Parcus' inducement, these orthopedic surgeon customers directly infringe the '597 patent by using the accused suture anchor products in their surgeries according the inventive method of the '597 patent.

61. Parcus specifically intended its customers to infringe the '597 patent and knew that its customers' acts constituted infringement. Upon information and belief, despite a high likelihood that its actions would induce its surgeon customers' direct infringement of the '597 patent, Parcus marketed and sold the accused suture anchor products to orthopedic surgeons for use in their surgeries. These orthopedic surgeons directly infringe the '597 patent by performing surgery following the directions for use and other instructional literature prepared and provided by Parcus for each of the accused suture anchor products. These materials are available on

Parcus' website, www.parcusmedical.com. See Directions for Use 30521, Rev. 5 (attached as Exhibit 5); 30521, Rev. 6 (attached as Exhibit 6); 30610, Rev. 4 (attached as Exhibit 7).

62. Upon information and belief, Parcus knew that the surgeons' actions, when performed, would directly infringe the '597 patent. At the very least, based at least in part on its knowledge and possession of the '597 patent, its knowledge of Arthrex's patent portfolio in general, its knowledge that Arthrex is a direct competitor in the relatively small suture anchor market, and its use of instructional literature that promote direct infringements by surgeons, Parcus believed that there was a high probability that its acts, if taken, would result in direct infringement of the '597 patent by its surgeon customers, yet deliberately avoided confirming that belief. In other words, upon information and belief, Parcus willfully blinded itself to its surgeons customers' direct infringement of the '597 patent resulting from use of the accused suture anchor products.

63. Upon information and belief, Parcus has not made any changes to any of the accused suture anchor products despite its knowledge of the '597 patent.

64. Upon information and belief, Parcus has not made any changes to any of its publically available instructional product literature, including the directions for use for the accused suture anchor products, despite its knowledge of the '597 patent.

65. Upon information and belief, despite having actual knowledge of the '597 patent, Parcus' continues to actively induce infringement of the '597 patent by releasing and promoting additional infringing products subsequent to the filing of this lawsuit. Parcus released the 45 Knotless Peek CF Suture Anchors in February 2012 specifically intending its customers to directly infringe the '597 patent, or at the very least, was willfully blind to the fact that the surgeons' use of these devices would directly infringe the '597 patent.

66. Upon information and belief, Parcus has actual and/or constructive knowledge of the '597 patent. Parcus has this knowledge by virtue of at least producing the '597 patent as part of its discovery in co-pending civil action no. 2:10-cv-151-FtM-99DNF and by virtue of the fact that several Parcus executives were previously employed by Arthrex during the time in which the invention of the '597 patent was conceived, reduced to practice and patented. Upon information and belief, Mark Brunsvold was involved with manufacturing prototypes of the '597 patent for Arthrex in 2001 while at Machined Metals. Upon information and belief, Parcus also has knowledge of the patent landscape of the suture anchor industry in general. At the very least, Parcus had knowledge of the '597 patent at least as early as the filing date of the original complaint in this case yet continues to actively induce the infringement of the '597 patent for the reasons stated above. Upon information and belief, at the very least, Parcus willfully blinded itself to the existence of the '597 patent, and therefore willfully blinded itself to surgeons' direct infringement of the '597 patent resulting from use of the accused suture anchor products.

67. As a result of Parcus' inducement of infringement, Arthrex will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages.

JURY DEMAND

68. Arthrex demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Arthrex requests judgment in its favor against Parcus for the following relief:

A. An Order adjudging that Parcus has infringed, contributed to the infringement of, and/or induced the infringement of the '451 patent;

B. An Order adjudging that Parcus has infringed, contributed to the infringement of, and/or induced the infringement of the ‘597 patent;

C. An order adjudging Parcus to have willfully infringed both the ‘451 patent and the ‘597 patent;

D. A preliminary and permanent injunction enjoining Parcus, its officers, directors, agents, servants, employees and those persons in active concert or participation with Parcus, from directly or indirectly infringing the ‘451 patent in violation of 35 U.S.C. §271;

E. A preliminary and permanent injunction enjoining Parcus, its officers, directors, agents, servants, employees and those persons in active concert or participation with Parcus, from directly or indirectly infringing the ‘597 patent in violation of 35 U.S.C. §271;

F. An award of damages adequate to compensate Arthrex for Parcus’ infringement;

G. An order for a trebling of damages and/or exemplary damages because of Parcus’ willful infringement pursuant to 35 U.S.C. §284;

H. An Order adjudging that this is an exceptional case;

I. An award to Arthrex of its attorney fees and its costs and expenses incurred in connection with this action pursuant to 35 U.S.C. §285;

J. An award of prejudgment and post-judgment interest and costs of this action; and

K. Such other and further relief that this Court deems just and proper.

Dated: August 29, 2012

/s/ Todd W. Barrett
Todd W. Barrett
Anthony P. Cho
Carlson, Gaskey & Olds, P.C.
400 W. Maple Rd., Suite 350
Birmingham, MI 48009
Telephone: (248) 988-8360
Facsimile: (248) 988-8363
tbarrett@cgolaw.com

acho@cgolaw.com

Andrew H. Reiss
Florida Bar No. 116955
CHEFFY PASSIDOMO, P.A.
821 Fifth Avenue South, Suite 201
Naples, Florida 34102
Telephone: (239) 261-9300
Facsimile: (239) 261-9782
ahreiss@napleslaw.com

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2012, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF and was also served upon all counsel of record identified on the below Service List through CM/ECF.

/s/ Todd W. Barrett

SERVICE LIST

Simeon D. Brier
Edwards Wildman Palmer LLP
525 Okeechobee Blvd, Suite 1600
West Palm Beach, FL 33401
Telephone: (561) 820-0240
Facsimile: (888) 325-9469

Alan M. Spiro
Adam Samansky
Edwards Wildman Palmer LLP
111 Huntington Avenue
Boston, MA 02199
Telephone: (617) 951-2204
Facsimile: (888) 325-9124