

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

Intelligent Automation Design, LLC,	§	
	§	
Plaintiff,	§	Case No. 5:16-cv-00011-JRG-CMC
	§	
v.	§	JURY TRIAL DEMANDED
	§	
Zimmer Biomet CMF and Thoracic, LLC	§	
d/b/a Biomet Microfixation,	§	
	§	
Defendant.	§	
	§	

PLAINTIFF’S FIRST AMENDED COMPLAINT

Plaintiff, Intelligent Automation Design, LLC (“IAD” or “Plaintiff”), files its First Amended Complaint against Defendant Biomet Microfixation, now known as Zimmer Biomet CMF and Thoracic, LLC (referred to herein as “Biomet Microfixation”) and through this Amended Complaint alleges the following:

I. THE PARTIES

1. Plaintiff, Intelligent Automation Design, LLC, is a Pennsylvania limited liability company, having a place of business at 376 Twig Lane, Yardley, PA 19067.
2. Defendant Zimmer Biomet CMF and Thoracic, LLC, doing business as Biomet Microfixation, is a Florida limited liability corporation headquartered at 1520 Tradeport Drive, Jacksonville, FL 32218, and which may be served with process through its counsel of record.

II. JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35, Section 1, *et. seq.* of the United States Code. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 because this action arises under the patent laws of the

United States, including 35 U.S.C. § 271 *et seq.* This Court also has diversity jurisdiction pursuant to 28 U.S.C. § 1332.

4. Biomet Microfixation, either directly or through intermediaries, makes, uses, sells or offers to sell products in this judicial district that infringe the below-identified patent. Biomet Microfixation offers to sell and/or distributes the below-identified infringing products to healthcare institutions and/or medical professionals within this District. Biomet Microfixation has thus committed, contributed to and/or induced acts of infringement within this District and is therefore subject to the jurisdiction of this Court.

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b). Biomet Microfixation has committed acts of infringement in this District and shall be deemed to reside in this judicial District pursuant to 28 U.S.C. § 1391(c)(2).

BACKGROUND OF PATENT-IN-SUIT

6. Plaintiff, IAD, is the owner of the United States Patent No. 7,091,683 (“the ’683 patent”), titled “Method of Monitoring and Controlling the Seating of Screws to the Optimum Point of Grip Independent of Screw Size and Material Density.” A true and correct copy of the ’683 patent, which was duly and legally issued by the United States Patent and Trademark Office on August 15, 2006, is attached hereto as Exhibit A. Pursuant to 35 U.S.C. § 282, the ’683 patent is presumed valid and enforceable.

7. On information and belief, Biomet Microfixation is and has been making, using, offering for sale and/or selling within the United States, products and/or methods that fall within the scope of one or more of the claims of the ’683 patent, literally and/or under the doctrine of equivalents. Specifically, Biomet Microfixation has advertised for sale and sold the “iQ Intelligent System,” (the “Infringing System”) a motorized screwdriver which infringes claims 1

through 8 of the '683 patent. A true and correct copy of an advertisement of an Infringing System is attached hereto as Exhibit B.

8. Biomet Microfixation's sale of the Infringing System for use in accordance with the methods described and claimed in Claims 1-5 of the '683 patent also contributes to the infringement of the '683 patent. The Infringing System is not a staple article of commerce and does not have a substantial non-infringing use.

9. In addition, upon information and belief, Biomet Microfixation has, and continues to, actively induce customers to infringe of claims 1-5 of the '683 patent by knowingly inducing its customers to use the claimed method of controlling a motor used to drive a screwdriver bit such that screws are seated to the optimum point of grip between the screw and the workpiece material. Biomet Microfixation advertises benefits of the Infringing System, including that "[t]he iQ Intelligent System continuously monitors torque output to allow for consistent, accurate and rapid screw insertion," and that use of the Infringing System results in "[n]o excessive torque application resulting in screw stripping" and "[c]omplete seating of all screws." A true and correct copy of an article titled, "Evaluation of the iQTM Intelligent System for Rapid Screw Insertion," is attached hereto as Exhibit C. Biomet Microfixation intends to induce customers to accomplish the advertised benefits through use of the patented method.

10. Accordingly, on information and belief, Biomet Microfixation is infringing the '683 patent and is liable for infringement pursuant to 35 U.S.C. § 271(a)-(c).

11. Biomet Microfixation is liable to Plaintiff for damages that are adequate to compensate for the infringement under 35 U.S.C. § 284, which shall in no event be less than a reasonable royalty.

12. Biomet Microfixation had actual notice of the '683 patent. Defendants' infringement of Plaintiff's '683 patent is therefore willful, and Plaintiff is accordingly entitled to enhanced damages pursuant to 35 U.S.C. § 284. Specifically, Biomet Microfixation or its affiliate filed U.S. Patent Application No. 13/965,692, titled "Surgical Device with Smart Bit Recognition Collet Assembly to Set a Desired Application Mode" ("the '692 App"). The '692 App was rejected as unpatentable in view of Plaintiff's '683 patent and was thereafter abandoned as a result of the USPTO's rejection. A true and correct copy of the Non-Final Office Action dated March 3, 2015 is attached hereto as Exhibit D.

13. This is an exceptional case such that Biomet Microfixation should be required to pay Plaintiff's reasonable attorneys' fees in accordance with 35 U.S.C. § 285.

JURY DEMAND

14. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial on all issues and claims so triable.

PRAYER FOR RELIEF

15. WHEREFORE, Plaintiff prays for judgment and seeks the following relief:
- a) For judgment in Plaintiff's favor that Biomet Microfixation has infringed the '683 patent;
 - b) For an order requiring Biomet Microfixation to account to Plaintiff for all sales, revenues, and profits derived from the infringing device, including any conveyed or derivative sales, and to compensate Plaintiff for all damages pursuant to 35 U.S.C. § 284 for infringement of the '683 patent, which are in no event less than a reasonable royalty;
 - c) For judgment and an order that damages so assessed be enhanced or trebled as a result of willful infringement by Biomet Microfixation, as provided by 35 U.S.C. § 284;
 - d) For judgment and an order requiring Biomet Microfixation to pay Plaintiff its costs, expenses, pre-judgment interest, and post-judgment interest for infringement of the '683 patent, as provided under 35 U.S.C. § 284;

- e) For judgment and an order that this case is exceptional under 35 U.S.C. § 285 and requiring Biomet Microfixation to pay Plaintiff's reasonable attorneys' fees; and
- f) For such other and further relief as the Court may deem just and proper.

DATED: March 24, 2016

RESPECTFULLY SUBMITTED,

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PLAINTIFF'S FIRST
AMENDED COMPLAINT

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule LR5 on March 24, 2016. The notice of electronic filing sent by the Court's electronic filing system constitutes service of the document on all counsel of record who have consented in writing to electronic service.

/s/ Holly H. Barnes
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