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SPITZ TECHNOLOGIES CORPORATION

7 **UNITED STATES DISTRICT COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**  
9

10 SPITZ TECHNOLOGIES  
11 CORPORATION,

12 Plaintiff,

13 vs.

14 NOBEL BIO CARE USA, LLC, a  
15 Delaware limited liability company,

16 Defendant.

Case No.: 8:17-cv-00660-JVS-JCG

Honorable James V. Selna

**FIRST AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

Original Complaint Filed: April 11,  
2017

1 Plaintiff SPITZ TECHNOLOGIES CORPORATION (“Plaintiff”) hereby  
2 alleges, by the undersigned attorneys, upon personal information as to itself, and  
3 upon information and belief as to all other allegations, as follows:

4 **THE PARTIES**

5 1. Plaintiff SPITZ TECHNOLOGIES CORPORATION is a corporation  
6 organized and existing under the laws of the province of Ontario, Canada, having  
7 its principle place of business at 7088 Financial Drive, Mississauga, Canada.

8 2. On information and belief, Defendant NOBEL BIOCARE  
9 SERVICES AG is a Swiss company with a place of business at Balz  
10 Zimmermann-Strasse 7, CH-8302 Kloten, SWITZERLAND, NOBEL BIOCARE  
11 AB is a Swedish company, with a place of business at Box 5190, 402 26 Vastra  
12 Hamngatan 1, 411 17, Goteborg, Sweden. Defendant NOBEL BIOCARE USA,  
13 LLC, is a Delaware limited liability company with its principal place of business  
14 at 22715 Savi Ranch Parkway, Yorba Linda, California 92887. Hereinafter,  
15 NOBEL BIOCARE SERVICES AG, NOBEL BIOCARE AB, and NOBEL  
16 BIOCARE USA, LLC, are collectively referred to as “Nobel” or “Defendants.”

17 **JURISDICTION AND VENUE**

18 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§  
19 1331 and 1338(a) because this action arises under the patent laws of the United  
20 States, 35 U.S.C. § 100 et seq.

21 4. This Court has personal jurisdiction over Defendant, NOBEL  
22 BIOCARE USA, LLC as it reside in this judicial district. This Court has personal  
23 jurisdiction over Defendants, NOBEL BIOCARE SERVICES AG and NOBEL  
24 BIOCARE AB as, on information and belief, they regularly and systematically  
25 transact business in the State of California and within this judicial district. This  
26 Court further has personal jurisdiction over defendants as, on information and  
27 belief, they have and are engaged in infringing conduct in California and this  
28 judicial district.

1           5.     Venue is proper in the Central District of California pursuant to 28  
2 U.S.C. §§ 1391(b) and (c) and 1400(b), because Defendant, NOBEL BIO CARE  
3 USA, LLC, resides in this judicial district, this Court has personal jurisdiction  
4 over Defendants and Defendants have committed acts of infringement in this  
5 judicial district.

6                           **FACTS COMMON TO ALL COUNTS**

7           6.     United States Patent No. 7,008,227 (“the ’227 Patent”), titled “Self –  
8 Drilling Implant,” was duly and legally issued by the United States Patent and  
9 Trademark Office on March 7, 2006. A true and correct copy of the ’277 Patent is  
10 attached hereto as Exhibit 1. Plaintiff is the assignee and owner of the ’227 patent  
11 and all rights arising therefrom.

12           7.     The ’227 Patent is directed towards, *inter alia*, a dental implant  
13 which is self-drilling and self-tapping.

14           8.     More particularly, the ’227 patent claims a dental implant having  
15 body and head portions. The body portion has a tip portion and external threads  
16 including a lead thread portion, an intermediate thread portion, and a distal thread  
17 portion. The threads of the lead, intermediate and distal thread portions comprise  
18 a cutting edge so that the implant is self-tapping. The head portion of the implant  
19 has a central bore with an internal thread for receiving a dental prosthesis. The tip  
20 portion of the implant has at least one cutting edge for cutting bone to form a bore  
21 as the implant is rotated into position in the patient’s mouth. The cutting edge is  
22 formed at the generally longitudinal axis of the implant and extends radially  
23 outward such that upon rotation of the implant, the implant is self-drilling. The  
24 implant also includes at least one flute having a first end adjacent to the cutting  
25 edge so that upon rotation of the implant bone cuttings may move up and out of  
26 the bore created by the implant.

27           9.     Defendants do not have a license to make, use, sell or import a dental  
28 implant that falls within the scope of the ’227 Patent’s claims.

1           10. On information and belief, Defendants make, use, sell, offer for sale,  
2 and import into the United States a dental implant under the tradename  
3 NobelActive which infringes one or more claims of the '227 patent and have  
4 derived and received, and will continue to derive and receive income and profits  
5 from its infringing activity to the monetary damage of Plaintiff.

6           11. The NobelActive implant has body and head portions. The body  
7 portion has a tip portion and external threads including a lead thread portion, an  
8 intermediate thread portion, and a distal thread portion. The threads of the lead,  
9 intermediate and distal thread portions comprise a cutting edge so that the implant  
10 is self-tapping. The head portion of the implant has a central bore with an internal  
11 thread for receiving a dental prosthesis. The tip portion of the implant has at least  
12 one cutting edge for cutting bone to form a bore as the implant is rotated into  
13 position in the patient's mouth. The cutting edge is formed at the generally  
14 longitudinal axis of the implant and extends radially outward such that upon  
15 rotation of the implant, the implant is self-drilling. The implant also includes at  
16 least one flute having a first end adjacent to the cutting edge so that upon rotation  
17 of the implant bone cuttings may move up and out of the bore created by the  
18 implant.

19           12. Nobel Biocare USA, LLC., has admitted in response to discovery  
20 requests in this action that it knew about the '227 patent at least as early as  
21 October 2013 as a result of it being cited by the United States Patent Office in an  
22 Office Action involving the application for Nobel's U.S. Patent No. 8,814,569  
23 ("the '569 patent").

24           13. The '569 patent is listed on Nobel's website where it provides patent  
25 marking information for the NobelActive® dental implant.

26           14. The prosecution history of U.S. Patent No. 8,814,569 contains an  
27 October 2, 2013 Office Action that specifically references the '227 patent. In  
28 particular, the Patent Examiner rejected then pending claims 1, 6, 13, 26, 28, 30-

33 and 42-45 as anticipated under 35 U.S.C. 102(e) as being anticipated by the '227 patent.

15. Then pending claim 1 of the '569 application read as follows:

A dental implant for supporting a dental prosthesis, said implant comprising:

a proximal portion with a proximal end and a distal end, the proximal portion begin generally cylindrical and defining a distal diameter at the distal end of the proximal portion; and

a tapering front portion defining a proximal diameter and having a distal end surface that defines a distal diameter, the distal diameter being substantially smaller than the distal diameter of the proximal portion, the front portion tapering linearly from the distal diameter of the proximal portion to the distal diameter of the distal end surface, the distal diameter of the distal end surface being approximately half of the distal diameter of the proximal portion, the front portion further comprising a cutting edge; and

at least one thread that extends from the proximal portion of the implant to the distal end surface, the thread defining a thread height and cross-sectional thread form that are substantially constant along the extent of the thread on at least the tapering front portion of the implant.

16. In rejecting claim 1, the Patent Examiner stated the '227 patent disclosed the following:

Per claim 1, figures 1 and 2 of Carmichael teaches a dental implant (i.e., implant, 10) for supporting a dental prosthesis (see e.g., column 7, lines 49-51), the implant (10) including a proximal portion (i.e. head portion, 14, intermediate thread portion 22 and distal thread portion 24), with a proximal end (i.e., the top most end of the implant as illustrated in

figure 1) and a distal end (i.e., the bottom most end of the intermediate thread portion 22 as illustrated in figure 1), the proximal portion being generally cylindrical (see figure 1) and defining a distal diameter (i.e., the diameter at the top of the thread portion 20 defining a diameter which is equal to two time the distance between line 47 and axis 16 defined as the “root distance”, see e.g., column 5, line 29 to column 6, line 18) at a distal end of the proximal portion (14, 22, and 24); and a tapering front portion (i.e., lead thread portion, 20) defining a proximal diameter (i.e., the diameter at the top of the lead thread portion 20 defining a diameter which is equal to two times the distance between line 47 and axis 16 defined as the “root distance”, see e.g., column 5, line 29 to column 6, line 18, which as noted above is the same as the distal diameter of the proximal portion) and having a distal end surface (i.e., surface of tip portion , 18) that defines a distal diameter (i.e., the diameter at the bottom of lead portion defining a diameter which is equal to two time the distance between line 45 and axis 16 defined as the “cutting edge distance”, see e.g., column 5, line 29 to column 6, line 18), the distal diameter (i.e., “cutting edge distance”) being substantially smaller than the distal diameter (i.e., “root distance”) of the proximal portion (14, 22, 24), the front portion (20) tapering linearly (i.e., it is clear from figure 1 that the implant tapers along the crest line 62) from the distal diameter (i.e., “root distance) of the proximal portion (14, 22, 24) to the distal diameter (i.e., “cutting edge distance”) of the distal end surface (18), the distal diameter (i.e., cutting edge distance”) being approximately half of the distal diameter of the proximal portion (i.e., “root distance, (i.e., Carmicheal clearly teaches the distance 49 “may be larger, perhaps up to as large s 1/3 of the radial distance between axis 16 and the line 47”, see column 6, lines 4-6, which would provide a distal diameter equal to two thirds of the proximal diameter which the examiner has interpreted as

1 “substantially smaller” and approximately half”), the front portion (22)  
2 further including a cutting edge (i.e., cutting edges, 42 and 52); and at least  
3 one thread (i.e., the thread of lead thread portion 20, intermediate thread  
4 portion 22 and distal thread portion, 24) that extends from the proximal  
5 portion (14, 22 and 24) of the implant (10) to the distal end surface (18), the  
6 thread defining a thread height and a cross-sectional thread form that are  
7 substantially constant (as clearly shown in figure 1) along the extent of the  
8 thread on at least the tapering front portion (20) of the implant (10).

9 17. Nobel did not specifically contend that any portion of the Patent  
10 Examiner’s description of the ’227 patent was incorrect.

11 18. Nobel thus had detailed, and actual, knowledge of the ’227 patent and  
12 was aware of its application to the NobelActive® dental implant, and to Nobel’s  
13 product line, as early as October 2013. Nobel has responded to discovery requests  
14 in this action that it did not seek the advice of counsel as to whether the claims of  
15 the ’227 patent were valid and infringed. Rather, knowing of the ’227 patent, the  
16 validity of the patent’s claims and the fact that the NobelActive® dental implant  
17 infringed at least one claim of the ’227 patent, Nobel willfully decided to infringe  
18 the patent by manufacturing, offering for sale, selling, importing and causing to be  
19 imported infringing products in the United States.

20 **Count 1**

21 **Patent Infringement of U.S. Patent No. 7,008,227**

22 19. Plaintiff repeats and re-alleges each of the allegations in paragraphs  
23 1-11 as though fully set forth herein.

24 20. Defendants have infringed, and are continuing to infringe, the ’227  
25 patent, by making, using, selling, offering to sell in the United States or importing  
26 into the United States a product, including but not limited to the NobelActive®  
27 dental implant which incorporates the inventions claimed in the ’227 patent.  
28



21. Defendants' infringement was and continues to be willful and will continue unless enjoined by the Court.

**Count 2**

**Induced Infringement of U.S. Patent No. 7,008,227**

22. Plaintiff repeats and re-alleges each of the allegations in paragraphs 1-14 as though fully set forth herein.

23. Defendants, sell a dental implant to end user clinicians in the United States who through their use of the infringing dental implants directly infringe at least one claim of the '227 patent. Defendants have knowingly, actively and with specific intent to do so, have induced the end user clinicians to directly infringe the claims of the '227 patent by advertising and instructing them on the infringing properties and methods of use.

- a. Nobel's 2007 "NobelActive External Connections, Procedures & Products" manual promotes pg. 8 the "Self drilling, self cutting and self condensing abilities . . ." and at pg. 22 the "The unique self-drilling, self-cutting and self-condensing abilities of the NobelActive implant . . ."
- b. Nobel's 2007 NobelActive® promotion in Manufacturer News "NobelActive-The Implant of the Future" describes the implants threads at pg. 1 as having "sharp horizontal threads."
- c. Nobel's 2010 NobelActive® "A New Direction" brochure at pg. 5 describes the NobelActive® dental implant as having an "expanding tapered body acts like a threaded osteotome . . ." and at pg. 4 as having "[e]xpanding tapered body with double lead thread design and apical drilling blades" and "Drilling blades on apex: enables smaller osteotomy".
- d. Nobel's 2011 "NobelActive" leaflet, at pg. 5 promotes the NobelActive's "[r]everse-cutting flutes with drilling blades on apex



1 enable experienced clinicians to adjust implant position for optimal  
2 restorative orientation, particularly in extraction sites.” See also,  
3 2014 NobelActive® Procedures Manual p. 13: “The self-drilling  
4 capability of NobelActive allows it to be inserted into sites that have  
5 been prepared to a reduced depth. This ability becomes very useful in  
6 situations of close proximity to vital anatomical structures or in softer  
7 bone when maximum condensation is desirable. Drill to 2–4 mm less  
8 than the total implant length, insert implant to drilled depth and  
9 continue to insert. The implant will drill its way to final depth.”

10 24. Defendants’ infringement was and continues to be willful and will  
11 continue unless enjoined by the Court.

12 **Count 3**

13 **Contributory Infringement of U.S. Patent No. 7,008,227**

14 25. Plaintiff repeats and re-alleges each of the allegations in paragraphs  
15 1-17 as though fully set forth herein.

16 26. The NobelActive® dental implants are solely used by clinicians to  
17 replace extracted teeth. The NobelActive® dental implants have no other use, let  
18 alone any substantial non-infringing use.

19 27. The structure of the NobelActive® dental implant constitutes the  
20 claimed invention, or a material part thereof, and the end use by the clinicians  
21 constitutes a direct infringement of the ’227 patent. Defendants have  
22 contributorily infringed the ’227 patent by selling or offering to sell to others  
23 dental implant products, that infringe the claims of the ’227 patent that are not  
24 suitable for non-infringing use.

25 28. Defendants’ infringement was and will and continues to be willful  
26 and will continue unless enjoined by the Court.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for Judgment against Defendants as follows:

1. That the Court determine that Defendants have infringed and will continue to infringe one or more claims of United States Patent No. 7,008,227.

2. That the Court determine that Defendants have induced others, and will continue to induce others, into infringing one or more claims of United States Patent No. 7,008,227.

3. That the Court determine that Defendants have contributorily infringed and will continue to contributorily infringe one or more claims of United States Patent No. 7,008,227.

4. That the Court determine that Defendant's infringement was willful.

5. That the Court award all lawful damages to Plaintiff including damages no less than a reasonable royalty arising out of Defendants infringement of United States Patent No. 7,008,227, plus interest on such damages.

6. That the Court permanently enjoin Defendants from further infringement for the remaining life of United States Patent No. 7,008,227.

7. That the Court determine that Defendants infringement was willful and that this case "exceptional" within the meaning of 35 U.S.C. §§ 284 and/or 285 and order Defendants to pay Plaintiff's enhanced damages up to treble damages and Plaintiff's reasonable attorney's fees.

8. The Court award Plaintiff its costs; and

9. Such further relief as this Court may deem equitable.

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1 Dated: October 30, 2017

**MICHELMAN & ROBINSON, LLP**

2 By: /s/ Jan P. Weir

3 Jan P. Weir

4 Kathrine J. Brandt

5 Attorneys for Plaintiff

6 SPITZ TECHNOLOGIES

7 CORPORATION

**DEMAND FOR JURY TRIAL**

Pursuant to FED. R. CIV. P. 38, Plaintiff hereby demands a trial by jury on its claims.

Dated: October 30, 2017

**MICHELMAN & ROBINSON, LLP**

By: /s/ Jan P. Weir

Jan P. Weir

Kathrine J. Brandt

Attorneys for Plaintiff

SPITZ TECHNOLOGIES

CORPORATION