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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Extremity Medical, LLC,

Plaintiff/ Counter-Defendant,

v.

Fusion Orthopedics, LLC,

Defendant/ Counter-Claimant.

Case No.: 2:22-cv-00723-PHX-GMS

**EXTREMITY MEDICAL'S
INFRINGEMENT CONTENTIONS**

Pursuant to the Case Management Order entered on December 16, 2022 (Dkt. No. 49), Plaintiff/ Counter-Defendant Extremity Medical, LLC ("Extremity Medical") hereby serves its Infringement Contentions on Defendant/ Counter-Claimant Fusion Orthopedics, LLC ("Fusion"). Fact discovery has just begun in this case. Accordingly, Extremity Medical reserves the right to amend its contentions as discovery progresses and/or for other good cause.

Extremity Medical, LLC
EXHIBIT 2006
Fusion Orthopedics v. Extremity Medical
Case IPR2023-00894

1 Based on available information obtained to date, Extremity Medical asserts against
2 Defendant Claims 1-8 and 10-15 of U.S. Patent No. 11,298,166 (“the ’166 Patent”). As further
3 set forth below and in the claim chart provided herewith, Defendant has infringed each claim
4 under 35 U.S.C. § 271(a), 35 U.S.C. § 271(b) and/or 35 U.S.C. § 271(c).

5 Based on available information obtained to date, the accused instrumentalities include
6 Fusion’s IntraLock System (the “Infringing System”). The Infringing System includes at least:
7 (1) a Post Nail, (2) a Set Screw, and (3) a Lag Screw as shown at least in Defendant’s Surgical
8 Technique Guide for the IntraLock System. *See, e.g.,* XM_Fusion_000001- XM_Fusion_000020.

9 A claim chart identifying (based on publicly available information presently known to
10 Extremity Medical) where each element of each asserted claim is found within the Infringing
11 System is provided herewith. The analyses in the claim chart provided herewith shows how each
12 element is literally present. In the event that a claim element is deemed to be missing under a
13 literal-infringement analysis (e.g., due to claim construction), Extremity Medical reserves the
14 right to demonstrate the presence of a substantial equivalent of such element and to pursue
15 infringement under the doctrine of equivalents.

16 Defendant has infringed and continues to infringe Claims 1-8 and 10-15 of the ’166 Patent
17 in violation of 35 U.S.C. § 271(a) by making, using, offering to sell, and/or selling the Infringing
18 System, within the United States, or importing the Infringing System into the United States.

19 Defendant has infringed and continues to infringe Claims 1-8 and 10-15 of the ’166 Patent
20 in violation of 35 U.S.C. § 271(b) by inducing vendors, customers and others to make, use, sell,
21 or offer for sale within the United States, or import into the United States systems that practice
22 inventions of the ’166 Patent with knowledge of and intent that such vendors, customers and
23 others infringe the ’166 Patent. Defendant has intentionally caused, urged, encouraged, or aided
24 in the actions—including the direct infringement of the ’166 Patent—that induced infringement
25 of the ’166 Patent by vendors, customers and others. Upon information and belief, such
26 intentional actions include, for example, inducing Defendant’s customers to infringe the ’166
27 Patent by making available on Defendant’s website surgical guides that teach surgeons how to
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1 assemble and use the Infringing System. As a result of Defendant's conduct, Defendant has
2 induced and is inducing such vendors, customers and others to make or use systems, such as the
3 Infringing System, to infringe Claims 1-8 and 10-15 of the '166 Patent. Additionally, Defendant
4 has induced and is inducing its vendors, customers and others to implement and utilize parts of
5 the Infringing System to infringe Claims 1-8 and 10-15 of the '166 Patent. Defendant has engaged
6 and is engaging in this conduct while aware of the '166 Patent and with the intent to infringe, at
7 least as of the filing of the Complaint.

8 Defendant has also contributed to the infringement of the '166 Patent by offering for sale
9 or selling within the United States or importing into the United States the Post Nail, which
10 constitutes a material part of the Infringing System. Defendant knows the Post Nail is especially
11 made or especially adapted for use in the Infringing System, and that the Post Nail is not a staple
12 article or commodity of commerce suitable for substantial noninfringing use. By contributing to
13 the use of the Infringing System by their vendors, customers and others, Defendant has been
14 indirectly infringing under 35 U.S.C. § 271(c) Claims 1-8 and 10-15 of the '166 Patent, either
15 literally or under the doctrine of equivalents.

16
17
18 DATED: January 6, 2023

By /s/ Michael J. Zinna

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CERTIFICATE OF SERVICE

I hereby certify that on this day a true and correct copy of the foregoing document was served on counsel for Defendants by electronic mail.

Dated: January 6, 2023

By: /s/ David Lindenbaum

David Lindenbaum