

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROGER P. JACKSON, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 20-1784 (RGA)
	)	
SEASPINE HOLDINGS CORPORATION,	)	HIGHLY CONFIDENTIAL-
	)	ATTORNEY'S EYES ONLY
Defendant.	)	

PLAINTIFF'S FINAL INFRINGEMENT CONTENTIONS

Pursuant to Court's Scheduling Order (D.I. 49, 59 and 65) Plaintiff Roger P. Jackson, M.D. (hereafter, "Dr. Jackson" or "Plaintiff") by and through his attorneys, hereby provides his Final Infringement Contentions (hereafter, "Contentions") to Defendant SeaSpine Holders Corporation (hereafter, "SeaSpine" or "Defendant"). As disclosed herein and in the accompanying exhibits identified herein and attached hereto, these Contentions identify accused products and asserted claims of Asserted Patent Nos. 7,377,923 (the '923 Patent), 10,588,667 (the '667 Patent), 8,540,753 (the '753 Patent), 10,278,740 (the '740 Patent), 10,561,445 (the '445 Patent), 10,952,777 (the '777 Patent), 9,662,143 (the '143 Patent), 10,722,273 (the '273 Patent), 11,399,873 (the '873 Patent), and 9,808,292 (the '292 Patent), and include claim charts relating how accused products allegedly infringes asserted claims.

PRELIMINARY STATEMENT

While the foregoing contentions nominally are "final," they should not be understood as Plaintiff's final and last statement on how it contends infringement or liability for infringement occurs by or with Defendant. Plaintiff reserves the right to amend, supplement, or otherwise revise these Contentions, including as provided for under Fed.R.Civ.P. 26. Further, discovery is ongoing

and Plaintiff contemplates receiving additional discovery relevant (or potentially-relevant) to its contentions.

Plaintiff accordingly contemplates these Contentions may be revised in light of, and/or to incorporate, additional discovery or understanding of existing discovery. SeaSpine appears not to have completed its production of documents and information at this time. Consequently, these contentions are based upon Dr. Jackson's current understanding of the accused spinal implant systems, namely the Mariner, Malibu and Newport spinal implant systems with their associated variations. Dr. Jackson reserves the right to appropriately supplement and amend these Final Contentions based upon, further analysis, information that he obtains from public sources, from third party sources, from further information and documents produced by SeaSpine or learned by Dr. Jackson through and during the Expert Discovery period. Dr. Jackson further reserves the right to supplement and amend these Final Contentions based on the results of testing or analysis of physical samples, as may be requested or desired by Dr. Jackson's experts and/or consultants.

The materials cited by Dr. Jackson herein and in the accompanying exhibits is illustrative and exemplary and is not intended to provide exhaustive, exclusive, or preclusive recitations of all evidence upon which Dr. Jackson may ultimately rely upon at trial. Instead, the materials cited by Dr. Jackson herein and in the accompanying exhibits is meant to provide specific notice to Defendant SeaSpine as to how the SeaSpine Mariner, Malibu and Newport products meet all of the limitations of the claims.

ASSERTED CLAIMS AND ACCUSED PRODUCTS

Dr. Jackson alleges that the SeaSpine Mariner spinal implant system infringes (and/or SeaSpine is liable as an infringer of) the following claims pursuant to 35 U.S.C. §§ 271(a), (b), (c), (f)(1) and (f)(2). Dr. Jackson's identification of claims below is pursuant to the Parties'

agreement regarding limiting claims and prior art references, as reflected in Amended Schedule dated April 2, 2024 (D.I. 164), which for efficient management of the Court's resources in bringing the case to trial includes less than all claims Plaintiff contends are infringed. The selection of claims here pursuant to the Parties' agreement is without prejudice of Plaintiff's ability to later assert infringement of those claims by Defendant's products and pursue remedies for any infringement:

- '923 Patent, independent claim 1.
- '923 Patent, dependent claim 4.
- '667 Patent, independent claim 1.
- '667 Patent, dependent claim 7.
- '753 Patent, independent claim 1.
- '753 Patent, independent claim 14.
- '740 Patent, independent claim 1.
- '740 Patent, dependent claim 2.
- '445 Patent, dependent claim 6.
- '777 Patent, independent claim 1.
- '143 Patent, independent claim 1.
- '273 Patent, independent claim 39.
- '873 Patent, independent claim 1.
- '292 Patent, independent claim 1.
- '292 Patent, independent claim 25.

Dr. Jackson also alleges that the SeaSpine Malibu and Newport spinal implant systems infringe (and/or SeaSpine is liable as an infringer of) the following claims pursuant to 35 U.S.C. §§ 271(a), (b), (c), (f)(1) and (f)(2):

- '292 Patent, independent claim 1.
- '292 Patent, independent claim 25.

Dr. Jackson contends, based on the documents, testimony, and other information available that each element of each asserted claim of the Asserted Patents is literally met by the accused devices, as set forth in Exhibits 1 through 10c. To the extent SeaSpine argues that one or more claim element is not literally satisfied, Dr. Jackson reserves the right to supplement these contentions to show that those elements are met under the doctrine of equivalents. Dr. Jackson also reserves the right to allege that claim limitations are satisfied under the doctrine of equivalents once the Court construes any disputed claim terms.

With respect to direct infringement pursuant to § 271(a), SeaSpine makes, uses, offers to sell, sells or imports the Accused Products. In addition, in some instances, Plaintiff additionally contends that SeaSpine is liable as an infringer under 35 U.S.C. § 271(b), (c), and/or (f). With respect to the scienter requirements in 35 U.S.C. § 271(b), (c) and in f(1)¹ and f(2)² Plaintiff refers to information SeaSpine provides to surgeons and other clinicians and information provided to the FDA, other regulatory agencies, and on the indications for use of the infringed products. These

¹ “In such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the patent if such combination occurred within the United States,”.

² “Component of a patented invention that is especially made or especially adapted for use in the invention and not a staple article or commodity of commerce suitable for substantial noninfringing use, where such component is uncombined in whole or in part, knowing that such component is so made or adapted and intending that such component will be combined outside of the United States in a manner that would infringe the patent if such combination occurred within the United States.”

include “Guides” and/or “Technique Guides” and/or “Surgical Technique Guides” for the Accused Products and the instructions for use.

ILLUSTRATIVE PRODUCTS AND COMPONENTS

During discovery it was revealed that multiple variations of at least the accused Mariner spinal implant system exist and have been, e.g., manufactured and sold, by SeaSpine. These include at least the polyaxial, trauma and deformity heads. Mr. Corey Gladieux, SeaSpine’s 30(b)(6) designee, testified that these six Mariner head styles varied in only certain respects from one another. *See, e.g.,* 30(b)(6) Deposition of Corey Gladieux dated 10-8-2024 (“Gladieux 30(b)(6) Depo”), 62:17–71:15, 90:20–25. Specifically, Mr. Gladieux testified that the orientational direction of the rod extension channel and the angle at which the shank is inserted varies. *See, e.g., id.* at 63:6–64:25, 70:17–71:7. Further, Mr. Gladieux testified that each of the polyaxial, trauma and deformity heads optionally can include break-off tab extensions. *See, e.g., id.* at 67:13-69:10. For purposes of determining infringement of the claims identified herein, these variations do not alter the alleged infringement and unless, specifically noted in Exhibits 1 through 10a each variation infringes the asserted claims in the same manner.

Likewise, certain information regarding a further variation of the Mariner, the “Marnier RDX” spinal implant head style was, e.g., manufactured and sold, by SeaSpine. Differences between the Mariner RDX and the other head styles do not alter the alleged infringement and the Mariner RDX spinal implant infringes in the same manner. *See, e.g.,* SEASPINE_131141.

Additionally, during discovery it was revealed that the polyaxial pedicle screws of the Mariner system could be implanted in a “pre-assembled” form or “*in situ*.” *See, e.g.,* Gladieux 30(b)(6) Depo, 77:17-78:17. Only the polyaxial head, polyaxial head with break-off tab extensions and RDX could be implanted “*in situ*” as Plaintiff presently understand SeaSpine’s discovery. *See,*

e.g., id. at 105:3-25; *see also* SEASPINE_000065-112. All Mariner variations can be implanted when “pre-assembled.” *See, e.g.,* Gladieux 30(b)(6) Depo, 73:23-74:16. Unless specifically noted in Exhibits 1-9, both the “pre-assembled” and “*in situ*” arrangement infringe. With respect to Exhibit 10a, Plaintiff presently identifies the “pre-assembled” arrangement as infringing the claims of the `292 patent.

Consequently, for purposes of brevity and simplicity, the Mariner polyaxial head style without break-off tabs is utilized to illustrate and serve as a representative product for infringement purposes; however, unless specifically noted each of the Mariner variations infringes for the same reasons and Plaintiff discloses to Defendant that products with other head styles infringe in the same manner.

Similarly, during discovery SeaSpine disclosed that with respect to the bushing or insert utilized by the Mariner spinal implant system that a Generation 1 (“Gen 1”) and Generation 2 (“Gen 2”) bushing was manufactured and sold by SeaSpine. *See, e.g.,* Gladieux 30(b)(6) Depo, 120:25-122:20. The Gen 1 bushing incorporated a more extended hinge portion. *See, e.g., id.* at 121:7-19. Unless specifically noted both the Gen 1 and Gen 2 bushings infringes the asserted claims equally and for the same reasons.

Further, during discovery SeaSpine disclosed that the shanks utilized as part of the Mariner system utilized the same geometry for their respective shank heads, while having different lengths and diameters for their anchor portions. *See, e.g.,* Gladieux 30(b)(6) Depo, 71:22-72:15, 173:22-174:20, 179:3-13. Additionally, Mariner shanks were manufactured to be solid, cannulated and cannulated with fenestrations. *See, e.g., id.* at 60:1-5. Unless specifically noted each variant of the Mariner shank infringes the asserted claims equally and for the same reasons.

Finally, during discovery SeaSpine disclosed that with respect to the closure top or locking cap of the Mariner product that a Generation 1, Generation 2 and Generation 2.1 closure top or locking cap was manufactured and sold by SeaSpine. SeaSpine disclosed that Generation 1 purportedly featured a square thread form; whereas Generation 2 and 2.1 purportedly featured a rhomboid reverse angle thread form. *See, e.g.,* Gladieux 30(b)(6) Depo, 109:5-23. Generation 1 and 2 included a substantially flat or “very gradual domed” lower surface, while Generation 2.1 included a further button or “point lock” at the center of its lower surface. *See, e.g., id.* at 109:24-111:4. Unless specifically noted each variant of the closure top or locking cap infringes the asserted claims equally and for the same reasons.

DOCUMENTS, TESTIMONY AND OTHER INFORMATION RELIED UPON

In addition to the documents and testimony cited specifically in Exhibits 1 through 10c that accompany this disclosure, Dr. Jackson may rely on additional documents, testimony, and other information to support the contentions in Exhibits 1 through 10c. For example, Dr. Jackson may further rely upon:

- All documents and other information cited in Dr. Jackson’s preliminary infringement contentions;
- All documents and other information cited in Dr. Jackson’s interrogatory responses and all supplements thereto on topics related to infringement and/or liability for infringement;
- All documents and other information that will be cited by reference in the forthcoming expert report(s) produced pursuant to the timeframe and schedule set forth by the Court or otherwise agreed to by the parties;

- Physical samples of the accused product made available to Dr. Jackson and photographs thereof, including but not limited to the physical samples produced by SeaSpine at SEASPINE_000662-671;
- The testimony and exhibits of Mr. Gladieux and Mr. Bannigan, the 30(b)(6) designees of SeaSpine;
- The CAD files produced by SeaSpine. *See, e.g.,* SEASPINE_121987, SEASPINE_123712-13;
- SeaSpine documents produced on October 25, 2024, having bates range of SEASPINE_130737-131551, including but not limited to recently produced Surgical Technique Guides (including but not limited to SEASPINE_130747, SEASPINE_131018, and SEASPINE_131141), white papers and technical documents, and engineering drawings (including but not limited to SEASPINE_131500-503); and,
- The videos referenced in Dr. Jackson's Complaint, First Amended Complaint, Second Amended Complaint, and Third Amended Complaint. . *See, e.g.,* D.I. 1, ¶¶ 29-40; D.I. 9, ¶¶ 36-47; D.I. 79, ¶¶ 32-43; D.I. 165, ¶¶ 35-46.

The aforementioned list is not exhaustive and is subject to further supplementation and amendment based upon information that Dr. Jackson obtains from public sources, from third party sources, from further information and documents produced by SeaSpine or learned by Dr. Jackson through and during the Expert Discovery period, or further analysis of other materials. Dr. Jackson further reserves the right to supplement and amend the Final Contentions and materials relied upon based on the results of testing or analysis of physical samples, as may be requested or desired by Dr. Jackson's experts and/or consultants.

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CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2024, I caused the foregoing to be served upon the following in the manner indicated:

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