

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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| BONUTTI SKELETAL INNOVATIONS LLC, | |) | |
| | |) | |
| Plaintiff, | |) | |
| | |) | C.A. No. 12-1107-GMS |
| v. | |) | |
| | |) | JURY TRIAL DEMANDED |
| ZIMMER BIOMET HOLDINGS, INC. and | |) | |
| ZIMMER, INC., | |) | |
| | |) | |
| Defendants. | |) | |
| <hr/> | |) | |
| BONUTTI SKELETAL INNOVATIONS LLC, | |) | |
| | |) | |
| Plaintiff, | |) | |
| | |) | C.A. No. 12-1110-GMS |
| v. | |) | |
| | |) | JURY TRIAL DEMANDED |
| WRIGHT MEDICAL GROUP, INC. and | |) | |
| WRIGHT MEDICAL TECHNOLOGY, INC., | |) | |
| | |) | |
| Defendants. | |) | |
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| BONUTTI SKELETAL INNOVATIONS LLC, | |) | |
| | |) | |
| Plaintiff, | |) | |
| | |) | C.A. No. 14-1040-GMS |
| v. | |) | |
| | |) | JURY TRIAL DEMANDED |
| MICROPORT ORTHOPEDICS INC., | |) | |
| | |) | |
| Defendant. | |) | |
| <hr/> | |) | |

JOINT STATUS REPORT

In accordance with the Court’s Oral Order dated June 30, 2015, Rules 16(b) and 26(f) of the Federal Rules of Civil Procedure, and District of Delaware Local Rule 16.2(b), counsel for Plaintiff Bonutti Skeletal Innovations LLC (“Bonutti Skeletal” or “Plaintiff”) and Defendants

Zimmer Biomet Holdings, Inc. (formerly Zimmer Holdings, Inc.) and Zimmer, Inc. (collectively, “Zimmer”); Wright Medical Group, Inc. and Wright Medical Technology Inc. (collectively, “Wright Medical”); and MicroPort Orthopedics, Inc. (“MicroPort” and collectively, “Defendants”) submit this Joint Status Report.

I. JURISDICTION & SERVICE

The parties agree that this Court has subject matter jurisdiction over all claims and counterclaims in these actions pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

Defendants reserve the right to challenge subject matter jurisdiction to the extent that discovery reveals that Plaintiff does not have standing to sue. The parties agree that this Court has personal jurisdiction over the parties for purposes of this action. At this time, the parties are not aware of any additional party yet to be served.

II. SUBSTANCE OF THE ACTION

The instant actions are among several patent infringement suits Plaintiff has filed against medical device manufacturers. Two related cases previously before this Court—*Bonutti Skeletal Innovations, LLC v. ConforMIS, Inc.* (C.A. No. 12-1109) and *Bonutti Skeletal Innovations, LLC v. Smith & Nephew Inc.* (C.A. No. 12-1111)—have been dismissed pursuant to settlement agreements between the parties. The instant actions had been stayed pending *inter partes* review (“IPR”) proceedings. That stay was lifted by the Court’s Oral Order of June 30, 2015. In connection with the IPR proceedings, and to streamline the instant actions, Plaintiff is no longer asserting U.S. Patent No. 6,702,821; U.S. Patent No. 7,749,229; or U.S. Patent No. 7,837,736.

In Plaintiff’s action against Zimmer (C.A. No. 12-1107), Plaintiff alleges that Zimmer has infringed and is still infringing U.S. Patent No. 8,133,229; U.S. Patent No. 7,806,896; and U.S. Patent No. 7,959,635 by selling, offering for sale, importing, making, or having made knee implant systems and instrumentation for use of those systems and by knowingly and

intentionally creating and distributing surgical technique guides that instruct surgeons on using these knee implant systems in an infringing manner. Zimmer denies that Plaintiff has any meritorious claim under any of these patents. Zimmer has answered Plaintiff's First Amended Complaint, has denied Plaintiff's allegations of infringement and has asserted affirmative defenses, including failure to state a claim, invalidity of the asserted patents under one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 102, 103, and/or 112; prosecution history estoppel, laches, prosecution laches, and non-satisfaction of the requirements of 35 U.S.C. § 287. Zimmer has also asserted counterclaims seeking declaratory relief of non-infringement and invalidity of each of the asserted patents.

In Plaintiff's action against Wright Medical (C.A. No. 12-1110), Plaintiff alleges that Wright Medical has infringed and is still infringing U.S. Patent No. 8,133,229 and U.S. Patent No. 7,806,896 by selling, offering for sale, importing, making, or having made knee implant systems and instrumentation for use of those systems and by knowingly and intentionally creating and distributing surgical technique guides that instruct surgeons on using these knee implant systems in an infringing manner. Wright Medical denies that Plaintiff has any meritorious claim under any of these patents. Wright Medical has answered Plaintiff's First Amended Complaint, has denied Plaintiff's allegations of infringement and has asserted affirmative defenses, including failure to state a claim, invalidity of the asserted patents under one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 102, 103, and/or 112; prosecution history estoppel, laches, prosecution laches, and non-satisfaction of the requirements of 35 U.S.C. § 287. Wright Medical has also asserted counterclaims seeking declaratory relief of non-infringement and invalidity of each of the asserted patents.

In Plaintiff's action against MicroPort (C.A. No. 14-1040), Plaintiff alleges that MicroPort has infringed and is still infringing U.S. Patent No. 8,133,229 and U.S. Patent No. 7,806,896 by selling, offering for sale, importing, making, or having made knee implant systems and instrumentation for use of those systems and by knowingly and intentionally creating and distributing surgical technique guides that instruct surgeons on using these knee implant systems in an infringing manner. MicroPort denies that Plaintiff has any meritorious claim under any of these patents. MicroPort has answered Plaintiff's Complaint, has denied Plaintiff's allegations of infringement and has asserted affirmative defenses, including failure to state a claim, invalidity of the asserted patents under one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 102, 103, and/or 112; prosecution history estoppel, laches, prosecution laches, and non-satisfaction of the requirements of 35 U.S.C. § 287. MicroPort has also asserted counterclaims seeking declaratory relief of non-infringement and invalidity of each of the asserted patents.

III. IDENTIFICATION OF ISSUES

The issues to be resolved in this action include:

- the proper construction of disputed claim terms in the asserted claims of the patents-in-suit;
- whether any Defendant has infringed and/or is infringing, directly or indirectly, literally or under the doctrine of equivalents, any asserted claim of the patents-in-suit, and whether any such infringement was willful;
- Defendants' knowledge of the patents-in-suit and intent to induce surgeons to infringe the patents-in-suit;
- whether any asserted claim of the patents-in-suit is invalid under 35 U.S.C. §§ 102, 103, and/or 112;
- whether Plaintiff's claims for infringement are barred in whole or in part by, *inter alia*, laches, estoppel or equitable estoppel, waiver, prosecution history estoppel,

non-satisfaction of the requirements of 35 U.S.C. § 287, and/or lack of ownership and standing;

- whether each Defendant is entitled to declaratory relief;
- whether Plaintiff is entitled to an award of damages from any Defendant and, if so, the amount of such damages;
- whether Plaintiff is entitled to injunctive relief;
- whether this case is “exceptional” under 35 U.S.C. § 285.

IV. NARROWING OF ISSUES

Plaintiff has significantly narrowed the patents-at-issue and is no longer asserting U.S. Patent No. 6,702,821; U.S. Patent No. 7,749,229; or U.S. Patent No. 7,837,736. The parties believe that it is currently too early in the case to know whether any additional issues in the litigation can be narrowed by agreement or by motions. Plaintiff submits that a fair adjudication of Plaintiff’s infringement claims will require discovery and that document discovery on the structure, function, operation and implantation techniques and uses of Defendants’ accused products, Defendants’ marketing and sales of the accused devices, Defendants’ knowledge of the patents-in-suit, Defendants’ intent, the inventor’s conception and reduction to practice of the inventions and third party discovery that is typical of these patent infringement actions will need to be undertaken, as well as the identification and examination of witnesses on these topics. The parties propose to address any dispositive or partially dispositive issues in accordance with the Court’s standard summary judgment procedures, and the proposed schedule the parties intend to submit by September 4, 2015. The parties may identify other issues in these actions that can be narrowed by agreement or through motion practice as party and non-party discovery continues.

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