

Filed on behalf of: BONUTTI SKELETAL INNOVATIONS LLC Paper \_\_\_\_\_  
Date: May 30, 2014

By: Cary Kappel, Lead Counsel  
William Gehris, Backup Counsel  
Davidson, Davidson & Kappel, LLC  
485 Seventh Avenue  
New York, NY 10018  
Telephone (212) 736-1257  
(212) 736-2015  
Facsimile (212) 736-2427  
E-mail: ckappel@ddkpatent.com  
wgehris@ddkpatent.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SMITH & NEPHEW,  
INC.

Petitioner,

v.

BONUTTI SKELETAL INNOVATIONS LLC

Patent Owner

Case: IPR2013-00629  
Patent 7,806,896

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**DECLARATION OF DR. SCOTT D. SCHOIFET, M.D. IN  
SUPPORT OF PATENT OWNER RESPONSE**

Exhibit 2004

### Introduction

I, Scott D. Schoifet, hereby declare under the penalty of perjury:

1. I reside at 19 Macclesfield Drive, Medford, NJ. 08055.

2. I am a board certified surgeon specializing in Total Joint Replacement and Adult Reconstructive Surgery in the practice of Reconstructive Orthopedics P.A.

3. I have been retained as an expert witness and asked to render opinions regarding certain matters pertaining to the inter partes review (IPR2013-00629) of the Bonutti U.S. Patent No. 7,806,896 (“the ‘896 patent”). I offer this declaration (“Declaration”) in support of Bonutti Skeletal’s Patent Owner Response.

4. I obtained my Medical Degree from Columbia University College of Physicians and Surgeons, New York, New York in 1983. I completed my General Surgery Residency at St. Vincent’s Hospital, New York, New York, in 1985; and my Orthopedic Residency at the Strong Memorial Hospital, University of Rochester, Rochester, New York in 1988. I completed my Fellowship in Total Joint Replacement and Adult Reconstructive Surgery at the Mayo Clinic in Rochester, Minnesota, in 1989, where I was appointed as an Instructor in Orthopedic Surgery. I obtained my board certification from the American Board of Orthopedic Surgery in 1991.

5. Shortly after completing my Fellowship, I entered private practice in September, 1989. I joined Reconstructive Orthopedics P.A. in May, 1990. I am an instructor for Minimally Invasive Surgery Quad Sparing for Partial and Total Knee Replacements, both nationally and internationally.

6. I have performed over 7,000 total knee and total hip replacements. I performed my first minimally invasive surgery (“MIS”) knee replacement in November of 2003 and have performed over 4,800 MIS total knee replacements since then. I currently average 700 MIS total knee replacements per year.

7. I am a fellow of the American College of Surgeons (FACS), and the American Academy of Orthopaedic Surgeons (FAAOS). I also am a member of the American Association of Hip and Knee Surgeons (AAHKS).

8. A more detailed account of my work experience and qualifications is included in my curriculum vitae, which is attached as Appendix A to this Declaration.

9. In connection with my study of this matter and reaching the opinions stated herein, I have reviewed and considered:

(A) the '896 patent and its prosecution history before the United States Patent and Trademark Office, focusing on claim 1;

(B) Scott L. Delp, et al., “Computer Assisted Knee Replacement,” 354 Clinical Orthopaedics and Related Research (1998) (“Delp”) (Exhibit 1003);

(C) S. David Stulberg, et al., “Computer-Assisted Total Knee Replacement Arthroplasty,” 10(1) Operative Techniques in Orthopaedics (Jan. 2000) (“Stulberg”) (Exhibit 1005);

(D) Roderick H. Turner, et al., “Geometric and Anametric Total Knee Replacement,” in Total Knee Replacement (A.A. Savastano, M.D. ed. 1980) (“Turner”) (Exhibit 1008);

(E) Stryker Howmedica Osteonics, Scorpio Single Axis Total Knee System – Passport Total A.R. Total Knee Instruments – Passport A.R. Surgical Technique (May 2000) (“Scorpio”) (Exhibit 1009);

(F) U.S. Patent 5,871,018 (February 16, 1999) (“Delp ‘018”) (Exhibit 1004);

(G) the Institution Decision in IPR 2013-00629, paper 10 (February 28, 2014)(“Institution Decision”), focusing on the discussion of the instituted grounds of Stulberg in view of Turner or Scorpio, and Delp in view of Turner or Scorpio; and

(H) the Declaration Of Jay D. Mabrey, MD, MBA (Exhibit 1002), focusing on the discussion of Stulberg in view of Turner or Scorpio, and Delp in view of Turner or Scorpio.

10. I also have a Scorpio Anterior Resection Cutting Guide, of the type described in Scorpio, which I examined in preparing this Declaration. What I refer

to as the Anterior Resection Guide includes three parts: the A/R Anterior Skim Cutting Guide bearing Model No. 7650-5003-A, the alignment guide bearing reference number I-K1287AR02, and an intramedullary rod bearing Model No. 7650-1026. Photographs of the Anterior Resection Guide that I examined are included in Exhibit 2005, which I have also reviewed.

11. I understand that the Patent Office has instituted a review of claim 1 of the '896 patent based on the following two grounds: (i) Whether claim 1 would have been obvious to a person of ordinary skill in the art based on the disclosure of Stulberg in view of either Turner or Scorpio; and (ii) Whether claim 1 would have been obvious to a person of ordinary skill in the art based on the disclosure of Delp in view of either Turner or Scorpio.

#### **Priority Date**

12. In preparing this Declaration, I have reviewed the '896 patent and considered each document cited herein, in light of the knowledge of a person of ordinary skill in the art in the field of knee arthroplasty, as it stood in the timeframe of 2000-2003.

13. I have been instructed by counsel that the effective filing date of the '896 patent with respect to the subject matter of claim 1 is August 28, 2001. I have also been informed that the Petitioner may assert other effective filing dates, up to and including November 25, 2003. In any event, my opinion would remain

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