

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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ZIMMER HOLDINGS, INC.  
ZIMMER, INC.  
Petitioners

v.

BONUTTI SKELETAL INNOVATION LLC  
Patent Owner

Patent No. 7,837,736

Filing Date: October 30, 2007

Issue Date: November 23, 2010

Title: MINIMALLY INVASIVE SURGICAL SYSTEMS AND METHODS

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*Inter Partes* Review No. Unassigned

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**SECOND DECLARATION OF ARTHUR G. ERDMAN, Ph.D.**

I, Arthur G. Erdman, declare and state as follows:

## **I. INTRODUCTION**

1. This declaration is the second declaration that I have provided in connection with U.S. Patent 7,837,736 (the '736 patent). My first declaration ("First Declaration") was provided in connection with *inter partes* review no. 2014-00191 of the '736 patent, and is dated November 21, 2013. I understand that *inter partes* review no. 2014-00191 has been instituted.

2. This declaration supplements my First Declaration. Accordingly, I refer to portions of the First Declaration.

3. My background and curriculum vitae, as provided in the First Declaration, are current and incorporated herein.

## **II. DOCUMENTS AND INFORMATION CONSIDERED**

4. In performing my investigation in this matter and in forming my opinions herein, I have reviewed the documents set forth in my First Declaration, some of which include the following documents.

- Bonutti U.S. Patent 7,806,896 (the "Bonutti patent")
- Walker et al. U.S. Patent 5,755,801 (the "Walker patent")
- Buechel et al. U.S. Patent 4,340,978 (the "Buechel patent")
- Hood et al. U.S. Patent 5,370,699 (the "Hood patent")
- Bahler et al. U.S. Patent 5,282,868 (the "Bahler patent")

- Decision –Institution of *Inter Partes* Review, Case IPR2014-00191 (“Decision”)

### III. APPLICABLE LEGAL STANDARDS

5. I understand that this declaration is being used in connection with an *inter partes* review proceeding before the Patent Trial and Appeal Board of the United States Patent Office. I understand that the issues presented in this *inter partes* review proceeding must be considered in view of certain applicable legal standards. I am not a lawyer. A summary of my general understanding of certain legal standards that I have used in forming my opinions expressed below, including, in particular, my general understanding of the legal concepts of “anticipation” and “obviousness,” is set out in my First Declaration.

### IV. DETAILED STATEMENT OF OPINIONS

6. A detailed explanation of my additional opinions in this matter as well as the bases for these opinions is set forth below. I reserve the right to supplement my opinions based on any new information that is provided to me in this matter.

7. In my First Declaration, I opined that certain references anticipated or rendered obvious certain claims of the ’736 patent. This declaration supplements my opinions.

#### A. The Bonutti Patent

8. I note that claim 25 of the Bonutti patent depends from claim 15, and says that the device of claim 15 “further includ[es] means associated with said

protrusion to prevent a separation of said base sliding side and said moveable sliding side.” I have been told that this is a “means plus function” claim, and that under applicable legal standards covers structures disclosed in the patent that provide the stated function, and equivalents. It seems clear from the words of this claim that the function of the “means” is to prevent separation of the base sliding side of the base component relative to the movable sliding side of the movable component. I will assume for purposes of my opinions herein that this is effectively the same as preventing separation of the claimed base component, such as a the tibial tray of a tibial knee implant, relative to the claimed movable component, such as the meniscal bearing insert, of the knee implant. For convenience, I sometimes refer to this claim function as the “separation prevention function” in my opinions. In my opinion, the specification of the ’736 patent does not disclose any structure associated with a protrusion that provides this separation prevention function, as required by claim 25.

9. At paragraphs 39-44 of the First Declaration I discuss certain features of the tibial component 1292 shown in Fig. 90 and described in columns 101 and 102 of the Bonutti patent. Specifically, I noted that the tibial component includes a tray 1294 and a bearing insert 1296. The upper or superior surface 1302 of the tray 1294 is provided with a projection, or post, 1306 that cooperates with a recess 1308 located on and extending into the bottom or inferior surface 1304 of the

bearing insert to permit rotation of the bearing insert with respect to the tibial tray. I also noted that the Bonutti patent states that the post 1306 is offset toward the medial compartment of the knee.

10. The post 1306 and recess 1308 of the tibial component shown in Fig. 90 of the Bonutti patent will constrain the motion of the bearing insert 1296 to rotational motion with respect to the tibial tray 1294. By so doing, the post and recess prevent certain other forms of movement between the bearing insert and the tibial tray. For example, with reference to Fig. 90, the post and recess will prevent movement of the bearing insert with respect to the tibial tray in a direction parallel to the medial-lateral axis of the tray. Similarly, the post and recess will prevent movement of the bearing insert with respect to the tibial tray in a direction parallel to the anterior-posterior axis of the tray.

11. However, the description of the implant shown in Fig. 90 and described at column 101, line 6 through column 102, line 4, has no express description of structures associated with post 1306 that provide a separation prevention function, as I understand is required by claim 25. For example, I see no description of any structures associated with post 1306 that would prevent the bearing insert from separating from the tibial tray. Nor do I see any description of a dovetail joint structure (which I discuss in greater detail below) in connection with the description of the implant shown in Fig. 90.

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