

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ETHICON LLC, ETHICON ENDO-)
SURGERY, INC., and ETHICON US LLC.)

Plaintiffs,)

v.)

INTUITIVE SURGICAL, INC.,)
INTUITIVE SURGICAL OPERATIONS,)
INC., and INTUITIVE SURGICAL)
HOLDINGS, LLC)

Defendants.)

C.A. No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Ethicon LLC, Ethicon Endo-Surgery, Inc., and Ethicon US, LLC (collectively “Ethicon” or “Plaintiffs”) file this Complaint for patent infringement against Defendants Intuitive Surgical, Inc., Intuitive Surgical Operations, Inc., and Intuitive Surgical Holdings, LLC (collectively, “Defendants”), and allege as follows:

Nature of the Action

1. This is an action for infringement of United States Patent Nos. 9,585,658 (“the 658 Patent”), 8,479,969 (“the 969 Patent”), 9,113,874 (“the 874 Patent”), 8,998,058 (“the 058 Patent”), 8,991,677 (“the 677 Patent”), and 9,084,601 (“the 601 Patent”) (collectively, “the Asserted Patents”) under the United States Patent Laws, 35 U.S.C. § 1 *et seq.*

2. Ethicon brings this action against Defendants because of their systematic infringement of Ethicon’s valuable patent rights. In addition to seeking damages for Defendants’ infringement of Ethicon’s patent rights, Ethicon seeks to enjoin Defendants’ continued infringement.

The Parties

3. Plaintiff Ethicon LLC (f/d/b/a as Ethicon Endo-Surgery, LLC) is a limited liability company organized under the laws of the State of Delaware, having its headquarters and principal place of business at 475 Street C, Los Frailes Industrial Park, Guaynabo, PR 00969.

4. Plaintiff Ethicon Endo-Surgery, Inc. is a corporation organized under the laws of Ohio having its headquarters and principal place of business at 4545 Creek Road, Cincinnati, OH 45242.

5. Plaintiff Ethicon US, LLC is a limited liability company organized under the laws of Texas having its headquarters and principal place of business at 4545 Creek Road, Cincinnati 45242. Ethicon US, LLC is a wholly-owned subsidiary of Ethicon Endo-Surgery, Inc.

6. Ethicon is a leading designer, manufacturer, and provider of innovative medical devices for surgical procedures, including its ECHELON FLEX™ endocutters and ECHELON ENDOPATH™ reload cartridges.

7. On information and belief, Defendant Intuitive Surgical Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business at 1266 Kifer Road, Building 101, Sunnyvale, CA 94086.

8. On information and belief, Defendant Intuitive Surgical Operations, Inc. is a privately held corporation organized under the laws of the State of Delaware, with its principal place of business at 1020 Kifer Rd, Sunnyvale, CA 94086.

9. On information and belief, Defendant Intuitive Surgical Operations, Inc. is a wholly-owned subsidiary of Defendant Intuitive Surgical, Inc.

10. On information and belief, Defendant Intuitive Surgical Holdings, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 1020 Kifer Rd, Sunnyvale, CA 94086.

11. On information and belief, Defendant Intuitive Surgical Holdings LLC is wholly-owned by Defendant Intuitive Surgical, Inc.

Jurisdiction and Venue

12. This is an action for patent infringement arising under the United States Patent Act, 35 U.S.C. § 1, *et seq.* This Court has subject matter jurisdiction over Ethicon's claims under 28 U.S.C. §§ 1331 and 1338(a).

13. This Court has personal jurisdiction over Defendants at least because each Defendant is organized under the laws of the State of Delaware, and is thus a resident of Delaware. On information and belief, this Court also has personal jurisdiction over Defendants because they have committed acts of infringement in this District by offering to sell and/or selling infringing products in Delaware. For example, the Helen F. Graham Cancer Center & Research Institute is located in Newark, Delaware, and advertises use of the da Vinci Robotic System that is made and sold by Defendants. *See* <https://christianacare.org/services/cancer/cancersurgery/davinci/>.

14. Venue is proper in this District under 28 U.S.C. § 1400(b) because Defendants reside in Delaware.

The Asserted Patents

15. The 658 Patent is titled "Stapling Systems," and was issued by the United States Patent and Trademark Office ("USPTO") on March 7, 2017. Ethicon LLC is the owner by assignment of the entire right, title and interest in and to the 658 Patent. Ethicon LLC has exclusively licensed Ethicon Endo-Surgery, Inc. to sell products in the United States that would infringe the 658 Patent absent a license. Ethicon Endo-Surgery, Inc. has exclusively sublicensed that right to Ethicon US, LLC. A true and correct copy of the 658 Patent is attached hereto as Exhibit A.

16. The 969 Patent is titled “Drive Interface for Operably Coupling a Manipulatable Surgical Tool to a Robot,” and was issued by the USPTO on July 9, 2013. Ethicon LLC is the owner by assignment of the entire right, title and interest in and to the 969 Patent. Ethicon LLC has exclusively licensed Ethicon Endo-Surgery, Inc. to sell products in the United States that would infringe the 969 Patent absent a license. Ethicon Endo-Surgery, Inc. has exclusively sublicensed that right to Ethicon US, LLC. A true and correct copy of the 969 Patent is attached hereto as Exhibit B.

17. The 874 Patent is titled “Surgical Instrument System,” and was issued by the USPTO on August 25, 2015. Ethicon LLC is the owner by assignment of the entire right, title and interest in and to the 874 Patent. Ethicon LLC has exclusively licensed Ethicon Endo-Surgery, Inc. to sell products in the United States that would infringe the 874 Patent absent a license. Ethicon Endo-Surgery, Inc. has exclusively sublicensed that right to Ethicon US, LLC. A true and correct copy of the 874 Patent is attached hereto as Exhibit C.

18. The 058 Patent is titled “Detachable Motor Powered Surgical Instrument,” and was issued by the USPTO on April 7, 2015. Ethicon LLC is the owner by assignment of the entire right, title and interest in and to the 058 Patent. Ethicon LLC has exclusively licensed Ethicon Endo-Surgery, Inc. to sell products in the United States that would infringe the 058 Patent absent a license. Ethicon Endo-Surgery, Inc. has exclusively sublicensed that right to Ethicon US, LLC.. A true and correct copy of the 058 Patent is attached hereto as Exhibit D.

19. The 677 Patent is titled “Detachable Motor Powered Surgical Instrument,” and was issued by the USPTO on March 31, 2015. Ethicon LLC is the owner by assignment of the entire right, title and interest in and to the 677 Patent. Ethicon LLC has exclusively licensed Ethicon Endo-Surgery, Inc. to sell products in the United States that would infringe the 677 Patent absent

a license. Ethicon Endo-Surgery, Inc. has exclusively sublicensed that right to Ethicon US, LLC.. A true and correct copy of the 677 Patent is attached hereto as Exhibit E.

20. The 601 Patent is titled “Detachable Motor Powered Surgical Instrument,” and was issued by the USPTO on July 21, 2015. Ethicon LLC is the owner by assignment of the entire right, title and interest in and to the 601 Patent. Ethicon LLC has exclusively licensed Ethicon Endo-Surgery, Inc. to sell products in the United States that would infringe the 601 Patent absent a license. Ethicon Endo-Surgery, Inc. has exclusively sublicensed that right to Ethicon US, LLC.. A true and correct copy of the 601 Patent is attached hereto as Exhibit F.

Surgical Staplers and Endocutters

21. Ethicon designs and sells a variety of surgical stapling instruments, including endocutters. An endocutter is an instrument that both cuts and staples tissue. An endocutter can be used in place of traditional scalpel-and-suture techniques, and is therefore useful in a wide variety of surgical procedures. Endocutters are particularly useful in laparoscopic surgery (also referred to as minimally invasive surgery).

22. Ethicon is a market leader in developing endocutter technology. Ethicon introduced its first endocutter in 1996. In 2011, Ethicon introduced to the market the first motor-powered endocutter—the ECHELON FLEX™ Powered ENDOPATH® Stapler. Ethicon’s motor-powered endocutters dramatically reduce the force required to operate an endocutter, thereby minimizing unwanted movement of the device during procedures that could result in increased tissue trauma. In 2014, Ethicon introduced its ECHELON FLEX™ Stapler with Gripping Surface Technology (GST), which greatly reduces tissue slippage while firing the stapler.

23. Ethicon designs, manufactures, and sells several endocutter products, including both powered and non-powered endocutters. In addition, Ethicon offers endocutter products that

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