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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

HOWMEDICA OSTEONICS CORP. and	:	
STRYKER IRELAND LTD.,	:	Civil Action No.
	:	
Plaintiffs,	:	District Judge
	:	Magistrate Judge
v.	:	
	:	
SMITH & NEPHEW, INC.,	:	
	:	
Defendant.	:	
	x	

**COMPLAINT AND DEMAND FOR TRIAL BY JURY**

Plaintiffs Howmedica Osteonics Corp. and Stryker Ireland Ltd. (collectively "Stryker"), by and through their undersigned attorneys, as and for their Complaint against Smith & Nephew, Inc., allege as follows:

### **NATURE OF ACTION**

1. This is an action for patent infringement involving United States Patent No. 6,475,243 ("the '243 Patent"), entitled "Acetabular Cup Assembly With Selected Bearing." A true and correct copy of the '243 Patent is attached as Exhibit A.

2. The '243 Patent relates to a surgical implant used in hip replacement procedures. Specifically, the '243 Patent addresses acetabular cup technologies featuring a dual-locking mechanism and capable of accommodating a plurality of bearings with different characteristics.

3. Stryker has achieved significant commercial success as a result of the '243 Patent's technology.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper under 28 U.S.C. §§ 1391(c) and 1400(b).

6. This Court has personal jurisdiction over the Defendant because, among other things, the Defendant has infringed Plaintiffs' patent in this district, regularly conducts business within this district, and its activities have targeted this district.

### **PARTIES**

7. Plaintiff Howmedica Osteonics Corp., a wholly owned subsidiary of Stryker Corporation, is a New Jersey corporation with its principal place of business at 325 Corporate Drive, Mahwah, New Jersey 07430.

8. Plaintiff Stryker Ireland Ltd., a wholly owned subsidiary of Stryker Corporation, is an Irish company with its principal place of business at IDA Industrial Estate, Carrigtwohill, Cork, Ireland.

9. Upon information and belief, Defendant Smith & Nephew, Inc. ("Smith & Nephew") is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business at 1450 Brooks Road, Memphis, Tennessee 38116.

### **BACKGROUND**

10. Plaintiffs are joint assignees of the '243 Patent.

11. On November 5, 2002, the United States Patent and Trademark Office ("PTO") duly and legally issued the '243 Patent, which is entitled "Acetabular Cup Assembly With Selected Bearing." Plaintiff Howmedica Osteonics Corp. is an assignee and owner of the '243 Patent and accordingly has the right to sue for infringement.

12. On December 7, 2010, the PTO duly and legally issued an *Ex Parte* Reexamination Certificate pursuant to Reexamination Request No. 90/009,406. This Reexamination Certificate confirmed the validity of the '243 Patent. A true and correct copy of the Reexamination Certificate is attached as Exhibit B.

### **FIRST CLAIM FOR RELIEF** **Claim For Patent Infringement**

13. Stryker restates paragraphs 1 through 12 as if fully set forth herein.

14. Without authorization from Stryker, Smith & Nephew has infringed, and continues to infringe, the '243 Patent. Smith & Nephew is currently marketing its R3 $\diamond$ <sup>TM</sup> Acetabular Cup. This product contains the dual-locking mechanism claimed in the '243 Patent. It is also capable of accommodating one of a plurality of bearing members, as claimed in the '243 Patent. Other aspects of the product further infringe the claims of the '243 Patent.

15. By making, selling, offering to sell, and using the product defined in paragraph 14, Smith & Nephew infringes one or more claims of the '243 Patent in violation of 35 U.S.C. § 271.

16. Smith & Nephew's conduct has caused, and continues to cause, Plaintiffs irreparable harm. Unless such conduct is enjoined by the Court, Plaintiffs will have no adequate remedy.

**SECOND CLAIM FOR RELIEF**  
**Claim For Indirect Patent Infringement**

17. Stryker restates paragraphs 1 through 16 as if fully set forth herein.

18. On information and belief, Smith & Nephew sells, offers for sale, and distributes to its customers the product described in paragraph 14. Those customers' use of the product in turn directly infringes the claims of the '243 Patent. As such, Smith & Nephew has caused, urged, encouraged, and/or aided the performance of infringing acts by its customers.

19. On information and belief, Smith & Nephew's activities include the distribution of literature and surgical techniques instructing healthcare providers on the practice of methods that infringe the claims of the '243 Patent. On information and belief, Smith & Nephew also trains healthcare providers in methods that infringe the claims of the '243 Patent.

20. On information and belief, Smith & Nephew knows, should know, or is willfully blind to the fact that its infringing product is specially made or adapted for an infringing method. Nevertheless, it has sold, and continues to sell, a material component of the patented invention that is not a staple article of commerce capable of substantial noninfringing use.

21. As such, Smith & Nephew has knowingly, or with willful blindness, contributed to and induced, and continues to contribute to and induce, the infringement of the claims of the '243 Patent in violation of 35 U.S.C. § 271.

22. Smith & Nephew's conduct has caused, and continues to cause, Plaintiffs irreparable harm. Unless such conduct is enjoined by the Court, Plaintiffs will have no adequate remedy.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs Howmedica Osteonics Corp. and Stryker Ireland Ltd. pray that this Court enter judgment against defendant Smith & Nephew, Inc. as follows:

A. For an order preliminarily, temporarily, and permanently enjoining Smith & Nephew from marketing any product — including that defined in paragraph 14 — that infringes any claim of the '243 Patent;

B. For a finding that Smith & Nephew's product infringes one or more claims of the '243 Patent;

C. For a finding that Smith & Nephew has indirectly infringed one or more claims of the '243 Patent;

D. For damages or other monetary relief to compensate Stryker for the infringement of the '243 Patent, increased as provided in 35 U.S.C. § 284; and

E. For such other relief as the Court determines to be just and proper.

**JURY DEMAND**

Stryker requests a trial by jury of all claims so triable.

Respectfully submitted,

LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
*Attorneys for Plaintiffs Howmedica  
Osteonics Corp. and Stryker Ireland Ltd.*

Dated: November 4, 2011

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**CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2**

The undersigned hereby certifies, pursuant to Local Civil Rule 11.2, that with respect to the matter in controversy herein, neither plaintiffs Howmedica Osteonics Corp. and Stryker Ireland Ltd. nor Howmedica Osteonics Corp.'s and Stryker Ireland Ltd.'s attorneys are aware of any other action pending in any court, or of any pending arbitration or administrative proceeding, to which this matter is subject.

LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
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Corp. and Stryker Ireland Ltd.*

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