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6 7	UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON		
8	AT SEATTLE		
9	HUDSON SURGICAL DESIGN, INC.,)		
10	Plaintiff,) No.		
11	v.) COMPLAINT FOR PATENT) INFRINGEMENT		
12	SMITH & NEPHEW, INC.,) JURY TRIAL DEMANDED		
13	Defendant.		
14	COMPLAINT		
15	Plaintiff Hudson Surgical Design, Inc. ("Hudson") complains of defendant Smith &		
16	Nephew, Inc. ("S&N") as follows:		
17	THE PARTIES		
18	1. Hudson is a Washington corporation having its place of business at 3629B		
19	Evanston Avenue North, Seattle, Washington 98103.		
20	2. S&N is a Delaware corporation having a place of business at 1450 Brooks Road		
21	Memphis, Tennessee 38116.		
22	JURISDICTION AND VENUE		
23	3. This is a complaint for patent infringement under the patent laws of the United		
24 25	States, Title 35 of the United States Code. This Court has original jurisdiction over the subject		
26	matter of this complaint under 28 U.S.C. § 1338(a). Venue in this district is proper under 28 U.S.C. §§ 1400(b) and 1391(c).		
27	5.5.5. 33 1 100(0) and 1371(0).		
,	COMPLAINT — 1 Davis Wright Tremaine LLP LAWOFFICES		

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PATENT INFRINGEMENT

- 4. Hudson owns all right, title and interest in, has the sole and exclusive right to enforce, and has standing to sue and recover damages for, infringement of U.S. Patent No. 7,967,822, entitled "Methods and Apparatus for Orthopedic Implants" ("the '822 patent"). A copy of the '822 patent is attached as Exhibit 1.
- 5. The '822 patent was issued by the United States Patent and Trademark Office on June 8, 2011.
- 6. S&N has designed, made, marketed, provided, distributed, offered for sale, sold and otherwise promoted and encouraged the use of instruments for use in minimally invasive total knee arthroplasty including tibial cutting blocks for its Profix, Genesis II, Legion and Journey BCS total knee systems. These include at least the following S&N product numbers: 7151-3322; 7151-3323; 7151-3324; 7151-3325; 7151-3326; 7151-3327; 7144-1136; 7144-1137; 7401-7411; 7401-8411; and Visionaire Patient Matched tibial cutting blocks. These are collectively referred to as the "S&N TKA instruments."
- 7. S&N has designed, made, marketed, provided, distributed and otherwise promoted and encouraged the use of surgical techniques for minimally invasive total knee arthroplasty using the S&N TKA instruments including, but not limited to, the following surgical techniques: "Minimally Invasive TKA Profix Distal Cut First"; "Genesis II Anterior Cut First"; "Extramedullary Tibial Preparation"; and "Visionaire Patient Matched Surgical Procedure." These surgical techniques are collectively referred to as the "S&N TKA surgical techniques."
- 8. The S&N TKA instruments were designed, made and adapted, and have been marketed, promoted, provided, distributed, offered for sale and sold, for use in performing the S&N TKA surgical techniques and are not staple articles or commodities of commerce suitable for substantial non-infringing use.
- 9. The S&N TKA surgical techniques were designed, made and adapted, and have been marketed, promoted, provided and distributed, for use with the S&N TKA instruments

and are not staple articles or commodities of commerce suitable for substantial non-infringing use.

- 10. S&N has designed, made, marketed, provided, distributed and otherwise promoted and encouraged the use of implants for implantation using the S&N TKA instruments and the S&N TKA surgical techniques. These implants are collectively referred to as the "S&N implants."
- 11. S&N has been aware of Hudson's patent rights in the field of MIS TKA for many years. S&N has been aware of the '822 patent and its direct application to the S&N TKA instruments, the S&N TKA surgical techniques and the S&N implants since June 28, 2011. S&N has acted with at least willful blindness with respect to Hudson's patent rights.
- 12. S&N has directly infringed at least claims 2, 4, 10, 13, 15, 23, 25, 26 and 27 of the '822 patent by, among other activities, making, using, offering to sell, selling, importing, exporting, providing and distributing S&N TKA instruments, S&N TKA surgical techniques and S&N implants to hospitals, surgeons and others throughout the United States, including in this judicial district.
- S&N has actively induced hospitals, surgeons, distributors, sales representatives, sales agents and others to infringe at least claims 1, 3, 10, 13, 14, 23, 25, 26 and 27 of the '822 patent under 35 U.S.C. § 271(b) by, among other activities, designing and making S&N TKA instruments, S&N TKA surgical techniques and S&N implants; by offering for sale, selling, importing, exporting, providing and distributing these instruments, techniques and implants to hospitals, surgeons, distributors, sales representatives, sales agents and others throughout the United States, including in this judicial district; and by aiding, assisting and encouraging hospitals, surgeons, distributors, sales representatives, sales agents and others to practice the steps of these claims throughout the United States, including in this judicial district.
- 14. S&N has contributed to the infringement of at least claims 1, 3, 10, 13, 14, 23, 25, 26 and 27 of the '822 patent by hospitals, surgeons, distributors, sales representatives, sales agents and others under 35 U.S.C. § 271(c) by, among other activities, designing and making

S&N TKA instruments, S&N TKA surgical techniques and S&N implants; by offering for sale, selling, importing, exporting, providing and distributing these instruments, techniques and implants to hospitals, surgeons, distributors, sales representatives, sales agents and others throughout the United States, including in this judicial district; and by encouraging hospitals, surgeons, distributors, sales representatives, sales agents and others to practice the steps of these claims throughout the United States, including in this judicial district.

- 15. S&N has actively induced hospitals, surgeons and others to infringe at least claims 2, 4, 10, 13, 15, 23, 25, 26 and 27 of the '822 patent under 35 U.S.C. § 271(b) by, among other activities, designing and making S&N TKA instruments, S&N TKA surgical techniques and S&N implants; by offering for sale, selling, importing, exporting, providing and distributing these instruments, techniques and implants to hospitals, surgeons, distributors, sales representatives, sales agents and others throughout the United States, including in this judicial district; and by aiding, assigning and encouraging hospitals, surgeons and others to practice the steps of these claims throughout the United States, including in this judicial district.
- 16. S&N has contributed to infringement by hospitals, surgeons and others to infringe at least claims 2, 4, 10, 13, 15, 23, 25, 26 and 27 of the '822 patent under 35 U.S.C. § 271(c) by, among other activities, designing and making S&N TKA instruments, S&N TKA techniques and S&N implants; by offering for sale, selling, importing, exporting, providing and distributing these instruments, techniques and implants to hospitals, surgeons, distributors, sales representatives, sales agents and others throughout the United States, including in this judicial district; and by aiding, assisting and encouraging hospitals, surgeons and others to practice the steps of these claims throughout the United States, including in this judicial district.
- 17. S&N's unlawful acts of infringement of the '822 patent will continue unless enjoined by this Court.
- 18. Hudson has complied with the marking and notice requirements of 35 U.S.C. § 287.

- 19. S&N's infringement has been and continues to be intentional and deliberate in violation of 35 U.S.C. § 284. As stated above, S&N has acted with knowledge of Hudson's patent rights and their direct application to the S&N TKA instruments, the S&N TKA techniques and the S&N implants but has not taken steps to avoid infringement, Instead, S&N has continued to infringe the '822 patent in an objectively reckless manner.
- 20. Hudson has been injured S&N's ongoing, willful infringement of the '822 patent and is entitled to recover damages adequate to compensate Hudson for infringement of the '822 patent.
- 21. S&N's infringement has injured and will continue to injure Hudson, unless and until this Court issues and injunction prohibiting further infringement and, specifically, enjoining further manufacture, use, offers for sale, sale and importation of the S&N TKA instruments, the S&N TKA techniques and the S&N implants.

REQUESTED RELIEF

WHEREFORE, Hudson requests that a judgment be entered as follows:

- A. An injunction prohibiting S&N, and all those acting in concert or participation with S&N, from further acts of infringement of the '822 patent;
- B. An award to Hudson of such damages as it can prove at trial against S&N sufficient to fully and adequately compensate Hudson for the acts of infringement that have occurred, said damages to be no less than a reasonable royalty;
- C. An award to Hudson for any damages so determined that are found for willful infringement, pursuant to 35 U.S.C. § 284, together with prejudgment interest;
 - D. An award to Hudson of costs and its reasonable attorneys' fees; and
 - E. Such other relief as this Court and the jury may determine to be proper and just.

JURY DEMAND

A trial by jury is hereby demanded on all issues triable to a jury in this case.

1	DATED this 18 th day of August, 2011.	
2		Davis Wright Tremaine LLP
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