

UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF VIRGINIA

FLEX TECHNOLOGY, INC.

Plaintiff,

V.

SONOMA ORTHOPEDIC
PRODUCTS, INC.

Defendant.

Civil Action No. _____

COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW the Plaintiff Flex Technology Inc., by and through undersigned counsel,
complaining of defendant, Sonoma Orthopedic Products, Inc. and respectfully alleges the
following:

PRELIMINARY STATEMENT

1. Flex Technology Inc. brings this complaint against Sonoma Orthopedic Products, Inc. pursuant to the patent laws of the United States, Title 35 of the United States code.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action, which arises under the patent laws of the United States, pursuant to 28 U.S.C. § 1331 (federal question), § 1332 (diversity), § 1338(a) (patents), and § 1367 (supplemental jurisdiction).

3. This Court has personal jurisdiction over Sonoma Orthopedic Products, Inc. because of the continuous and systematic contacts with this state. On information and belief, Sonoma Orthopedic Products, Inc. intentionally markets and directs its products to this State and enjoys income from sales in this State.

4. Venue in this Judicial District is proper under 28 U.S.C. § 1391 and § 1400(b) because Sonoma Orthopedic Products, Inc. conducts business in this District and is subject to personal jurisdiction in this District.

PARTIES

5. Plaintiff Flex Technology Inc. (hereinafter referred to as “Flex” or “Plaintiff”) is a Virginia company with its principal place of business located at 801 W Main Street # 108 Charlottesville, Virginia. Flex holds US Patents 6,447,518 and 6,053,922 with a priority date of 1995. Additional applications using the flexible shaft technology are pending.

6. Defendant Sonoma Orthopedic Products, Inc. (hereinafter referred to as “Sonoma” or “Defendant”) is a Californian company with its principal place of business located at 3589 Westwind Boulevard Santa Rose, California. Sonoma provides orthopedic implants for repairing bone fractures using minimally invasive surgical access. Sonoma holds US Patent 7,846,162, with additional applications unrelated to flexible shaft technology pending. Sonoma products and technology include WaviBody™ technology, WavEon CRx™ clavicle fracture repair device, WavEon WRx™ wrist fracture repair device and other instruments (hereinafter referred to as “Infringing Devices”).

PATENTS-IN-SUIT

7. On September 10, 2002, the USPTO issued U.S. Patent No. 6,447,518 (hereinafter referred to as “’384”), entitled “Flexible shaft components.” William Krause and Garland Edwards are the named inventors on the face of the ‘384 patent. A copy of the ‘384 patent is attached hereto.

8. On April 25, 2000, the USPTO issued U.S. Patent No. 6,053,922 (hereinafter referred to as “’922”), entitled “Flexible shaft.” William Krause and Garland Edwards are the named inventors on the face of the ‘922 patent. A copy of the ‘922 patent is attached hereto.

9. On December 10, 2010, the USPTO issued U.S. Patent No. 7,846,162 (hereinafter referred to as “’162”), entitled “Minimally invasive actuatable bone fixation devices.” Charles Nelson, Heber Saravia, and Kai Mazur are the named inventors on the face of the ‘162 patent. On information and belief, the ‘162 patent is assignment to Sonoma Orthopedic Products, Inc. A copy of the ‘162 patent is attached hereto.

FACTS

10. On March 2, 2010 a letter detailing possible infringement was sent to Sonoma Orthopedic Products, Inc. 650 Larkfield Shopping Center, Suite C Santa Rosa, Calif. 95403 care of the Legal Department. The letter indicated the potential infringement of the ‘518 and ‘922 patents by Sonoma’s WaviBody™ technology, WavEon CRx™ clavicle fracture repair device, WavEon WRx™ wrist fracture repair device and flexible drills used for insertion of repair devices. Flex requested any basis for an opinion of non-infringement, and indicated openness to licensing and agreements as a means to avoid litigation.

11. Defendant has not responded to Flex's request for a basis for an opinion of non-infringement.

12. Defendant has at no time been licensed under the '518 or '922 patents.

COUNT 1

(Patent Infringement: Injunctive Relief)

13. Plaintiff repeats and re-alleges each and every allegation as set forth in the preceding paragraphs.

14. Defendant has infringed, and is currently infringing, literally and/or under the doctrine of equivalents, one or more claims of the '518 and '922 patents, in violation of 35 U.S.C. § 271 *et seq.*, by making, using, selling, offering to sell in the United States, and/or importing into the United States, without license or authority, products that embody one or more claims of the '518 and '922 patents, including without limitation Defendant's WaviBody™ technology, WavEon CRx™ clavicle fracture repair device and WavEon WRx™ wrist fracture repair device and any other products using similar technology.

15. Pursuant to 35 U.S.C. § 283, Flex, upon the facts set forth in this Complaint, is entitled to injunctive relief prohibiting Sonoma from further infringement of the '384 and '922 patents and enjoining any operation of the Infringing Devices or any manufacture or sale or assignment of any other device which infringes the '384 and '922 patents.

16. There is a substantial likelihood that Flex will prevail upon the merits in the final adjudication of this civil action.

17. Infringement of the '384 and '922 patents results in irreparable injury to Flex for which there is no adequate remedy at law. Congress, in recognition of this fact, has enacted 35

U.S.C. §283, expressly authorizing injunctive relief against patent infringement in order to preserve the federally mandated monopoly created by federal law for the benefit of the patent holder.

18. The issuance of the injunction will not disserve the public interest. Granting the injunctive relief sought will serve the express national policy of protecting federally created patent rights.

19. For these reasons, Flex seeks a temporary restraining order, a preliminary injunction, and a permanent injunction.

COUNT 2

(Patent Infringement: Damages)

20. Plaintiff repeats and re-alleges each and every allegation as set forth in the preceding paragraphs.

21. Defendant has infringed, and is currently infringing, literally and/or under the doctrine of equivalents, one or more claims of the '518 and '922 patents, in violation of 35 U.S.C. § 271 *et seq.*, by making, using, selling, offering to sell in the United States, and/or importing into the United States, without license or authority, products that embody one or more claims of the '518 and '922 patents, including without limitation Defendant's WaviBody™ technology, WavEon CRx™ clavicle fracture repair device and WavEon WRx™ wrist fracture repair device and any other products using similar technology.

22. The conduct of Flex as alleged herein constitutes patent infringement entitling Flex to damages not yet determined and all other remedies at law or in equity pursuant to 35 U.S.C. §281.

COUNT 3

(Patent Infringement: Enhanced Damages and Attorney's Fees)

23. Plaintiff repeats and re-alleges each and every allegation as set forth in the preceding paragraphs.

24. Defendant has infringed, and is currently infringing, literally and/or under the doctrine of equivalents, one or more claims of the '518 and '922 patents, in violation of 35 U.S.C. § 271 *et seq.*, by making, using, selling, offering to sell in the United States, and/or importing into the United States, without license or authority, products that embody one or more claims of the '518 and '922 patents, including without limitation Defendant's WaviBody™ technology, WavEon CRx™ clavicle fracture repair device and WavEon WRx™ wrist fracture repair device and any other products using similar technology.

25. On information and belief, Defendant's infringement of the '518 and '922 patents has been and will continue to be willful and intentional. Accordingly, Flex is entitled to recover enhanced damages and attorney's fees in addition to its actual damages.

RELIEF REQUESTED

WHEREFORE, Flex respectfully requests the following relief:

A. Upon Count 1, issuance of a Temporary Restraining Order and preliminary and permanent injunctions prohibiting Sonoma from operating, assigning, alienating or selling the Infringing Devices and prohibiting all future infringement of the '384 and '922 patents by Sonoma;

- B. Upon Count 2, an accounting for damages, interest, and costs, and a judgment of damages against Sonoma for infringement of the '384 and '922 patents;
- C. Upon Count 3, enhanced damages and attorney's fees; and
- D. All such other relief of whatever nature as may be just and equitable and/or required or permitted by law.

Respectfully submitted,

A handwritten signature in cursive script, reading "Sheldon H. Parker".

February 16, 2011

Sheldon H. Parker, VA Bar # 00438
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VERIFICATION

STATE OF VIRGINIA

COUNTY OF ALBEMARLE

William Krause, being first duly sworn, deposes and says that he is the President of Flex Technology, a Virginia corporation, and he has read the foregoing Complaint and knows the contents thereof; that the same is true to the best of his knowledge except those matters and things based upon information and belief and as to those matters and things, he believes the same to be true.

This the ____ day of January, 2011.

FLEX TECHNOLOGY, INC

By: _____

William Krause, President