



**PATENT-IN-SUIT**

5. U.S. Patent No. 6,702,821 (“the ’821 patent”), entitled “Instrumentation For Minimally Invasive Joint Replacement and Methods For Using Same,” was lawfully issued on March 9, 2004 to the inventor Peter M. Bonutti (“Dr. Bonutti”). Bonutti Skeletal is the owner, through assignment, of the title, interest and rights to enforce and collect damages for all past, present and future infringements of the ’821 patent by the accused products and the use thereof. A copy of the ’821 patent is attached as Exhibit A.

**BACKGROUND**

6. Dr. Bonutti is an orthopedic surgeon with experience in performing over 20,000 orthopedic surgical procedures.

7. Because of Dr. Bonutti’s expertise, insights, experience and research efforts, Dr. Bonutti is an inventor or co-inventor of over 150 U.S. patents, including the ’821 patent.

8. The ’821 patent involves specialized procedures, instruments, implants, kits and systems invented by Dr. Bonutti for performing minimally invasive knee surgery.

9. On information and belief, Wright Medical designs, develops, manufactures, offers for sale, sells, uses, distributes and/or markets knee implants and surgical instruments used in minimally invasive knee surgery.

10. On information and belief, Wright Medical creates, distributes and/or otherwise makes available to surgeons and the public at large instructions for use and/or videos on surgical techniques for implanting knee implants including, but not limited to, the LINK Sled Prosthesis and associated MITUS (Minimally Invasive Technique of Unicondylar Sled Prosthesis) Instruments.

11. On information and belief, Wright Medical creates, distributes and/or otherwise makes available to surgeons and the public at large instructions for use and/or videos on surgical instruments for implanting knee implants including, but not limited to, the LINK Sled Prosthesis, including creating, distributing and/or otherwise making available to surgeons and the public at large instructions and/or videos on the use of these surgical instruments including the associated MITUS Instruments and surgical technique guides.

12. On information and belief, Wright Medical further offers courses to surgeons and medical professionals with a focus on the use of knee products it promotes, including knee implants such as, for example, the LINK Sled Prosthesis and surgical instruments for the implantation thereof.

13. At least as early as December 10, 2003, Dr. Bonutti and/or representatives of Dr. Bonutti were in communication with Wright Medical relating to Dr. Bonutti's intellectual property rights.

14. On information and belief, as a result of this contact and communication between Dr. Bonutti and Wright Medical, as well as activities of Wright Medical in the field of knee implants, Wright Medical was aware of the patenting activities of Dr. Bonutti and had knowledge of Dr. Bonutti's patent portfolio and the '821 patent.

### **JURISDICTION AND VENUE**

15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 et seq.

16. This Court has personal jurisdiction over Defendants because, among other things, Defendants are both Delaware corporations and are thus subject to personal jurisdiction in

this District, and because, on information and belief, Defendants engage in substantial and ongoing business in this District.

17. On information and belief, Defendants offer to sell, sell and distribute their knee implants and/or knee implant related instruments and products, which either infringe the '821 patent or are for use in infringing procedures, to healthcare institutions and/or medical professionals within this District. On information and belief, Defendants' knee implants and/or knee implant related instruments and products are used, including in infringing procedures, by healthcare institutions and/or medical professionals within this District. On information and belief, Defendants, independently and/or collectively, have committed, contributed to and/or induced acts of patent infringement within this District.

18. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

#### **COUNT I – INFRINGEMENT OF THE '821 PATENT**

19. Bonutti Skeletal realleges and incorporates by reference each of the preceding paragraphs.

20. On information and belief, Defendants, directly or through the actions of their employees, divisions and/or subsidiaries, have infringed and continue to infringe the '821 patent directly, indirectly (by inducing infringement by others or contributing to infringement), jointly, literally and/or equivalently.

21. On information and belief, Defendants have infringed and continue to infringe the '821 patent, directly, indirectly, jointly, literally and/or by equivalents, by, among other things, making, using, offering for sale, selling and/or importing within the United States knee implants and/or surgical instruments for use in a manner that practices the method of at least one claim of the '821 patent, and/or by, among other things, using and implanting (and/or instructing and

encouraging medical professionals to implant) knee implants and/or using (and/or instructing and encouraging medical professionals to use) surgical instruments in a manner that practices the method of at least one claim of the '821 patent. The knee implants and products include, but are not limited to, the LINK Sled Prosthesis and/or associated MITUS (Minimally Invasive Technique of Unicondylar Sled Prosthesis) Instruments, products and surgical technique guides.

22. On information and belief, surgeons, physicians and medical professionals have infringed and continue to infringe the '821 patent, directly, indirectly, jointly, literally and by equivalents, by, among other things, using and implanting knee implants, including, but not limited to, the LINK Sled Prosthesis, and/or using surgical instruments, including those designed, manufactured, offered for sale, sold, promoted and marketed by the Defendants for use in implanting knee implants, including, but not limited to, the LINK Sled Prosthesis and the associated MITUS (Minimally Invasive Technique of Unicondylar Sled Prosthesis) instruments, in the United States in a manner that practices the method of at least one claim of the '821 patent.

23. On information and belief, Defendants had and continue to have knowledge and are aware of Dr. Bonutti's patents, including the '821 patent.

24. On information and belief, Defendants have infringed and continue to infringe the '821 patent, directly, indirectly, jointly, literally and by equivalents, by, among other things, encouraging, instructing, contributing to the infringement of, and otherwise encouraging, promoting and inducing surgeons, physicians and medical professionals to use and implant within the United States knee implants and/or to use surgical instruments in a manner that practices the method of at least one claim of the '821 patent, by, for example, creating and distributing instructions for use and surgical technique guides for knee implants, including, but not limited to, the LINK Sled Prosthesis and associated MITUS (Minimally Invasive Technique

of Unicondylar Sled Prosthesis) Instruments, and by designing, manufacturing, offering for sale, selling and instructing of surgeons, physicians and medical professionals in the use of instruments specially designed and used for implanting knee implants, including, but not limited to, the LINK Sled Prosthesis, in a manner that practices the method of at least one claim of the '821 patent.

25. On information and belief, Defendants' infringement of the '821 patent is and has been willful and deliberate.

#### **DAMAGES AND RELIEF**

26. As a consequence of Defendants' infringement of the '821 patent, Bonutti Skeletal has been damaged in an amount not yet determined and will suffer additional irreparable damage unless Defendants' infringing acts are enjoined by this Court.

#### **PRAYER FOR RELIEF**

WHEREFORE, Bonutti Skeletal respectfully requests that the Court enter judgment against Defendants:

A. Determining that Defendants have infringed and continue to infringe one or more claims of the '821 patent;

B. Preliminarily and permanently enjoining Defendants, their respective officers, agents, servants, directors, employees and attorneys, and all persons acting in concert or participation with them, directly or indirectly, or any of them who receive actual notice of the judgment, from further infringing, inducing others to infringe, or contributing to the infringement of the '821 patent ;

C. Ordering Defendants to account for and pay to Bonutti Skeletal all damages suffered by Bonutti Skeletal as a consequence of Defendants' infringement of the '821 patent, together with interest and costs as fixed by the Court;

D. Trebling or otherwise increasing Bonutti Skeletal's damages under 35 U.S.C. § 284 on the grounds that Defendants' infringement of the '821 patent was deliberate and willful;

E. Declaring that this case is exceptional and awarding Bonutti Skeletal its costs and attorneys' fees in accordance with 35 U.S.C. § 285; and

F. Granting Bonutti Skeletal such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Bonutti Skeletal hereby requests a trial by jury for all issues so triable.

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