

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

3006607

MAR -8 PM 3:17

BIOMET, INC.,

Plaintiff,

v.

BONUTTI SKELETAL
INNOVATIONS LLC,

Defendant.

CASE NO. **3:13CV 176**

COMPLAINT

Plaintiff, Biomet, Inc. ("Biomet"), by and through its undersigned attorneys, files this Complaint for Declaratory Judgment (the "Complaint") against Bonutti Skeletal Innovations LLC ("Bonutti Skeletal").

THE PARTIES

1. Biomet is an Indiana corporation having its primary place of business at 56 East Bell Drive, Warsaw, Indiana 46581-0587. Biomet is a privately held company that designs, manufactures and markets products used primarily by musculoskeletal medical specialists in surgical and non-surgical therapy. Biomet's product portfolio encompasses reconstructive products, including orthopedic joint replacement products; sports medicine products, including internal and external fixation devices; and spinal products, including spinal stimulation devices, spinal hardware and orthobiologics. Biomet has provided dramatic advancements in patient care through innovative new products and instruments. Biomet and its subsidiaries distribute products in 90 countries and employ approximately 7,000 team members worldwide. Biomet's Warsaw, Indiana facility is home to personnel, documents and a substantial amount of the

design, development, manufacturing and sales and marketing activities that will be relevant to the products in dispute in this case.

2. On information and belief, Bonutti Skeletal is a Delaware limited liability company having a place of business at 6136 Frisco Square Boulevard, Suite 385, Frisco, Texas 75034. On information and belief, Bonutti Skeletal is at least partially owned by Advanced Skeletal Innovations LLC (“Advanced Skeletal”), sharing a same place of business.

3. On information and belief, Advanced Skeletal is a Delaware limited liability company having a principal place of business at 6136 Frisco Square Blvd., Suite 385, Frisco, Texas 75034. On information and belief, Advanced Skeletal is a wholly owned subsidiary of Acacia Research Group LLC (“Acacia Research”), sharing a same place of business.

4. On information and belief, Acacia Research is a Delaware limited liability company having a principal place of business at 6136 Frisco Square Blvd., Suite 385, Frisco, Texas 75034.

JURISDICTION AND VENUE

5. This is an action for declaratory judgment that the manufacture, use, sale, offer for sale in the United States and/or importation into the United States of various Biomet products, including sports medicine products, knee replacement products, spine products and biologic bone healing products and their associated instrumentation and surgical techniques have not and will not infringe, either directly, indirectly or jointly, any valid and enforceable claim of numerous U.S. patents owned by Bonutti Skeletal, including U.S. Patent Nos. 5,921,986, 6,099,531, 6,423,063, 6,638,279, 6,702,821, 7,070,557, 7,087,073, 7,104,996, 7,708,740, 7,806,896, 7,806,897, 7,828,852, 7,931,690, 8,133,229 and 8,147,514 (collectively, the “Bonutti Skeletal patents”).

6. This action is based on an actual controversy between Bonutti Skeletal and Biomet concerning the non-infringement and invalidity of the Bonutti Skeletal patents and Biomet's continued right to manufacture, use, sell, offer for sale in the United States and/or import into the United States various Biomet sports medicine products, knee replacement products, spine products and biologic bone healing products and their associated instrumentation and surgical techniques.

7. This Court has exclusive subject matter jurisdiction over Biomet's declaratory judgment claims against Bonutti Skeletal pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, 2202 and the Patent Laws of the United States, 35 U.S.C. § 100 *et. seq.*

8. This Court has personal jurisdiction over Bonutti Skeletal because Bonutti Skeletal has entered into a license agreement, through assignment, with Biomet. Biomet currently makes royalty payments to Bonutti Skeletal pursuant to this license agreement. The license agreement between Bonutti Skeletal and Biomet expressly provides that the agreement shall be governed by and construed in accordance with the laws of the State of Indiana. In addition, Acacia Research, on behalf of Bonutti Skeletal, has engaged Biomet in a series of communications over a period of several months regarding the Bonutti Skeletal patents and Biomet products that form the basis of this Complaint.

FACTUAL BACKGROUND SUPPORTING ACTUAL CONTROVERSY

9. Dr. Peter M. Bonutti is an orthopedic surgeon having a principal place of business in Effingham, Illinois. Dr. Bonutti is listed as an inventor or co-inventor on over 150 U.S. patents, including the Bonutti Skeletal patents.

10. In December 2006, Biomet (through its wholly owned subsidiary Arthrotek LLC) entered into a licensing agreement with Dr. Bonutti's research and/or patent holding company, MarcTec, LLC ("MarcTec"), regarding various U.S. patents in the sports medicine field (the

“December 2006 License Agreement”). The December 2006 License Agreement is governed by and shall be construed and enforced under the laws of the state of Indiana.

11. In December 2006, MarcTec was the assignee of numerous U.S. patents of which Dr. Bonutti was listed as the alleged inventor or co-inventor, including U.S. Patent No. 7,087,073, which is subject to Counts VII and VIII of this Complaint. Thereafter, a series of transfers occurred. On or about June 8, 2012, MarcTec (or P Tech LLC, another Dr. Bonutti owned entity) assigned the Bonutti Skeletal patents to Acacia Research. A copy of the assignment records of the Bonutti Skeletal patents from the United States Patent & Trademark Office (“US PTO”) is attached as Group Exhibit A. On or about August 30, 2012, Acacia Research assigned the Bonutti Skeletal patents to Acacia Research’s wholly owned subsidiary, Advanced Skeletal. (*See* Group Exhibit A.) On or about August 31, 2012, Advanced Skeletal assigned the Bonutti Skeletal patents to its wholly owned subsidiary, Bonutti Skeletal. (*Id.*)

12. On or about August 13, 2012, Biomet Manufacturing Corp., a wholly owned subsidiary of Biomet, and Acacia Research entered into a Non-Disclosure Agreement for the purpose of exploring a business opportunity relating to patents which Acacia Research had acquired from Dr. Bonutti.

13. On or about September 5, 2012, Acacia Research informed Biomet that the December 2006 License Agreement had been assigned from MarcTec to Bonutti Skeletal and that future royalty payments should be sent to: Bonutti Skeletal Innovations LLC, Attn: Accounting, 6136 Frisco Square Blvd. Ste. 385, Frisco, TX 75034.

14. Shortly thereafter, Bonutti Skeletal filed a series of patent litigations against numerous medical device manufacturers, including Depuy, Inc. (“Depuy”), Zimmer, Inc. (“Zimmer”), Smith & Nephew, Inc. (“Smith & Nephew”), Wright Medical Group, Inc. (“Wright

Medical”), ConforMIS, Inc. (“Conformis”), Arthrex, Inc. (“Arthrex”), Linvatec Corporation (“Linvatec”) and ConMed Corporation (“ConMed”) (collectively, the “Bonutti Skeletal lawsuits”). In these litigations, Bonutti Skeletal asserted infringement of some of the Bonutti Skeletal patents (along with other patents Bonutti Skeletal acquired from Dr. Bonutti) against products similar to the Biomet products in dispute in this case. The accused products in the Bonutti Skeletal lawsuits include suture anchors and related products and instruments used in surgical procedures in the field of sports medicine and knee replacement components and related products and instruments used in total and partial knee replacement surgery.

15. On or about September 26, 2012, Dr. Bonutti confirmed to Biomet that MarcTec had assigned the December 2006 License Agreement to Bonutti Skeletal. Since September 26, 2012, Biomet has been making royalty payments to Bonutti Skeletal pursuant to the December 2006 License Agreement.

16. Thereafter, a series of communications occurred between Biomet representatives in Warsaw, Indiana and representatives of Acacia Research (acting on behalf of Bonutti Skeletal) that have placed Biomet in apprehension of being sued for patent infringement by Bonutti Skeletal on patents Bonutti Skeletal had acquired from Dr. Bonutti, but which were not previously licensed to Biomet under the December 2006 License Agreement.

17. On or about January 27, 2013, on information and belief, Robert Rauker, Vice President, Licensing and New Business Development of Acacia Research (“Mr. Rauker”) sent to Biomet on behalf of Bonutti Skeletal a patent chart identifying certain Bonutti Skeletal patents, specific claims of these patents and the identification of specific Biomet products that Bonutti Skeletal considered to be infringing the representative patent claims.

18. On or about February 1, 2013, Mr. Rauker sent to Biomet on behalf of Bonutti Skeletal a settlement demand with terms for licensing the U.S. patents that Bonutti Skeletal acquired from Dr. Bonutti, including the patents previously identified in a patent chart to Biomet and the patents asserted in the lawsuits filed against Depuy, Zimmer, Wright Medical, ConforMIS, Arthrex, Smith & Nephew, Linvatec and ConMed.

19. On or about February 7, 2013, Mr. Rauker sent to Biomet on behalf of Bonutti Skeletal a list of the cases filed by Bonutti Skeletal against Depuy, Zimmer, Wright Medical, ConforMIS, Arthrex, Smith & Nephew, Linvatec and ConMed, and identified the patents asserted in each of these lawsuits.

20. On February 20, 2013 and February 27, 2013, Mr. Rauker participated in telephone calls on behalf of Bonutti Skeletal with Biomet employees to discuss the patents, licensing terms and litigations previously identified by Bonutti Skeletal, Biomet's sports medicine and knee replacement products, and potential litigation against Biomet. During these telephone calls, Mr. Rauker explained Bonutti Skeletal's strategy to settle with a few of the medical device manufacturers and take the remainder of the cases "all the way" through litigation.

21. On March 1, 2013, Mr. Rauker sent to Biomet on behalf of Bonutti Skeletal an email that stated "with discussions progressing with other parties, we request that you [Biomet] accept our offer or make a counter-offer [to the settlement demand of February 1] by Friday March 8." Mr. Rauker concluded in his email that "I would personally like to see a deal occur with Biomet, but must emphasize the urgency of this matter."

22. On Friday March 8, 2013, Biomet informed Bonutti Skeletal that Biomet had concluded that a license was not necessary and therefore Biomet would neither be accepting

Bonutti Skeletal's offer for a license nor would Biomet be making a counter-offer to Bonutti Skeletal's settlement demand.

23. Based on at least: (a) Bonutti Skeletal's demand that Biomet required a license for the Bonutti Skeletal patents and identification of specific claims for specific Biomet sports medicine products, knee replacement products and spine and bone healing products; (b) Bonutti Skeletal's assertion of many of the same Bonutti Skeletal patents in lawsuits recently filed against other medical device manufacturers against similar products; and (c) Biomet's clear communication to Bonutti Skeletal (through Mr. Rauker) that a license for the Bonutti Skeletal patents was not necessary because Biomet did not infringe any valid and enforceable claim identified by Bonutti Skeletal and that no counter-offer would be forthcoming from Biomet, there exists an actual and justiciable controversy between Plaintiff, Biomet and Defendant, Bonutti Skeletal regarding the non-infringement and invalidity of the Bonutti Skeletal patents.

PATENTS-IN-SUIT

24. U.S. Patent No. 5,921,986 ("the '986 patent"), entitled "Bone Suture," was issued on July 13, 1999 to the alleged inventor Peter M. Bonutti ("Dr. Bonutti"). According to the recorded assignment records of the U.S. Patent and Trademark Office ("USPTO") and representations in other publicly filed pleadings, 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 '986 patent. A copy of the '986 patent is attached as Exhibit B.

25. U.S. Patent No. 6,638,279 ("the '279 patent"), entitled "Method of Positioning Body Tissue Relative To A Bone," was issued on October 28, 2003 to the alleged inventor Dr. Bonutti. According to the recorded assignment records of the USPTO and representations in other publicly filed pleadings, 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 '279 patent. A copy of the '279 patent is attached as Exhibit C.

26. U.S. Patent No. 8,147,514 ("the '514 patent"), entitled "Apparatus And Method For Securing A Portion Of A Body," was issued on April 3, 2012 to the alleged inventor Dr. Bonutti. According to the recorded assignment records of the USPTO and representations in other publicly filed pleadings, 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 '514 patent. A copy of the '514 patent is attached as Exhibit D.

27. U.S. Patent No. 7,087,073 ("the '073 patent"), entitled "Method Of Securing Body Tissue," was issued on August 8, 2006 to the alleged inventor Dr. Bonutti. According to the recorded assignment records of the USPTO and representations in other publicly filed pleadings, 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 '073 patent. A copy of the '073 patent is attached as Exhibit E.

28. U.S. Patent No. 6,702,821 ("the '821 patent"), entitled "Instrumentation For Minimally Invasive Joint Replacement And Methods For Using Same," was issued on March 9, 2004 to the alleged inventor Dr. Bonutti. According to the recorded assignment records of the USPTO and representations in other publicly filed pleadings, 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. A copy of the '821 patent is attached as Exhibit F.

29. U.S. Patent No. 7,806,896 ("the '896 patent"), entitled "Knee Arthroplasty Method," was issued on October 5, 2010 to the alleged inventor Dr. Bonutti. According to the

recorded assignment records of the USPTO and representations in other publicly filed pleadings, 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 '896 patent. A copy of the '896 patent is attached as Exhibit G.

30. U.S. Patent No. 7,708,740 ("the '740 patent"), entitled "Method For Total Knee Arthroplasty And Resecting Bone In Situ," was issued on May 4, 2010 to the alleged inventor Dr. Bonutti. According to the recorded assignment records of the USPTO, Bonutti Skeletal is the owner, through assignment, of the title, interest and rights in the '740 patent. A copy of the '740 patent is attached as Exhibit H.

31. U.S. Patent No. 7,806,897 ("the '897 patent"), entitled "Knee Arthroplasty And Preservation Of The Quadriceps Mechanism," was issued on October 5, 2010 to the alleged inventor Dr. Bonutti. According to the recorded assignment records of the USPTO, Bonutti Skeletal is the owner, through assignment, of the title, interest and rights in the '897 patent. A copy of the '897 patent is attached as Exhibit I.

32. U.S. Patent No. 8,133,229 ("the '229 patent"), entitled "Knee Arthroplasty Method," was issued on March 13, 2012 to the alleged inventor Dr. Bonutti. According to the recorded assignment records of the USPTO and representations in other publicly filed pleadings, 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 '229 patent. A copy of the '229 patent is attached as Exhibit J.

33. U.S. Patent No. 7,828,852 ("the '852 patent"), entitled "Inlaid Articular Implant," was issued on November 9, 2010 to the alleged inventor Dr. Bonutti. According to the recorded

assignment records of the USPTO, Bonutti Skeletal is the owner, through assignment, of the title, interest and rights in the '852 patent. A copy of the '852 patent is attached as Exhibit K.

34. U.S. Patent No. 7,931,690 ("the '690 patent"), entitled "Method Of Resurfacing An Articular Surface Of A Bone," was issued on April 26, 2011 to the alleged inventor Dr. Bonutti. According to the recorded assignment records of the USPTO, Bonutti Skeletal is the owner, through assignment, of the title, interest and rights in the '690 patent. A copy of the '690 patent is attached as Exhibit L.

35. U.S. Patent No. 7,070,557 ("the '557 patent"), entitled "Tissue Graft Material And Method Of Making," was issued on July 4, 2006 to the alleged inventor Dr. Bonutti. According to the recorded assignment records of the USPTO, Bonutti Skeletal is the owner, through assignment, of the title, interest and rights in the '557 patent. A copy of the '557 patent is attached as Exhibit M.

36. U.S. Patent No. 6,423,063 ("the '063 patent"), entitled "Changing Relationship Between Bones," was issued on July 23, 2002 to the alleged inventor Dr. Bonutti. According to the recorded assignment records of the USPTO, Bonutti Skeletal is the owner, through assignment, of the title, interest and rights in the '063 patent. A copy of the '063 patent is attached as Exhibit N.

37. U.S. Patent No. 6,099,531 ("the '531 patent"), entitled "Changing Relationship Between Bones," was issued on August 8, 2000 to the alleged inventor Dr. Bonutti. According to the recorded assignment records of the USPTO, Bonutti Skeletal is the owner, through assignment, of the title, interest and rights in the '531 patent. A copy of the '531 patent is attached as Exhibit O.

38. U.S. Patent No. 7,104,996 ("the '996 patent"), entitled "Method Of Performing Surgery," was issued on September 12, 2006 to the alleged inventor Dr. Bonutti. According to the recorded assignment records of the USPTO, Bonutti Skeletal is the owner, through assignment, of the title, interest and rights in the '996 patent. A copy of the '996 patent is attached as Exhibit P.

COUNT I
**(Declaratory Judgment of Non-Infringement of U.S. Patent No. 5,921,986
Under 35 U.S.C. § 271)**

39. Biomet incorporates the preceding paragraphs as if fully set forth herein.

40. Direct infringement under 35 U.S.C. § 271(a) requires that a party without authority make, use, offer for sale, or sell any patented invention within the United States, or import into the United States any patented invention during the term of a patent. Direct infringement of a method claim requires that a party perform each and every step of the method claim.

41. The '986 patent consists entirely of method claims. Biomet does not perform each and every step of any claim of the '986 patent. Therefore, Biomet cannot directly infringe, and does not currently directly infringe, any valid and enforceable claim of the '986 patent.

42. The '986 patent consists entirely of method claims. Biomet does not perform any step of any claim of the '986 patent. Therefore, Biomet has not jointly infringed, and does not currently jointly infringe, any valid and enforceable claim of the '986 patent.

43. Indirect infringement under 35 U.S.C. § 271(b) requires that a party actively induce infringement of a patent. Induced infringement requires that: (i) there is a direct infringement; (ii) the alleged inducer knew of the patent; and (iii) the alleged inducer knowingly induced or instructed another party to perform infringing acts with a specific intent to encourage

infringement of a third-party's patent rights, or with willful blindness of a third-party's patent rights.

44. The '986 patent consists entirely of method claims. Biomet has not and does not induce others to perform each and every step of the claims of the '986 patent alleged to be infringed by Bonutti Skeletal. Specifically, Biomet did not have actual knowledge of, or specific intent to induce others to infringe, the method claims of the '986 patent. Therefore, Biomet has not induced, and does not induce, infringement of any valid and enforceable claim of the '986 patent alleged to be infringed by Bonutti Skeletal.

45. Contributory infringement of a method claim under 35 U.S.C. § 271(c) requires that a party sell or import into the United States a component or apparatus, for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and such component or apparatus is not a staple article or commodity of commerce suitable for substantial non-infringing use.

46. Biomet has not contributorily infringed and does not contributorily infringe any valid and enforceable claim of the '986 patent alleged to be infringed by Bonutti Skeletal.

47. Accordingly, there exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding whether Biomet's ToggleLoc™ Fixation Device with ZipLoop™ Technology, ZipTight™ Fixation System with ZipLoop™ Technology and EZLoc™ and WasherLoc™ Fixation Device products and their associated instruments and surgical techniques infringe any valid and enforceable claim alleged to infringe the '986 patent, and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT II

(Declaratory Judgment of Invalidity of U.S. Patent No. 5,921,986)

48. Biomet incorporates the preceding paragraphs as if fully set forth herein.

49. The '986 patent and each of the claims alleged by Bonutti Skeletal to be infringed are invalid for failure to comply with at least one or more conditions for patentability set forth in one or more provisions of 35 U.S.C. §§ 102, 103 and/or 112.

50. There exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding the validity of the claims of the '986 patent alleged by Bonutti Skeletal to be infringed, and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT III

**(Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,638,279
Under 35 U.S.C. § 271)**

51. Biomet incorporates the preceding paragraphs as if fully set forth herein.

52. The '279 patent consists entirely of method claims. Biomet does not perform each and every step of any claim of the '279 patent. Therefore, Biomet cannot directly infringe, and does not currently directly infringe, any valid and enforceable claim of the '279 patent.

53. The '279 patent consists entirely of method claims. Biomet does not perform any step of any claim of the '279 patent. Therefore, Biomet has not jointly infringed, and does not currently jointly infringe, any valid and enforceable claim of the '279 patent.

54. The '279 patent consists entirely of method claims. Biomet has not and does not induce others to perform each and every step of the claims of the '279 patent alleged to be infringed by Bonutti Skeletal. Specifically, Biomet did not have actual knowledge of, or specific intent to induce others to infringe the method claims of the '279 patent. Therefore, Biomet has

not induced, and does not induce, infringement of any valid and enforceable claim of the '279 patent alleged to be infringed by Bonutti Skeletal.

55. Biomet has not contributorily infringed and does not contributorily infringe any valid and enforceable claim of the '279 patent alleged to be infringed by Bonutti Skeletal.

56. Accordingly, there exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding whether Biomet's ToggleLoc™ Fixation Device with ZipLoop™ Technology and ZipTight™ Fixation System with ZipLoop™ Technology products and their associated instruments and surgical techniques infringe any valid and enforceable claim alleged to infringe the '279 patent, and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT IV

(Declaratory Judgment of Invalidity of U.S. Patent No. 6,638,279)

57. Biomet incorporates the preceding paragraphs as if fully set forth herein.

58. The '279 patent and each of the claims alleged by Bonutti Skeletal to be infringed are invalid for failure to comply with at least one or more conditions for patentability set forth in one or more provisions of 35 U.S.C. §§ 102, 103 and/or 112.

59. There exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding the validity of the claims of the '279 patent alleged by Bonutti Skeletal to be infringed, and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT V

(Declaratory Judgment of Non-Infringement of U.S. Patent No. 8,147,514 Under 35 U.S.C. § 271)

60. Biomet incorporates the preceding paragraphs as if fully set forth herein.

61. The '514 patent consists of apparatus claims and method claims that also comprise the limitations of the apparatus claims. Biomet's ZipTight™ Fixation System with ZipLoop™ Technology product does not have each and every element of any claim of the '514 patent alleged to be infringed by Bonutti Skeletal. Therefore, Biomet cannot directly infringe, and does not currently directly infringe, any valid and enforceable claim of the '514 patent.

62. Accordingly, there exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding whether Biomet's ZipTight™ Fixation System with ZipLoop™ Technology product infringes any valid and enforceable claim alleged to infringe the '514 patent, and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT VI
(Declaratory Judgment of Invalidity of U.S. Patent No. 8,147,514)

63. Biomet incorporates the preceding paragraphs as if fully set forth herein.

64. The '514 patent and each of the claims alleged by Bonutti Skeletal to be infringed are invalid for failure to comply with at least one or more conditions for patentability set forth in one or more provisions of 35 U.S.C. §§ 102, 103 and/or 112.

65. There exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding the validity of the claims of the '514 patent alleged by Bonutti Skeletal to be infringed, and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT VII
**(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,087,073
Under 35 U.S.C. § 271)**

66. Biomet incorporates the preceding paragraphs as if fully set forth herein.

67. The '073 patent consists entirely of method claims. Biomet does not perform each and every step of any claim of the '073 patent. Therefore, Biomet cannot directly infringe, and does not currently directly infringe, any valid and enforceable claim of the '073 patent.

68. The '073 patent consists entirely of method claims. Biomet does not perform any step of any claim of the '073 patent. Therefore, Biomet has not jointly infringed, and does not currently jointly infringe, any valid and enforceable claim of the '073 patent.

69. The '073 patent consists entirely of method claims. Biomet has not and does not induce others to perform each and every step of the claims of the '073 patent alleged to be infringed by Bonutti Skeletal. Specifically, Biomet did not have a specific intent to induce others to infringe the method claims of the '073 patent. Therefore, Biomet has not induced, and does not induce, infringement of any valid and enforceable claim of the '073 patent alleged to be infringed by Bonutti Skeletal.

70. Biomet has not contributorily infringed and does not contributorily infringe any valid and enforceable claim of the '073 patent alleged to be infringed by Bonutti Skeletal.

71. Accordingly, there exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding whether Biomet's ALLThread™ Knotless product and its associated instruments and surgical technique infringes any valid and enforceable claim alleged to infringe the '073 patent, and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT VIII
(Declaratory Judgment of Invalidity of U.S. Patent No. 7,087,073)

72. Biomet incorporates the preceding paragraphs as if fully set forth herein.

73. The '073 patent and each of the claims alleged by Bonutti Skeletal to be infringed are invalid for failure to comply with at least one or more conditions for patentability set forth in one or more provisions of 35 U.S.C. §§ 102, 103 and/or 112.

74. There exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding the validity of the claims of the '073 patent alleged by Bonutti Skeletal to be infringed, and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202

COUNT IX
**(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,806,896
Under 35 U.S.C. § 271)**

75. Biomet incorporates the preceding paragraphs as if fully set forth herein.

76. The '896 patent consists entirely of method claims. Biomet does not perform each and every step of any claim of the '896 patent. Therefore, Biomet cannot directly infringe, and does not currently directly infringe, any valid and enforceable claim of the '896 patent.

77. The '896 patent consists entirely of method claims. Biomet does not perform any step of any claim of the '896 patent. Therefore, Biomet has not jointly infringed, and does not currently jointly infringe, any valid and enforceable claim of the '896 patent.

78. The '896 patent consists entirely of method claims. Biomet has not and does not induce others to perform each and every step of the claims of the '896 patent alleged to be infringed by Bonutti Skeletal. Specifically, Biomet did not have specific intent to induce others to infringe the method claims of the '896 patent. Therefore, Biomet has not induced, and does not induce, infringement of any valid and enforceable claim of the '896 patent alleged to be infringed by Bonutti Skeletal.

79. Biomet has not contributorily infringed and does not contributorily infringe any valid and enforceable claim of the '896 patent alleged to be infringed by Bonutti Skeletal.

80. Accordingly, there exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding whether Biomet's Oxford® Partial Knee, Signature™ Vanguard® Complete Knee System, Signature™ Oxford® Partial Knee and Vanguard® Complete Knee System products and their associated instruments and surgical techniques infringe any valid and enforceable claim alleged by Bonutti Skeletal to infringe the '896 patent, and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT X
(Declaratory Judgment of Invalidity of U.S. Patent No. 7,806,896)

81. Biomet incorporates the preceding paragraphs as if fully set forth herein.

82. The '896 patent and each of the claims alleged by Bonutti Skeletal to be infringed are invalid for failure to comply with at least one or more conditions for patentability set forth in one or more provisions of 35 U.S.C. §§ 102, 103 and/or 112.

83. There exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding the validity of the claims of the '896 patent alleged by Bonutti Skeletal to be infringed, and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XI
**(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,806,897
Under 35 U.S.C. § 271)**

84. Biomet incorporates the preceding paragraphs as if fully set forth herein.

85. The '897 patent consists entirely of method claims. Biomet does not perform each and every step of any claim of the '897 patent. Therefore, Biomet cannot directly infringe, and does not currently directly infringe, any valid and enforceable claim of the '897 patent.

86. The '897 patent consists entirely of method claims. Biomet does not perform any step of any claim of the '897 patent. Therefore, Biomet has not jointly infringed, and does not currently jointly infringe, any valid and enforceable claim of the '897 patent.

87. The '897 patent consists entirely of method claims. Biomet has not and does not induce others to perform each and every step of the claims of the '897 patent alleged to be infringed by Bonutti Skeletal. Specifically, Biomet did not have actual knowledge of, or specific intent to induce others to infringe, the method claims of the '897 patent. Therefore, Biomet has not induced, and does not induce, infringement of any valid and enforceable claim of the '897 patent alleged to be infringed by Bonutti Skeletal.

88. Biomet has not contributorily infringed and does not contributorily infringe any valid and enforceable claim of the '897 patent alleged to be infringed by Bonutti Skeletal.

89. Accordingly, there exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding whether Biomet's Vanguard® Complete Knee System product and its associated instruments and surgical techniques infringe any valid and enforceable claim alleged to infringe the '897 patent and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XII
(Declaratory Judgment of Invalidity of U.S. Patent No. 7,806,897)

90. Biomet incorporates the preceding paragraphs as if fully set forth herein.

91. The '897 patent and each of the claims alleged by Bonutti Skeletal to be infringed are invalid for failure to comply with at least one or more conditions for patentability set forth in one or more provisions of 35 U.S.C. §§ 102, 103 and/or 112.

92. There exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding the validity of the claims of the '897 patent alleged by

Bonutti Skeletal to be infringed and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XIII
**(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,708,740
Under 35 U.S.C. § 271)**

93. Biomet incorporates the preceding paragraphs as if fully set forth herein.

94. The '740 patent consists entirely of method claims. Biomet does not perform each and every step of any claim of the '740 patent. Therefore, Biomet cannot directly infringe, and does not currently directly infringe, any valid and enforceable claim of the '740 patent.

95. The '740 patent consists entirely of method claims. Biomet does not perform any step of any claim of the '740 patent. Therefore, Biomet has not jointly infringed, and does not currently jointly infringe, any valid and enforceable claim of the '740 patent.

96. The '740 patent consists entirely of method claims. Biomet has not and does not induce others to perform each and every step of the claims of the '740 patent alleged to be infringed by Bonutti Skeletal. Specifically, Biomet did not have actual knowledge of, or specific intent to induce others to infringe, the method claims of the '740 patent. Therefore, Biomet has not induced, and does not induce, infringement of any valid and enforceable claim of the '740 patent alleged to be infringed by Bonutti Skeletal.

97. Biomet has not contributorily infringed and does not contributorily infringe any valid and enforceable claim of the '740 patent alleged to be infringed by Bonutti Skeletal.

98. Accordingly, there exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding whether Biomet's Vanguard® Complete Knee System product and its associated instruments and surgical techniques infringe any valid and enforceable claim alleged to infringe the '740 patent, and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XIV

(Declaratory Judgment of Invalidity of U.S. Patent No. 7,708,740)

99. Biomet incorporates the preceding paragraphs as if fully set forth herein.

100. The '740 patent and each of the claims alleged by Bonutti Skeletal to be infringed are invalid for failure to comply with at least one or more conditions for patentability set forth in one or more provisions of 35 U.S.C. §§ 102, 103 and/or 112.

101. There exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding the validity of the claims of the '740 patent alleged by Bonutti Skeletal to be infringed, and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XV

**(Declaratory Judgment of Non-Infringement of U.S. Patent No. 8,133,229
Under 35 U.S.C. § 271)**

102. Biomet incorporates the preceding paragraphs as if fully set forth herein.

103. The '229 patent consists entirely of method claims. Biomet does not perform each and every step of any claim of the '229 patent. Therefore, Biomet cannot directly infringe, and does not currently directly infringe, any valid and enforceable claim of the '229 patent.

104. The '229 patent consists entirely of method claims. Biomet does not perform any step of any claim of the '229 patent. Therefore, Biomet has not jointly infringed, and does not currently jointly infringe, any valid and enforceable claim of the '229 patent.

105. The '229 patent consists entirely of method claims. Biomet has not and does not induce others to perform each and every step of the claims of the '229 patent alleged to be infringed by Bonutti Skeletal. Specifically, Biomet did not have actual knowledge of, or specific intent to induce others to infringe, the method claims of the '229 patent. Therefore, Biomet has

not induced, and does not induce, infringement of any valid and enforceable claim of the '229 patent alleged to be infringed by Bonutti Skeletal.

106. Biomet has not contributorily infringed and does not contributorily infringe any valid and enforceable claim of the '229 patent alleged to be infringed by Bonutti Skeletal.

107. Accordingly, there exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding whether Biomet's Vanguard® Total Knee System and Vanguard® PFR Replacement Knee System products and their associated instruments and surgical techniques infringe any valid and enforceable claim alleged to infringe the '229 patent, and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XVI
(Declaratory Judgment of Invalidity of U.S. Patent No. 8,133,229)

108. Biomet incorporates the preceding paragraphs as if fully set forth herein.

109. The '229 patent and each of the claims alleged by Bonutti Skeletal to be infringed are invalid for failure to comply with at least one or more conditions for patentability set forth in one or more provisions of 35 U.S.C. §§ 102, 103 and/or 112.

110. There exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding the validity of the claims of the '229 patent alleged by Bonutti Skeletal to be infringed and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XVII
**(Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,702,821
Under 35 U.S.C. § 271)**

111. Biomet incorporates the preceding paragraphs as if fully set forth herein.

112. The '821 patent consists entirely of method claims. Biomet does not perform each and every step of any claim of the '821 patent. Therefore, Biomet cannot directly infringe, and does not currently directly infringe, any valid and enforceable claim of the '821 patent.

113. The '821 patent consists entirely of method claims. Biomet does not perform any step of any claim of the '821 patent. Therefore, Biomet has not jointly infringed, and does not currently jointly infringe, any valid and enforceable claim of the '821 patent.

114. The '821 patent consists entirely of method claims. Biomet has not and does not induce others to perform each and every step of the claims of the '821 patent alleged to be infringed by Bonutti Skeletal. Specifically, Biomet did not have actual knowledge of, or specific intent to induce others to infringe, the method claims of the '821 patent. Therefore, Biomet has not induced, and does not induce, infringement of any valid and enforceable claim of the '821 patent alleged to be infringed by Bonutti Skeletal.

115. Biomet has not contributorily infringed and does not contributorily infringe any valid and enforceable claim of the '821 patent alleged to be infringed by Bonutti Skeletal.

116. Accordingly, there exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding whether Biomet's Oxford® Partial Knee System and Vanguard® M Partial Knee System products and their associated instruments and surgical techniques infringe any valid and enforceable claim alleged to infringe the '821 patent and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XVIII
(Declaratory Judgment of Invalidity of U.S. Patent No. 6,702,821)

117. Biomet incorporates the preceding paragraphs as if fully set forth herein.

118. The '821 patent and each of the claims alleged by Bonutti Skeletal to be infringed are invalid for failure to comply with at least one or more conditions for patentability set forth in one or more provisions of 35 U.S.C. §§ 102, 103 and/or 112.

119. There exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding the validity of the claims of the '821 patent alleged by Bonutti Skeletal to be infringed and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XIX
**(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,828,852
Under 35 U.S.C. § 271)**

120. Biomet incorporates the preceding paragraphs as if fully set forth herein.

121. The '852 patent consists entirely of apparatus claims. Biomet's Regenrex® Acetabular System product does not have each and every element of any claim of the '852 patent alleged to be infringed by Bonutti Skeletal. Therefore, Biomet cannot directly infringe, and does not currently directly infringe, any valid and enforceable claim of the '852 patent.

122. Accordingly, there exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding whether Biomet's Regenrex® Acetabular System product infringes any valid and enforceable claim alleged to infringe the '852 patent by Bonutti Skeletal and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XX
(Declaratory Judgment of Invalidity of U.S. Patent No. 7,828,852)

123. Biomet incorporates the preceding paragraphs as if fully set forth herein.

124. The '852 patent and each of the claims alleged by Bonutti Skeletal to be infringed are invalid for failure to comply with at least one or more conditions for patentability set forth in one or more provisions of 35 U.S.C. §§ 102, 103 and/or 112.

125. There exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding the validity of the claims of the '852 patent alleged by Bonutti Skeletal to be infringed and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XXI
**(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,931,690
Under 35 U.S.C. § 271)**

126. Biomet incorporates the preceding paragraphs as if fully set forth herein.

127. The '690 patent consists entirely of method claims. Biomet does not perform each and every step of any claim of the '690 patent. Therefore, Biomet cannot directly infringe, and does not currently directly infringe, any valid and enforceable claim of the '690 patent.

128. The '690 patent consists entirely of method claims. Biomet does not perform any step of any claim of the '690 patent. Therefore, Biomet has not jointly infringed, and does not currently jointly infringe, any valid and enforceable claim of the '690 patent.

129. The '690 patent consists entirely of method claims. Biomet has not and does not induce others to perform each and every step of the claims of the '690 patent alleged to be infringed by Bonutti Skeletal. Specifically, Biomet did not have actual knowledge of, or specific intent to induce others to infringe, the method claims of the '690 patent. Therefore, Biomet has not induced, and does not induce, infringement of any valid and enforceable claim of the '690 patent alleged to be infringed by Bonutti Skeletal.

130. Biomet has not contributorily infringed and does not contributorily infringe any valid and enforceable claim of the '690 patent alleged to be infringed by Bonutti Skeletal.

131. Accordingly, there exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding whether Biomet's Regenerex® Acetabular System product and its associated instruments and surgical technique infringes any valid and enforceable claim alleged by Bonutti Skeletal to infringe the '690 patent and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XXII
(Declaratory Judgment of Invalidity of U.S. Patent No. 7,931,690)

132. Biomet incorporates the preceding paragraphs as if fully set forth herein.

133. The '690 patent and each of the claims alleged by Bonutti Skeletal to be infringed are invalid for failure to comply with at least one or more conditions for patentability set forth in one or more provisions of 35 U.S.C. §§ 102, 103 and/or 112.

134. There exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding the validity of the claims of the '690 patent alleged by Bonutti Skeletal to be infringed and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XXIII
**(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,070,557
Under 35 U.S.C. § 271)**

135. Biomet incorporates the preceding paragraphs as if fully set forth herein.

136. The '557 patent consists entirely of method claims. Biomet does not perform each and every step of any claim of the '557 patent. Therefore, Biomet cannot directly infringe, and does not currently directly infringe, any valid and enforceable claim of the '557 patent.

137. The '557 patent consists entirely of method claims. Biomet does not perform any step of any claim of the '557 patent. Therefore, Biomet has not jointly infringed, and does not currently jointly infringe, any valid and enforceable claim of the '557 patent.

138. The '557 patent consists entirely of method claims. Biomet has not and does not induce others to perform each and every step of the claims of the '557 patent alleged to be infringed by Bonutti Skeletal. Specifically, Biomet did not have actual knowledge of, or specific intent to induce others to infringe, the method claims of the '557 patent. Therefore, Biomet has not induced, and does not induce, infringement of any valid and enforceable claim of the '557 patent alleged to be infringed by Bonutti Skeletal.

139. Biomet has not contributorily infringed and does not contributorily infringe any valid and enforceable claim of the '557 patent alleged to be infringed by Bonutti Skeletal.

140. Accordingly, there exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding whether Biomet's BioCUE™ Platelet Concentration System and Bonus® Bone Matrix products and their associated instruments and surgical techniques infringe any valid and enforceable claim alleged by Bonutti Skeletal to infringe the '557 patent and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XXIV
(Declaratory Judgment of Invalidity of U.S. Patent No. 7,070,557)

141. Biomet incorporates the preceding paragraphs as if fully set forth herein.

142. The '557 patent and each of the claims alleged by Bonutti Skeletal to be infringed are invalid for failure to comply with at least one or more conditions for patentability set forth in one or more provisions of 35 U.S.C. §§ 102, 103 and/or 112.

143. There exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding the validity of the claims of the '557 patent alleged by Bonutti Skeletal to be infringed and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XXV

**(Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,423,063
Under 35 U.S.C. § 271)**

144. Biomet incorporates the preceding paragraphs as if fully set forth herein.

145. The '063 patent consists entirely of method claims. Biomet does not perform each and every step of any claim of the '063 patent. Therefore, Biomet cannot directly infringe, and does not currently directly infringe, any valid and enforceable claim of the '063 patent.

146. The '063 patent consists entirely of method claims. Biomet does not perform any step of any claim of the '063 patent. Therefore, Biomet has not jointly infringed, and does not currently jointly infringe, any valid and enforceable claim of the '063 patent.

147. The '063 patent consists entirely of method claims. Biomet has not and does not induce others to perform each and every step of the claims of the '063 patent alleged to be infringed by Bonutti Skeletal. Specifically, Biomet did not have actual knowledge of, or specific intent to induce others to infringe, the method claims of the '063 patent. Therefore, Biomet has not induced, and does not induce, infringement of any valid and enforceable claim of the '063 patent alleged to be infringed by Bonutti Skeletal.

148. Biomet has not contributorily infringed and does not contributorily infringe any valid and enforceable claim of the '063 patent alleged to be infringed by Bonutti Skeletal.

149. Accordingly, there exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding whether Biomet's Osteostim® Cervical and Lumbar Spacer products and their associated instruments and surgical techniques infringe any valid and enforceable claim alleged by Bonutti Skeletal to infringe the '063 patent and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XXVI

(Declaratory Judgment of Invalidity of U.S. Patent No. 6,423,063)

150. Biomet incorporates the preceding paragraphs as if fully set forth herein.

151. The '063 patent and each of the claims alleged by Bonutti Skeletal to be infringed are invalid for failure to comply with at least one or more conditions for patentability set forth in one or more provisions of 35 U.S.C. §§ 102, 103 and/or 112.

152. There exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding the validity of the claims of the '063 patent alleged by Bonutti Skeletal to be infringed and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XXVII

**(Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,099,531
Under 35 U.S.C. § 271)**

153. Biomet incorporates the preceding paragraphs as if fully set forth herein.

154. The '531 patent consists of method and apparatus claims. Biomet does not perform each and every step of any method claim of the '531 patent. Further, Biomet's Solitaire™ Lumbar and Cervical Spacer System products do not have each and every element of the apparatus claims of the '531 patent. Therefore, Biomet cannot directly infringe, and does not currently directly infringe, any valid and enforceable claim of the '531 patent alleged to be infringed by Bonutti Skeletal.

155. Biomet does not perform any step of any method claim of the '531 patent. Therefore, Biomet has not jointly infringed, and does not currently jointly infringe, any valid and enforceable method claim of the '531 patent.

156. Biomet has not and does not induce others to perform each and every step of the method claims of the '531 patent alleged to be infringed by Bonutti Skeletal. Specifically,

Biomet did not have actual knowledge of, or specific intent to induce others to infringe, the method claims of the '531 patent. Therefore, Biomet has not induced, and does not induce, infringement of any valid and enforceable method claim of the '531 patent alleged to be infringed by Bonutti Skeletal.

157. Biomet has not contributorily infringed and does not contributorily infringe any valid and enforceable method claim of the '531 patent alleged to be infringed by Bonutti Skeletal.

158. Accordingly, there exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding whether Biomet's Solitaire™ Lumbar and Cervical Spacer System products and their associated instruments and surgical techniques infringe any valid and enforceable claim alleged by Bonutti Skeletal to infringe the '531 patent and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XXVIII
(Declaratory Judgment of Invalidity of U.S. Patent No. 6,099,531)

159. Biomet incorporates the preceding paragraphs as if fully set forth herein.

160. The '531 patent and each of the claims alleged by Bonutti Skeletal to be infringed are invalid for failure to comply with at least one or more conditions for patentability set forth in one or more provisions of 35 U.S.C. §§ 102, 103 and/or 112.

161. There exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding the validity of the claims of the '531 patent alleged by Bonutti Skeletal to be infringed and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XXIX

**(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,104,996
Under 35 U.S.C. § 271)**

162. Biomet incorporates the preceding paragraphs as if fully set forth herein.

163. The '996 patent consists entirely of apparatus claims. Biomet's Vanguard® Complete Knee System, Vanguard® 360 Revision Knee System and Vanguard® PFR Replacement Knee System products do not have each and every element of any claim of the '996 patent alleged to be infringed by Bonutti Skeletal. Therefore, Biomet cannot directly infringe, and does not currently directly infringe, any valid and enforceable claim of the '852 patent alleged to be infringed by Bonutti Skeletal.

164. Accordingly, there exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding whether Biomet's Vanguard® Complete Knee System, Vanguard® 360 Revision Knee System and Vanguard® PFR Replacement Knee System products infringe any valid and enforceable claim alleged by Bonutti Skeletal to infringe the '531 patent and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

COUNT XXX

(Declaratory Judgment of Invalidity of U.S. Patent No. 7,104,996)

165. Biomet incorporates the preceding paragraphs as if fully set forth herein.

166. The '996 patent and each of the claims alleged by Bonutti Skeletal to be infringed are invalid for failure to comply with at least one or more conditions for patentability set forth in one or more provisions of 35 U.S.C. §§ 102, 103 and/or 112.

167. There exists an actual controversy between Bonutti Skeletal on the one hand, and Biomet on the other hand, regarding the validity of the claims of the '996 patent alleged by

Bonutti Skeletal to be infringed and a judicial declaration is necessary and appropriate pursuant to 28 U.S.C. §§ 2201 and 2202.

PRAYER FOR RELIEF

WHEREFORE, Biomet respectfully requests that the Court enter judgment against Bonutti Skeletal as follows:

A. declaring that Biomet has not directly infringed, and does not currently directly infringe, any properly construed, valid and enforceable claim of the Bonutti Skeletal patents;

B. declaring that Biomet has not jointly infringed, and does not currently jointly infringe, any properly construed, valid and enforceable claim of the Bonutti Skeletal patents;

C. declaring that Biomet has not contributorily infringed, and does not currently contributorily infringe, any properly construed, valid and enforceable claim of the Bonutti Skeletal patents;

D. declaring that Biomet has not induced, and does not currently induce infringement of any properly construed, valid and enforceable claim of the Bonutti Skeletal patents;

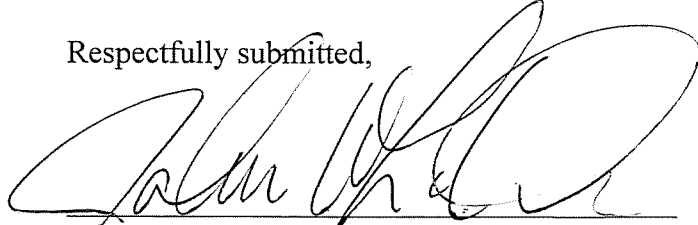
E. declaring that the claims of the Bonutti Skeletal patents are invalid;

F. finding this case exceptional under 35 U.S.C. § 285 and awarding Biomet its costs and reasonable attorneys' fees; and

G. awarding Biomet any other relief this Court deems just and proper.

Dated: March 8, 2013

Respectfully submitted,



John D. LaDue (19039-71)

John A. Drake (28534-02)

LaDue Curran & Kuehn LLC

200 First Bank Building

205 West Jefferson Boulevard

South Bend, IN 46601

Tel: 574.968.0760

Fax: 574.968.0761

jladue@lck-law.com

jdrake@lck-law.com

Attorneys for Plaintiff Biomet, Inc.

OF COUNSEL

Terrence P. McMahon

MCDERMOTT WILL & EMERY LLP

275 Middlefield Road, Suite 100

Menlo Park, CA 94025

E-mail address: tmcMahon@mwe.com

Telephone: (650) 815-7400

Facsimile: (650) 815-7401

Jeffrey R. Gargano

Krista Vink Venegas

Kevin P. Shortsle

MCDERMOTT WILL & EMERY LLP

227 W. Monroe Street, Suite 4400

Chicago, IL 60606

E-mail address: jgargano@mwe.com

E-mail address: kvinkvenegas@mwe.com

E-mail address: kshortsle@mwe.com

Telephone: (312) 372-2000

Facsimile: (312) 984-7700