Benjamin C. Deming (SBN 233687)
DNL ZITO
355 S. Grand, Suite 2450
Los Angeles, California 90071
bdeming@dnlzito.com

Attorneys for Plaintiff
AngleFix Tech, LLC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTHERN DISTRICT OF CALIFORNIA

ANGLEFIX TECH, LLC

Plaintiff,

v.

NUVASIVE, INC.

Defendant.

Civil Action No: **'13CV0983 BEN RBB**

COMPLAINT FOR PATENT INFRINGEMENT
JURY TRIAL DEMANDED

Plaintiff, AngleFix Tech, LLC ("AngleFix"), brings this Complaint for patent infringement against Defendant Nuvasive, Inc. ("Nuvasive ") as follows.

JURISDICTION AND VENUE

1. This is an action for patent infringement under Title 35 of the United States Code §§281 and 271 (a) (b) and/or (c) for infringement of US Patent 6,955,677 (the '677 Patent).

2. This Court has jurisdiction over patent claims under 35 U.S.C. §281 and 28 U.S.C. §§1331, 1338(a) providing for federal question jurisdiction of actions relating to patents and trademarks.

3. Defendant is currently engaged in making, using, offering for sale and selling, products which infringe claims of the ‘677 Patent throughout the United States, including sales within this judicial district. Defendant is also inducing others to sell and use and contributing to the sale of infringing products. Defendant is also practicing methods and inducing others to practice methods which infringe claims of the ‘677 Patent.

4. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) (c) and (d) and §1400(a) and (b). Defendants sell products in this Judicial District and maintain its facilities for the accused product in this Judicial District.

THE PARTIES AND GENERAL ALLEGATIONS

5. Plaintiff, AngleFix Tech, LLC. is a North Carolina corporation existing in the State of North Carolina and is the exclusive license with all right to sue for infringement, of United States Letters Patent Numbers 6,955,677 which issued on October 18, 2005 to the University of North Carolina, naming Dr. Laurence E. Dahners as the sole inventor. The patent was the result of Dr. Dahners’ desire to capture bone fragments during orthopedic surgery that would otherwise evade locking screws set at a single fixed angle. Dr. Dahners experimented with self-threading in a metal plate, interrupted threads, bristles and foamed metal to achieve a relatively good, angle stable, fixation. Dr. Dahners' pioneering work was recognized by the University of North Carolina, which applied for patent protection. The United States Patent Office granted the ‘677 Patent on the multi angular plate and screw system developed by Dr. Dahners. The ‘677 Patent lists the University of North Carolina at Chapel Hill as the assignee.

6. Defendant Nuvasive is a corporation existing under the laws of the state of California, with its corporate headquarters located in this judicial district at 7475 Lusk Blvd, San Diego, California.

7. Nuvasive manufactures, and distributes nationwide, medical products generally known as plate and screw systems for bone fixation for use in orthopaedic procedures. The devices manufactured by Nuvasive are referred to as the Helix ACP, among other names.

THE PATENT IN SUIT

8. U. S. Patent 6,955,677 is entitled "Multi-angular Fastening Apparatus and Method for Surgical Bone Screw/plate Systems" and includes exemplary independent apparatus claims 1, 21, 47 and 54, as follows:

> 1. A surgical plate adapted for fixation with a bone screw, comprising first and second opposing major surfaces, an inside surface extending between the first and second major surfaces and defining an aperture generally coaxially disposed about an aperture axis, and a non-rotatable, non-threaded tappable contact region disposed on the inside surface of the aperture, the tappable contact region having an inside diameter large enough to permit a bone screw to pass therethrough at a variable insertion angle defined between the longitudinal axis of the bone screw and the aperture axis, and the tappable contact region is formed so as to allow for being tapped by an external thread of the bone screw to rigidly affix the bone screw to the tappable contact region at a selected one of a plurality of different insertion angles that can be selectively formed between the axis of the bone screw and the aperture axis.
>
> 21. A fastening apparatus adapted for multi-angular insertion, comprising: (a) a fastener comprising an elongate section and an adjoining head section disposed along a fastener axis, the head section comprising a thread; and (b) a fastener receiving member comprising first and second opposing major surfaces, an inside surface extending between the first and second major surfaces and defining an aperture generally coaxially disposed about an aperture axis, and a non-rotatable tappable contact region disposed on the inside surface of the aperture, the tappable contact region having an inside diameter large enough to permit the elongate section of the fastener to pass therethrough at a variable insertion angle defined between the fastener axis and the aperture axis, and the tappable contact region is formed so as to allow for being tapped by the thread of the head section to rigidly affix the head section to the tappable contact region at a selected one of a plurality of different angles that can be selectively formed between the axis of the fastener and the aperture axis.
>
> 47. A surgical plate adapted for fixation with a bone screw, comprising first and second opposing major surfaces, an inside surface extending between the first and second major surfaces and defining an aperture generally coaxially disposed about an aperture axis, and a non-threaded tappable contact region disposed on the inside surface, wherein the tappable contact region has a minimum inside diameter large enough to permit a bone screw to pass therethrough at an insertion angle defined between a longitudinal axis of the bone screw and the aperture axis, and the tappable contact region is adapted for being

tapped by an external thread of the bone screw to affix the bone screw to the tappable contact region at the insertion angle and wherein the tappable contact region comprises a plurality of protrusions extending generally radially inwardly from the inside surface and a plurality of interstices between the protrusions.

54. A fastening apparatus adapted for multi-angular insertion, comprising: (a) a fastener comprising an elongate section and an adjoining head section disposed along a fastener axis, the head section comprising a thread, said fastener comprising a surgical bone screw; and (b) a fastener receiving member comprising first and second opposing major surfaces, an inside surface extending between the first and second major surfaces and defining an aperture generally coaxially disposed about an aperture axis, and a tappable contact region disposed on the inside surface, wherein the tappable contact region has a minimum inside diameter large enough to permit the elongate section to pass therethrough at an insertion angle defined between the fastener axis and the aperture axis, and the tappable contact region is adapted for being tapped by the thread of the head section to affix the head section to the tappable contact region at the insertion angle.

and exemplary method claims 39 and 71, as follows:

39. A method for affixing a fastener to a fastener receiving member at a desired orientation, comprising the steps of: (a) providing a fastener comprising an elongate section and an adjoining head section disposed along a fastener axis, the head section comprising a thread; (b) providing a fastener receiving member comprising first and second opposing major surfaces, an inside surface extending between the first and second major surfaces and defining an aperture generally coaxially disposed about an aperture axis, and a non-rotatable tappable contact region disposed on the inside surface of the aperture, the tappable contact region having an inside diameter large enough to permit the elongate section of the fastener to pass therethrough at a variable insertion angle defined between the fastener axis and the aperture axis, and the contact region is formed so as to allow for being tapped by the thread of the head section to rigidly affix the head section to the tappable contact region at a selected one of a plurality of different angles that can be selectively formed between the axis of the fastener and the apertur axis; (c) selecting one of the plurality of different insertion angles at which the fastener is to be inserted in relation to the fastener receiving member; (d) inserting the elongate section through the aperture until the thread of the head section contacts the non-rotatable tappable contact region; and (e) tapping the fastener into the receiving member such that the fastener is rigidly oriented at the selected insertion angle by threading the thread of the head section into the non-rotatable tappable contact region while the fastener is oriented at the selected insertion angle.

71. A method for affixing a fastener to a fastener receiving member at a desired orientation, comprising the steps of: (a) providing a fastener comprising a threaded elongate section and an adjoining head section disposed along a fastener axis, the head section comprising a thread; (b) providing a fastener receiving member comprising first and second opposing major surfaces, an inside surface extending between the first and second major surfaces and defining an aperture generally coaxially disposed about an aperture axis, and a tappable contact region disposed on the inside surface; (c) selecting an insertion angle at which the fastener is to be inserted in relation to the fastener receiving member, wherein the insertion angle is defined between the fastener axis and

the aperture axis; (d) inserting the elongate section through the aperture until the thread of the head section contacts the tappable contact region; (e) tapping the fastener into the receiving member such that the fastener is oriented at the selected insertion angle by threading the thread of the head section into the tappable contact region while the fastener is oriented at the selected insertion angle; and (f) comprising the step of placing one of the major surfaces of the receiving member against bone material, and inserting the elongate section of the fastener into the bone material by threading the elongate section into the bone material.

THE ACCUSED PRODUCTS

9. Nuvasive manufactures, and distributes nationwide, medical products generally known as plate and screw systems for bone fixation for use in orthopaedic procedures. The devices manufactured by Nuvasive are referred to as the Helix ACP, among other names.

10. The Helix ACP is a fastening apparatus adapted for multi-angular screw insertion, which includes threaded shaft screw fasteners with threaded head sections and a plate with holes for the screws that include a non-rotatable tappable contact region on the inside surface of the holes, having an inside diameter large enough to permit the threaded shaft portion of the screw to pass through at a variable insertion angle, and small enough to contact and to be tapped by the thread of the screw head to rigidly affix the head section to the tappable contact region at a selected one of a plurality of different angles.

11. The Helix ACP is used in a method for affixing a fastener to a fastener receiving member at a desired orientation for orthopedic procedures, by the steps of: (a) providing a shaft threaded and head threaded screw, (b) providing a plate with holes with internal tappable contact region disposed on the inside surface of the holes; (c) selecting an insertion angle for one of the screws; (d) inserting a screw through a hole until the thread of the head section contacts the tappable contact region; (e) tapping the screw into the receiving member such that the screw is oriented at the selected insertion angle by threading the thread of the head section into the tappable contact region while the screw is oriented at the selected insertion angle; and (f) placing one of the plate against bone material, and inserting the shaft of the screw into the bone material.

12. Nuvasive has infringed and continues to infringe at least one or more apparatus claims of the '677 through making, using, selling and offering for sale, products which infringe the apparatus claims of the '677 Patent, including the products described above.

13. Nuvasive has contributorily infringed and continues to contributorily infringe one or more of the apparatus claims of the ‘677 Patent through sales of components which when combined with other components form a fastening apparatus which infringes one or more of the apparatus claims of the ‘677 Patent. The sale of components includes the sale of plates and the sale of screws which do not have substantial non-infringing commercial applications.

14. Nuvasive has induced and continues to induce others to infringe one or more of the claims of the ‘677 Patent, through sales of infringing products which are resold or used and infringe one or more of the apparatus claims of the ‘677 Patent, and/or which are used and/or can be used in a method which infringes the method claims of the ‘677 Patent.

15. Nuvasive has infringed and continues to infringe the method claims of the ‘677 Patent and has practiced and continues to practice methods, which infringe the method claims of the '677 Patent, and sells products which induce others to practice methods which infringe the claims of the ‘677 Patent.

16. Nuvasive infringes one or more of the claims of the '677 Patent.

COUNT I
PATENT INFRINGEMENT OF 6,955,677

17. Plaintiff re-alleges each and every allegation set forth above and incorporates them herein by reference.

18. Plaintiff is the exclusive licensee and has standing to sue for infringement of United States Letters Patent 6,955,677, which was duly and legally issued on October 18, 2005.

19. The ‘677 Patent properly names Laurence E. Dahners as inventor, is entitled "Multi-angular Fastening Apparatus and Method for Surgical Bone Screw/plate Systems" and is properly assigned to The University of North Carolina and properly exclusively licensed to Plaintiff, AngleFix Tech LLC.

20. Upon information and belief, Defendant Nuvasive currently infringes and has infringed one or more of the apparatus and method claims of the '677 Patent under 35 U.S.C. §271 by making, using, selling and offering for sale, products as described above.

21. The infringement by Nuvasive is direct and indirect, contributory and inducement.

22. Plaintiff is entitled to recover damages from Nuvasive including reasonable royalties and lost profits, sustained as a result of Nuvasive infringing acts under 35 U.S.C. §271 and §284.

23. Defendant has been aware of Plaintiff’s rights in the patents in suit and of Plaintiffs’ intent to enforce those rights. Defendant has, with full knowledge of those rights, willfully proceeded to infringe, in disregard of Plaintiff’s rights. Plaintiff is entitled to enhanced damages under 35 U.S.C. §284.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

24. That Defendant Nuvasive be held to have infringed U.S. Patent No. 6,559,677 under 35 U.S.C. §271.

25. That Defendant acted with knowledge of the patent in suit.

26. That judgment be entered for Plaintiff against Defendant, for Plaintiff’s actual damages according to proof, and for any additional profits attributable to infringements of Plaintiffs’ patent rights, in accordance with proof and for enhanced damages under 35 U.S.C. §284 and §285.

27. That judgment be entered for Plaintiff against Defendant, adequate to compensate Plaintiff, for reasonable royalties and/or other statutory damages based upon Defendant's acts of patent infringement and for their other violations of law under 35 U.S.C. §284 and §285.

28. That Defendant be required to account for all gains, profits, and advantages derived from their acts of infringement and for their other violations of law and that Plaintiff be awarded damages in the amount of such profits under 35 U.S.C. §284 and §285.

29. That the actions of Defendant be found willful.

30. That judgment be entered for Plaintiff and against Defendant, for enhancement of the damages awarded for patent infringement under 35 U.S.C. §284 and §285.

31. That the actions of Defendant be found exceptional under 35 U.S.C. §285.

32. That Plaintiff be granted judgment against the Defendant for Plaintiff's costs and attorney's fees under 35 U.S.C. §285 and or the inherent powers of the Court.

33. That the Court grant such other, further, and different relief as the Court deems proper under the circumstances.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury on all issues raised by the complaint which are properly triable to a jury.

DATED: April 24, 2013

Respectfully submitted,
DNL ZITO

By /s/ Benjamin Deming
DNL ZITO
355 S. Grand, Suite 2450
Los Angeles, California 90071

Attorneys for Plaintiff AngleFix Tech, LLC