

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

BONUTTI SKELETAL  
INNOVATIONS LLC,

Plaintiff,

vs.

CONFORMIS, INC.,

Defendant.

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Civil Action No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT**

Bonutti Skeletal Innovations LLC ("Bonutti Skeletal") hereby asserts claims of patent infringement against ConforMIS, Inc. ("ConforMIS"), and alleges as follows:

**THE PARTIES**

1. Bonutti Skeletal is a Delaware limited liability company having a place of business at 6136 Frisco Square Blvd., Suite 385, Frisco, TX 75034.
2. On information and belief, ConforMIS is a Delaware corporation having a place of business at 11 North Ave., Burlington, MA 01803.

**PATENT-IN-SUIT**

3. U.S. Patent No. 7,806,896 ("the '896 patent"), entitled "Knee Arthroplasty Method," was lawfully issued on October 5, 2010 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 '896 patent by the accused products and the use thereof. A copy of the '896 patent is attached as Exhibit A.

**BACKGROUND**

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

5. 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 '896 patent.

6. The '896 patent involves specialized procedures, instruments, implants, kits and systems invented by Dr. Bonutti for performing minimally invasive knee surgery.

7. On information and belief, ConforMIS designs, develops, manufactures, offers for sale, sells, uses, distributes and markets knee implants and surgical instruments used in minimally invasive knee surgery.

8. On information and belief, ConforMIS creates, distributes and otherwise makes available to surgeons and the public at large instructions for use and/or videos on surgical techniques for implanting ConforMIS knee implants including, but not limited to, the ConforMIS iUni G2 Unicompartmental Knee Resurfacing System and associated instruments (including the iFit Implant-to-Implant Technology and iJig Instrumentation).

9. On information and belief, ConforMIS creates, distributes and otherwise makes available to surgeons and the public at large instructions for use and/or videos on ConforMIS surgical instruments for implanting ConforMIS knee implants including, but not limited to, the ConforMIS iUni G2 Unicompartmental Knee Resurfacing System, including creating, distributing and otherwise making available to surgeons and the public at large instructions and/or videos on the use of these ConforMIS surgical instruments including the iFit Implant-to-Implant Technology and iJig Instrumentation.

10. On information and belief, ConforMIS offers Bioskills Training Labs for Orthopedic Surgeons (“Training Labs”) that are faculty led, held at training facilities around the country and offer hands-on cadaver sessions. These Training Labs include sessions pertaining to ConforMIS knee implants including, but not limited to, sessions covering Partial Knee Resurfacing using the ConforMIS iUni G2.

11. On information and belief, and as a result of the activities of ConforMIS in the field of knee implants, ConforMIS was aware of the patenting activities of Dr. Bonutti and had knowledge of Dr. Bonutti’s patent portfolio and the ’896 patent.

### **JURISDICTION AND VENUE**

12. 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.

13. This Court has personal jurisdiction over ConforMIS because, among other things, ConforMIS is a Delaware corporation and is thus subject to personal jurisdiction in this District, and because, on information and belief, ConforMIS engages in substantial and ongoing business in this District.

14. On information and belief, Defendant offers to sell, sells and distributes its knee implants and/or knee implant related instruments and products, which either infringe the ’896 patent or are for use in infringing procedures, to healthcare institutions and/or medical professionals within this District. On information and belief, Defendant’s 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, Defendant, independently and/or collectively, has committed, contributed to and/or induced acts of patent infringement within this District.

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

**COUNT I – INFRINGEMENT OF THE '896 PATENT**

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

17. On information and belief, ConforMIS, directly or through the actions of its employees, divisions and/or subsidiaries, has infringed and continues to infringe the '896 patent directly, indirectly (by inducing infringement by others or contributing to infringement), jointly, literally and/or equivalently.

18. On information and belief, ConforMIS has infringed and continues to infringe the '896 patent, directly, indirectly, jointly, literally and 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 '896 patent, and/or by, among other things, using and implanting (and/or instructing and encouraging medical professionals to implant) ConforMIS knee implants and/or using (and/or instructing and encouraging medical professionals to use) ConforMIS surgical instruments in a manner that practices the method of at least one claim of the '896 patent. The knee implants and products include, but are not limited to, the ConforMIS iUni G2 Unicompartmental Knee Resurfacing System and/or associated instruments (including the iFit Implant-to-Implant Technology and iJig Instrumentation), products and surgical technique guides.

19. On information and belief, surgeons, physicians and medical professionals have infringed and continue to infringe the '896 patent, directly, indirectly, jointly, literally and by

equivalents, by, among other things, using and implanting ConforMIS knee implants, including, but not limited to, the ConforMIS iUni G2 Unicompartmental Knee Resurfacing System, and/or using ConforMIS surgical instruments, including for example, the iJig Instrumentation and iFit Technology and those designed, manufactured, offered for sale, sold, promoted and marketed by ConforMIS for use in implanting ConforMIS knee implants, including, but not limited to, the ConforMIS iUni G2 Unicompartmental Knee Resurfacing System, in the United States in a manner that practices the method of at least one claim of the '896 patent.

20. On information and belief, ConforMIS had and continues to have knowledge and is aware of Dr. Bonutti's patents, including the '896 patent.

21. On information and belief, ConforMIS has infringed and continues to infringe the '896 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 ConforMIS knee implants and/or to use ConforMIS surgical instruments in a manner that practices the method of at least one claim of the '896 patent, by, for example, creating and distributing instructions for use and surgical technique guides for ConforMIS knee implants, including, but not limited to, the ConforMIS iUni G2 Unicompartmental Knee Resurfacing System and associated instruments (including the iFit Implant-to-Implant Technology and iJig Instrumentation), 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 ConforMIS knee implants, including, but not limited to, the ConforMIS iUni G2 Unicompartmental Knee Resurfacing System, in a manner that practices the method of at least one claim of the '896 patent.

22. On information and belief, ConforMIS's infringement of the '896 patent is and has been willful and deliberate.

### **DAMAGES AND RELIEF**

23. As a consequence of ConforMIS's infringement of the '896 patent, Bonutti Skeletal has been damaged in an amount not yet determined and will suffer additional irreparable damage unless ConforMIS's infringing acts are enjoined by this Court.

### **PRAYER FOR RELIEF**

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

A. Determining that ConforMIS has infringed and continues to infringe one or more claims of the '896 patent;

B. Preliminarily and permanently enjoining ConforMIS, its respective officers, agents, servants, directors, employees and attorneys, and all persons acting in concert or participation with it, 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 '896 patent;

C. Ordering ConforMIS to account for and pay to Bonutti Skeletal all damages suffered by Bonutti Skeletal as a consequence of ConforMIS' infringement of the '896 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 ConforMIS's infringement of the '896 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**

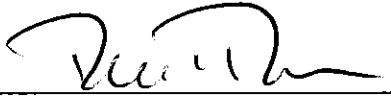
Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Bonutti Skeletal hereby requests a trial by jury for all issues so triable.

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