



1 **COMPLAINT**

2 Plaintiff Orthopaedic Hospital (the “Hospital”) asserts the following Complaint  
3 against DePuy Orthopaedics, Inc. (“DePuy”) and in support of the Complaint states as  
4 follows:

5 **PARTIES, JURISDICTION, AND VENUE**

6 1. The Hospital is a nonprofit public benefit corporation organized and  
7 existing under the laws of the State of California and has its principal place of  
8 business at 403 West Adams Blvd., Los Angeles, California 90007-2664. The  
9 Hospital is an independent nonprofit charitable organization that treats children with  
10 musculoskeletal disorders and conducts scientific research aimed at improving  
11 orthopaedic materials, implants, surgical instrumentation, and surgical techniques.

12 2. Upon information and belief, DePuy is a corporation organized and  
13 existing under the laws of the State of Indiana and has its principal place of business at  
14 700 Orthopaedic Drive, Warsaw, Indiana 46582-3900.

15 3. This action arises under the patent laws of the United States, 35 U.S.C.  
16 § 1 *et seq.*, and seeks damages and injunctive relief under 35 U.S.C. §§ 271, 281, and  
17 283–285.

18 4. This Court has subject matter jurisdiction over the action pursuant to 28  
19 U.S.C. §§ 1331 and 1338(a) in that this action arises under the Acts of Congress  
20 relating to patents.

21 5. Venue is proper in the Central District of California pursuant to 28  
22 U.S.C. §§ 1391(b), 1391(c) and/or 1400(b).

23 6. This Court has personal jurisdiction over DePuy. DePuy has been  
24 registered to do business in the State of California since 1992, and maintains several  
25 offices in California. It has had regular and systematic contacts with the State of  
26 California and with this judicial District by making, selling or offering to sell products  
27 that infringe the patent-at-issue in this action, or by conducting other business within  
28 this judicial District.

1 **COUNT I**

2 7. The Hospital realleges and incorporates herein by this reference  
3 paragraphs 1 through 6 set forth above as though fully set forth herein.

4 8. United States Patent No. 8,658,710 (the “’710 patent,” a copy of which is  
5 attached hereto as Exhibit A), entitled Oxidation-Resistant and Wear-Resistant  
6 Polyethylenes for Human Joint Replacements and Methods for Making Them, issued  
7 on February 25, 2014. The Hospital is the owner of the ’710 patent, possessing the  
8 exclusive right to bring suit for infringement of the patent.

9 9. DePuy is infringing and has infringed the ’710 patent by making, selling,  
10 offering for sale, and using infringing products, including but not limited to DePuy’s  
11 AOX Antioxidant Polyethylene for Sigma and LCS Rotating Platform Systems,  
12 within the United States.

13 10. DePuy’s infringement of the ’710 patent has been without the  
14 permission, consent, authorization or license of the Hospital.

15 11. Upon information and belief, DePuy has known of the ’710 patent since  
16 at least February 25, 2014, when the patent issued.

17 12. DePuy’s infringement of the ’710 patent has been and continues to be  
18 willful, deliberate, and/or objectively reckless.

19 13. DePuy’s infringement of the ’710 patent has caused and will continue to  
20 cause the Hospital substantial damages, and has caused and will continue to cause the  
21 Hospital irreparable harm for which there is no adequate remedy at law unless and  
22 until DePuy is enjoined.

23 **OTHER ALLEGATIONS**

24 14. On information and belief, DePuy had at least constructive notice of the  
25 ’710 patent by operation of law, and the Hospital and any predecessors-in-interest  
26 have complied with any marking requirements of 35 U.S.C. § 287 to the extent  
27 required by law.  
28

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff Orthopaedic Hospital request that the Court:

- 3 1. Adjudge that DePuy has infringed and is infringing the '710 patent;
- 4 2. Preliminarily and/or permanently enjoin DePuy and its affiliates,
- 5 subsidiaries, officers, directors, employees, agents, representatives,
- 6 licensees, successors, and assigns, and all those acting for it and on its
- 7 behalf, or acting in concert with it, from further infringement, including
- 8 inducement and contributory infringement, of the '710 patent;
- 9 3. Award damages for willful infringement of three times the damages so
- 10 determined, as provided by 35 U.S.C. § 284, together with interest;
- 11 4. Order an accounting of all accrued damages;
- 12 5. Award any supplemental damages to the Hospital;
- 13 6. Award the Hospital their costs and, where appropriate, reasonable
- 14 attorneys' fees under 35 U.S.C. § 285;
- 15 7. Award compensatory damages to the Hospital, together with interest; and
- 16 8. Award any other such relief as the Court deems just and proper.

17

18 DATED: February 24, 2014

Respectfully submitted,

19 KIRKLAND & ELLIS LLP

20

21 /s/ Nimalka R. Wickramasekera

22 Luke L. Dauchot

23 luke.dauchot@kirkland.com

Nimalka R. Wickramasekera

24 nimalka.wickramasekera@kirkland.com

Benjamin A. Herbert

25 benjamin.herbert@kirkland.com

26 Attorneys for Plaintiff,

27 ORTHOPAEDIC HOSPITAL

28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1

- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
20  
21  
22  
23  
24  
25  
26  
27  
28

8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2  
3  
4  
5  
6  
7  
8  
9  
20  
21  
22  
23  
24  
25  
26  
27  
28

2  
3  
4  
5  
6  
7  
8  
9  
20  
21  
22  
23  
24  
25  
26  
27  
28