

1 John B. Sganga, Jr. (SBN 116,211)  
john.sganga@knobbe.com  
2 Sheila N. Swaroop (SBN 203,476)  
sheila.swaroop@knobbe.com  
3 Baraa Kahf (SBN 261,144)  
baraa.kahf@knobbe.com  
4 Marissa Calcagno (SBN 279,783)  
marissa.calcagno@knobbe.com  
5 KNOBBE, MARTENS, OLSON & BEAR, LLP  
2040 Main Street  
6 Fourteenth Floor  
Irvine, CA 92614  
7 Phone: (949) 760-0404  
Facsimile: (949) 760-9502

8 Attorneys for Plaintiffs  
9 NOBEL BIO CARE SERVICES AG and  
NOBEL BIO CARE USA, LLC  
10

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13  
14 NOBEL BIO CARE SERVICES AG, a  
Swiss corporation, and NOBEL  
15 BIO CARE USA, LLC, a Delaware limited  
liability company,

16 Plaintiffs,

17 v.

18 NEODENT USA, INC., a Delaware  
corporation,

19 Defendant.  
20

Civil Action No. 8:14-cv-1322

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

21 Plaintiffs NOBEL BIO CARE SERVICES AG and NOBEL BIO CARE  
22 USA, LLC, hereby complain of Defendant NEODENT USA, INC., and allege  
23 as follows:

24 **JURISDICTION AND VENUE**

25 1. This is an action for patent infringement arising under the patent laws  
26 of the United States, 35 U.S.C. § 100 et seq.

27 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C.  
28 §§ 1331 and 1338.

1 3. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391 and  
2 1400(b).

### 3 **THE PARTIES**

4 4. Plaintiff NOBEL BIOCARE SERVICES AG is a Swiss company with  
5 a place of business at Balz Zimmermann-Strasse 7, CH-8302 Kloten,  
6 SWITZERLAND. Plaintiff NOBEL BIOCARE USA, LLC, is a Delaware  
7 limited liability company with its principal place of business at 22715 Savi  
8 Ranch Parkway, Yorba Linda, California 92887. Hereinafter, NOBEL  
9 BIOCARE SERVICES AG and NOBEL BIOCARE USA, LLC, are collectively  
10 referred to as “Nobel” or “Plaintiffs.”

11 5. Nobel is informed and believes, and thereupon alleges, that Defendant  
12 NEODENT USA, INC. (hereinafter, “Neodent” or “Defendant”), is a Delaware  
13 corporation having a place of business at 60 Minuteman Road, Andover, MA  
14 01810.

15 6. Nobel is informed and believes, and thereon alleges, that Neodent  
16 conducts business in this judicial district and has committed the acts alleged  
17 herein within this judicial district and elsewhere. Neodent’s activities within  
18 this district include marketing and promotional activities for dental implants,  
19 including the Drive CM implants accused of infringement in this lawsuit.

### 20 **ALLEGATIONS FOR ALL CLAIMS FOR RELIEF**

#### 21 **A. Nobel’s History of Innovation and Collaboration**

22 7. Nobel is the world’s largest dental implant company and is a leader in  
23 developing innovative restorative and esthetic dental solutions for patients.  
24 Nobel has over 2500 employees worldwide and offers its products and services  
25 in over eighty countries, including the United States.

26 8. The products at issue in the lawsuit are dental implants, which are  
27 devices fabricated from high-grade titanium that are surgically placed into a  
28 patient’s jawbone. The implants are designed to integrate within the patient’s

1 bone structure much like the root of a natural tooth. As a result, the implants are  
2 capable of supporting a dental prosthesis, such as a crown or an overdenture bar,  
3 enabling patients to have a long-lasting solution to replace their teeth.

4 9. For more than forty years, Nobel has conducted original scientific  
5 research and innovation in the area of restorative and esthetic dentistry. Nobel  
6 has achieved its success by collaborating with pioneers in the industry,  
7 beginning with Professor Per-Ingvar Brånemark, who first discovered in the  
8 1950's that titanium implants were biocompatible and could osseointegrate with  
9 bone.

10 10. As a result of such collaborations, Nobel has developed scientific  
11 concepts into successful products and solutions that have been used safely and  
12 effectively in patients around the world for decades, and has acquired and  
13 developed a large intellectual property portfolio.

14 11. These include innovative designs for dental implants, such as the  
15 Brånemark System®, the world's first commercially successful system of dental  
16 implants, innovative industrial techniques for producing individualized all-  
17 ceramic crowns, bridges and laminates as part of the NobelProcera® system,  
18 and innovations in the use of CAD/CAM technology to design and manufacture  
19 restorative and surgical components for use with dental implants.

20 12. Nobel has also introduced innovative treatment concepts for use  
21 with its implants, including the All-on-4® treatment concept for patients in  
22 which four implants are surgically installed in a patient's jawbone and used to  
23 support a full-arch prosthesis.

24 13. There are more than 1900 peer-reviewed publications around the  
25 world that support the safety and efficacy of Nobel's products and solutions,  
26 including studies of dental implants that have been followed in publications for  
27 over 25 years.

28 ///

1 14. Nobel invests significantly in its research and development efforts,  
2 and currently spends 10% of its sales revenue on research and development  
3 activities, which exceeds the typical research and development investment of its  
4 competitors.

5 15. As a result of these efforts, Nobel has been awarded numerous  
6 patents in the United States and around the world. A listing of Nobel's U.S.  
7 patents can be found on Nobel's website at [www.nobelbiocare.com](http://www.nobelbiocare.com).

8 **B. Nobel's Development and Launch of NobelActive®**

9 16. In 2008, Nobel commercially launched its NobelActive® line of  
10 implants, a new dental implant design with a thread shape that progressively  
11 condenses bone and provides for enhanced stability of the implant. The  
12 NobelActive® implant line also has a unique shape at its tip, which allows the  
13 clinician to change the direction of insertion of the implant during the surgical  
14 procedure to accommodate the unique anatomy of the patient. An image of a  
15 NobelActive® implant is shown below:



1           17.    The preliminary design features of this implant were developed by  
2 a team of Israeli clinicians at AlphaBio Tec. Nobel obtained permission from  
3 these clinicians to use their design concepts and to conduct further research and  
4 development of those concepts, which led to the NobelActive® implant.

5           18.    In 2007, Nobel initiated a pre-launch of the NobelActive® implant,  
6 which included special training courses for clinicians and several months of  
7 clinical trials around the world.

8           19.    In 2008, Nobel invested further in this implant design by acquiring  
9 AlphaBio Tec, including its intellectual property rights. In 2008, Nobel also  
10 launched the NobelActive® implant line, and since then has continuously  
11 publicized the benefits of the NobelActive® design at conferences and  
12 educational programs internationally, with the result being that NobelActive®  
13 has been the most successful product introduction in Nobel's history.

14           20.    Nobel's success with the NobelActive® implant has been  
15 recognized in the industry. In 2009, the NobelActive® implant was voted the  
16 "Best Product 2009" on the peer review platform Dental Product Shopper  
17 (DPS). In June 2014, the NobelActive® implant was identified as one of the  
18 Top 25 implant products in Dentistry Today.

19           21.    In addition to the NobelActive® implant, Nobel offers and sells  
20 numerous restorative and surgical components that are designed to be used with  
21 this implant, such as abutments, drills, impression copings, as well as  
22 customized surgical templates and prosthetics

23           22.    Nobel also provides extensive training and education to support  
24 clinicians in surgical and restorative procedures for the NobelActive® implant.  
25 This includes training and education of clinicians at Nobel's U.S. headquarters  
26 in Yorba Linda, California.

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**C. Nobel's U.S. Patents**

23. The innovative design of NobelActive® is protected by numerous U.S. patents.

24. On May 6, 2014, the U.S. Patent & Trademark Office ("PTO") duly and legally issued U.S. Patent No. 8,714,977 ("the '977 patent"), entitled "Condensing skeletal implant that facilitate insertions," naming Ophir Fromovich, Yuval Jacoby, Nitzan Bichacho, and Ben-Zion Karmon as inventors. A true and correct copy of the '977 patent is attached hereto as Exhibit 1. Plaintiff NOBEL BIO CARE SERVICES AG is the owner of all right, title and interest in the '977 patent, and Plaintiff NOBEL BIO CARE USA, LLC is the exclusive U.S. licensee of this patent. Thus, Nobel has the right to enforce the '977 patent and the right to recover damages for infringement of this patent.

25. On July 1, 2014, the PTO duly and legally issued U.S. Patent No. 8,764,443 ("the '443 patent"), entitled "Method for producing a surface structure on an implant, and such an implant," naming Jan Hall as inventor. A true and correct copy of the '443 patent is attached hereto as Exhibit 2. Plaintiff NOBEL BIO CARE SERVICES AG is the owner of all right, title and interest in the '443 patent, and Plaintiff NOBEL BIO CARE USA, LLC is the exclusive U.S. licensee of this patent. Thus, Nobel has the right to enforce the '443 patent and the right to recover damages for infringement of this patent.

26. Nobel has complied with 35 U.S.C. § 287 by including patent marking information on the product packaging for NobelActive®. The product packaging states that the NobelActive® implant is "covered by US or international patents listed at nobelbiocare.com." Nobel's website, [www.nobelbiocare.com](http://www.nobelbiocare.com) includes a patent marking notice that lists the '977 and '443 patents.

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**D. Neodent's Infringement**

27. In March 2014, Neodent announced its intention to begin selling dental implants in the United States. Neodent has extensively promoted its Drive CM dental implant within the U.S. and within this district.

28. The Drive CM implant includes many of the design features of the NobelActive® implant, including striking similarities in the shape of the collar at the top of the implant, the design and shape of the outer threads along the body of the implant, and the tip of the implant.

29. The images below provide a side-by-side comparison of the NobelActive® implant, on the left, with Neodent's Drive CM implant, on the right:



NobelActive®  
implant



Neodent's Drive CM  
implant

30. Neodent offers the Drive CM implant in at least 3 different diameters and 4 different lengths and thus imports, sells and offers to sell at least 12 different sizes of the Drive CM implant in the United States.

31. Neodent has the Drive CM implants manufactured in Brazil and imports these implants into the United States.

32. Unlike Nobel, Neodent did not undertake any pre-launch training of clinicians or any clinical trials prior to introducing the Drive CM implant in the United States. Instead, Neodent has sought to capitalize on Nobel's extensive research and development efforts and training and education efforts for the NobelActive® implant by suggesting that the Drive CM implant can be used for the same procedures as NobelActive®, such as the "All-on-4®" procedure developed by Nobel. However, the Drive CM implant is not supported by the extensive clinical data that exists for the NobelActive® implant.

33. Neodent offers its Drive CM implants at a price that is substantially less than the NobelActive® implant. Neodent is only able to undercut Nobel's prices because Neodent has not invested the resources into research and development or training and education that Nobel has committed to NobelActive®.

34. The Drive CM implant uses design features that have been patented by Nobel. In particular, one or more sizes of the Drive CM implant, including at least the 4.3 x 8 mm implant, 4.3 x 10 mm implant, 4.3 x 11.5 mm implant, and 4.3 x 13 mm implant infringe Claim 1 of the '977 patent. In addition, one or more sizes of the Drive CM implant, including at least the 4.3 x 8 mm implant, 4.3 x 10 mm implant, 4.3 x 11.5 mm implant, and 4.3 x 13 mm implant, infringe Claim 15 of the '443 patent.

### FIRST CLAIM FOR RELIEF

**(Infringement of U.S. Patent No. 8,714,977)**

35. Nobel repeats, realleges, and incorporates by reference the allegations set forth in Paragraphs 1 through 34 of this Complaint as though fully set forth herein.



36. This is a claim for patent infringement and arises under the patent laws of the United States, 35 U.S.C. § 100 *et seq.*

37. Neodent is infringing the '977 patent by using, importing, selling, and/or offering for sale in the United States dental implant products that infringe at least Claim 1 of the '977 patent.

38. Neodent's acts constitute direct infringement of the '977 patent in violation of 35 U.S.C. § 271(a).

39. Neodent's infringing activities are without the consent of, authority of, or license from Nobel.

40. Neodent has derived and received, and will continue to derive and receive, gains, profits, and advantages from the aforesaid acts of infringement in an amount that is not presently known to Nobel. By reason of the aforesaid infringing acts, Nobel has been damaged and is entitled to monetary relief in an amount to be determined at trial.

41. Neodent's infringement will continue unless enjoined by this Court.

42. Because of the aforesaid infringing acts, Nobel has suffered and continues to suffer great and irreparable injury, for which Nobel has no adequate remedy at law.

## **SECOND CLAIM FOR RELIEF**

**(Infringement of U.S. Patent No. 8,764,443)**

43. Nobel repeats, realleges, and incorporates by reference the allegations set forth in Paragraphs 1 through 42 of this Complaint as though fully set forth herein.

44. This is a claim for patent infringement and arises under the patent laws of the United States, 35 U.S.C. § 100 *et seq.*

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45. Neodent is infringing the '443 patent by using, importing, selling, and/or offering for sale in the United States dental implant products that infringe at least Claim 15 of the '443 patent.

46. Neodent's acts constitute direct infringement of the '443 patent in violation of 35 U.S.C. § 271(a).

47. Neodent's infringing activities are without the consent of, authority of, or license from Nobel.

48. Neodent has derived and received, and will continue to derive and receive, gains, profits, and advantages from the aforesaid acts of infringement in an amount that is not presently known to Nobel. By reason of the aforesaid infringing acts, Nobel has been damaged and is entitled to monetary relief in an amount to be determined at trial.

49. Neodent's infringement will continue unless enjoined by this Court.

50. Because of the aforesaid infringing acts, Nobel has suffered and continues to suffer great and irreparable injury, for which Nobel has no adequate remedy at law.

**RELIEF REQUESTED**

WHEREFORE, Nobel seeks judgment against Neodent as follows:

A. An Order adjudging Neodent to have infringed the '977 patent under 35 U.S.C. § 271;

B. An Order adjudging Neodent to have infringed the '443 patent under 35 U.S.C. § 271;

C. That Neodent, its agents, servants, employees and attorneys, and all those persons in active concert or participation with them, be forthwith preliminarily and thereafter permanently enjoined from directly infringing the '977 and '443 patents in violation of 35 U.S.C. § 271;

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1 D. That Neodent account for all gains, profits, and advantages derived  
2 by its infringement of the '977 and '443 patents in violation of 35 U.S.C. § 271,  
3 and that Neodent pay to Nobel all such damages suffered by Nobel, including  
4 but not limited to a reasonable royalty for Neodent's infringement, the profits  
5 lost by Nobel as a result of Neodent's infringement, and the damages incurred  
6 by Nobel as a result of price erosion as a result of Neodent's infringing sales;

7 E. That Nobel be awarded its attorneys' fees, costs, and expenses in  
8 connection with this action pursuant to 35 U.S.C. § 285;

9 F. That Nobel be awarded pre-judgment and post-judgment interest  
10 against Neodent; and

11 G. Such other and further relief as this Court may deem just.

12 Respectfully submitted,

13 KNOBBE, MARTENS, OLSON & BEAR, LLP  
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15  
16 Dated: August 19, 2014 By: /s/ John B. Sganga, Jr.

17 John B. Sganga, Jr.  
18 Sheila N. Swaroop  
19 Baraa Kahf  
20 Marissa Calcagno

21 Attorneys for Plaintiffs  
22 NOBEL BIO CARE SERVICES AG  
23 and NOBEL BIO CARE USA LLC  
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**DEMAND FOR JURY TRIAL**

Plaintiffs NOBEL BIOCARE SERVICES AG and NOBEL BIOCARE  
USA, LLC, hereby demand a trial by jury on all issues so triable.

Respectfully submitted,  
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: August 19, 2014 By: /s/ John B. Sganga, Jr.  
John B. Sganga, Jr.  
Sheila N. Swaroop  
Baraa Kahf  
Marissa Calcagno  
  
Attorneys for Plaintiffs  
NOBEL BIOCARE SERVICES AG and  
NOBEL BIOCARE USA, LLC

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