

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STRYKER CORPORATION,)	
STRYKER SALES CORPORATION)	
)	
Plaintiffs,)	
)	Civil Action No.
v.)	
)	Hon.
ZIMMER, INC., and)	
ZIMMER SURGICAL, INC.,)	JURY TRIAL REQUESTED
)	
Defendant.)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Stryker Corporation and Stryker Sales Corporation (collectively

“Plaintiffs”) allege as follows:

The Parties

1. Plaintiff Stryker Corporation (“Stryker”) is a Michigan corporation having its principal place of business at 2825 Airview Boulevard, Kalamazoo, Michigan 49002.

2. Plaintiff Stryker Sales Corporation (“Stryker Sales”) is a Michigan corporation having its principal place of business at 2825 Airview Boulevard, Kalamazoo, Michigan 49002.

3. On information and belief, Defendant Zimmer, Inc. (“Zimmer”) is a Delaware corporation having its principal place of business at 1800 West Center Street, Warsaw, Indiana 46581.

4. On information and belief, Defendant Zimmer Surgical, Inc. (“Zimmer Surgical”) is a Delaware corporation having its principal place of business at 200 West Ohio Avenue, Dover, OH 44622.

5. Stryker is a medical technology company with a range of products in various medical specialties, including the market for personal protection systems for use in surgical environments.

6. Stryker Sales is the exclusive distributor of certain Stryker products in the United States, including but not limited to the T5 and the Flyte™ Steri-Shield® Personal Protection Systems.

7. Upon information and belief, Zimmer and Zimmer Surgical (collectively “Defendants”) are medical technology companies with a range of products in various medical specialties, including the Zimmer® TotalShield™ Surgical Helmet System (“TotalShield”), which system includes the TotalShield™ Surgical Helmet and/or TotalShield™ Advanced Surgical Helmet with LED Lighting for use with the TotalShield™ Zippered Surgical Toga and/or TotalShield™ Surgical Hood.

8. Upon information and belief, Defendants manufacture, use, import, offer for sale, sell, and/or distribute a range of products, including the TotalShield.

The Patents-in-Suit

9. On September 23, 2003, United States Patent No. 6,622,311 (“the ‘311 Patent”), entitled “AIR FILTRATION SYSTEM INCLUDING A HELMET ASSEMBLY” (Exhibit A), duly and legally issued. The ‘311 Patent is assigned to Stryker Corporation. Stryker Sales Corporation is an exclusive licensee to the ‘311 Patent with the sole exclusive right and license to advertise, market, distribute, sell, and offer for sale products covered by the ‘311 Patent in the United States, and the right to sue for past, present, and future ‘311 Patent infringement damages. Plaintiffs have complied with the requirements of 35 U.S.C. § 287.

10. On November 19, 2002, United States Patent No. 6,481,019 (“the ‘019 Patent”), entitled “AIR FILTRATION SYSTEM INCLUDING A HELMET ASSEMBLY” (Exhibit B),

duly and legally issued. The '019 Patent is assigned to Stryker Corporation. Stryker Sales Corporation is an exclusive licensee to the '019 Patent with the sole exclusive right and license to advertise, market, distribute, sell, and offer for sale products covered by the '019 Patent in the United States, and the right to sue for past, present, and future '019 Patent infringement damages. Plaintiffs have complied with the requirements of 35 U.S.C. § 287.

11. On July 13, 2010, United States Patent No. 7,752,682 (“the ‘682 Patent”), entitled “PERSONAL PROTECTION SYSTEM INCLUDING A HELMET AND A HOOD, THE HELMET INCLUDING A VENTILATION SYSTEM THAT BLOWS AIR ON THE NECK OF THE WEARER” (Exhibit C), duly and legally issued. The ‘682 Patent is assigned to Stryker Corporation. Stryker Sales Corporation is an exclusive licensee to the ‘682 Patent with the sole exclusive right and license to advertise, market, distribute, sell, and offer for sale products covered by the ‘682 Patent in the United States, and the right to sue for past, present, and future ‘682 Patent infringement damages. Plaintiffs have complied with the requirements of 35 U.S.C. § 287.

12. On October 9, 2012, United States Patent No. 8,282,234 (“the ‘234 Patent”), entitled “MEDICAL/SURGICAL PERSONAL PROTECTION SYSTEM INCLUDING A LIGHT ASSEMBLY ARRANGED SO THAT HEAT GENERATED BY THE ASSEMBLY IS EXHAUSTED AWAY FROM THE ASSEMBLY” (Exhibit D), duly and legally issued. The ‘234 Patent is assigned to Stryker Corporation. Stryker Sales Corporation is an exclusive licensee to the ‘234 Patent with the sole exclusive right and license to advertise, market, distribute, sell, and offer for sale products covered by the ‘234 Patent in the United States, and the right to sue for past, present, and future ‘234 Patent infringement damages. Plaintiffs have complied with the requirements of 35 U.S.C. § 287.

Jurisdiction and Venue

13. This is an action for patent infringement that arises under the patent laws of the United States, Title 35 U.S.C. §1 et seq., and seeks damages and injunctive relief as provided in 35 U.S.C. §§281 and 283-285. This Court has subject matter jurisdiction under 28 U.S.C. §§1331 and 1338(a).

14. This Court has personal jurisdiction over Defendants because Defendants have done and are doing substantial business in this judicial district, both generally and, on information and belief, with respect to the allegations in this complaint, including Defendants' one or more acts of infringement in this district.

15. Venue is proper in this district under 28 U.S.C. §§1391(c) and 1400(b), as Defendants have regularly conducted business in this judicial district and, on information and belief have committed, and continue to commit, acts of patent infringement by making, using, selling, or offering to sell personal protection systems that infringe Stryker's patents, including the '311 Patent, the '019 Patent, the '682 Patent, and the '234 Patent. Plaintiffs Stryker and Stryker Sales both have their principal places of business in Kalamazoo, Michigan.

COUNT I – PATENT INFRINGEMENT OF U.S. PATENT NO. 6,622,311

16. Plaintiffs incorporate paragraphs 1 through 15 as if fully set forth herein.

17. Defendants have manufactured, used, imported, offered for sale, or sold personal protection system products ("the Zimmer Products"), including at least the "TotalShield™ Surgical Helmet System" (Exhibits E, F, and G), that infringe, either literally or under the doctrine of equivalents, one or more claims of the '311 Patent either directly, contributorily, by inducement or otherwise, in violation of 35 U.S.C. § 271. Plaintiffs have complied with the requirements of 35 U.S.C. § 287. Defendants' infringement will continue unless enjoined by this Court.

18. The Zimmer Products infringe one or more claims of the '311 Patent, including claim 26, which reads as follows:

26. A hood that is adapted to cover a helmet assembly used in an air filtration system wherein said hood assists a single user of the air filtration system in self-gowning as the user maintains sterility, said hood comprising:

a filter medium for filtering air between the user and an environment external to the user; and

a face shield mounted to said filter medium of said hood to permit the user to view through said hood, said face shield including a mounting mechanism that is adapted to automatically center said face shield relative to the helmet assembly and to support said face shield and said filter medium on the helmet assembly as the user self-gowns such that the user maintains sterility.

19. The Zimmer Products include a hood that is adapted to cover a helmet assembly used in an air filtration system wherein the hood assists a single user of the air filtration system in self-gowning as the user maintains sterility. The hood comprises a filter medium for filtering air between the user and an environment external to the user. The hood also comprises a face shield mounted to the filter medium of the hood to permit the user to view through the hood. The face shield includes a mounting mechanism that is adapted to automatically center the face shield relative to the helmet assembly and to support the face shield and the filter medium on the helmet assembly as the user self-gowns such that the user maintains sterility.

20. Defendants' infringement has damaged and continues to damage and injure Plaintiffs. Plaintiffs' injury is irreparable and will continue unless and until Defendants are enjoined by this Court from further infringement.

21. Defendants are engaging in willful and deliberate infringement of the '311 Patent, which justifies an increase of three times the damages to be assessed pursuant to 35 U.S.C. § 284 and further qualifies this as an exceptional case supporting an award of reasonable attorneys' fees pursuant to 35 U.S.C. § 285. On information and belief, Defendants knew or should have

known of the '311 Patent and have acted, and continue to act, despite an objectively high likelihood that their actions constitute infringement of a valid patent, i.e., the '311 Patent. On information and belief, this objectively high likelihood of infringement of the valid '311 Patent was either known or so obvious that it should have been known to Defendants. Plaintiffs and Defendants are direct and active competitors in the field of surgical products.

COUNT II – PATENT INFRINGEMENT OF U.S. PATENT NO. 6,481,019

22. Plaintiffs incorporate paragraphs 1 through 21 as if fully set forth herein.

23. Defendants have manufactured, used, imported, offered for sale, or sold personal protection system products (“the Zimmer Products”), including at least the “TotalShield™ Surgical Helmet System” (Exhibits E, F, and G), that infringe, either literally or under the doctrine of equivalents, one or more claims of the '019 Patent either directly, contributorily, by inducement or otherwise, in violation of 35 U.S.C. § 271. Plaintiffs have complied with the requirements of 35 U.S.C. § 287. Defendants’ infringement will continue unless enjoined by this Court.

24. The Zimmer Products infringe one or more claims of the '019 Patent, including claim 125, which reads as follows:

125. A visual positioning system for assisting a single user in self-gowning as the user maintains sterility, said visual positioning system comprising:

a helmet assembly adapted to be mounted on a head of the user, said helmet assembly including a base section and a facial section extending from said base section to define a facial opening;

a gown including a body portion for covering at least a portion of the body of the user and a head portion for covering said base section of said helmet assembly;

a face shield mounted to said head portion of said gown to cover said facial opening thereby permitting the user to view through said head portion of said gown,

said face shield including a first visual indicator on said face shield to enable the user to visually align said face shield with said helmet assembly; and

said base section of said helmet assembly including a second visual indicator positioned relative to said facial opening for alignment with said first visual indicator on said face shield to automatically center said face shield over said facial opening thereby assisting the single user is self-gowning while maintaining a relative position between said gown and face shield and said helmet assembly as the user maintains sterility.

25. The Zimmer Products include a visual positioning system for assisting a single user in self-gowning as the user maintains sterility. The visual positioning system comprises a helmet assembly adapted to be mounted on a head of the user, said helmet assembly including a base section and a facial section extending from said base section to define a facial opening. The visual positioning system also comprises a gown including a body portion for covering at least a portion of the body of the user and a head portion for covering the base section of the helmet assembly. The visual positioning system also comprises a face shield mounted to the head portion of the gown to cover the facial opening thereby permitting the user to view through the head portion of the gown. The face shield includes a first visual indicator on the face shield to enable the user to visually align the face shield with the helmet assembly. The base section of the helmet assembly includes a second visual indicator positioned relative to the facial opening for alignment with the first visual indicator on the face shield to automatically center the face shield over the facial opening thereby assisting the single user is self-gowning while maintaining a relative position between the gown and face shield and the helmet assembly as the user maintains sterility.

26. Defendants' infringement has damaged and continues to damage and injure Plaintiffs. Plaintiffs' injury is irreparable and will continue unless and until Defendants are enjoined by this Court from further infringement.

27. Defendants are engaging in willful and deliberate infringement of the ‘019 Patent, which justifies an increase of three times the damages to be assessed pursuant to 35 U.S.C. § 284 and further qualifies this as an exceptional case supporting an award of reasonable attorneys’ fees pursuant to 35 U.S.C. § 285. On information and belief, Defendants knew or should have known of the ‘019 Patent and have acted, and continue to act, despite an objectively high likelihood that their actions constitute infringement of a valid patent, i.e., the ‘019 Patent. On information and belief, this objectively high likelihood of infringement of the valid ‘019 Patent was either known or so obvious that it should have been known to Defendants. Plaintiffs and Defendants are direct and active competitors in the field of surgical products.

COUNT III – PATENT INFRINGEMENT OF U.S. PATENT NO. 7,752,682

28. Plaintiffs incorporate paragraphs 1 through 27 as if fully set forth herein.

29. Defendants have manufactured, used, imported, offered for sale, or sold personal protection system products (“the Zimmer Products”), including at least the “TotalShield™ Surgical Helmet System” (Exhibits E, F, and G), that infringe, either literally or under the doctrine of equivalents, one or more claims of the ‘682 Patent either directly, contributorily, by inducement or otherwise, in violation of 35 U.S.C. § 271. Plaintiffs have complied with the requirements of 35 U.S.C. § 287. Defendants’ infringement will continue unless enjoined by this Court.

30. The Zimmer Products infringe one or more claims of the ‘682 Patent, including claim 11, which reads as follows:

11. A personal protection system for fitting over a head and a neck, said system comprising:

a head band that extends at least partially around the head, said head band having a front portion that extends around a front of the head and a back portion that extends around a rear of the head;

a plurality of spaced apart support members that extend upwardly from said head band;

a shell mounted to said support members, said support members and said shell being shaped to hold said shell above the head, said shell being located above said back portion of said head band;

a fan mounted to said shell for drawing air into said shell;

an outlet duct that extends forward from said fan that receives air discharged from said fan, said outlet duct extending in front of said head band front portion and having an opening through which air is discharged to below said head band;

a duct assembly located below and rearward of said shell, said duct assembly having: a duct structure that extends over said back portion of said head band that is connected to said shell for receiving air discharged from said fan; and a tip located below and in fluid communication with said duct structure, said tip having an exit opening located below said head band through which air can be discharged therefrom across a bottom edge of said back portion of said head band towards the back of the neck;

a hood removably disposed over said head band, said shell, said outlet duct and said duct assembly, said hood having a transparent face shield located forward of said head band front portion; and a fastening assembly connected to at least one of said shell or said hood for releasably holding said hood to said shell.

31. The Zimmer Products include a personal protection system for fitting over a head and a neck. The personal protection system includes a head band that extends at least partially around the head, the head band having a front portion that extends around a front of the head and a back portion that extends around a rear of the head. The personal protection system also includes a plurality of spaced apart support members that extend upwardly from the head band. The personal protection system also includes a shell mounted to the support members, the support members and the shell being shaped to hold the shell above the head, the shell being located above the back portion of the head band. The personal protection system also includes a fan mounted to the shell for drawing air into the shell. The personal protection system also includes an outlet duct that extends forward from the fan that receives air discharged from the

fan, the outlet duct extending in front of the head band front portion and having an opening through which air is discharged to below the head band. The personal protection system also includes a duct assembly located below and rearward of the shell. The duct assembly includes a duct structure that extends over the back portion of the head band that is connected to the shell for receiving air discharged from the fan, and a tip located below and in fluid communication with the duct structure, the tip having an exit opening located below the head band through which air can be discharged therefrom across a bottom edge of the back portion of the head band towards the back of the neck. The personal protection system also includes a hood removably disposed over the head band, the shell, the outlet duct and the duct assembly. The hood includes a transparent face shield located forward of the head band front portion. The personal protection system also includes a fastening assembly connected to at least one of the shell or the hood for releasably holding the hood to the shell.

32. Defendants' infringement has damaged and continues to damage and injure Plaintiffs. Plaintiffs' injury is irreparable and will continue unless and until Defendants are enjoined by this Court from further infringement.

33. Defendants are engaging in willful and deliberate infringement of the '682 Patent, which justifies an increase of three times the damages to be assessed pursuant to 35 U.S.C. § 284 and further qualifies this as an exceptional case supporting an award of reasonable attorneys' fees pursuant to 35 U.S.C. § 285. On information and belief, Defendants knew or should have known of the '682 Patent and have acted, and continue to act, despite an objectively high likelihood that their actions constitute infringement of a valid patent, i.e., the '682 Patent. On information and belief, this objectively high likelihood of infringement of the valid '682 Patent

was either known or so obvious that it should have been known to Defendants. Plaintiffs and Defendants are direct and active competitors in the field of surgical products.

COUNT IV – PATENT INFRINGEMENT OF U.S. PATENT NO. 8,282,234

34. Plaintiffs incorporate paragraphs 1 through 33 as if fully set forth herein.

35. Defendants have manufactured, used, imported, offered for sale, or sold personal protection system products (“the Zimmer Products”), including at least the “TotalShield™ Surgical Helmet System” (Exhibits E, F, and G), that infringe, either literally or under the doctrine of equivalents, one or more claims of the ‘234 Patent either directly, contributorily, by inducement or otherwise, in violation of 35 U.S.C. § 271. Plaintiffs have complied with the requirements of 35 U.S.C. § 287. Defendants’ infringement will continue unless enjoined by this Court.

36. The Zimmer Products infringe one or more claims of the ‘234 Patent, including claim 1, which reads as follows:

1. A personal protection system comprising:

a helmet to be worn over the head of a wearer, said helmet including a head band that is disposed above the face of the wearer;

a hood disposed over said helmet, said hood having a transparent face shield that is forward of said head band;

a fastening assembly integral with at least one of said helmet or said hood for releasably holding said hood, including said face shield, over said helmet;

a ventilation assembly integral with said helmet, the ventilation assembly having a fan and a front nozzle that is connected to said fan to receive air output by said fan, said front nozzle having an opening through which the air is discharged that is located forward of the head band so as to be in front of the face of the wearer;

and a light assembly including a light source and a light emitting head, said light assembly being mounted to said helmet and positioned to emit light through said face shield and being located below the front nozzle opening so that air discharged through the front nozzle opening flows over said light assembly.

37. The Zimmer products include a personal protection system. The personal protection system includes a helmet to be worn over the head of a wearer. The helmet includes a head band that is disposed above the face of the wearer. The personal protection system also includes a hood disposed over the helmet. The hood includes a transparent face shield that is forward of said head band. The personal protection system also includes a fastening assembly integral with at least one of the helmet or the hood for releasably holding the hood, including the face shield, over the helmet. The personal protection system also includes a ventilation assembly integral with the helmet. The ventilation assembly includes a fan and a front nozzle that is connected to the fan to receive air output by the fan. The front nozzle includes an opening through which the air is discharged that is located forward of the head band so as to be in front of the face of the wearer. The personal protection system also includes a light assembly including a light source and a light emitting head, the light assembly being mounted to the helmet and positioned to emit light through the face shield and being located below the front nozzle opening so that air discharged through the front nozzle opening flows over the light assembly.

38. Defendants' infringement has damaged and continues to damage and injure Plaintiffs. Plaintiffs' injury is irreparable and will continue unless and until Defendants are enjoined by this Court from further infringement.

39. Defendants are engaging in willful and deliberate infringement of the '234 Patent, which justifies an increase of three times the damages to be assessed pursuant to 35 U.S.C. § 284 and further qualifies this as an exceptional case supporting an award of reasonable attorneys' fees pursuant to 35 U.S.C. § 285. On information and belief, Defendants knew or should have known of the '234 Patent and have acted, and continue to act, despite an objectively high likelihood that their actions constitute infringement of a valid patent, i.e., the '234 Patent. On

information and belief, this objectively high likelihood of infringement of the valid '234 Patent was either known or so obvious that it should have been known to Defendants. Plaintiffs and Defendants are direct and active competitors in the field of surgical products.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

A. That U.S. Patent Nos. 6,622,311, 6,481,019, 7,752,682, and 8,282,234 be judged valid, enforceable, and infringed by Defendants, and that Defendants' infringement be judged to be willful;

B. That the Court enjoin Defendants, its subsidiaries, parent, divisions, agents, servants, and employees from making, using, selling, offering to sell, or importing or importing or distributing any infringing personal protection system products, including the Zimmer Products, and from infringing, contributing to the infringement of, and for inducing infringement of U.S. Patent Nos. 6,622,311, 6,481,019, 7,752,682, and 8,282,234, and for all further and proper injunctive relief;

C. That Plaintiffs be awarded judgment against Defendants for damages together with interest and costs;

D. That Plaintiffs be awarded treble damages pursuant to 35 U.S.C. § 284;

E. That Plaintiffs be awarded their reasonable costs, expenses, and attorneys' fees pursuant to 35 U.S.C. § 285 or other applicable law; and

F. That Plaintiffs be awarded other and further relief as this Court may deem just and proper under the circumstances.

Respectfully submitted,

Dated: November 21, 2014

/s/ D. Andrew Portinga

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