

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FLEXUSPINE, INC.

Plaintiff,

v.

GLOBUS MEDICAL, INC.,

Defendant.

CIVIL ACTION NO. 6:15-cv-00201

JURY TRIAL DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff FLEXUSPINE, INC. files this Original Complaint against Defendant GLOBUS MEDICAL, INC., alleging as follows:

I. THE PARTIES

1. FLEXUSPINE, INC. (“Plaintiff” or “Flexuspine”) is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business in Tyler, Texas.

2. Flexuspine is a company that develops novel devices for the treatment of degenerative spine disease.

3. Upon information and belief, GLOBUS MEDICAL, INC. (“Globus”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 2560 General Armistead Avenue, Audubon, Pennsylvania. Globus may be served with process by serving its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company located at 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

4. Globus is a medical device company focused on the design, development and commercialization of musculoskeletal implants that promote healing in patients with spine disorders, including intervertebral spinal fusion and minimally invasive spine products.

II. JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the patent laws of the United States, Title 35 United States Code. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §1338(a). Venue is proper under 28 U.S.C. §§ 1391(b) and (c).

6. Upon information and belief, Globus has had minimum contacts with the Tyler Division of the Eastern District of Texas such that this venue is a fair and reasonable one. Globus has committed such purposeful acts and/or transactions in Texas that it reasonably knew and/or expected that it could be haled into a court as a future consequence of such activity. Upon information and belief Globus has transacted and, at the time of the filing of this Complaint, is transacting business within the Tyler Division of the Eastern District of Texas.

7. Flexuspine is an existing business located within the Tyler Division of the Eastern District of Texas. All of Flexuspine's documents and prototypes relating to the patents-in-suit and its business are located in this Division.

8. Two of the named inventors for the patents-in-suit and the founders of Flexuspine, Dr. Charles Gordon, M.D. and Corey Harbold, are located within the Tyler Division of the Eastern District of Texas.

III. PATENTS-IN-SUIT

9. On April 17, 2007, United States Patent No. 7,204,853 (“the ‘853 patent”) was duly and legally issued for an “ARTIFICIAL FUNCTIONAL SPINAL UNIT ASSEMBLIES.” A true and correct copy of the ‘853 patent is attached hereto as Exhibit “A” and made a part hereof.

10. On January 8, 2008, United States Patent No. 7,316,714 (“the ‘714 patent”) was duly and legally issued for an “ARTIFICIAL FUNCTIONAL SPINAL UNIT ASSEMBLIES.” A true and correct copy of the ‘714 patent is attached hereto as Exhibit “B” and made a part hereof.

11. On March 22, 2011, United States Patent No. 7,909,869 (“the ‘869 patent”) was duly and legally issued for an “ARTIFICIAL SPINAL UNIT ASSEMBLIES.” A true and correct copy of the ‘869 patent is attached hereto as Exhibit “C” and made a part hereof.

12. On February 28, 2012, United States Patent No. 8,123,810 (“the ‘810 patent”) was duly and legally issued for an “EXPANDABLE INTERVERTEBRAL IMPLANT WITH WEDGED EXPANSION MEMBER.” A true and correct copy of the ‘810 patent is attached hereto as Exhibit “D” and made a part hereof.

13. On February 11, 2014, United States Patent No. 8,647,386 (“the ‘386 patent”) was duly and legally issued for an “EXPANDABLE INTERVERTEBRAL IMPLANT SYSTEM AND METHOD.” A true and correct copy of the ‘386 patent is attached hereto as Exhibit “E” and made a part hereof.

14. Collectively, the ‘853, ‘714, ‘869, ‘810, and ‘386 patents are referred to as “the patents-in-suit.”

15. As it pertains to this lawsuit, the patents-in-suit, very generally speaking, relate to a device which can be implanted between two vertebral bodies of a human spine to increase or

maintain the separation distance between vertebrae (distraction) and facilitate the fusion of such vertebral bodies as treatment for degenerative spinal conditions.

16. In 2003, Dr. Gordon and Mr. Harbold, founded FSU Technologies, Inc. (later renamed Flexuspine) to design and develop devices for spinal surgery, including the devices disclosed in the patents-in-suit. With years of experience in spinal surgery and engineering, respectively, Dr. Gordon and Mr. Harbold conceived, reduced to practice, and patented an improved interbody fusion device that could be inserted between two vertebral bodies and then be expanded to provide distraction of the vertebral bodies, thereby decompressing the spine and facilitating spinal fusion as disclosed in the patents-in-suit.

IV. FIRST CLAIM FOR RELIEF

(Patent Infringement)

17. Flexuspine is the owner of all right, title and interest of the patents-in-suit, including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the patents-in-suit. Accordingly, Flexuspine possesses the exclusive right and standing to prosecute the present action for infringement of the patents-in-suit by Globus.

18. Upon information and belief, Globus manufactures, makes, has made, uses, practices, imports, provides, supplies, distributes, sells and/or offers for sale products and/or systems that infringe one or more claims of the patents-in-suit.

19. Globus' expandable intervertebral fusion devices including, at a minimum, the Caliber and Caliber-L have infringed in the past and continue to infringe at least one claim of the '853 patent, at least one claim of the '869 patent, at least one claim of the '810 patent, and at least one claim of the '386 patent.

20. Globus' expandable intervertebral fusion devices including, at a minimum, the Rise and Rise IntraLIF have infringed in the past and continue to infringe at least one claim of the '853 patent.

21. Globus' expandable intervertebral fusion devices including, at a minimum, the Altera have infringed in the past and continue to infringe at least one claim of the '714 patent and at least one claim of the '386 patent.

22. As a result of Globus's infringing conduct, Globus has damaged Flexuspine. Globus is, thus, liable to Flexuspine in an amount that adequately compensates Flexuspine for its' infringement, which by law in no event can be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

23. Upon information and belief, Globus was on notice of the patents-in-suit and of its infringing conduct, and has, respectively, knowingly and willfully infringed the patents-in-suit at least as early as June 2014. Therefore, Flexuspine is entitled to additional damages as permitted by 35 U.S.C. § 284.

24. As a consequence of each Globus's infringement, Flexuspine has been irreparably damaged and such damage will continue without the issuance of an injunction by this Court.

V. JURY DEMAND

Flexuspine hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

VI. PRAYER FOR RELIEF

WHEREFORE, Flexuspine respectfully requests that the Court find in its favor and against Globus, and that the Court grant Flexuspine the following relief:

- a. Judgment that one or more claims of the patents-in-suit have been infringed, either literally and/or under the doctrine of equivalents, by Globus;
- b. Judgment that Globus's infringement is willful from the time Globus became aware of the infringing nature of its products and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284.
- c. Judgment that Globus account for and pay to Flexuspine all damages to and costs incurred by Flexuspine because of Globus's infringing activities and other conduct complained of herein;
- d. That Flexuspine be granted pre-judgment and post-judgment interest on the damages caused by Globus's infringing activities and other conduct complained of herein;
- e. That the Court declare this an exceptional case and award Flexuspine its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 284;
- f. That Globus be permanently enjoined from any further activity or conduct that infringes one or more claims of the patents-in-suit; and
- g. That Flexuspine be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: March 11, 2015.

Respectfully submitted,

/s/ Mark D. Strachan

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