

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ZIRCORE, LLC,

Plaintiff,

v.

STRAUMANN MANUFACTURING, INC.;
STRAUMANN USA, LLC;
STRAUMANN HOLDING AG; AND
DENTAL WINGS INC.

Defendants.

§
§
§
§
§
§
§
§
§
§
§

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Zircore, LLC (“Plaintiff” or “Zircore”) alleges the following for its complaint for patent infringement and related claims against Straumann Manufacturing, Inc., Straumann USA, LLC, Straumann Holding AG, and Dental Wings Inc. (“Defendants”).

THE NATURE OF THE ACTION

1. Plaintiff Zircore owns the inventions described in U.S. Patent No. 7,690,920 (“the ‘920 Patent”), U.S. Patent No. 8,751,031 (“the ‘031 Patent”), and U.S. Patent No. 7,967,606 (“the ‘606 Patent”). As each of those patents reveals, Zircore and its principals developed the technological innovations that would reshape the manufacture and design of tooth prosthetic components. Defendants have reaped the benefits of Zircore’s inventions, including after directly communicating with Zircore in 2012 about the technology and Zircore’s intellectual property rights in that technology. Defendants have willfully put Zircore’s patented technology to use, without permission or payment, in connection with products and processes they make, use, sell, and offer to sell, and indirectly have induced others to infringe Zircore’s patents.

Zircore seeks damages for patent infringement and an injunction preventing Defendants from continuing their unlawful acts.

THE PARTIES

2. Zircore is a limited liability company formed under the laws of the State of Kansas having its principal place of business at 514 Humboldt Street, Manhattan, KS, 66502. Zircore is engaged in the business of inventing and creating improved dental prosthetic components.

3. Straumann Manufacturing, Inc. (“Straumann Mfg.”) is a corporation organized under the laws of the State of Delaware and represents that its principal place of business is located at 60 Minuteman Rd., Andover, Massachusetts 01810. Straumann Mfg. is engaged in the business of design and manufacture of dental prosthetic components, among other things.

4. Straumann USA, LLC (“Straumann USA”) is a limited liability company organized under the laws of the State of Delaware and represents that its principal place of business is located at 60 Minuteman Rd., Andover, Massachusetts 01810. Straumann USA is engaged in the business of commercializing dental solutions from implants and prosthetic components to dental design software, among other things.

5. Straumann Holding AG (“Straumann Holding”) is a corporation organized under the laws of Switzerland and represents that its principal place of business is located at Peter Merian-Weg 12, CH 4002, Basel, Switzerland. Straumann Holding is the parent corporation of Straumann USA and Straumann Mfg., and also owns a controlling interest in Dental Wings, Inc. (“Dental Wings”). Straumann Holding is engaged in the business of research, development, and commercialization of solutions in implant dentistry and dental tissue regeneration.

6. The Straumann defendants operate an approximately 27,000 square foot manufacturing facility located at 916 13th Street, Arlington, TX. The Texas facility is the only manufacturing facility the Straumann defendants operate in the United States concerning the infringed patents. The Straumann defendants recently expanded their Texas-based operations, including by more than doubling the size of the Texas manufacturing facility.

7. Straumann has a network of dental laboratories that includes laboratories throughout the Eastern District of Texas. On information and belief, these dental laboratories purchase and license products and processes from Straumann that infringe Zircore's patents and/or are induced by Straumann to infringe Zircore's patents.

8. Dental Wings is a corporation organized under the laws of Canada with a principal place of business at 2251 Avenue Letourneux, Montréal, QC H1V 2N9, Canada.

9. On information and belief, Straumann Holding AG, owns a majority stake of 55% in Dental Wings, with an option to increase to full ownership by 2020.

10. On information and belief, Dental Wings' equipment (e.g., impression scanners, intraoral scanners, milling machines, etc.), complements the Straumann defendants' technology and enables the Straumann defendants to provide customers services related to the design and manufacture of dental prosthetics. This includes software that defendants Straumann Manufacturing, Inc., and Strauman USA, LLC use and market as an extension of Dental Wings' dental design software, DWOS. That software incorporates procedures and elements that are within claims of Zircore's patents.

JURISDICTION AND VENUE

11. This action arises under the patent laws of the United States, 35 U.S.C. 271 et seq. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

12. The Court has personal jurisdiction over Defendants, and venue is proper in this Judicial District pursuant to 28 U.S.C. § 1400 because Defendants reside in the District, are responsible for acts of infringement in the District as alleged in this Complaint, and have delivered or caused to be delivered their infringing products in the District.

BACKGROUND

13. The “Zircore Group” was organized in 2004 with the goal of inventing and introducing in the market innovative dental prosthetic systems. The Zircore Group has over ten years of experience with Computer Automated Design (CAD) and Computer Automated Milling (CAM) production in interstate commerce; ten years of documented, published clinical trials/proof of concept validation; and three Prosthodontic specialists and one hospital general dentist, each with more than 35 years of clinical practice and a record of publication independent of the Zircore project.

14. In 2004, dental prosthetic fractures occurred frequently with the then-available materials and methods for manufacturing tooth prosthetic components. Moreover, dentistry was yet to develop technology to effectively improve the process by which tooth prosthetics were designed and made.

15. The Zircore Group set out to develop something radically different in the dental industry. It foresaw a revolutionary system of mass customization that would use automation, as opposed to just computerization of the current procedures, for the manufacture of tooth prosthetic components employing digital tools for CAD/CAM. Through the use of such a system, the Zircore Group envisioned making available to patients aesthetically appealing, durable, and reliable alternatives to the products that were available. Such systems were unknown and unavailable at that time.

16. The Zircore Group began conducting research on reinforcement of tooth infrastructures, and computer automated design and manufacturing of tooth prosthetics, and invented several new and previously unknown procedures. The Zircore Group started the formal process to patent their inventions relevant to this case in 2004.

17. In November 2007, the Zircore Group organized Zircore, LLC for the purpose of owning, manufacturing and commercializing the intellectual property the Zircore Group had developed and related intellectual property it would develop in the future in the same field. Based, in part, on Defendants' infringement and inducement of infringement by others, Zircore has not been able to successfully enter the market with its innovations.

18. On April 6, 2010, the United States Patent and Trademark Office duly and legally issued the '920 Patent, disclosing and claiming a "High Strength Substructure Reinforcement for Crowns and Bridges." A true and correct copy of the '920 Patent is attached hereto as Exhibit A.

19. Each claim of the '920 Patent is valid and enforceable.

20. On June 28, 2011, the United States Patent and Trademark Office duly and legally issued the '606 Patent disclosing and claiming a "Process for Manufacturing Custom Crown Copings and Infrastructures." A true and correct copy of the '606 Patent is attached hereto as Exhibit B.

21. Each claim of the '606 Patent is valid and enforceable.

22. On June 10, 2014, the United States Patent and Trademark Office duly and legally issued the '031 Patent claiming and disclosing a "System and Method for Mass Custom Manufacturing of Dental Crowns and Crown Components." A true and correct copy of the '031 Patent is attached hereto as Exhibit C.

23. Each claim of the '031 Patent is valid and enforceable.

24. Zircore holds the exclusive right to take all actions, including the filing of this patent infringement lawsuit, necessary to enforce its rights to the '920, '606, and '031 Patents. Zircore also has the right to pursue recovery of royalties or damages for past, present, and future infringement of these patents.

25. In or about August 2012, Zircore shared a business plan containing information regarding the '920 and '606 patents with representatives of Straumann USA. These representatives provided this information to Straumann Holding. After Straumann Holding obtained Zircore's information, the parties engaged in discussions regarding Defendants licensing Zircore's patents.

26. On or about September 2012, after evaluating Zircore's patents, Straumann Holding declined Zircore's offer to license Zircore's patents.

27. Nonetheless, Straumann Holding and its subsidiaries Straumann USA and Straumann Mfg. acting in conjunction with and through Dental Wings, have incorporated Zircore's patented inventions into their products and services. Defendants have been, and continue to be, commercially exploiting and benefiting from Zircore's patented inventions since that time. They have infringed the '920, '606, and '031 Patents, and induced infringement by third parties.

COUNT 1
PATENT INFRINGEMENT OF THE '920 PATENT

Direct Infringement of the '920 Patent (35 U.S.C. § 271(a))

28. Zircore incorporates and realleges the allegations of paragraphs 1 to 27 of this Complaint as if fully set forth herein.

29. Defendant Straumann Mfg. has directly infringed and continues to infringe, literally or under the doctrine of equivalents, in the United States, one or more of the claims of

the '920 Patent. Defendant Straumann Mfg. has infringed by making, having made, using (including use for testing purposes), selling, importing, or offering for sale products, including but not limited to, crown copings and abutments, that satisfy each and every limitation of claims 1, 3-16, and 19-21 of the '920 Patent. Such products include, but are not limited to, crown components designed and manufactured by Straumann Mfg.

30. On information and belief, Defendant Straumann Mfg. has made, used (including use for testing purposes), sold, imported, and/or offered for sale products, e.g., crown components, with knowledge of the '920 Patent and with knowledge that such products would infringe the '920 Patent. Defendant Straumann Mfg. has had such knowledge from the time when it became aware of said patent, which is no later than 2012.

31. Straumann Mfg.'s manufacture of, sales of and/or offers to sell the accused products is unauthorized, and constitutes infringement under 35 U.S.C. §271(a) for which it is directly liable.

Indirect Infringement of the '920 Patent (35 U.S.C. § 271(b))

32. Zircore repeats and realleges the allegations of paragraphs 1 to 31 of this Complaint as if fully set forth herein.

33. Straumann Mfg., Straumann USA, Straumann Holding, and Dental Wings have induced and continue to induce the infringement in the United States of claims 1, 3-16, and 19-21 of the '920 Patent, and will continue such inducement of infringement unless enjoined by this Court. On information and belief, Defendants have induced, and are still inducing, third parties to directly infringe claims 1, 3-16, and 19-21 of the '920 Patent by, *inter alia*, intentionally and voluntarily providing their DWOS and CARES software, and Straumann® CARES® System's Validated Workflow to persons within the Eastern District of Texas and elsewhere to design and

manufacture infringing crown components, knowing that their features and associated services infringe the '920 Patent.

34. Defendants affirmatively intended and intend to cause direct infringement of Zircore's '920 Patent by known and unknown third parties.

35. As a consequence of, *inter alia*, Zircore's publicly available '920 Patent, and the dialog between Straumann Holding AG and Zircore for potential licensing of Zircore's patents, Defendants had notice of Zircore's patent when it carried out the conduct complained of herein, and knowledge that such conduct constituted infringement of the '920 Patent, or in the alternative, were willfully blind to the infringement of Zircore's patents.

COUNT 2
PATENT INFRINGEMENT OF THE '031 PATENT

Direct Infringement of the '031 Patent (35 U.S.C. § 271(a))

36. Zircore incorporates and realleges the allegations of paragraphs 1 to 35 of this Complaint as if fully set forth herein.

37. Defendant Straumann Mfg. has directly infringed and continues to infringe, literally or under the doctrine of equivalents, in the United States, claims 1-2 of the '031 Patent by using (including use for testing purposes), selling, importing, or offering for sale services that satisfy each and every limitation of claims 1-2 of the '031 Patent. Such services include, *inter alia*, Straumann® CARES® Scan & Shape Service, and Straumann® CARES® CADCAM.

38. On information and belief, Straumann Mfg. has used (including use for testing purposes), imported, sold and/or offered for sale services with knowledge of the '031 Patent and that such services would infringe the '031 Patent, at least from the time when Defendants became aware of said patent before the commencement of this action.

39. Straumann Mfg.'s sales of and/or offers to sell the accused services are unauthorized, and constitutes infringement under 35 U.S.C. §271(a) for which it is directly liable.

Indirect Infringement of the '031 Patent (35 U.S.C. § 271(b))

40. Zircore incorporates and realleges the allegations of paragraphs 1 to 39 of this Complaint as if fully set forth herein.

41. Defendants have induced and are still inducing the infringement in the United States of claims 1-2 of the '031 Patent and will continue such inducement of infringement unless enjoined by this Court.

42. Defendants affirmatively intended and intend to cause infringement of Zircore's '031 Patent by known and unknown third parties.

43. As a consequence of, *inter alia*, Zircore's publicly available '031 Patent, Defendants had notice of Zircore's patent when they carried out the conduct complained of herein, and knowledge that such conduct constituted infringement of the '031 Patent, or in the alternative, were willfully blind that such services would infringe.

44. On information and belief, with knowledge of Zircore's '031 Patent, Defendants have induced, and are still inducing, third parties to infringe claims 1-2 of the '031 Patent by, *inter alia*, intentionally and voluntarily providing their DWOS and CARES software, and Straumann® CARES® System's Validated Workflow to persons within the Eastern District of Texas and elsewhere, knowing that its features and associated services infringe the '031 Patent.

COUNT 3
PATENT INFRINGEMENT OF THE '606 PATENT

Direct Infringement of the '606 Patent (35 U.S.C. § 271(a))

45. Zircore incorporates and realleges the allegations of paragraphs 1 to 44 of this Complaint as if fully set forth herein.

46. Defendant Straumann Mfg. has directly infringed and continues to infringe, literally or under the doctrine of equivalents, in the United States, claims 1-12 of the '606 Patent by using (including use for testing purposes), importing, selling, or offering for sale services that satisfy each and every limitation of claims 1-12 of the '606 Patent. Straumann Mfg.'s infringing services include, *inter alia*, Straumann® CARES® Scan & Shape Service, and Straumann® CARES® CADCAM.

47. Upon information and belief, Defendant Straumann Mfg. used (including use for testing purposes), imported, sold and/or offered for sale services with knowledge of the '606 Patent and that such services would infringe the '606 Patent, at least from the time when Defendants became aware of said patents, which is no later than 2012.

48. Straumann Mfg.'s sales of and/or offers to sell the accused services are unauthorized, and constitutes infringement under 35 U.S.C. §271(a) for which it is directly liable.

Indirect Infringement of the '606 Patent (35 U.S.C. § 271(b))

49. Zircore incorporates and realleges the allegations of paragraphs 1 to 48 of this Complaint as if fully set forth herein.

50. Defendants have induced and are still inducing the infringement in the United States of claims 1-12 of the '606 Patent and will continue such inducement of infringement unless enjoined by this Court.

51. Defendants affirmatively intended and intend to cause direct infringement of Zircore's '606 Patent by known and unknown third parties.

52. As a consequence of, *inter alia*, Zircore's publicly available '606 Patent, and the dialog between Straumann Holding AG and Zircore for potential licensing of Zircore's patents, Defendant had notice of Zircore's patents when it carried out the conduct complained of herein, and knowledge that such conduct constituted infringement of the '606 Patent, or in the alternative, were willfully blind that such services would infringe.

53. Upon information and belief, with knowledge of Zircore's '606 Patent, Defendants have induced, and are still inducing, third parties to infringe claims 1-12 of the '606 Patent by, *inter alia*, intentionally and voluntarily providing their DWOS and CARES software, and Straumann® CARES® System's Validated Workflow to persons within the Eastern District of Texas, knowing that its features and associated services infringe the '606 Patent, at least from the time when Defendants became aware of said patent, which is at least the time of commencement of this action.

DAMAGES

54. Zircore repeats and realleges the allegations of paragraphs 1 to 53 of this Complaint as if fully set forth herein.

55. Defendants' acts of infringement have caused and continue to cause damage to Zircore, and Zircore is entitled to recover from Defendants the damages sustained by Zircore as a result of Defendants' wrongful acts in an amount subject to proof at trial. Defendants' infringement of Zircore's exclusive rights under the '920, '606, and '031 Patents will continue to damage Zircore, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

56. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff requests a trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Zircore, LLC respectfully requests entry of judgment in its favor and against Defendants as follows:

(a) A judgment that Defendants have infringed U.S. Patent No. 7,690,920, U.S. Patent No. 8,751,031, and U.S. Patent No. 7,967,606;

(b) A judgment awarding Zircore damages adequate to compensate for Defendants' infringement of U.S. Patent No. 7,690,920, U.S. Patent No. 8,751,031, and U.S. Patent No. 7,967,606 to Plaintiff, together with pre-judgment and post-judgment interest at the maximum rate permitted by law;

(c) A judgment awarding Zircore all damages, including treble damages, based on any infringement found to be willful, 35 U.S.C. § 284, together with prejudgment interest;

(d) An order permanently enjoining Defendants and their respective officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns, from further infringement, including both or either direct or indirect infringement, of U.S. Patent No. 7,690,920, U.S. Patent No. 8,751,031, and U.S. Patent No. 7,967,606, or in the alternative, awarding setting and awarding a reasonable royalty for post-judgment infringement;

(e) Awarding attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and

(f) Awarding such other costs and further relief as the Court may deem just and proper.

Respectfully submitted,

PEIFER, HANSON & MULLINS, P.A.

By: /s/Mark T. Baker

Mark T. Baker

N.M. Bar No.: 16831

P.O. Box 25245

Albuquerque, NM 87125-5245

Tel: (505) 247-4800

Fax: (505) 243-6458

Email: mbaker@peiferlaw.com

-and-

Melissa R. Smith

GILLAM & SMITH LLP

303 South Washington Ave.

Marshall, TX 75670

Tel: (903) 934-8450

Fax: (903) 934-9257

Email: Melissa@gillamsmithlaw.com

-and-

Jeffrey L. Squires

TX State Bar No.: 24095209

Isaac Estrada

N.M. Bar No.: 26768

PEACOCK MYERS, P.C.

201 Third St. NW, Suite 1340

Albuquerque, NM 87102

Tel: (505) 998-1500

Fax: (505) 243-2542

Email: jlsquires@peacocklaw.com

iestrada@peacocklaw.com