

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF COLORADO

WRIGHT MEDICAL TECHNOLOGY, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO. 1:18-cv-691
	)	
PARAGON 28, INC.,	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant.	)	
	)	
	)	
	)	

**COMPLAINT**

For its Complaint against Defendant Paragon 28, Inc. (“Paragon 28”), Plaintiff Wright Medical Technology, Inc. (“Wright Medical”) alleges that:

**NATURE OF THE ACTION**

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. Paragon 28 has infringed and continues to infringe, directly and/or indirectly, U.S. Patent Nos. 7,771,457; 8,100,954; 8,118,846; 8,118,848; 9,144,443; 9,259,251; 9,259,252; 9,259,253; 9,545,278; and 9,078,710 in violation of 35 U.S.C. §§ 271(a), (b) and/or (c).

**PARTIES**

2. Plaintiff Wright Medical is a Delaware corporation with a principal place of business located at 1023 Cherry Road, Memphis TN 38117. Wright Medical designs, manufactures, and sells medical device products, including, among other products, orthopedic plates for use in bone repair, including for bone repairs in the foot and ankle.

3. Defendant Paragon 28 is a corporation organized and existing under the laws of Colorado, with a principal place of business located at 4B Inverness Court East, Suite 280, Englewood, Colorado 80112.

4. Paragon 28 directly or indirectly develops, designs, manufactures, uses, distributes, markets, offers to sell, and/or sells products in the United States, including orthopedic plate systems, devices and surgical instruments for bone repair, including in this District.

### **JURISDICTION AND VENUE**

5. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, which are within the subject matter jurisdiction of this Court under 28 U.S.C. §§ 1331 and 1338(a).

6. Paragon 28 is subject to personal jurisdiction in the District of Colorado based upon its purposeful, systematic and continuous contacts with Colorado, including its formation under the laws of Colorado, its location of its principal place of business in this District, its transaction of business in this District, and its use, marketing, distributing, offering for sale, and/or sales of infringing systems, devices and instruments in this District, which has caused Wright Medical harm in this District.

7. Venue is proper in this District under 28 U.S.C. §§ 1391(b), (c), and/or 1400(b) because Paragon resides in this District and is subject to personal jurisdiction in this District.

### **FACTS**

8. This case is a patent infringement lawsuit directed to Paragon 28's past and continued infringement of U.S. Patent Nos. 7,771,457 ("the '457 Patent"); 8,100,954 ("the '954 Patent"); 8,118,846 ("the '846 Patent"); 8,118,848 ("the '848 Patent"); 9,144,443 ("the '443 Patent"); 9,259,251 ("the '251 Patent"); 9,259,252 ("the '252 Patent"); 9,259,253 ("the '253 Patent"); 9,545,278 ("the '278 Patent"); and 9,078,710 ("the '710 Patent") (collectively, "the

Patents-in-Suit”). The Patents-in-Suit are valid, enforceable and currently in full force and effect.

9. On August 10, 2010, the United States Patent and Trademark Office (“USPTO”) duly and lawfully issued the ’457 Patent, entitled “Orthopedic plate for use in small bone repair.” A true and correct copy of the ’457 Patent is attached as Exhibit 1 hereto.

10. On January 24, 2012, the USPTO duly and lawfully issued the ’954 Patent, entitled “Orthopedic plate for use in small bone repair.” A true and correct copy of the ’954 Patent is attached as Exhibit 2 hereto.

11. On February 21, 2012, the USPTO duly and lawfully issued the ’846 Patent, entitled “Orthopedic plates for use in clavicle repair and methods for their use.” A true and correct copy of the ’846 Patent is attached as Exhibit 3 hereto.

12. On February 21, 2012, the USPTO duly and lawfully issued the ’848 Patent, entitled “Orthopedic plate for use in fibula repair.” A true and correct copy of the ’848 Patent is attached as Exhibit 4 hereto.

13. On September 29, 2015, the USPTO duly and lawfully issued the ’443 Patent, entitled “Orthopedic plates for use in clavicle repair and methods for their use.” A true and correct copy of the ’443 Patent is attached as Exhibit 5 hereto.

14. On February 16, 2016, the USPTO duly and lawfully issued the ’251 Patent, entitled “Orthopedic plate for use in small bone repair.” A true and correct copy of the ’251 Patent is attached as Exhibit 6 hereto.

15. On February 16, 2016, the USPTO duly and lawfully issued the ’252 Patent, entitled “Orthopedic plate for use in small bone repair.” A true and correct copy of the ’252 Patent is attached as Exhibit 7 hereto.

16. On February 16, 2016, the USPTO duly and lawfully issued the '253 Patent, entitled "Orthopedic plate for use in small bone repair." A true and correct copy of the '253 Patent is attached as Exhibit 8 hereto.

17. On January 17, 2017, the USPTO duly and lawfully issued the '278 Patent, entitled "Orthopedic plate for use in small bone repair." A true and correct copy of the '278 Patent is attached as Exhibit 9 hereto.

18. On July 14, 2015, the USPTO duly and lawfully issued the '710 Patent, entitled "Orthopedic compression/distraction device." A true and correct copy of the '710 Patent is attached as Exhibit 10 hereto.

19. The Patents-in-Suit describe and claim various orthopedic plates, plating systems and instruments, and their methods of use, which were developed and patented by OrthoHelix Surgical Designs, Inc. and Wright Medical.

20. Wright Medical is the owner by assignment of all right, title and interest in the Patents-in-Suit.

21. Wright Medical develops, manufactures, sells and/or distributes a variety of medical devices, systems and instruments for use in surgical procedures involving the foot and ankle. These medical devices, systems and instruments include, among other products, various orthopedic plating devices, systems and instrumentation for surgical fixation or repair of a bone or bones in the foot and ankle, including, *inter alia*, orthopedic plating systems that have been sold and/or distributed and currently are sold and/or distributed under the MAXLOCK™ EXTREME™ brand and the ORTHOLOC™ 3Di brand, and orthopedic compression/distraction instrumentation that has been sold and/or distributed and currently is sold and/or distributed under the X-TRACK brand.

22. Wright Medical's orthopedic plating systems are marked with the patent numbers of one or more of the Patents-in-Suit in accordance with 35 U.S.C. § 287.

23. Paragon 28's business is focused on medical devices for the foot and ankle, including orthopedic plating systems for surgical fixation or repair of a bone or bones in the foot and ankle.

24. A number of former Wright Medical employees have been and/or are employed by Paragon 28. Upon information and belief, various of these employees had knowledge of the MAXLOCK™ EXTREME™ and ORTHOLOC™ 3Di family of products, the X-TRACK compression/distraction instrumentation and one or more of the Patents-in-Suit while employed by Wright Medical.

25. On or about March 4, 2014, the Food and Drug Administration ("FDA") received Paragon 28's Section 510(k) premarket notification of intent to market metallic bone fixation appliances and accessories that Paragon 28 referred to as the ParaLock Plating System™. In the Section 510(k) submission, Paragon 28 identified predicate devices which are substantially equivalent to the ParaLock Plating System. The predicate devices identified by Paragon 28 include the Wright Medical ORTHOLOC™ 3Di Hallux System, the Wright Medical ORTHOLOC™ 3Di Ankle Fusion Plating System, the Wright Medical ORTHOLOC™ 3Di Midfoot/Flatfoot System, and the Mini MaxLock Extreme® Plating system by OrthoHelix Surgical Designs Inc.

26. On or about April 17, 2014, the FDA approved Paragon 28's Section 510(k) premarket notification of intent to market the ParaLock Plating System™.

27. Paragon 28 re-named the ParaLock Plating System as the Gorilla Plating System.

28. Paragon 28, directly and/or indirectly, manufactures, markets, offers for sale, sells, and/or distributes in the United States orthopedic plating systems (including plates, screws, plate bending devices, drill guides, compression/distraction devices and other surgical instruments) which infringe the Patents-in-Suit, including, without limitation, the Gorilla® R3CON Plating Systems (including *inter alia* the Gorilla Lapidus Arthrodesis System, the Gorilla MTP Plating System, the Gorilla NC Plating System, the Gorilla Lisfranc Plating System, the Gorilla Ankle Fracture Plating System, the Gorilla Calc Fracture Plating System, the Gorilla BOW & ARROW™ Plating System, and the Gorilla Universal Plating System), the Baby Gorilla™ Mini Plating Systems, the PROMO™ Triplanar Hallux Valgus Correction System, and the Gorilla® Caspar Device.

29. Paragon 28's Gorilla® R3CON Plating Systems include TUFFNEK locking, non-locking and compression screws that Paragon 28 instructs its customers and users to employ with Gorilla plates in surgical procedures to repair bone. A true and correct copy of the Gorilla R3CON Plating System surgical technique guide, which includes these instructions and is available to the public at Paragon 28's website [www.paragon28.com](http://www.paragon28.com), is attached as Exhibit 11 and incorporated herein.

30. Paragon 28's Gorilla R3CON Plating System include Gorilla Instrumentation, including, without limitation, retractors, plate benders, drills, drill bits, drill guides and the Gorilla Caspar Device, that Paragon 28 instructs its customers and users to employ with Gorilla plates and TUFFNEK screws in surgical procedures to repair bone. Instructions for using the Gorilla Instrumentation, including the Gorilla Caspar Device, are set out in the Gorilla R3CON Plating System surgical technique guide attached as Exhibit 11 and incorporated herein.

31. Paragon 28's Baby Gorilla Mini Plating Systems include locking and non-locking screws that Paragon 28 instructs its customers and users to employ with Baby Gorilla plates in surgical procedures to repair bone. A true and correct copy of the Baby Gorilla Mini Plating System surgical technique guide, which includes these instructions and is available to the public at Paragon 28's website [www.paragon28.com](http://www.paragon28.com), is attached as Exhibit 12 and incorporated herein.

32. Paragon 28's Baby Gorilla Mini Plating Systems include Baby Gorilla Instrumentation, including, without limitation, plate bending tools, retractors, osteotomies, drill guides, drills and olive wires, that Paragon 28 instructs its customers and users to employ with Baby Gorilla plates and locking and non-locking screws in surgical procedures to repair bone. Instructions for using the Baby Gorilla Instrumentation are included in the Baby Gorilla Mini Plating System surgical technique guide attached as Exhibit 12 and incorporated herein.

33. Paragon 28's PROMO™ Triplanar Hallux Valgus Correction System includes locking, non-locking and cannulated screws and surgical instruments that Paragon 28 instructs its customers and users to employ with the PROMO plates in surgical procedures to repair bone. A true and correct copy of the PROMO™ Triplanar Hallux Valgus Correction System surgical technique guide, which includes these instructions and is available to the public at Paragon 28's website [www.paragon28.com](http://www.paragon28.com), is attached as Exhibit 13 and incorporated herein.

34. Wright Medical has suffered damages as a result of Paragon 28's infringement of the Patents-in-Suit.

#### **COUNT ONE**

#### **Direct and Indirect Infringement of the '457 Patent**

35. Wright Medical incorporates the foregoing paragraphs by reference as though set forth fully herein.

36. In violation of 35 U.S.C. § 271(a), Paragon 28 has infringed and is infringing at least Claims 1 and 11 of the '457 Patent by manufacturing, distributing, using, offering to sell, and/or selling within the United States, and/or by importing into the United States, certain products, including but not limited to the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems, and the Baby Gorilla™ Plating Systems.

37. In violation of 35 U.S.C. § 271(b), Paragon 28 has knowingly and actively induced infringement and is knowingly and actively inducing infringement of at least Claims 1 and 11 of the '457 Patent by, *inter alia*, distributing, marketing and selling certain orthopedic plating systems, including but not limited to the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, knowing and intending that such orthopedic plating systems be used by Paragon 28's customers and users in a manner that infringes the '457 Patent. To that end, Paragon 28 provides instructions and teachings to its customers and users directing that such orthopedic plating systems be used in the manner claimed in the '457 Patent. *See* Exhibits 11, 12, 13. As a result, Paragon 28's system and products have been used by its customers and users in a manner that directly infringes the '457 Patent.

38. In violation of 35 U.S.C. § 271(c), Paragon 28 has contributed and is contributing to the infringement of at least Claims 1 and 11 of the '457 Patent by, *inter alia*, distributing, manufacturing, marketing and selling orthopedic plating used to repair bones, including bone repairs in the foot and ankle. By way of example, these systems include the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems.



39. Paragon 28's acts constitute contributory infringement of the '457 Patent because, among other reasons, Paragon 28 has manufactured, offered to sell and sold, and is manufacturing, offering to sell and selling, within the United States orthopedic plating systems, including the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, which are not staple articles or commodities of commerce suitable for non-infringing use, and are known by Paragon 28 to be especially made or especially adapted for use in infringement of the '457 Patent. As a result, Paragon 28's orthopedic plating systems have been used by its customers and users in a manner that directly infringes the '457 Patent.

40. Upon information and belief, Paragon 28 has had actual knowledge of the '457 Patent because, among other reasons, (1) former Wright Medical employees who had actual knowledge of the '457 Patent and the MAXLOCK™ EXTREME™ and ORTHOLOC™ 3Di orthopedic plating systems while employed by Wright Medical have been and/or are employed by Paragon 28; and (2) Wright Medical's orthopedic plating systems are marked with the number of the '457 Patent.

41. Paragon 28 has had constructive notice that its products infringe the '457 Patent for at least the reason that Wright Medical's orthopedic plating systems are marked with the number of the '457 Patent.

42. Paragon 28's infringing acts are willful and Wright Medical is therefore entitled to enhanced damages under 35 U.S.C. § 284 and attorney's fees and costs under 35 U.S.C. § 285.

43. Upon information and belief, Paragon 28 has derived and received, and will continue to derive and receive, gains, profits and advantages from the aforesaid acts of infringement in an amount not presently known to Wright Medical. Paragon 28's infringing acts

have caused damage to Wrights Medical, and Wright Medical is entitled to monetary relief in an amount to be determined at trial.

44. Paragon 28 will continue to infringe the '457 Patent unless permanently enjoined by this Court. As a result of Paragon 28's infringing conduct, Wright Medical has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Wright Medical is therefore entitled to permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

**COUNT TWO**  
**Indirect Infringement of the '954 Patent**

45. Wright Medical incorporates the foregoing paragraphs by reference as though set forth fully herein.

46. In violation of 35 U.S.C. § 271(b), Paragon 28 has knowingly and actively induced infringement and is knowingly and actively inducing infringement of at least Claim 4 of the '954 Patent by, *inter alia*, distributing, marketing and selling certain orthopedic plating systems, including but not limited to the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, knowing and intending that such orthopedic plating systems be used by Paragon 28's customers and users in a manner that infringes the '954 Patent. To that end, Paragon 28 provides instructions and teachings to its customers and users directing that such orthopedic plating systems be used in the manner claimed in the '954 Patent. *See* Exhibits 11, 12. As a result, Paragon 28's system and products have been used by its customers and users in a manner that directly infringes the '954 Patent.

47. In violation of 35 U.S.C. § 271(c), Paragon 28 has contributed and is contributing to the infringement of at least Claim 4 of the '954 Patent by, *inter alia*, distributing, manufacturing, marketing and selling orthopedic plating used to repair bones, including bone

repairs in the foot and ankle. By way of example, these systems include the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems.

48. Paragon 28's acts constitute contributory infringement of the '954 Patent because, among other reasons, Paragon 28 has manufactured, offered to sell and sold, and is manufacturing, offering to sell and selling, within the United States orthopedic plating systems, including Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, which are not staple articles or commodities of commerce suitable for non-infringing use, and are known by Paragon 28 to be especially made or especially adapted for use in infringement of the '954 Patent. As a result, Paragon 28's orthopedic plating systems have been used by its customers and users in a manner that directly infringes the '954 Patent.

49. Upon information and belief, Paragon 28 has had actual knowledge of the '954 Patent because, among other reasons, (1) former Wright Medical employees who had actual knowledge of the '954 Patent and the MAXLOCK™ EXTREME™ and ORTHOLOCT™ 3Di orthopedic plating systems, and their methods of use, while employed by Wright Medical have been and/or are employed by Paragon 28; and (2) Wright Medical's orthopedic plating systems are marked with the number of the '954 Patent.

50. Paragon 28's infringing acts are willful and Wright Medical is therefore entitled to enhanced damages under 35 U.S.C. § 284 and attorney's fees and costs under 35 U.S.C. § 285.

51. Upon information and belief, Paragon 28 has derived and received, and will continue to derive and receive, gains, profits and advantages from the aforesaid acts of infringement in an amount not presently known to Wright Medical. Paragon 28's infringing acts have caused damage to Wrights Medical, and Wright Medical is entitled to monetary relief in an amount to be determined at trial.

52. Paragon 28 will continue to infringe the '954 Patent unless permanently enjoined by this Court. As a result of Paragon 28's infringing conduct, Wright Medical has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Wright Medical is therefore entitled to permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

**COUNT THREE**  
**Direct and Indirect Infringement of the '846 Patent**

53. Wright Medical incorporates the foregoing paragraphs by reference as though set forth fully herein.

54. In violation of 35 U.S.C. § 271(a), Paragon 28 has infringed and is infringing at least Claim 7 of the '846 Patent by manufacturing, distributing, using, offering to sell, and/or selling within the United States, and/or by importing into the United States, certain products, including but not limited to the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems, and the Baby Gorilla™ Plating Systems.

55. In violation of 35 U.S.C. § 271(b), Paragon 28 has knowingly and actively induced infringement and is knowingly and actively inducing infringement of at least Claim 7 of the '846 Patent by, *inter alia*, distributing, marketing and selling certain orthopedic plating systems, including but not limited to the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, knowing and intending that such orthopedic plating systems be used by Paragon 28's customers and users in a manner that infringes the '846 Patent. To that end, Paragon 28 provides instructions and teachings to its customers and users directing that such orthopedic plating systems be used in the manner claimed in the '846 Patent. *See* Exhibits 11, 12, 13. As a result, Paragon 28's system

and products have been used by its customers and users in a manner that directly infringes the '846 Patent.

56. In violation of 35 U.S.C. § 271(c), Paragon 28 has contributed and is contributing to the infringement of at least Claim 7 of the '846 Patent by, *inter alia*, distributing, manufacturing, marketing and selling orthopedic plating used to repair bones, including bone repairs in the foot and ankle. By way of example, these systems include the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems.

57. Paragon 28's acts constitute contributory infringement of the '846 Patent because, among other reasons, Paragon 28 has manufactured, offered to sell and sold, and is manufacturing, offering to sell and selling, within the United States orthopedic plating systems, including the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, which are not staple articles or commodities of commerce suitable for non-infringing use, and are known by Paragon 28 to be especially made or especially adapted for use in infringement of the '846 Patent. As a result, Paragon 28's orthopedic plating systems have been used by its customers and users in a manner that directly infringes the '846 Patent.

58. Upon information and belief, Paragon 28 has had actual knowledge of the '846 Patent because, among other reasons, (1) former Wright Medical employees who had actual knowledge of the '846 Patent and the MAXLOCK™ EXTREME™ and ORTHOLOC™ 3Di orthopedic plating systems while employed by Wright Medical have been and/or are employed by Paragon 28; and (2) Wright Medical's orthopedic plating systems are marked with the number of the '846 Patent.

59. Paragon 28 has had constructive notice that its products infringe the '846 Patent for at least the reason that Wright Medical's orthopedic plating systems are marked with the number of the '846 Patent.

60. Paragon 28's infringing acts are willful and Wright Medical is therefore entitled to enhanced damages under 35 U.S.C. § 284 and attorney's fees and costs under 35 U.S.C. § 285.

61. Upon information and belief, Paragon 28 has derived and received, and will continue to derive and receive, gains, profits and advantages from the aforesaid acts of infringement in an amount not presently known to Wright Medical. Paragon 28's infringing acts have caused damage to Wrights Medical, and Wright Medical is entitled to monetary relief in an amount to be determined at trial.

62. Paragon 28 will continue to infringe the '846 Patent unless permanently enjoined by this Court. As a result of Paragon 28's infringing conduct, Wright Medical has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Wright Medical is therefore entitled to permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

**COUNT FOUR**  
**Direct and Indirect Infringement of the '848 Patent**

63. Wright Medical incorporates the foregoing paragraphs by reference as though set forth fully herein.

64. In violation of 35 U.S.C. § 271(a), Paragon 28 has infringed and is infringing at least Claim 1 of the '848 Patent by manufacturing, distributing, using, offering to sell, and/or selling within the United States, and/or by importing into the United States, certain products, including but not limited to the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems, and the Baby Gorilla™ Plating Systems.

65. In violation of 35 U.S.C. § 271(b), Paragon 28 has knowingly and actively induced infringement and is knowingly and actively inducing infringement of at least Claim 1 of the '848 Patent by, *inter alia*, distributing, marketing and selling certain orthopedic plating systems, including but not limited to the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, knowing and intending that such orthopedic plating systems be used by Paragon 28's customers and users in a manner that infringes the '848 Patent. To that end, Paragon 28 provides instructions and teachings to its customers and users directing that such orthopedic plating systems be used in the manner claimed in the '848 Patent. *See* Exhibits 11, 12, 13. As a result, Paragon 28's system and products have been used by its customers and users in a manner that directly infringes the '848 Patent.

66. In violation of 35 U.S.C. § 271(c), Paragon 28 has contributed and is contributing to the infringement of at least Claim 1 of the '848 Patent by, *inter alia*, distributing, manufacturing, marketing and selling orthopedic plating used to repair bones, including bone repairs in the foot and ankle. By way of example, these systems include the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems.

67. Paragon 28's acts constitute contributory infringement of the '848 Patent because, among other reasons, Paragon 28 has manufactured, offered to sell and sold, and is manufacturing, offering to sell and selling, within the United States orthopedic plating systems, including the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, which are not staple articles or commodities of commerce suitable for non-infringing use, and are known by Paragon 28 to be

especially made or especially adapted for use in infringement of the '848 Patent. As a result, Paragon 28's orthopedic plating systems have been used by its customers and users in a manner that directly infringes the '848 Patent.

68. Upon information and belief, Paragon 28 has had actual knowledge of the '848 Patent because, among other reasons, (1) former Wright Medical employees who had actual knowledge of the '848 Patent and the MAXLOCK™ EXTREME™ and ORTHOLOCT™ 3Di orthopedic plating systems while employed by Wright Medical have been and/or are employed by Paragon 28; and (2) Wright Medical's orthopedic plating systems are marked with the number of the '848 Patent.

69. Paragon 28 has had constructive notice that its products infringe the '848 Patent for at least the reason that Wright Medical's orthopedic plating systems are marked with the number of the '848 Patent.

70. Paragon 28's infringing acts are willful and Wright Medical is therefore entitled to enhanced damages under 35 U.S.C. § 284 and attorney's fees and costs under 35 U.S.C. § 285.

71. Upon information and belief, Paragon 28 has derived and received, and will continue to derive and receive, gains, profits and advantages from the aforesaid acts of infringement in an amount not presently known to Wright Medical. Paragon 28's infringing acts have caused damage to Wrights Medical, and Wright Medical is entitled to monetary relief in an amount to be determined at trial.

72. Paragon 28 will continue to infringe the '848 Patent unless permanently enjoined by this Court. As a result of Paragon 28's infringing conduct, Wright Medical has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Wright



Medical is therefore entitled to permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

**COUNT FIVE**  
**Direct and Indirect Infringement of the '443 Patent**

73. Wright Medical incorporates the foregoing paragraphs by reference as though set forth fully herein.

74. In violation of 35 U.S.C. § 271(a), Paragon 28 has infringed and is infringing at least Claims 1, 22 and 26 of the '443 Patent by manufacturing, distributing, using, offering to sell, and/or selling within the United States, and/or by importing into the United States, certain products, including but not limited to the Gorilla® R3CON Plating Systems, and the Baby Gorilla™ Plating Systems.

75. In violation of 35 U.S.C. § 271(b), Paragon 28 has knowingly and actively induced infringement and is knowingly and actively inducing infringement of at least Claims 1, 22 and 26 of the '443 Patent by, *inter alia*, distributing, marketing and selling certain orthopedic plating systems, including but not limited to the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, knowing and intending that such orthopedic plating systems be used by Paragon 28's customers and users in a manner that infringes the '443 Patent. To that end, Paragon 28 provides instructions and teachings to its customers and users directing that such orthopedic plating systems be used in the manner claimed in the '252 Patent *See* Exhibits 11, 12. As a result, Paragon 28's system and products have been used by its customers and users in a manner that directly infringes the '252 Patent.

76. In violation of 35 U.S.C. § 271(c), Paragon 28 has contributed and is contributing to the infringement of at least Claims 1, 22 and 26 of the '443 Patent by, *inter alia*, distributing, manufacturing, marketing and selling orthopedic plating used to repair bones, including bone

repairs in the foot and ankle. By way of example, these systems include the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems.

77. Paragon 28's acts constitute contributory infringement of the '443 Patent because, among other reasons, Paragon 28 has manufactured, offered to sell and sold, and is manufacturing, offering to sell and selling, within the United States orthopedic plating systems, including the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, which are not staple articles or commodities of commerce suitable for non-infringing use, and are known by Paragon 28 to be especially made or especially adapted for use in infringement of the '443 Patent. As a result, Paragon 28's orthopedic plating systems have been used by its customers and users in a manner that directly infringes the '443 Patent.

78. Upon information and belief, Paragon 28 has had actual knowledge of the '443 Patent because, among other reasons, (1) former Wright Medical employees who had actual knowledge of the '443 Patent and the MAXLOCK™ EXTREME™ and ORTHOLOCTM 3Di orthopedic plating systems while employed by Wright Medical have been and/or are employed by Paragon 28; and (2) Wright Medical's orthopedic plating systems are marked with the number of the '443 Patent.

79. Paragon 28 has had constructive notice that its products infringe the '443 Patent for at least the reason that Wright Medical's orthopedic plating systems are marked with the number of the '443 Patent.

80. Paragon 28's infringing acts are willful and Wright Medical is therefore entitled to enhanced damages under 35 U.S.C. § 284 and attorney's fees and costs under 35 U.S.C. § 285.

81. Upon information and belief, Paragon 28 has derived and received, and will continue to derive and receive, gains, profits and advantages from the aforesaid acts of

infringement in an amount not presently known to Wright Medical. Paragon 28's infringing acts have caused damage to Wrights Medical, and Wright Medical is entitled to monetary relief in an amount to be determined at trial.

82. Paragon 28 will continue to infringe the '443 Patent unless permanently enjoined by this Court. As a result of Paragon 28's infringing conduct, Wright Medical has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Wright Medical is therefore entitled to permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

**COUNT SIX**  
**Direct and Indirect Infringement of the '251 Patent**

83. Wright Medical incorporates the foregoing paragraphs by reference as though set forth fully herein.

84. In violation of 35 U.S.C. § 271(a), Paragon 28 has infringed and is infringing at least Claims 1 and 19 of the '251 Patent by manufacturing, distributing, using, offering to sell, and/or selling within the United States, and/or by importing into the United States, certain products, including but not limited to the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems, and the Baby Gorilla™ Plating Systems.

85. In violation of 35 U.S.C. § 271(b), Paragon 28 has knowingly and actively induced infringement and is knowingly and actively inducing infringement of at least Claims 1 and 19 of the '251 Patent by, *inter alia*, distributing, marketing and selling certain orthopedic plating systems, including but not limited to the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, knowing and intending that such orthopedic plating systems be used by Paragon 28's customers and users in a manner that infringes the '251 Patent. To that end, Paragon 28 provides instructions and

teachings to its customers and users directing that such orthopedic plating systems be used in the manner claimed in the '251 Patent. *See* Exhibits 11, 12, 13. As a result, Paragon 28's system and products have been used by its customers and users in a manner that directly infringes the '252 Patent.

86. In violation of 35 U.S.C. § 271(c), Paragon 28 has contributed and is contributing to the infringement of at least Claims 1 and 19 of the '251 Patent by, *inter alia*, distributing, manufacturing, marketing and selling orthopedic plating used to repair bones, including bone repairs in the foot and ankle. By way of example, these systems include the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems.

87. Paragon 28's acts constitute contributory infringement of the '251 Patent because, among other reasons, Paragon 28 has manufactured, offered to sell and sold, and is manufacturing, offering to sell and selling, within the United States orthopedic plating systems, including the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, which are not staple articles or commodities of commerce suitable for non-infringing use, and are known by Paragon 28 to be especially made or especially adapted for use in infringement of the '251 Patent. As a result, Paragon 28's orthopedic plating systems have been used by its customers and users in a manner that directly infringes the '251 Patent.

88. Upon information and belief, Paragon 28 has had actual knowledge of the '251 Patent because, among other reasons, (1) former Wright Medical employees who had actual knowledge of the '251 Patent and the MAXLOCK™ EXTREME™ and ORTHOLOC™ 3Di orthopedic plating systems while employed by Wright Medical have been and/or are employed

by Paragon 28; and (2) Wright Medical's orthopedic plating systems are marked with the number of the '251 Patent.

89. Paragon 28 has had constructive notice that its products infringe the '251 Patent for at least the reason that Wright Medical's orthopedic plating systems are marked with the number of the '251 Patent.

90. Paragon 28's infringing acts are willful and Wright Medical is therefore entitled to enhanced damages under 35 U.S.C. § 284 and attorney's fees and costs under 35 U.S.C. § 285.

91. Upon information and belief, Paragon 28 has derived and received, and will continue to derive and receive, gains, profits and advantages from the aforesaid acts of infringement in an amount not presently known to Wright Medical. Paragon 28's infringing acts have caused damage to Wrights Medical, and Wright Medical is entitled to monetary relief in an amount to be determined at trial.

92. Paragon 28 will continue to infringe the '251 Patent unless permanently enjoined by this Court. As a result of Paragon 28's infringing conduct, Wright Medical has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Wright Medical is therefore entitled to permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

**COUNT SEVEN**  
**Indirect Infringement of the '252 Patent**

93. Wright Medical incorporates the foregoing paragraphs by reference as though set forth fully herein.

94. In violation of 35 U.S.C. § 271(b), Paragon 28 has knowingly and actively induced infringement and is knowingly and actively inducing infringement of at least Claims 1 and 7 of the '252 Patent by, *inter alia*, distributing, marketing and selling certain orthopedic plating

systems, including but not limited to the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, knowing and intending that such orthopedic plating systems be used by Paragon 28's customers and users in a manner that infringes the '252 Patent. To that end, Paragon 28 provides instructions and teachings to its customers and users directing that such orthopedic plating systems be used in the manner claimed in the '252 Patent. *See* Exhibits 11, 12, 13. As a result, Paragon 28's system and products have been used by its customers and users in a manner that directly infringes the '252 Patent.

95. In violation of 35 U.S.C. § 271(c), Paragon 28 has contributed and is contributing to the infringement of at least Claims 1 and 7 of the '252 Patent by, *inter alia*, distributing, manufacturing, marketing and selling orthopedic plating used to repair bones, including bone repairs in the foot and ankle. By way of example, these systems include the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems.

96. Paragon 28's acts constitute contributory infringement of the '252 Patent because, among other reasons, Paragon 28 has manufactured, offered to sell and sold, and is manufacturing, offering to sell and selling, within the United States orthopedic plating systems, including the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, which are not staple articles or commodities of commerce suitable for non-infringing use, and are known by Paragon 28 to be especially made or especially adapted for use in infringement of the '252 Patent. As a result, Paragon 28's orthopedic plating systems have been used by its customers and users in a manner that directly infringes the '252 Patent.

97. Upon information and belief, Paragon 28 has had actual knowledge of the '252 Patent because, among other reasons, (1) former Wright Medical employees who had actual knowledge of the '252 Patent and the MAXLOCK™ EXTREME™ and ORTHOLOCT™ 3Di orthopedic plating systems, and their methods of use, while employed by Wright Medical have been and/or are employed by Paragon 28; and (2) Wright Medical's orthopedic plating systems are marked with the number of the '252 Patent.

98. Paragon 28's infringing acts are willful and Wright Medical is therefore entitled to enhanced damages under 35 U.S.C. § 284 and attorney's fees and costs under 35 U.S.C. § 285.

99. Upon information and belief, Paragon 28 has derived and received, and will continue to derive and receive, gains, profits and advantages from the aforesaid acts of infringement in an amount not presently known to Wright Medical. Paragon 28's infringing acts have caused damage to Wrights Medical, and Wright Medical is entitled to monetary relief in an amount to be determined at trial.

100. Paragon 28 will continue to infringe the '252 Patent unless permanently enjoined by this Court. As a result of Paragon 28's infringing conduct, Wright Medical has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Wright Medical is therefore entitled to permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

**COUNT EIGHT**  
**Direct and Indirect Infringement of the '253 Patent**

101. Wright Medical incorporates the foregoing paragraphs by reference as though set forth fully herein.

102. In violation of 35 U.S.C. § 271(a), Paragon 28 has infringed and is infringing at least Claims 1, 13, 20, 37 and 46 of the '253 Patent by manufacturing, distributing, using,

offering to sell, and/or selling within the United States, and/or by importing into the United States, certain products, including but not limited to the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems, and the Baby Gorilla™ Plating Systems.

103. In violation of 35 U.S.C. § 271(b), Paragon 28 has knowingly and actively induced infringement and is knowingly and actively inducing infringement of at least Claims 1, 13, 20, 37 and 46 of the '253 Patent by, *inter alia*, distributing, marketing and selling certain orthopedic plating systems, including but not limited to the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, knowing and intending that such orthopedic plating systems be used by Paragon 28's customers and users in a manner that infringes the '253 Patent. To that end, Paragon 28 provides instructions and teachings to its customers and users directing that such orthopedic plating systems be used in the manner claimed in the '253 Patent. *See* Exhibits 11, 12, 13. As a result, Paragon 28's system and products have been used by its customers and users in a manner that directly infringes the '253 Patent.

104. In violation of 35 U.S.C. § 271(c), Paragon 28 has contributed and is contributing to the infringement of at least Claims 1, 13, 20, 37 and 46 of the '253 Patent by, *inter alia*, distributing, manufacturing, marketing and selling orthopedic plating used to repair bones, including bone repairs in the foot and ankle. By way of example, these systems include the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems.

105. Paragon 28's acts constitute contributory infringement of the '253 Patent because, among other reasons, Paragon 28 has manufactured, offered to sell and sold, and is



manufacturing, offering to sell and selling, within the United States orthopedic plating systems, including the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, which are not staple articles or commodities of commerce suitable for non-infringing use, and are known by Paragon 28 to be especially made or especially adapted for use in infringement of the '253 Patent. As a result, Paragon 28's orthopedic plating systems have been used by its customers and users in a manner that directly infringes the '253 Patent.

106. Upon information and belief, Paragon 28 has had actual knowledge of the '253 Patent because, among other reasons, (1) former Wright Medical employees who had actual knowledge of the '253 Patent and the MAXLOCK™ EXTREME™ and ORTHOLOCTM 3Di orthopedic plating systems while employed by Wright Medical have been and/or are employed by Paragon 28; and (2) Wright Medical's orthopedic plating systems are marked with the number of the '253 Patent.

107. Paragon 28 has had constructive notice that its products infringe the '253 Patent for at least the reason that Wright Medical's orthopedic plating systems are marked with the number of the '253 Patent.

108. Paragon 28's infringing acts are willful and Wright Medical is therefore entitled to enhanced damages under 35 U.S.C. § 284 and attorney's fees and costs under 35 U.S.C. § 285.

109. Upon information and belief, Paragon 28 has derived and received, and will continue to derive and receive, gains, profits and advantages from the aforesaid acts of infringement in an amount not presently known to Wright Medical. Paragon 28's infringing acts have caused damage to Wrights Medical, and Wright Medical is entitled to monetary relief in an amount to be determined at trial.

110. Paragon 28 will continue to infringe the '253 Patent unless permanently enjoined by this Court. As a result of Paragon 28's infringing conduct, Wright Medical has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Wright Medical is therefore entitled to permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

**COUNT NINE**  
**Direct and Indirect Infringement of the '278 Patent**

111. Wright Medical incorporates the foregoing paragraphs by reference as though set forth fully herein.

112. In violation of 35 U.S.C. § 271(a), Paragon 28 has infringed and is infringing at least Claims 1 and 5 of the '278 Patent by manufacturing, distributing, using, offering to sell, and/or selling within the United States, and/or by importing into the United States, certain products, including but not limited to the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems, and the Baby Gorilla™ Plating Systems.

113. In violation of 35 U.S.C. § 271(b), Paragon 28 has knowingly and actively induced infringement and is knowingly and actively inducing infringement of at least Claims 1 and 5 of the '278 Patent by, *inter alia*, distributing, marketing and selling certain orthopedic plating systems, including but not limited to the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, knowing and intending that such orthopedic plating systems be used by Paragon 28's customers and users in a manner that infringes the '278 Patent. To that end, Paragon 28 provides instructions and teachings to its customers and users directing that such orthopedic plating systems be used in the manner claimed in the '278 Patent. *See* Exhibits 11, 12, 13. As a result, Paragon 28's system

and products have been used by its customers and users in a manner that directly infringes the '278 Patent.

114. In violation of 35 U.S.C. § 271(c), Paragon 28 has contributed and is contributing to the infringement of at least Claims 1 and 5 of the '278 Patent by, *inter alia*, distributing, manufacturing, marketing and selling orthopedic plating used to repair bones, including bone repairs in the foot and ankle. By way of example, these systems include the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems.

115. Paragon 28's acts constitute contributory infringement of the '278 Patent because, among other reasons, Paragon 28 has manufactured, offered to sell and sold, and is manufacturing, offering to sell and selling, within the United States orthopedic plating systems, including the PROMO™ Triplanar Hallux Valgus Correction System, the Gorilla® R3CON Plating Systems and the Baby Gorilla™ Mini Plating Systems, which are not staple articles or commodities of commerce suitable for non-infringing use, and are known by Paragon 28 to be especially made or especially adapted for use in infringement of the '278 Patent. As a result, Paragon 28's orthopedic plating systems have been used by its customers and users in a manner that directly infringes the '278 Patent.

116. Upon information and belief, Paragon 28 has had actual knowledge of the '278 Patent because, among other reasons, (1) former Wright Medical employees who had actual knowledge of the '278 Patent and the MAXLOCK™ EXTREME™ and ORTHOLOC™ 3Di orthopedic plating systems while employed by Wright Medical have been and/or are employed by Paragon 28; and (2) Wright Medical's orthopedic plating systems are marked with the number of the '278 Patent.

117. Paragon 28 has had constructive notice that its products infringe the '278 Patent for at least the reason that Wright Medical's orthopedic plating systems are marked with the number of the '278 Patent.

118. Paragon 28's infringing acts are willful and Wright Medical is therefore entitled to enhanced damages under 35 U.S.C. § 284 and attorney's fees and costs under 35 U.S.C. § 285.

119. Upon information and belief, Paragon 28 has derived and received, and will continue to derive and receive, gains, profits and advantages from the aforesaid acts of infringement in an amount not presently known to Wright Medical. Paragon 28's infringing acts have caused damage to Wrights Medical, and Wright Medical is entitled to monetary relief in an amount to be determined at trial.

120. Paragon 28 will continue to infringe the '278 Patent unless permanently enjoined by this Court. As a result of Paragon 28's infringing conduct, Wright Medical has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Wright Medical is therefore entitled to permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

**COUNT TEN**  
**Direct and Indirect Infringement of the '710 Patent**

121. Wright Medical incorporates the foregoing paragraphs by reference as though set forth fully herein.

122. Paragon 28 manufactures, distributes, uses, offers to sell, and/or sells within the United States, and/or imports into the United States, the Gorilla® Caspar Device as part of its Gorilla R3CON Plating System instrumentation (shown below):



125. In violation of 35 U.S.C. § 271(b), Paragon 28 has knowingly and actively induced infringement, and is knowingly and actively inducing infringement, of at least Claim 1 of the '710 Patent by, *inter alia*, distributing, marketing and selling the Gorilla® Caspar Device, knowing and intending that it be used by Paragon 28's customers and users in a manner that infringes the '710 Patent. To that end, Paragon 28 provides instructions and teachings to its customers and users directing that such orthopedic plating systems be used in the manner claimed in the '710 Patent. *See* Exhibit 11. As a result, Paragon 28's Gorilla® Caspar Device has been used by its customers and users in a manner that directly infringes the '710 Patent.

126. In violation of 35 U.S.C. § 271(c), Paragon 28 has contributed and is contributing to the infringement of at least Claim 1 of the '710 Patent by, *inter alia*, distributing, manufacturing, marketing and selling the Gorilla® Caspar Device.

127. Paragon 28's acts constitute contributory infringement of the '710 Patent because, among other reasons, Paragon 28 has manufactured, offered to sell and sold, and is manufacturing, offering to sell and selling, within the United States the Gorilla® Caspar Device, which is not a staple article or commodity of commerce suitable for non-infringing use, and is known by Paragon 28 to be especially made or especially adapted for use in infringement of the '710 Patent. As a result, Paragon 28's Gorilla® Caspar Device has been used by its customers and users in a manner that directly infringes the '710 Patent.

128. Upon information and belief, Paragon 28 has had actual knowledge of the '710 Patent for at least the reasons that (1) former Wright Medical employees who had actual knowledge of the '710 Patent and the Gorilla® Caspar Device while employed by Wright Medical have been and/or are employed by Paragon 28; and (2) the Gorilla® Caspar Device is a copy of the instrument described, illustrated and claimed in the '710 Patent.

129. Paragon 28's infringing acts are willful and Wright Medical is therefore entitled to enhanced damages under 35 U.S.C. § 284 and attorney's fees and costs under 35 U.S.C. § 285.

130. Upon information and belief, Paragon 28 has derived and received, and will continue to derive and receive, gains, profits and advantages from the aforesaid acts of infringement in an amount not presently known to Wright Medical. Paragon 28's infringing acts have caused damage to Wrights Medical, and Wright Medical is entitled to monetary relief in an amount to be determined at trial.

131. Paragon 28 will continue to infringe the '710 Patent unless permanently enjoined by this Court. As a result of Paragon 28's infringing conduct, Wright Medical has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law. Wright Medical is therefore entitled to permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

#### **PRAYER FOR RELIEF**

WHEREFORE, Wright Medical prays for judgment in its favor against Paragon 28:

A. An Order adjudging Paragon 28 to have willfully infringed each of the Patents-in-Suit under 35 U.S.C. §§ 271(a), (b) and/or (c);

B. An award of damages adequate to compensate Wright Medical for Paragon 28's infringement;

C. An Order that Paragon 28 and each of its officers, employees, agents, attorneys, and any persons in active concert or participation with them are permanently restrained and enjoined from continued acts of infringement of the Patents-in-Suit;

D. An Order for trebling of damages and/or exemplary damages pursuant to 35 U.S.C. § 284 because of Paragon 28's willful infringement;

E. An Order adjudging that this is an exceptional case under 35 U.S.C. § 285;

- F. An award to Wright Medical of its costs and attorneys' fees;
- G. An award of pre-judgment and post-judgment interest and costs;
- H. Such other relief as this Court or a jury may deem proper and just under the circumstances.

**JURY DEMAND**

Wright Medical demands a trial by jury on all issues so triable.



Dated: March 23, 2018

Respectfully submitted,

/s/ Thomas W. Sankey

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