

Tyler E. Baker (NJ Bar No. 44392011)
SHEPPARD MULLIN RICHTER
& HAMPTON LLP
30 Rockefeller Plaza, 39th Floor
New York, New York 10112
Tel: (212) 653-8700
Email: tbaker@sheppardmullin.com

*Attorneys for Plaintiff
Cochlear Ltd.*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

COCHLEAR LTD.,

Plaintiff,

v.

OTICON MEDICAL AB, and
OTICON MEDICAL LLC,

Defendants.

Civil Action No. 3:18-cv-06684

**COMPLAINT FOR
PATENT INFRINGEMENT OF
U.S. PATENT NO. 9,838,807
AND JURY DEMAND**

Plaintiff Cochlear Ltd. (hereafter “Cochlear”) states as follows:

THE PARTIES

1. Cochlear Ltd. is a corporation organized and existing under the laws of Australia, having its principal place of business at 1 University Avenue, Macquarie University, New South Wales 2109, Australia.

2. Cochlear, through its wholly-owned subsidiary Cochlear Bone Anchored Solutions AB, develops and manufactures bone anchored hearing

systems. Cochlear Bone Anchored Solutions AB is a corporation organized under the laws of Sweden and has its principal place of business at headquarters at Konstruktionsvägen 14, SE-435 33 Mölnlycke, Sweden.

3. Cochlear, through its wholly-owned subsidiary Cochlear Americas, markets and sells bone anchored hearing systems in the United States. Cochlear Americas is a Delaware corporation, with a principal place of business at 13059 East Peakview Avenue, Centennial, Colorado.

4. On information and belief, Oticon Medical AB is a corporation organized and existing under the laws of Sweden, having its principal place of business at Datavägen 37B, SE-436 33 Askim, Sweden.

5. On information and belief, Oticon Medical LLC is a limited liability company organized and existing under the laws of New Jersey, having its principal place of business at 580 Howard Ave., Somerset, New Jersey.

6. On information and belief, Oticon Medical LLC is a wholly-owned subsidiary of William Demant USA, Inc., and William Demant USA, Inc. is in turn a wholly-owned subsidiary of William Demant Holding A/S.

7. On information and belief, Oticon Medical AB is a wholly owned subsidiary of William Demant A/S.

8. On information and belief, Oticon Medical AB markets and sells products in the United States through Oticon Medical LLC.

JURISDICTION AND VENUE

9. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

10. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338.

11. On information and belief, personal jurisdiction over Oticon Medical AB and Oticon Medical LLC (collectively “Oticon Medical”) is proper because the infringement has occurred in, and the product at issue have been offered for sale and sold by Oticon Medical within, the state of New Jersey and this District, including through clinics in New Jersey promoted on the website oticonmedical.com operated by defendant Oticon Medical AB. In addition Oticon Medical LLC is a limited liability company organized and existing under the laws of New Jersey, having its principal place of business in New Jersey.

12. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b).

THE PATENT-IN-SUIT

13. Cochlear is the lawful owner of U.S. Patent No. 9,838,807 (“the ‘807 patent”) entitled “Bone Anchor Fixture for a Medical Prosthesis,” a copy of which is attached as Exhibit A, that has been duly and legally issued by the United States Patent and Trademark Office.

14. Cochlear holds all necessary rights and authority to enforce the '807 patent and seek all available remedies in connection with it.

BACKGROUND

15. This case involves bone anchored hearing systems (also known as osseointegrated auditory implant systems), which require the recipient-user of such a system to undergo a surgical procedure to have an implant inserted into the recipient-user's skull. Sound can then be transmitted directly through the skull to the recipient-user's inner ear by bone conduction.

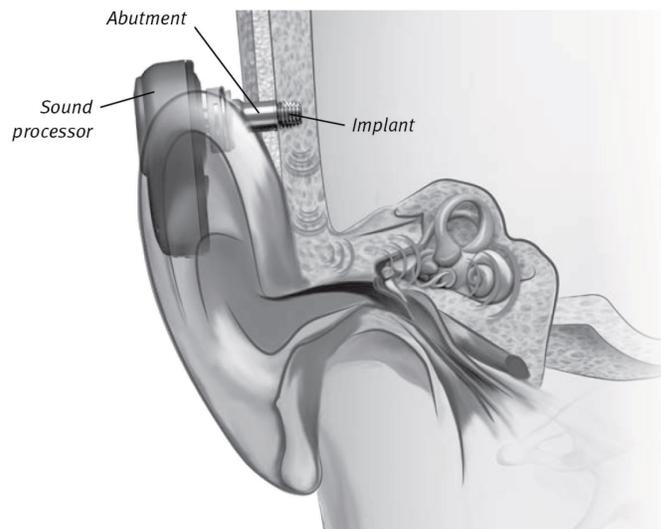
16. Cochlear sells bone anchored hearing systems in the United States, including in New Jersey, using the Baha® trademark.

17. On information and belief, Oticon Medical AB, through Oticon Medical LLC, offers for sale and sells bone anchored hearing systems in the United States, including New Jersey, using the Ponto trademark.

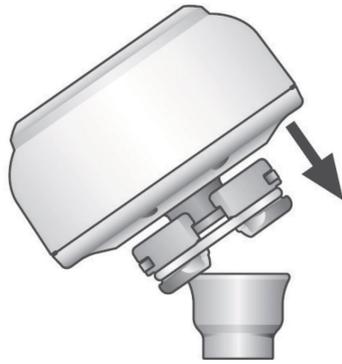
18. On information and belief, the Ponto and Baha systems both include an implant that is connected or connectable to a conical skin-penetrating abutment. On information and belief, the figure below shows an implant and abutment for a bone anchored hearing system.



19. On information and belief, the Ponto and Baha systems both include a sound processor for creating vibrations that connects to the conical skin-penetrating abutment, as shown in the figure below.



20. On information and belief, in the Ponto system, the sound processor connects to the abutment, as illustrated in the figure below.



21. On information and belief, Oticon Medical is selling and offering to sell an implant for the Ponto bone anchored hearing systems, called the Ponto BHX implant. An illustration of the Ponto BHX implant is shown below.



22. On information and belief, the Ponto abutment extension includes each element (or an equivalent of each element) of, for example, the following invention claimed in '807 patent:

Claim Language

1. An anchoring fixture for anchoring a prosthesis to a skull bone comprising:

a screw thread apparatus including a screw thread having a varying outer diameter;

Ponto BHX Implant

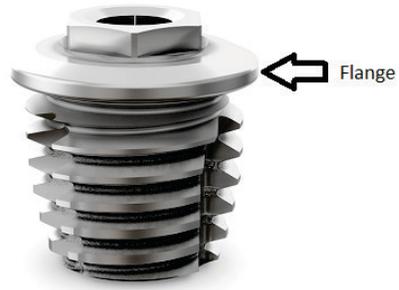
A bone anchored hearing system consists of two parts: 1. A small titanium implant placed in the bone behind the ear 2. A sound processor that attaches to the implant. With the Ponto BHX Implant, the Ponto system offers greater biomechanical fixation.

The BHX implant has screw threads with decreasing outer diameter from the portion closer to the abutment interface to the portion that is farthest away.



a flange configured to function as a stop for the anchoring fixture adapted to rest on top of the bone when the anchoring fixture is implanted into the bone;

The Ponto BHX Implant has a flange that serves as a stop.



and a circumferential groove located, with respect to a side of the flange, on the anchoring fixture on a threaded side of the anchoring fixture,

The Ponto BHX Implant has a circumferential groove on the threaded side of the flange.



wherein the anchoring fixture is configured for anchoring a hearing prosthesis component to the skull bone at a location behind an external ear so that sound is transmitted from the hearing prosthesis via the skull bone to the cochlea.

The Ponto BHX Implant is used in a bone anchored hearing system that once you click the sound processor onto the abutment attached to the implant, it picks up sound waves in much the same way as a conventional hearing aid. However, instead of sending these sound waves through the ear canal, it transforms them into sound vibrations that can be sent through your skull bone to the cochlea, bypassing the outer and middle ear.

23. Cochlear has not licensed nor otherwise authorized Oticon Medical to import, make, use, sell or offer to sell products covered by the '807 patent.

COUNT I

(Infringement of the '807 Patent)

24. Cochlear refers to and incorporates herein the allegations of Paragraphs 1-23 above.

25. On information and belief, Oticon Medical's sales, offers to sell, and/or importation of the Ponto BHX implant has infringed one or more claims of the '807 patent.

26. By reason of Oticon Medical's infringement, Cochlear is suffering damages, including impairment of the value of the '807 patent, in an amount yet to be determined.

27. Oticon Medical's acts of infringement are causing irreparable harm to Cochlear and will continue to cause irreparable harm unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Cochlear requests entry of judgment in its favor and against Oticon Medical as follows:

- (a) Awarding monetary damages sufficient to compensate Cochlear for infringement of the '807 patent;
- (b) Preliminarily and permanently enjoining Oticon Medical and their officers, agents, servants, employees, parents, subsidiaries, affiliate corporations, other related business entities and all other persons acting in concert, participation, or in privity with them, and their successors or assigns, from further infringement, contribution to infringement or inducement of infringement of the '807 patent;
- (c) Costs of suit; and
- (d) Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38, Fed. R. Civ. P., Cochlear demands trial by jury on all issues so triable.

Respectfully submitted,

By: /s/ Tyler E. Baker
Tyler E. Baker
SHEPPARD MULLIN RICHTER
& HAMPTON LLP
30 Rockefeller Plaza, 39th Floor
New York, New York 10112
Tel: (212) 653-8700
Email: tbaker@sheppardmullin.com

Attorneys for Plaintiff Cochlear Ltd.

Dated: April 13, 2018

CERTIFICATION OF NON-ARBITRABILITY

Pursuant to Local Civil Rule 201.1(d)(2), the undersigned attorneys for Plaintiff Cochlear Ltd. certify that this action is not eligible for arbitration under Local Civil Rule 201.1 because the relief sought in the Complaint primarily consists of a demand for preliminary and permanent injunctive relief, as well as damages believed to be in excess of \$150,000.00, exclusive of interest, costs, and any claim for punitive damages, and involves complex issues of patent law.

LOCAL CIVIL RULE 11.2 CERTIFICATION

Pursuant to Local Civil Rule 11.2, the undersigned attorney for Plaintiff Cochlear Ltd., certifies under the penalty of perjury under the Laws of the United States of America that, to the best of his knowledge after investigation, the matter in controversy is not the subject of another action pending in any court or of any arbitration or administrative proceeding.

SHEPPARD MULLIN RICHTER
& HAMPTON LLP
Attorneys for Plaintiff
Cochlear Ltd.

By: /s/ Tyler E. Baker
Tyler E. Baker

Dated: April 13, 2018