

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EXTREMITY MEDICAL, LLC, a New Jersey)	
limited liability company,)	
)	
Plaintiff,)	
v.)	C.A. No.
)	
NEXTREMITY SOLUTIONS, INC., a)	
Delaware corporation,)	JURY TRIAL DEMANDED
)	
ZIMMER BIOMET HOLDINGS, INC., a)	
Delaware corporation, and)	
)	
ZIMMER, INC., a Delaware corporation,)	
)	
Defendants.)	

COMPLAINT

Plaintiff Extremity Medical, LLC (“Extremity Medical” or “Plaintiff”), for its Complaint against Defendants Nextremity Solutions, Inc. (“Nextremity”), Zimmer Biomet Holdings, Inc. (“Zimmer Biomet”), and Zimmer, Inc. (“Zimmer”), (collectively, “Defendants”), hereby alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement of U.S. Patent No. 8,303,589 (“the ‘589 Patent”) in violation of the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, arising from Defendants’ unauthorized manufacture, use, offer to sell, sale and/or importing into or in the United States its InCore Lapidus System (“the Infringing System”).

THE PARTIES

2. Extremity Medical is a limited liability company formed in the State of New Jersey and having its principal place of business at 300 Interpace Parkway, Suite 410, Parsippany, NJ 07054.

3. Upon information and belief, Nextremity is a corporation organized under the laws of the State of Delaware and has its principal place of business at 1195 Polk Drive, Warsaw, Indiana 46582.

4. Upon information and belief, Zimmer Biomet is a corporation organized under the laws of the State of Delaware and has its principal place of business at 345 East Main Street, Warsaw, Indiana 46580.

5. Upon information and belief, Zimmer is a corporation organized under the laws of the State of Delaware and has its principal place of business at 345 East Main Street, Warsaw, Indiana 46580.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this is an action arising under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*

7. This Court has personal jurisdiction over Defendants because, upon information and belief, each Defendant: (a) was incorporated in the state of Delaware, (b) transacts business in Delaware through the sale of products from and/or into Delaware and therefore has substantial and continuous contacts within this judicial district; and (c) has committed, and continues to commit, tortious acts within the state of Delaware giving rise to this action. In short, each Defendant has purposely availed itself of the privileges and benefits of the laws of the State of Delaware, each Defendant derives benefits from its presence in this Judicial District, and each Defendant should reasonably expect its actions to have consequences within this Judicial District.

8. Venue is proper under 28 U.S.C. §§ 1391(b), 1391(c) and/or 1400(b).

THE PATENT-IN-SUIT

9. On November 6, 2012, U.S. Patent No. 8,303,589, entitled “Fixation System, an Intramedullary Fixation Assembly and Method Of Use”, was duly and legally issued by the United States Patent and Trademark Office (“USPTO”). A true and correct copy of the ’589 Patent is attached hereto as Exhibit A. The ’589 Patent is valid, enforceable and currently in full force and effect.

10. Plaintiff is the owner and assignee of all rights, title, and interest in the ’589 Patent, including the full and exclusive right to bring this action and enforce the ’589 Patent against infringers, and the right to recover damages for all relevant time periods, including for past infringement.

11. The ’589 Patent discloses, *inter alia*, bone fixation systems comprising intramedullary fixation assemblies for treating and fixating deteriorated, damaged and/or fractured bones, such as bones in the human foot. For example, assemblies disclosed in the ’589 Patent may be used to restore the arch in a human foot by coupling the assembly to the medullary canals of the first metatarsal, medial cuneiform, navicular and/or talus bones in the foot.

12. An exemplary figure, Figure 18, from the ’589 Patent is provided below:

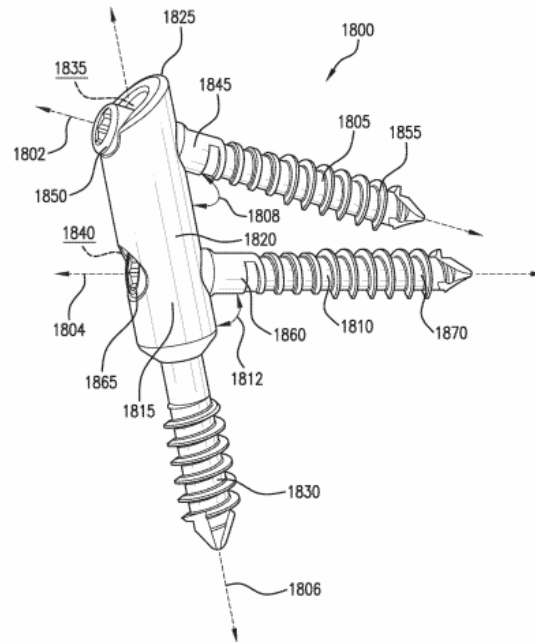


FIG. 18

FACTUAL BACKGROUND

13. Extremity Medical was founded in 2008 by Matthew Lyons. Mr. Lyons graduated from Syracuse University in 1986 with a Bachelor of Science in Mechanical Engineering, specializing in biomechanics. Mr. Lyons has over 30 years of experience in the medical device industry and is named as inventor on numerous patents directed to orthopedics and medical devices.

14. Extremity Medical is a global medical engineering company, dedicated to creating innovative solutions for the challenges that extremity surgeons face. Extremity Medical develops next-generation products for fusion, fixation and motion-preserving systems for the upper and lower extremities of the human body, including the hands and feet. Plaintiff proudly manufactures its products in the United States, and sells and promotes them throughout the United States and worldwide.

15. Extremity Medical has invested substantial time and resources into the research, design and development of its products, and secures intellectual property rights to protect them. The company has obtained 39 patents in the United States, Australia, Canada, the European Union, and Japan, and currently has seven additional patent applications pending.

16. On November 23, 2021, Extremity Medical, by its counsel, sent a letter to Defendants Nextremity and Zimmer Biomet. The letters explained that Extremity Medical has obtained over 20 patents on its inventions in the United States, and several others in foreign countries. The letters further explained that the '589 Patent is owned by Extremity Medical, and that the Infringing System contains all of the elements recited in Claim 59 of the '589 Patent, and is therefore infringing at least this claim.

17. On December 15, 2021 and January 14, 2022, Defendants Nextremity and Zimmer Biomet sent letters to Extremity Medical, confirming receipt of Extremity Medical's November 23, 2021 letter and acknowledging the notice provided by Extremity Medical regarding the '589 Patent.

18. The Infringing System includes at least: (1) an "InCore Post", (2) a "Targeting Guide," and (3) a screw. Below are annotated images of the Infringing System. The images (without annotations) are depicted on the cover and page 3 of product materials for the Infringing System, identified on Nextremity's website and Zimmer Biomet's website as the "InCore® Lapidus System Surgical Technique" Guide (the "Surgical Guide"). A copy of the Surgical Guide is attached hereto as Exhibit B. The Surgical Guide is available for download from Defendants' websites (See <https://www.nextremity.com/portfolio-items/incore-lapidus-system/> and <https://www.zimmerbiomet.com/en/products-and-solutions/specialties/foot-and-ankle/incore-lapidus-system.html#07-education>).

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