

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ZIMMER BIOMET HOLDINGS, INC., ZIMMER INC., and  
BIOMET INC.,  
Petitioners,

v.

ADVANCED ORTHOPAEDIC SOLUTIONS, INC.,  
Patent Owner.

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Case IPR2016-00311  
Patent 8,092,454 B2

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Before LORA M. GREEN, SCOTT A. DANIELS, and  
ROBERT A. POLLOCK, *Administrative Patent Judges*.

GREEN, *Administrative Patent Judge*.

DECISION  
Denying Institution of *Inter Partes* Review  
37 C.F.R. § 42.108

## I. INTRODUCTION

Zimmer Biomet Holdings, Inc., Zimmer Inc., and Biomet Inc. (collectively “Petitioner”) filed a Petition requesting an *inter partes* review of claims 6–11, 13–15, 19, and 20 of U.S. Patent No. 8,092,454 B2 (Ex. 1004, “the ’454 patent”). Paper 1 (“Pet.”). Advanced Orthopaedic Solutions, Inc. (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 5 (“Prelim. Resp.”).

We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Upon considering the Petition and the Preliminary Response, we determine that Petitioner has failed to demonstrate a reasonable likelihood that it would prevail in showing the unpatentability of any of the challenged claims. Accordingly, we decline to institute an *inter partes* review.

### A. *Related Proceedings*

Petitioner notes that “[t]he ’454 Patent is the subject of the civil action *Advanced Orthopaedic Solutions, Inc. v. Biomet Inc. et al.*, Case No. 2:14-cv-06354 ODW-(MANx), filed on August 13, 2014 in the U.S. District Court for the Central District of California.” Pet. 1.

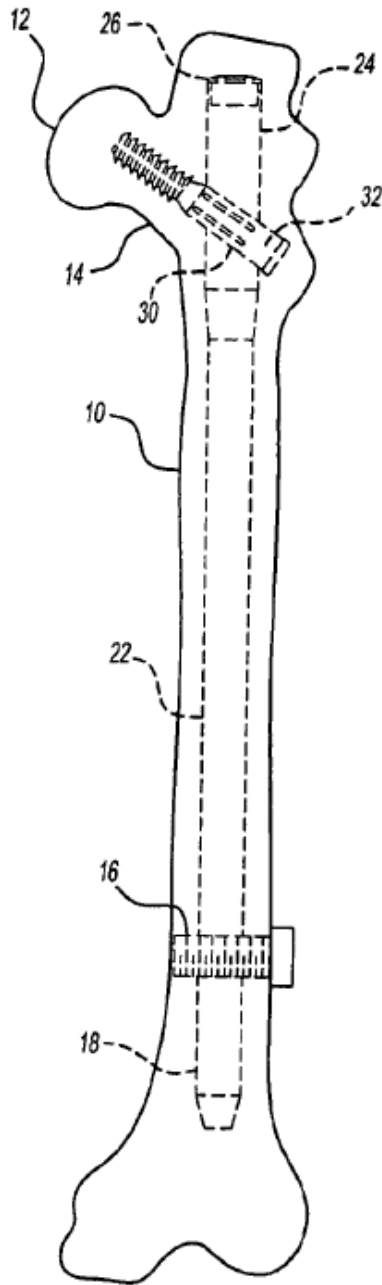
We note further that Petitioner filed a second IPR, IPR2016-00236, which challenges related U.S. Pat. No. 8,702,707 B2. Trial was instituted in IPR2016-00236 on May 31, 2016. IPR2016-00236, Paper 6.

### B. *The ’454 Patent (Ex. 1004)*

The ’454 patent issued on January 10, 2012, with Gary W. Sohngen as the listed inventor. Ex. 1004.

The '454 patent is drawn to “a fixation instrument for treating bone fractures,” and “[m]ore specifically, a nail and bone screw combination used to treat a fracture of the femur.” *Id.* at 1:12–14. “The bone nail extends within the shaft portion of a bone such as a femur,” and an “opening in the head or proximal end of the nail receives a bone screw that, in the case of a femoral neck fracture, extends into the femoral head.” *Id.* at 1:49–52. “[A] locking insert disposed within the nail engages the bone screw and prevents rotation thereof.” *Id.* at 1:53–55.

Figure 1 of the '454 patent is reproduced below:

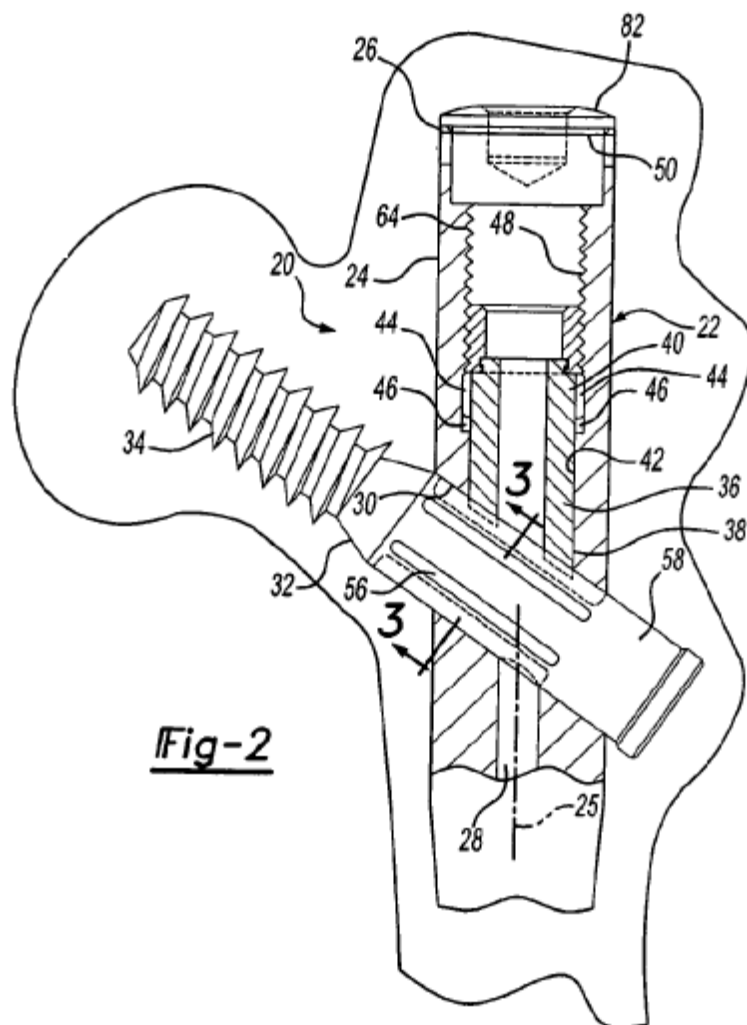


**Fig-1**

Figure 1 “is a diagrammatic front view of a fixation instrument . . . shown implanted within a femur.” *Id.* at 1:65–67. As can be seen in Figure 1, the

fixation instrument includes nail member 22 that has distal end 18 and proximal end 24. *Id.* at 2:45–47.

Figure 2 of the '454 patent is reproduced below:



**Fig-2**

Figure 2 “is an enlarged front view of the proximal end of the fixation instrument according to the present invention with portions removed for clarity and illustration.” *Id.* at 2:1–3.

As shown in Figure 2, passageway 28 extends through the nail longitudinally between the proximal and distal ends. *Id.* at 2:52–54. The

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