

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ETHICON LLC, ETHICON ENDO- SURGERY, Inc., and ETHICON US, LLC,)	
)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. _____
)	
INTUITIVE SURGICAL, INC., INTUITIVE SURGICAL OPERATIONS, INC., and)	JURY TRIAL DEMANDED
INTUITIVE SURGICAL HOLDINGS, LLC,)	
)	
Defendants.)	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Ethicon LLC, Ethicon Endo-Surgery, Inc., and Ethicon US, LLC (collectively “Ethicon” or “Plaintiffs”) file this Complaint for patent infringement against Defendants Intuitive Surgical, Inc., Intuitive Surgical Operations, Inc., and Intuitive Surgical Holdings, LLC (collectively, “Defendants”), and allege as follows:

Nature of the Action

1. This is an action for infringement of United States Patent Nos 9,844,369 (“the 369 Patent”), 7,490,749 (“the 749 Patent”), 8,602,288 (“the 288 Patent”), 8,602,287 (“the 287 Patent”) and 9,326,770 (“the 770 Patent”) (collectively, “the Asserted Patents”) under the United States Patent Laws, 35 U.S.C. § 1 *et seq.*

2. Ethicon brings this action against Defendants because of their systematic infringement of Ethicon’s valuable patent rights. In addition to seeking damages for Defendants’ infringement of Ethicon’s patent rights, Ethicon seeks to enjoin Defendants’ continued infringement.

The Parties

3. Plaintiff Ethicon LLC (f/d/b/a as Ethicon Endo-Surgery, LLC) is a limited liability company organized under the laws of the State of Delaware, having its headquarters and principal place of business at 475 Street C, Los Frailes Industrial Park, Guaynabo, PR 00969.

4. Plaintiff Ethicon Endo-Surgery, Inc. is a corporation organized under the laws of Ohio having its headquarters and principal place of business at 4545 Creek Road, Cincinnati, OH 45242.

5. Plaintiff Ethicon US, LLC is a limited liability company organized under the laws of Texas having its headquarters and principal place of business at 4545 Creek Road, Cincinnati 45242. Ethicon US, LLC is a wholly-owned subsidiary of Ethicon Endo-Surgery, Inc.

6. Ethicon is a leading designer, manufacturer, and provider of innovative medical devices for surgical procedures, including its ECHELON FLEX™ endocutters and ECHELON ENDOPATH™ reload cartridges.

7. Defendant Intuitive Surgical Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business at 1266 Kifer Road, Building 101, Sunnyvale, CA 94086.

8. Defendant Intuitive Surgical Operations, Inc. is a privately held corporation organized under the laws of the State of Delaware, with its principal place of business at 1020 Kifer Rd, Sunnyvale, CA 94086.

9. Defendant Intuitive Surgical Operations, Inc. is a wholly-owned subsidiary of Defendant Intuitive Surgical, Inc.

10. Defendant Intuitive Surgical Holdings, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 1020 Kifer Rd, Sunnyvale, CA 94086.

11. Defendant Intuitive Surgical Holdings LLC is wholly-owned by Defendant Intuitive Surgical, Inc.

Jurisdiction and Venue

12. This is an action for patent infringement arising under the United States Patent Act, 35 U.S.C. § 1, *et seq.* This Court has subject matter jurisdiction over Ethicon's claims under 28 U.S.C. §§ 1331 and 1338(a).

13. This Court has personal jurisdiction over Defendants at least because each Defendant is organized under the laws of the State of Delaware, and is thus a resident of Delaware.

14. Venue is proper in this District under 28 U.S.C. § 1400(b) because Defendants reside in Delaware.

The Asserted Patents

15. The 369 Patent is titled "Surgical End Effectors with Firing Element Monitoring Arrangements" and was issued by the USPTO on December 19, 2017. Ethicon LLC is the owner by assignment of the entire right, title and interest in and to the 369 Patent. Ethicon LLC has exclusively licensed Ethicon Endo-Surgery, Inc. to sell products in the United States that would infringe the 369 Patent absent a license. Ethicon Endo-Surgery, Inc. has exclusively sublicensed that right to Ethicon US, LLC. A true and correct copy of the 369 Patent is attached hereto as Exhibit A.

16. The 749 Patent is titled "Surgical Stapling and Cutting Instrument with Manually Retractable Firing Member," and was issued by the USPTO on February 17, 2009. Ethicon LLC is the owner by assignment of the entire right, title and interest in and to the 749 Patent. Ethicon LLC has exclusively licensed Ethicon Endo-Surgery, Inc. to sell products in the United States that would infringe the 749 Patent absent a license. Ethicon Endo-Surgery, Inc. has exclusively

sublicensed that right to Ethicon US, LLC. A true and correct copy of the 749 Patent is attached hereto as Exhibit B.

17. The 288 Patent is titled “Robotically-Controlled Motorized Surgical End Effector System With Rotary Actuated Closure Systems Having Variable Actuation Speeds,” and was issued by the USPTO on December 10, 2013. Ethicon LLC is the owner by assignment of the entire right, title and interest in and to the 288 Patent. Ethicon LLC has exclusively licensed Ethicon Endo-Surgery, Inc. to sell products in the United States that would infringe the 288 Patent absent a license. Ethicon Endo-Surgery, Inc. has exclusively sublicensed that right to Ethicon US, LLC. A true and correct copy of the 288 Patent is attached hereto as Exhibit C.

18. The 287 Patent is titled “Motor Driven Surgical Cutting Instrument,” and was issued by the USPTO on December 10, 2013. Ethicon LLC is the owner by assignment of the entire right, title and interest in and to the 287 Patent. Ethicon LLC has exclusively licensed Ethicon Endo-Surgery, Inc. to sell products in the United States that would infringe the 287 Patent absent a license. Ethicon Endo-Surgery, Inc. has exclusively sublicensed that right to Ethicon US, LLC. A true and correct copy of the 287 Patent is attached hereto as Exhibit D.

19. The 770 Patent is titled “Surgical Instrument,” and was issued by the USPTO on May 3, 2016. Ethicon LLC is the owner by assignment of the entire right, title and interest in and to the 770 Patent. Ethicon LLC has exclusively licensed Ethicon Endo-Surgery, Inc. to sell products in the United States that would infringe the 770 Patent absent a license. Ethicon Endo-Surgery, Inc. has exclusively sublicensed that right to Ethicon US, LLC. A true and correct copy of the 770 Patent is attached hereto as Exhibit E.

Surgical Staplers and Endocutters

20. Ethicon designs and sells a variety of surgical stapling instruments, including endocutters. An endocutter is an instrument that both cuts and staples tissue. An endocutter can be used in place of traditional scalpel-and-suture techniques, and is therefore useful in a wide variety of surgical procedures. Endocutters are particularly useful in laparoscopic surgery (also referred to as minimally invasive surgery).

21. Ethicon is a market leader in developing endocutter technology. Ethicon introduced its first endocutter in 1996. In 2011, Ethicon introduced to the market its first motor-powered endocutter—the ECHELON FLEX™ Powered ENDOPATH® Stapler. Ethicon's motor-powered endocutters dramatically reduce the force required to operate an endocutter, thereby minimizing unwanted movement of the device during procedures that could result in increased tissue trauma. In 2014, Ethicon introduced its ECHELON FLEX™ Stapler with Gripping Surface Technology (GST), which greatly reduces tissue slippage while firing the stapler.

22. Ethicon designs, manufactures, and sells several endocutter products, including both powered and non-powered endocutters. In addition, Ethicon offers endocutter products that produce staple lines of different lengths. For example, the ECHELON FLEX™ Powered Vascular Stapler produces a staple line that is approximately 35 mm long, and is designed for use in vascular applications. Ethicon's ECHELON FLEX™ Powered ENDOPATH® Stapler is offered in models that produce a 45 mm or 60 mm staple line, and can be used in a variety of surgeries, including but not limited to thoracic, bariatric, and colorectal procedures. Ethicon's 60 mm staple line endocutter products are the market leader for use in bariatric procedures.

23. Defendants first released an endocutter, the *EndoWrist* Stapler 45, for the *da Vinci Si* surgical system in 2013. Defendants subsequently released an *EndoWrist* Stapler 45 and

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