

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

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ARTHREX, INC.)	
)	
Plaintiff)	Case No.:
v.)	
)	
PARCUS MEDICAL, LLC,)	
)	
Defendant)	
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**ARTHREX’S COMPLAINT FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL**

This is an action for patent infringement in which Plaintiff Arthrex, Inc. (hereinafter “Arthrex”) complains against Defendant Parcus Medical, LLC (hereinafter “Parcus”) and alleges as follows:

PARTIES

1. Arthrex is a Delaware corporation having its principal place of business at 1370 Creekside Boulevard, Naples, Florida 34108.
2. Parcus is a Wisconsin limited liability company with its principal place of business at 6423 Parkland Drive, Sarasota, FL 34243.

JURISDICTION AND VENUE

3. This Court has original subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. §1331 (federal question) and §1338 (patents).

4. Parcus is subject to personal jurisdiction in this Court. In particular, this Court has personal jurisdiction over Parcus because it has engaged in continuous, systematic and substantial activities within this judicial district, including, but not limited to, substantial manufacturing, marketing and sales of products in this judicial district. Parcus also has its principal place of business in this judicial district. Furthermore, this Court has personal jurisdiction over Parcus in this case because it has committed acts giving rise to Arthrex's claim for patent infringement within and directed to this judicial district.

5. Venue is proper in this judicial district under 28 U.S.C. §1391(b) and (c) and 28 U.S.C. §1400(b). Parcus has committed acts giving rise to Arthrex's claim for patent infringement in this district. Parcus also has a regular and established place of business in this district at least by way of its facility located at 6423 Parkland Drive, Sarasota, FL 34243.

BACKGROUND

6. Arthrex is an innovative company that designs, manufactures, and sells cutting edge medical devices used to treat patients suffering from a variety of injuries. Among other things, Arthrex designs, manufactures, and sells medical devices in the field of orthopedic medicine including, but not limited to, kits for syndesmosis repairs.

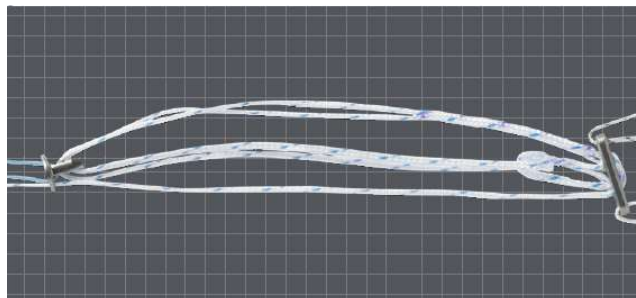
7. Arthrex is uniquely focused on improving the treatment of patients by investing in the research and development of ground-breaking surgical techniques and innovative medical devices used in these surgical procedures. Arthrex further strives to advance medicine by training and educating surgeons in the use of these novel surgical techniques and devices.

8. Arthrex protects its intellectual property in a variety of ways, including by patenting its inventive technology. To date, Arthrex has over 600 patents on its novel surgical techniques and medical devices. A number of these patents are directed to, amongst other things, innovative methods of ankle syndesmosis repair.

9. Arthrex's innovative surgical technique for ankle syndesmosis is performed using Arthrex TightRope® systems for syndesmosis repairs.

10. Parcus also manufactures and sells medical devices. Unlike Arthrex, Parcus does not focus on creating innovative new products.

11. One product sold by Parcus is the Parcus Synd-EZ Titanium Kit (At least part number 11223) and Parcus Synd-EZ SS Kit (At least part number 11224) (together the "Accused Synd-EZ Kits"). An example is shown in the image below. The Accused Synd-EZ Kits are for syndesmosis repair.



12. The Accused Synd-EZ Kits incorporate many of the same features of Arthrex's Tightrope systems for syndesmosis repairs.

13. This is not the first time Parcus has improperly relied on Arthrex's innovative technology to further their own interests.

14. Arthrex has previously been forced to bring suit for patent infringement regarding other Parcus products. [See *Arthrex Inc. v. Parcus Medical, LLC*, Case No. 2:11-cv-00694 (M.D. Fla)].

15. Parcus simply refuses to respect Arthrex's patented technology, including when it began selling products such as the Accused Synd-EZ Kits.

ARTHREX'S PATENTS

U.S. Patent No. 10,864,028

16. On December 15, 2020, the United States Patent and Trademark Office duly and lawfully issued United States Patent No. 10,864,028 ("the '028 patent"), entitled "Adjustable Suture-Button Construct for Ankle Syndesmosis Repair." A true and correct copy of the '028 patent is attached hereto as Exhibit 1.

17. The '028 patent names Eric S. Zajac, Ricardo Albertorio, and Brandon L. Roller as the inventors.

18. Arthrex is the owner by assignment of all right, title and interest in the '028 patent.

19. The '028 patent generally relates to, inter alia, a novel method of ankle syndesmosis repair.

U.S. Patent No. 10,251,686

20. On April 9, 2019, the United States Patent and Trademark Office duly and lawfully issued United States Patent No. 10,251,686 (“the ‘686 patent”), entitled “Adjustable Suture-Button Construct for Ankle Syndesmosis Repair.” A true and correct copy of the ‘686 patent is attached hereto as Exhibit 2.

21. The ‘686 patent names Eric S. Zajac, Ricardo Albertorio, and Brandon L. Roller as the inventors.

22. Arthrex is the owner by assignment of all right, title and interest in the ‘686 patent.

23. The ‘686 patent generally relates to, inter alia, a novel method of ankle syndesmosis repair.

COUNT I
(Induced Infringement of the ‘028 Patent by Parcus)

24. Arthrex incorporates by reference paragraphs 1 through 23 as though fully set forth herein.

25. The ‘028 patent remains valid, enforceable and unexpired.

26. Claim 1 of the ‘028 patent recites:

A method of ankle syndesmosis repair, comprising:

preparing a hole through a fibula and a tibia with a drill bit;

passing a first fixation device through the hole until the first fixation device exits at a medial side of the tibia;

flipping the first fixation device to an engagement position relative to the tibia; and

positioning a second fixation device at a lateral side of the fibula,

wherein the first fixation device and the second fixation device are knotlessly secured relative to the tibia and the fibula,

wherein a flexible suture construct is connected to the first fixation device and the second fixation device, and wherein the flexible suture construct includes at least one spliced section formed by splicing a strand of the flexible suture construct through itself.

27. With knowledge of the '028 patent, Parcus has induced and continues to induce infringement of at least claim 1 of the '028 patent in violation of 35 U.S.C. § 271(b) by offering to sell, selling, and/or importing, without license or authority, the Accused Synd-EZ Kits for use by at least Parcus' surgeon customers in a method of ankle syndesmosis repair instructed by Parcus. In light of Parcus' inducement, these surgeon customers directly infringe the '028 patent by using the Accused Synd-EZ Kits in ankle syndesmosis surgeries as instructed by Parcus thereby reading on at least claim 1 of the '028 patent.

28. As shown in Exhibit 3, the Accused Synd-EZ Kits used in accordance with Parcus' instructions meet each limitation of at least claim 1 of the '028 patent.

29. Parcus specifically intended its customers to infringe the '028 patent, knowing surgeons using the Accused Synd-EZ Kits infringe the '028 patent. At the very least, Parcus was willfully blind to the existence of the '028 patent and/or the fact that surgeons' use of the Accused Synd-EZ Kits would directly infringe the '028 patent. Despite a high likelihood that its actions would induce its surgeon customers' direct infringement of the '028 patent, Parcus marketed and sold the Accused Synd-EZ Kits to orthopedic surgeons for use in their surgeries. These orthopedic surgeons directly infringe the '028 patent by performing ankle syndesmosis surgery using the Accused Synd-EZ Kits following the instructions for use and other instructional literature and information prepared and provided by Parcus for the Accused Synd-EZ Kits. [See e.g. Exhibit 4, Synd-EZ Instructions for Use; Exhibit 5, Synd-EZ Technique Guide]. These materials and others are publicly available and/or provided with Parcus' Accused Synd-EZ Kits.

30. Recently, Parcus was provided the '028 Patent and informed of its infringement through a letter sent by Arthrex's counsel to Parcus through Parcus' counsel on December 15, 2021. [Exhibit 6].

31. Parcus was aware of the '028 patent and its infringement earlier in 2021.

32. Parcus was also aware of at least U.S. Patent Publication 2012/0123474 (the ‘474 Publication”), which is a publication of the parent application to the ‘028 patent. Parcus cited the ‘474 Publication in an information disclosure statement to the U.S. Patent Office in patent application no. 16/940,064 on October 22, 2020. Parcus also had the ‘474 Publication cited by the Examiner in an office action rejection of Parcus’ patent application no. 16/207,652 on October 25, 2019. Each of these two Parcus patent applications disclose “an adjustable fixation device suitable for syndesmosis repair.” Upon information and belief, Parcus would have been aware of the ‘028 patent, which claims priority to the parent application published as the ‘474 Publication.

33. Parcus knew that the surgeons’ actions, when performed, would directly infringe the ‘028 patent no later than 2021. Upon information and belief, Parcus has knowledge of patents related to ankle syndesmosis repair in general and would be aware of the ‘028 patent. Moreover, having been accused of patent infringement in the past by Arthrex, Parcus would have been aware of Arthrex’s patents related to orthopedic surgeries and/or surgical techniques including the ‘028 patent. Parcus was also aware of other patent applications in the family of the ‘028 patent to which it claims priority.

34. Upon information and belief, Parcus has not made any changes to the Accused Synd-EZ Kits despite its knowledge of the ‘028 patent.

35. Upon information and belief, Parcus has not made any changes to any of its publicly available instructional product literature for the Accused Synd-EZ Kits despite its knowledge of the '028 patent.

36. Upon information and belief, Parcus monitors Arthrex's patent portfolio as it has been sued for patent infringement by Arthrex in the past and therefore would know of the '028 Patent.

37. At the very least, based on the December 15, 2021 letter, its possession of the '028 Patent, Parcus' knowledge of Arthrex's patent portfolio in general, Parcus' knowledge of the parent application to the '028 Patent, Parcus' monitoring of Arthrex's patent portfolio, its knowledge that Arthrex is a direct competitor in the relatively small ankle syndesmosis repair market, and its use of instructional literature and/or information that promotes direct infringements by surgeons, Parcus believed that there was a high probability that its acts, if taken, would result in direct infringement of the '028 patent by its surgeon customers, yet deliberately avoided confirming that belief. At the very least, Parcus willfully blinded itself to the existence of the '028 patent, and therefore willfully blinded itself to surgeons' direct infringement of the '028 patent resulting from the surgeons' use of the Accused Synd-EZ Kits.

38. Parcus knew of the '028 patent, acted despite an objectively high likelihood that its actions constituted infringement of a valid patent, knew or should

have known of this likelihood, and ignored and/or disregarded that its actions constituted infringement of a valid and enforceable patent.

39. As a result, Parcus' infringement of the '028 patent is and has been egregious, willful and deliberate.

40. Arthrex and Parcus are competitors. As a result of Parcus' inducement of infringement, Arthrex will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages. The threatened injury to Arthrex outweighs any harm that the injunction may cause to Parcus. Injunctive relief would not disserve the public interest under these circumstances.

COUNT II
(Parcus' Contributory Infringement of the '028 Patent)

41. Arthrex incorporates by reference paragraphs 1 through 40 as though fully set forth herein.

42. The '028 patent remains valid, enforceable and unexpired.

43. With knowledge of the '028 patent, Parcus has contributed and continues to contribute, without license or authority, to the infringement of at least claim 1 of the '028 patent under 35 U.S.C. § 271(c) by selling, offering to sell, and/or importing the Accused Synd-EZ Kits for use by its orthopedic surgeon customers. These orthopedic surgeon customers directly infringe the '028 by using the Accused

Synd-EZ Kits in their surgeries according to Parcus' instructions and marketing thereby reading on at least claim 1 of the '028 patent.

44. As shown in Exhibit 3, the Accused Synd-EZ Kits meet each limitation of at least claim 1 of the '028 patent when used according to Parcus' instructions.

45. Parcus specifically intended its customers to infringe the '028 patent, knowing surgeons using the Accused Synd-EZ Kits infringe the '028 patent. At the very least, Parcus was willfully blind to the existence of the '028 patent and/or the fact that surgeons' use of the Accused Synd-EZ Kits would directly infringe the '028 patent. Despite a high likelihood that its actions would contribute to its surgeon customers' direct infringement of the '028 patent, Parcus marketed and sold the Accused Synd-EZ Kits to orthopedic surgeon customers for use in their ankle syndesmosis surgeries. These orthopedic surgeons directly infringe the '028 patent by using the Accused Synd-EZ Kits following the instructions for use and other instructional literature and/or information prepared and provided by Parcus for the Accused Synd-EZ Kits. [See e.g. Exhibits 4, 5]. These materials and others are publicly available and/or provided with Parcus' Accused Synd-EZ Kits.

46. Parcus' Accused Synd-EZ Kits have no substantial, non-infringing uses for at least the reason that Parcus' Accused Synd-EZ Kits can only be used to directly infringe the '028 patent. In other words, when Parcus' instructions and directions are followed to use its Accused Synd-EZ Kits, these Accused Synd-EZ Kits are only

used in an infringing manner, and are only advertised by Parcus for such an infringing use. [Exhibits 4, 5]. Parcus only promotes the Accused Synd-EZ Kits for use by surgeons in a manner that infringes the '028 patent.

47. Parcus' Accused Synd-EZ Kits constitute a material part of the invention of the '028 patent for at least the reason that they are each advertised, sold, and/or offered for sale for use to specifically practice the method claimed in at least claim 1 of the '028 patent. The surgeries Parcus promotes through its instructional materials require the making and/or use of Parcus' Accused Synd-EZ Kits thereby reading on at least claim 1 of the '028 patent. [Exhibit 3]. That is, the Accused Synd-EZ Kits are the very surgical instruments that are used to practice the invention of the '028 patent.

48. Parcus knew and/or knows that its Accused Synd-EZ Kits are especially made or especially adapted for use in an infringement of at least claim 1 of the '028 patent for at least the reason that the publicly available literature and information Parcus provides, endorses, and promotes for using and/or making its Accused Synd-EZ Kits, including the instructions for use and technique guides for these products, only promotes making and/or using the Accused Synd-EZ Kits in a manner thereby reading on at least claim 1 of the '028 patent.

49. Recently, Parcus was provided the '028 Patent and informed of its infringement through a letter sent by Arthrex's counsel to Parcus through Parcus' counsel on December 15, 2021. [Exhibit 6].

50. Parcus was aware of the '028 patent and its infringement earlier in 2021.

51. Parcus was also aware of at least U.S. Patent Publication 2012/0123474 (the '474 Publication'), which is a publication of the parent application to the '028 patent. Parcus cited the '474 Publication in an information disclosure statement to the U.S. Patent Office in patent application no. 16/940,064 on October 22, 2020. Parcus also had the '474 Publication cited by the Examiner in an office action rejection of Parcus' patent application no. 16/207,652 on October 25, 2019. Each of these two Parcus patent applications disclose "an adjustable fixation device suitable for syndesmosis repair." Upon information and belief, Parcus would have been aware of the '028 patent, which claims priority to the parent application published as the '474 Publication.

52. Parcus knew that the surgeons' actions, when performed, would directly infringe the '028 patent no later than 2021. Upon information and belief, Parcus has knowledge of patents related to ankle syndesmosis repair in general and would be aware of the '028 patent. Moreover, having been accused of patent infringement in the past by Arthrex, Parcus would have been aware of Arthrex's

patents related to orthopedic surgeries and/or surgical techniques including the '028 patent. Parcus was also aware of other patent applications in the family of the '028 patent and that the '028 patent claims priority to.

53. Upon information and belief, Parcus has not made any changes to the Accused Synd-EZ Kits despite its knowledge of the '028 patent.

54. Upon information and belief, Parcus has not made any changes to any of its publicly available instructional product literature for the Accused Synd-EZ Kits despite its knowledge of the '028 patent.

55. Upon information and belief, Parcus monitors Arthrex's patent portfolio as it has been sued for patent infringement by Arthrex in the past and therefore would know of the '028 Patent.

56. At the very least, based on the December 15, 2021 letter, its possession of the '028 Patent, Parcus' knowledge of Arthrex's patent portfolio in general, Parcus' knowledge of the parent application to the '028 Patent, Parcus' monitoring of Arthrex's patent portfolio, its knowledge that Arthrex is a direct competitor in the relatively small ankle syndesmosis repair market, and its use of instructional literature and/or information that promotes direct infringements by surgeons, Parcus believed that there was a high probability that its acts, if taken, would result in direct infringement of the '028 patent by its surgeon customers, yet deliberately avoided confirming that belief. At the very least, Parcus willfully blinded itself to the

existence of the '028 patent, and therefore willfully blinded itself to surgeons' direct infringement of the '028 patent resulting from the surgeons' use of the Accused Synd-EZ Kits.

57. Parcus knew of the '028 patent, acted despite an objectively high likelihood that its actions constituted infringement of a valid patent, knew or should have known of this likelihood, and ignored and/or disregarded that its actions constituted infringement of a valid and enforceable patent.

58. As a result, Parcus' infringement of the '028 patent is and has been egregious, willful and deliberate.

59. Arthrex and Parcus are competitors. As a result of Parcus' contributory infringement, Arthrex will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages. The threatened injury to Arthrex outweighs any harm that the injunction may cause to Parcus. Injunctive relief would not disserve the public interest under these circumstances.

COUNT III

(Induced Infringement of the '686 Patent by Parcus)

60. Arthrex incorporates by reference paragraphs 1 through 59 as though fully set forth herein.

61. The '686 patent remains valid, enforceable and unexpired.

62. Claim 1 of the '686 patent recites:

A method of ankle syndesmosis repair, comprising:

preparing a bone tunnel through a fibula and a tibia of an ankle joint;

passing a first fixation device through the bone tunnel of the fibula and the bone tunnel of the tibia until the first fixation device exits on a medial side of the tibia;

flipping the first fixation device so it rests against a medial cortex of the tibia; and

positioning a second fixation device at a lateral side of the fibula, wherein the first fixation device and the second fixation device are knotlessly secured relative to the tibia and the fibula without tying knots, wherein an adjustable loop is connected to the first fixation device and the second fixation device, and the adjustable loop includes at least one spliced section formed by splicing a strand of the adjustable loop through itself.

63. With knowledge of the '686 patent, Parcus has induced and continues to induce infringement of at least claim 1 of the '686 patent in violation of 35 U.S.C. § 271(b) by offering to sell, selling, and/or importing, without license or authority, the Accused Synd-EZ Kits for use by at least Parcus' surgeon customers in a method of ankle syndesmosis repair instructed by Parcus. In light of Parcus' inducement, these surgeon customers directly infringe the '686 patent by using the Accused

Synd-EZ Kits in ankle syndesmosis surgeries as instructed by Parcus thereby reading on at least claim 1 of the '686 patent.

64. As shown in Exhibit 7, the Accused Synd-EZ Kits used in accordance with Parcus' instructions meet each limitation of at least claim 1 of the '686 patent.

65. Parcus specifically intended its customers to infringe the '686 patent, knowing surgeons using the Accused Synd-EZ Kits infringe the '686 patent. At the very least, Parcus was willfully blind to the existence of the '686 patent and/or the fact that surgeons' use of the Accused Synd-EZ Kits would directly infringe the '686 patent. Despite a high likelihood that its actions would induce its surgeon customers' direct infringement of the '686 patent, Parcus marketed and sold the Accused Synd-EZ Kits to orthopedic surgeons for use in their surgeries. These orthopedic surgeons directly infringe the '686 patent by performing ankle syndesmosis surgery using the Accused Synd-EZ Kits following the instructions for use and other instructional literature and information prepared and provided by Parcus for the Accused Synd-EZ Kits. [See e.g. Exhibit 4; Exhibit 5]. These materials and others are publicly available and/or provided with Parcus' Accused Synd-EZ Kits.

66. Recently, Parcus was provided the '686 Patent and informed of its infringement through a letter sent by Arthrex's counsel to Parcus through Parcus' counsel on December 15, 2021. [Exhibit 6].

67. Parcus was aware of the ‘686 patent and its infringement earlier in 2021.

68. Parcus was also aware of at least U.S. Patent Publication 2012/0123474 (the ‘474 Publication”), which is a publication of the parent application to the ‘686 patent. Parcus cited the ‘474 Publication in an information disclosure statement to the U.S. Patent Office in patent application no. 16/940,064 on October 22, 2020. Parcus also had the ‘474 Publication cited by the Examiner in an office action rejection of Parcus’ patent application no. 16/207,652 on October 25, 2019. Each of these two Parcus patent applications disclose “an adjustable fixation device suitable for syndesmosis repair.” Upon information and belief, Parcus would have been aware of the ‘686 patent, which claims priority to the parent application published as the ‘474 Publication.

69. Parcus knew that the surgeons’ actions, when performed, would directly infringe the ‘686 patent no later than 2021. Upon information and belief, Parcus has knowledge of patents related to ankle syndesmosis repair in general and would be aware of the ‘686 patent. Moreover, having been accused of patent infringement in the past by Arthrex, Parcus would have been aware of Arthrex’s patents related to orthopedic surgeries and/or surgical techniques including the ‘686 patent. Parcus was also aware of other patent applications in the family of the ‘686 patent and that the ‘686 patent claims priority to.

70. Upon information and belief, Parcus has not made any changes to the Accused Synd-EZ Kits despite its knowledge of the '686 patent.

71. Upon information and belief, Parcus has not made any changes to any of its publicly available instructional product literature for the Accused Synd-EZ Kits despite its knowledge of the '686 patent.

72. Upon information and belief, Parcus monitors Arthrex's patent portfolio as it has been sued for patent infringement by Arthrex in the past and therefore would know of the '686 Patent.

73. At the very least, based on the December 15, 2021 letter, its possession of the '686 Patent, Parcus' knowledge of Arthrex's patent portfolio in general, Parcus' knowledge of the parent application to the '686 Patent, Parcus' monitoring of Arthrex's patent portfolio, its knowledge that Arthrex is a direct competitor in the relatively small ankle syndesmosis repair market, and its use of instructional literature and/or information that promotes direct infringements by surgeons, Parcus believed that there was a high probability that its acts, if taken, would result in direct infringement of the '686 patent by its surgeon customers, yet deliberately avoided confirming that belief. At the very least, Parcus willfully blinded itself to the existence of the '686 patent, and therefore willfully blinded itself to surgeons' direct infringement of the '686 patent resulting from the surgeons' use of the Accused Synd-EZ Kits.

74. Parcus knew of the '686 patent, acted despite an objectively high likelihood that its actions constituted infringement of a valid patent, knew or should have known of this likelihood, and ignored and/or disregarded that its actions constituted infringement of a valid and enforceable patent.

75. As a result, Parcus' infringement of the '686 patent is and has been egregious, willful and deliberate.

76. Arthrex and Parcus are competitors. As a result of Parcus' inducement of infringement, Arthrex will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages. The threatened injury to Arthrex outweighs any harm that the injunction may cause to Parcus. Injunctive relief would not disserve the public interest under these circumstances.

COUNT IV
(Parcus' Contributory Infringement of the '686 Patent)

77. Arthrex incorporates by reference paragraphs 1 through 76 as though fully set forth herein.

78. The '686 patent remains valid, enforceable and unexpired.

79. With knowledge of the '686 patent, Parcus has contributed and continues to contribute, without license or authority, to the infringement of at least claim 1 of the '686 patent under 35 U.S.C. § 271(c) by selling, offering to sell, and/or importing the Accused Synd-EZ Kits for use by its orthopedic surgeon customers.

These orthopedic surgeon customers directly infringe the ‘686 by using the Accused Synd-EZ Kits in their surgeries according to Parcus’ instructions and marketing thereby reading on at least claim 1 of the ‘686 patent.

80. As shown in Exhibit 7, the Accused Synd-EZ Kits meet each limitation of at least claim 1 of the ‘686 patent when used according to Parcus’ instructions.

81. Parcus specifically intended its customers to infringe the ‘686 patent, knowing surgeons using the Accused Synd-EZ Kits infringe the ‘686 patent. At the very least, Parcus was willfully blind to the existence of the ‘686 patent and/or the fact that surgeons’ use of the Accused Synd-EZ Kits would directly infringe the ‘686 patent. Despite a high likelihood that its actions would contribute to its surgeon customers’ direct infringement of the ‘686 patent, Parcus marketed and sold the Accused Synd-EZ Kits to orthopedic surgeon customers for use in their ankle syndesmosis surgeries. These orthopedic surgeons directly infringe the ‘686 patent by using the Accused Synd-EZ Kits following the instructions for use and other instructional literature and/or information prepared and provided by Parcus for the Accused Synd-EZ Kits. [See e.g. Exhibits 4, 5]. These materials and others are publicly available and/or provided with Parcus’ Accused Synd-EZ Kits.

82. Parcus’ Accused Synd-EZ Kits have no substantial, non-infringing uses for at least the reason that Parcus’ Accused Synd-EZ Kits can only be used to directly infringe the ‘686 patent. In other words, when Parcus’ instructions and directions

are followed to use its Accused Synd-EZ Kits, these Accused Synd-EZ Kits are only used in an infringing manner, and are only advertised by Parcus for such an infringing use. [Exhibits 4, 5]. Parcus only promotes the Accused Synd-EZ Kits for use by surgeons in a manner that infringes the '686 patent.

83. Parcus' Accused Synd-EZ Kits constitute a material part of the invention of the '686 patent for at least the reason that they are each advertised, sold, and/or offered for sale for use to specifically practice the method claimed in at least claim 1 of the '686 patent. The surgeries Parcus promotes through its instructional materials require the making and/or use of Parcus' Accused Synd-EZ Kits thereby reading on at least claim 1 of the '686 patent. [Exhibit 7]. That is, the Accused Synd-EZ Kits are the very surgical instruments that are used to practice the invention of the '686 patent.

84. Parcus knew and/or knows that its Accused Synd-EZ Kits are especially made or especially adapted for use in an infringement of at least claim 1 of the '686 patent for at least the reason that the publicly available literature and information Parcus provides, endorses, and promotes for using and/or making its Accused Synd-EZ Kits, including the instructions for use and technique guides for these products, only promotes making and/or using the Accused Synd-EZ Kits in a manner thereby reading on at least claim 1 of the '686 patent.

85. Recently, Parcus was provided the ‘686 Patent and informed of its infringement through a letter sent by Arthrex’s counsel to Parcus through Parcus’ counsel on December 15, 2021. [Exhibit 6].

86. Parcus was aware of the ‘686 patent and its infringement earlier in 2021.

87. Parcus was also aware of at least U.S. Patent Publication 2012/0123474 (the ‘474 Publication”), which is a publication of the parent application to the ‘686 patent. Parcus cited the ‘474 Publication in an information disclosure statement to the U.S. Patent Office in patent application no. 16/940,064 on October 22, 2020. Parcus also had the ‘474 Publication cited by the Examiner in an office action rejection of Parcus’ patent application no. 16/207,652 on October 25, 2019. Each of these two Parcus patent applications disclose “an adjustable fixation device suitable for syndesmosis repair.” Upon information and belief, Parcus would have been aware of the ‘686 patent, which claims priority to the parent application published as the ‘474 Publication.

88. Parcus knew that the surgeons’ actions, when performed, would directly infringe the ‘686 patent no later than 2021. Upon information and belief, Parcus has knowledge of patents related to ankle syndesmosis repair in general and would be aware of the ‘686 patent. Moreover, having been accused of patent infringement in the past by Arthrex, Parcus would have been aware of Arthrex’s

patents related to orthopedic surgeries and/or surgical techniques including the '686 patent. Parcus was also aware of other patent applications in the family of the '686 patent and that the '686 patent claims priority to.

89. Upon information and belief, Parcus has not made any changes to the Accused Synd-EZ Kits despite its knowledge of the '686 patent.

90. Upon information and belief, Parcus has not made any changes to any of its publicly available instructional product literature for the Accused Synd-EZ Kits despite its knowledge of the '686 patent.

91. Upon information and belief, Parcus monitors Arthrex's patent portfolio as it has been sued for patent infringement by Arthrex in the past and therefore would know of the '68 Patent.

92. At the very least, based on the December 15, 2021 letter, its possession of the '686 Patent, Parcus' knowledge of Arthrex's patent portfolio in general, Parcus' knowledge of the parent application to the '686 Patent, Parcus' monitoring of Arthrex's patent portfolio, its knowledge that Arthrex is a direct competitor in the relatively small ankle syndesmosis repair market, and its use of instructional literature and/or information that promotes direct infringements by surgeons, Parcus believed that there was a high probability that its acts, if taken, would result in direct infringement of the '686 patent by its surgeon customers, yet deliberately avoided confirming that belief. At the very least, Parcus willfully blinded itself to the

existence of the '686 patent, and therefore willfully blinded itself to surgeons' direct infringement of the '686 patent resulting from the surgeons' use of the Accused Synd-EZ Kits.

93. Parcus knew of the '686 patent, acted despite an objectively high likelihood that its actions constituted infringement of a valid patent, knew or should have known of this likelihood, and ignored and/or disregarded that its actions constituted infringement of a valid and enforceable patent.

94. As a result, Parcus' infringement of the '686 patent is and has been egregious, willful and deliberate.

95. Arthrex and Parcus are competitors. As a result of Parcus' contributory infringement, Arthrex will suffer severe and irreparable harm, unless that infringement is enjoined by this Court, and has suffered substantial damages. The threatened injury to Arthrex outweighs any harm that the injunction may cause to Parcus. Injunctive relief would not disserve the public interest under these circumstances.

PRAYER FOR RELIEF

WHEREFORE, Arthrex requests judgment in its favor against Parcus for the following relief:

A. An Order adjudging that Parcus has induced the infringement of the '028 patent and/or the '686 patent and/or contributed to the infringement of the '028 patent and/or the '686 patent pursuant to 35 U.S.C. §271(b) and/or §271(c);

B. A permanent injunction enjoining Parcus, its officers, directors, agents, servants, employees and those persons in active concert or participation with Parcus, from infringing the '028 patent and/or the '686 patent in violation of 35 U.S.C. §271;

C. An award of damages adequate to compensate Arthrex for Parcus' infringement including but not limited to lost profits and/or a reasonable royalty;

D. An Order adjudging Parcus to have deliberately and willfully infringed the '028 patent and/or the '686 patent;

E. An Order for a trebling of damages and/or exemplary damages because of Parcus' willful infringement pursuant to 35 U.S.C. §284;

F. An Order adjudging that this is an exceptional case;

G. An award to Arthrex of its attorney fees and its costs and expenses incurred in connection with this action pursuant to 35 U.S.C. §285;

H. An award of prejudgment and post-judgment interest and costs of this action; and

I. Such other and further relief that this Court deems just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Arthrex demands a trial by jury on all issues so triable.

Dated: January 11, 2022

Respectfully submitted,

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