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U.S. DISTRICT COURT

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

SDGI HOLDINGS, INC. and MEDTRONIC  
SOFAMOR DANEK, INC.,

Plaintiffs,

vs.

EBI, L.P. and BIOMET INC.,

Defendants.

Civil Action No. 2:06-CV- 490 DMC

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**(Jury Trial Demanded)**

Plaintiffs SDGI Holdings, Inc. and Medtronic Sofamor Danek, Inc., for their Complaint against Defendants EBI, L.P. and Biomet Inc., hereby state and allege as follows:

**Nature of the Action**

1. This is an action for infringement by Defendants of seven United States patents owned by SDGI Holdings, Inc.

**The Parties**

2. Plaintiff SDGI Holdings, Inc. ("SDGI") is a corporation organized and existing under the laws of Delaware.

3. Plaintiff Medtronic Sofamor Danek, Inc. ("Sofamor Danek") is a corporation organized and existing under the laws of Indiana with its principal place of business in Memphis, Tennessee. Sofamor Danek is the sole shareholder of SDGI.

4. Upon information and belief, Defendant EBI, L.P. is a limited partnership controlled by Biomet Inc. whose principal place of business is in Parsippany, New Jersey. EBI, L.P. describes itself as a "business unit" of Biomet Inc.

5. Upon information and belief, Defendant Biomet Inc. is a corporation organized and existing under the laws of Indiana. Biomet Inc.'s principal place of business is located in Warsaw, Indiana. Biomet Inc. and EBI, L.P. are jointly hereinafter referred to "Biomet."

#### **Jurisdiction and Venue**

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) in that this action arises under the Acts of Congress relating to patents, 35 U.S.C. § 101 et seq.

7. Upon information and belief, the Defendants each transact business in this judicial district by manufacturing, selling or offering to sell products that infringe the patents at issue in this action or by conducting other business within this judicial district.

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

#### **Background to the Action**

9. On August 27, 2002 United States Patent No. 6,440,133, entitled "Rod Reducer Instruments and Methods" ("the '133 patent") was duly and legally issued to Jeffrey W. Beale and John Stewart Young. A copy of the '133 patent is attached to this Complaint as Exhibit A.

10. On September 14, 2004, United States Patent No. 6,790,209, entitled "Rod Reducer Instruments and Methods" ("the '209 patent") was duly and legally issued to Jeffrey W. Beale and John Stewart Young. A copy of the '209 patent is attached to this Complaint as Exhibit B.

11. On September 22, 1998, United States Patent No. 5,810,878, entitled "Rod Introducer Forceps" ("the '878 patent") was duly and legally issued to Marc H. Burel, David L. Brumfield and Thomas Barker. A copy of the '878 patent is attached to this complaint as Exhibit C.

12. On March 14, 2000, United States Patent No. 6,036,692, entitled "Rod Introducer Forceps" ("the '692 patent") was duly and legally issued to Marc H. Burel, David L. Brumfield and Thomas Barker. A copy of the '692 patent is attached to this complaint as Exhibit D.

13. On July 12, 2005, United States Patent No. 6,916,320, entitled "Anterior Cervical Plate System" ("the '320 patent") was duly and legally issued to Gary K. Michelson. A copy of the '320 patent is attached to this Complaint as Exhibits E.

14. On July 15, 2003, United States Patent No. 6,592,586, entitled "Single-Lock Anterior Cervical Plating System" ("the '586 patent") was duly and legally issued to Gary K. Michelson. A copy of the '586 patent is attached to this Complaint as Exhibits F.

15. On August 6, 2002, United States Patent No. 6,428,542, entitled "Single-Lock Anterior Cervical Plate" ("the '542 patent") was duly and legally issued to Gary K. Michelson. A copy of the '542 patent is attached to this complaint as Exhibits G.

16. Plaintiff SDGI is the assignee of all right, title and interest in the '133, '209, '878, '692, '320, '586 and '542 patents, including the right to bring this action against Defendants for injunctive relief, an accounting and damages. Plaintiff Sofamor Danek directly and/or indirectly through its wholly-owned subsidiaries, has a right to make, use or sell devices which are the subject of such patents.

**COUNT I**

**(Claim for Patent Infringement of U.S. Patent No. 6,440,133)**

17. Paragraphs 1-16 are incorporated into this count by reference.

18. Defendant Biomet has been and is making, selling, offering for sale or otherwise distributing in the District of New Jersey and elsewhere within the United States devices that infringe one or more claims of the '133 patent. Such products include, but are not limited to, the Cannulated Rod Reducer, which is part of Biomet's "Array Spinal System."

19. Plaintiffs have been damaged as a result of Biomet's acts of infringement of the '133 patent.

### **COUNT II**

#### **(Claim for Patent Infringement of U.S. Patent No. 6,790,209)**

20. Paragraphs 1-16 are incorporated into this count by reference.

21. Defendant Biomet has been and is making, selling, offering for sale or otherwise distributing in the District of New Jersey and elsewhere within the United States devices that infringe one or more claims of the '209 patent. Such products include, but are not limited to, the Cannulated Rod Reducer, which is part of Biomet's "Array Spinal System."

22. Plaintiffs have been damaged as a result of Biomet's acts of infringement of the '209 patent.

### **COUNT III**

#### **(Claim for Patent Infringement of U.S. Patent No. 5,810,878)**

23. Paragraphs 1-16 are incorporated into this count by reference.

24. Defendant Biomet has been and is making, selling, offering for sale or otherwise distributing in the District of New Jersey and elsewhere within the United States devices that infringe one or more claims of the '878 patent. Such products include, but are not limited to, the Left or Right Rod Rockers, which are part of Biomet's "Array Spinal System."

25. Plaintiffs have been damaged as a result of Biomet's acts of infringement of the '878 patent.

**COUNT IV**

**(Claim for Patent Infringement of U.S. Patent No. 6,036,692)**

26. Paragraphs 1-16 are incorporated into this count by reference.

27. Defendant Biomet has been and is making, selling, offering for sale or otherwise distributing in the District of New Jersey and elsewhere within the United States devices that infringe one or more claims of the '692 patent. Such products include, but are not limited to, the Left or Right Rod Rockers, which are part of Biomet's "Array Spinal System."

28. Plaintiffs have been damaged as a result of Biomet's acts of infringement of the '692 patent.

**COUNT V**

**(Claim for Patent Infringement of U.S. Patent No. 6,916,320)**

29. Paragraphs 1-16 are incorporated into this count by reference.

30. Defendant Biomet has been and is making, selling or offering for sale in the District of New Jersey and elsewhere within the United States devices that infringe one or more claims of the '320 patent. Such products include, but are not limited to, Biomet's Vuelock® Anterior Cervical Plate System.

31. Plaintiffs have been damaged as a result of Biomet's acts of infringement of the '320 patent.

**COUNT VI**

**(Claim for Patent Infringement of U.S. Patent No. 6,592,586)**

32. Paragraphs 1-16 are incorporated into this count by reference.

33. Defendant Biomet has been and is making, selling or offering for sale in the District of New Jersey and elsewhere within the United States devices that infringe one or more claims of the '586 patent. Such products include, but are not limited to, Biomet's Vuelock® Anterior Cervical Plate System.

34. Plaintiffs have been damaged as a result of Biomet's acts of infringement of the '586 patent.

**COUNT VII**

**(Claim for Patent Infringement of U.S. Patent No. 6,428,542)**

35. Paragraphs 1-16 are incorporated into this count by reference.

36. Defendant Biomet has been and is making, selling or offering for sale in the District of New Jersey and elsewhere within the United States devices that infringe one or more claims of the '542 patent. Such products include, but are not limited to, Biomet's Vuelock® Anterior Cervical Plate System.

37. Plaintiffs have been damaged as a result of Biomet's acts of infringement of the '542 patent.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for an entry of judgment against each of the Defendants as follows:

a. That Defendants have infringed the '133, '209, '878, '692, '320, '586 and/or '542 patents;

b. That Defendants, and their respective agents, servants, officers, directors, employees and all persons acting in concert with them, directly or indirectly, be preliminarily and permanently enjoined from infringing, inducing others to infringe, or contributing to the

infringement of the '133, '209, '878, '692, '320, '586 and/or '542 patents;

c. That Defendants account for and pay to Plaintiffs the damages to which Plaintiffs are entitled as a consequence of the infringement of the patents-in-suit;

d. That Plaintiffs be awarded pre-judgment interest, their costs and attorneys' fees;  
and

e. That Plaintiffs be awarded such other and further relief as the Court may deem just and equitable.

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury on all issues triable by a jury.


**LOCAL CIVIL RULE 11.2 CERTIFICATION**

I hereby certify that to the best of my knowledge, information and belief, the matter in controversy is not the subject of any other action or proceeding pending in any court, arbitration, or administrative agency.

By:   
Stephen R. Buckingham

DATED: February 1, 2006

**LOWENSTEIN SANDLER PC**

By:   
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**ATTORNEYS FOR PLAINTIFFS**



**Index of Exhibits**

- Exhibit A** United States Patent No. 6,440,133, entitled "Rod Reducer Instruments and Methods" ("the '133 patent")
- Exhibit B** United States Patent No. 6,790,209, entitled "Rod Reducer Instruments and Methods" ("the '209 patent")
- Exhibit C** United States Patent No. 5,810,878, entitled "Rod Introducer Forceps" ("the '878 patent")
- Exhibit D** United States Patent No. 6,036,692, entitled "Rod Introducer Forceps" ("the '692 patent")
- Exhibits E** United States Patent No. 6,916,320, entitled "Anterior Cervical Plate System" ("the '320 patent")
- Exhibits F** United States Patent No. 6,592,586, entitled "Single-Lock Anterior Cervical Plating System" ("the '586 patent")
- Exhibit G** United States Patent No. 6,428,542, entitled "Single-Lock Anterior Cervical Plate" ("the '542 patent")