



Provided by:
Overhauser Law Offices LLC
www.iniplaw.org
www.overhauser.com

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STRYKER CORPORATION,
STRYKER PUERTO RICO, LTD., and
STRYKER SALES CORPORATION,

Plaintiffs,

CASE NO. 1:10-CV-1223

v.

HON. ROBERT J. JONKER

ZIMMER, INC., and
ZIMMER SURGICAL, INC.,

Defendants

_____ /

VERDICT FORM

We, the jury, unanimously answer the questions submitted as follows:

PART I: INFRINGEMENT

Burden of Proof	The burden is on Stryker to prove Infringement by a preponderance of the evidence
Key Idea	Does the "accused device" have every element of the particular patent claim at issue, either literally, or by the "doctrine of equivalents"?

1. Did Stryker carry its burden of proving by a preponderance of the evidence that Zimmer literally infringed Claim 2 of the '329 Patent?

 X Yes _____ No

2. Did Stryker carry its burden of proving by a preponderance of the evidence that Zimmer infringed Claim 2 of the '329 Patent by the Doctrine of Equivalents?

 X Yes _____ No

PART II: INVALIDITY

Burden of Proof	The burden is on Zimmer to prove Invalidity by clear and convincing evidence
Key Idea	Does "prior art" make the particular patent claim "anticipated" (a single reference), or "obvious" (multiple references in the context of secondary factors) to someone "skilled in the art"?

For each of the following Claims, answer where requested whether Zimmer has carried its burden of proving by clear and convincing evidence that the Claim is invalid as "Anticipated" or "Obvious" (or both) under the instructions I have given you for each doctrine.

	ANTICIPATED?		OBVIOUS?	
1. Claim 2 of the '329 Patent	_____ Yes	<u>X</u> No	_____ Yes	<u>X</u> No
2. Claim 45 of the '807 Patent	_____ Yes	<u>X</u> No	_____ Yes	<u>X</u> No
3. Claim 50 of the '807 Patent	_____ Yes	<u>X</u> No	_____ Yes	<u>X</u> No
4. Claim 51 of the '807 Patent	_____ Yes	<u>X</u> No	_____ Yes	<u>X</u> No
5. Claim 52 of the '807 Patent	_____ Yes	<u>X</u> No	_____ Yes	<u>X</u> No
6. Claim 1 of the '383 Patent			_____ Yes	<u>X</u> No
7. Claim 2 of the '383 Patent			_____ Yes	<u>X</u> No
8. Claim 3 of the '383 Patent			_____ Yes	<u>X</u> No
9. Claim 8 of the '383 Patent			_____ Yes	<u>X</u> No
10. Claim 10 of the '383 Patent			_____ Yes	<u>X</u> No
11. Claim 11 of the '383 Patent			_____ Yes	<u>X</u> No
12. Claim 13 of the '383 Patent			_____ Yes	<u>X</u> No

- | | | OBVIOUS? | |
|-----|-----------------------------|-----------------|-------------|
| 13. | Claim 17 of the '383 Patent | _____ Yes | <u>X</u> No |
| 14. | Claim 19 of the '383 Patent | _____ Yes | <u>X</u> No |
| 15. | Claim 20 of the '383 Patent | _____ Yes | <u>X</u> No |
| 16. | Claim 22 of the '383 Patent | _____ Yes | <u>X</u> No |
| 17. | Claim 24 of the '383 Patent | _____ Yes | <u>X</u> No |
| 18. | Claim 27 of the '383 Patent | _____ Yes | <u>X</u> No |
| 19. | Claim 38 of the '383 Patent | _____ Yes | <u>X</u> No |
| 20. | Claim 40 of the '383 Patent | _____ Yes | <u>X</u> No |
| 21. | Claim 46 of the '383 Patent | _____ Yes | <u>X</u> No |

PART III: REMEDY

SUBPART A: MONEY DAMAGES

Burden of Proof	The burden is on Stryker to prove the amount of Money Damages by a preponderance of the evidence.
Key Idea	Assuming Zimmer infringed valid patent claims, what amount of money would put Stryker in the position it would have occupied without the infringement?

1. Did Stryker carry its burden of proving by a preponderance of the evidence that Stryker is entitled to recover any lost profits because of Zimmer's sales of infringing products?

X Yes _____ No

If you answered "Yes," enter the dollar amount you find Stryker has proved by a preponderance of the evidence it is entitled to recover as lost profits:

\$ 70 MILLION

- 2. What is the reasonable royalty rate (in percent) that you find Stryker has proven by a preponderance of the evidence should apply to any covered sales of infringing products by Zimmer, assuming validity and infringement of all three patents in suit?

25 % (double initial percentage of David license as we felt 32.2% was too high)

- a. Do you find that the reasonable royalty rate would be any different if fewer than all three of the patents in suit are valid and infringed?

 Yes X No

- b. If "no," skip to the next question. If "yes," what is the reasonable royalty that you find Stryker has established by a preponderance of the evidence should apply for each of the patents in suit individually?

 % assuming that only the '329 patent is valid and infringed

 % assuming that only the '807 patent is valid and infringed

 % assuming that only the '383 patent is valid and infringed

- 3. What is the dollar amount of sales by Zimmer to which you find Stryker has proven by a preponderance of the evidence the reasonable royalty rate should apply, assuming validity and infringement of all three patents in suit?

\$ 254,823,154

- a. Do you find that the dollar amount of sales to which the reasonable royalty rate should apply would be any different if fewer than all three of the patents in suit are valid and infringed?

X Yes No

- b. If "no," skip to the next question. If "yes," what is the dollar amount of sales by Zimmer to which you find Stryker has established by a preponderance of the evidence the reasonable royalty rate should apply for each of the patents in suit individually?

\$ 254,823,154 assuming that only the '329 patent is valid and infringed

\$ 254,823,154 assuming that only the '807 patent is valid and infringed

\$ 163,647,429.50 assuming that only the '383 patent is valid and infringed

PART III: REMEDY

SUBPART B: MARKING

Burden of Proof	The burden is on Stryker to prove proper Marking by a preponderance of the evidence.
Key Idea	Did Stryker appropriately mark "substantially all" of its own products with the applicable patent numbers; and, if so, by what date?

1. Has Stryker met its burden of proving by a preponderance of the evidence that it acted reasonably in choosing the mark product labels, rather than the plastic product itself?

Yes No

2. Has Stryker met its burden of proving by a preponderance of the evidence that it marked substantially all of its products with the applicable patent number?

- a. For the '329 Patent?

Yes No

If yes, by what date? Dec 10, 2004

b. For the '807 Patent?

X Yes _____ No

If yes, by what date? Dec 10, 2004

c. For the '383 Patent?

X Yes _____ No

If yes, by what date? March 16, 2007

PART III: REMEDY

SUBPART C: WILLFULNESS

Burden of Proof	The burden is on Stryker to prove Willfulness by clear and convincing evidence.
Key Idea	Was there an objectively "high likelihood" of liability; and, if so, did Zimmer know or should Zimmer have known it?

Has Stryker met its burden of proving by clear and convincing evidence that Zimmer acted willfully in infringing any valid claims under the applicable patent?

a. For the '329 Patent?

X Yes _____ No

b. For the '807 Patent?

X Yes _____ No

c. For the '383 Patent?

X Yes _____ No

SIGNATURE BLOCK

We, the jury, unanimously return this verdict form as our verdict in the case:

Date: <u>February 5, 2013</u>	<u>[Signature]</u> Jury Foreperson
Date: <u>2/05/13</u>	<u>[Signature]</u>
Date: <u>2/5/13</u>	<u>[Signature]</u>
Date: <u>2/5/13</u>	<u>[Signature]</u>
Date: <u>2-5-13</u>	<u>[Signature]</u>
Date: <u>2/05/13</u>	<u>[Signature]</u>
Date: <u>2-5-13</u>	<u>[Signature]</u>
Date: <u>2-5-13</u>	<u>[Signature]</u>

can we see all of the physical
devices? claim charts as well

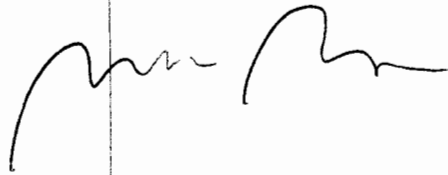
Mr Mr

3:30

2-4-13

#1

Would it be possible to have
the large claim charts in the
jury room to present and view
all at once as a group?

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke.

2:4-13

4:40

#2

We're no where near
a conclusion. See you tomorrow!

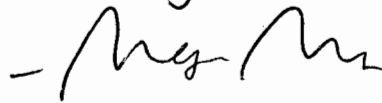


2-4-13
4:50

#3

Is there a copy of Mrs. Lawton's
full report that we can
reference?

Also, ~~can~~ would it be possible
to watch the "Rick May"
deposition video again?

- 

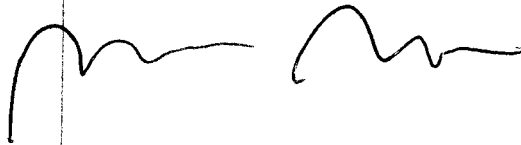
#3 12:00
2-5-13

Are we allowed to come up with our own figures for either lost profits amounts or reasonable royalty, i.e., come to a compromise?

If we find one claim of several ~~claims~~ obvious, does that make the whole patent invalid?

12:30 #4 2-5-13

We have come to a conclusion
and filled out the verdict form.

A handwritten signature consisting of two stylized, wavy lines.

1:50 pm
2-5-13
#5