

1 Joseph F. Jennings (SBN 145920)
joe.jennings@knobbe.com
2 Brandon G. Smith (SBN 307676)
brandon.smith@knobbe.com
3 KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, Fourteenth Floor
4 Irvine, CA 92614
Telephone: 949-760-0404
5 Facsimile: 949-760-9502

6 Brian C. Horne (SBN 205621)
brian.horne@knobbe.com
7 KNOBBE, MARTENS, OLSON & BEAR, LLP
1925 Century Park East, Suite 600
8 Los Angeles, CA 90067
Telephone: (310) 551-3450
9 Facsimile: (310) 601-1263

10 Attorneys for Plaintiff
KFX MEDICAL, LLC
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14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
16

17 KFX MEDICAL, LLC,

18 Plaintiff,

19 v.

20 STRYKER CORPORATION AND
21 HOWMEDICA OSTEONICS CORP.
22 d/b/a STRYKER ORTHOPAEDICS,

23 Defendants.
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Case No. '18CV1799 AJB WVG

**COMPLAINT FOR PATENT
INFRINGEMENT**

and

DEMAND FOR JURY TRIAL

1 Plaintiff KFx Medical, LLC (“KFx”) hereby complains of Defendants
2 Stryker Corporation and Howmedica Osteonics Corp. d/b/a Stryker Orthopaedics
3 (collectively “Stryker” or “Defendants”) and alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This Complaint states causes of action for patent infringement arising
6 under the patent laws of the United States, 35 U.S.C. § 100 *et seq.*, and, more
7 particularly, 35 U.S.C. §§ 271 and 281. This Court has subject-matter jurisdiction
8 under 28 U.S.C. §§ 1331 and 1338(a).

9 2. On information and belief: Defendants rent or own the property at
10 6696 Mesa Ridge Road, San Diego, CA 92121, and conduct regular and ongoing
11 business from that location. Defendants’ website (www.stryker.com) advertises
12 jobs based at their San Diego office. Defendants have committed the acts of
13 infringement detailed herein within this judicial district.

14 3. Venue is proper in this judicial district under 28 U.S.C. § 1400(b).

15 **PARTIES**

16 4. KFx Medical, LLC is a Delaware limited liability company having its
17 principal place of business at 990 Highland Drive, Suite 212-I, Solana Beach, CA
18 92075.

19 5. On information and belief, Defendant Stryker Corporation is a
20 Delaware corporation having its principal place of business at 2825 Airview
21 Boulevard, Kalamazoo, MI 49002 USA.

22 6. On information and belief, Defendant Howmedica Osteonics Corp.
23 d/b/a Stryker Orthopaedics is a subsidiary of Stryker Corporation and is a New
24 Jersey corporation having its principal place of business at 325 Corporate Drive,
25 Mahwah, NJ 07430.

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1 **ALLEGATIONS FOR ALL CLAIMS**

2 **The KFx Patents**

3 7. On September 8, 2009, the United States Patent and Trademark Office
4 (“PTO”) issued U.S. Patent No. 7,585,311 (“the ’311 patent”), titled “System and
5 Method for Attaching Soft Tissue to Bone.”

6 8. On February 10, 2015, the United States Patent and Trademark Office
7 (“PTO”) issued U.S. Patent No. 8,951,287 (“the ’287 patent”), titled “System and
8 Method for Attaching Soft Tissue to Bone.”

9 9. The ’311 and ’287 patents name Michael L. Green, Dr. Joseph C.
10 Tauro, and Bart Bojanowski as inventors

11 10. KFx is the owner by assignment of all right, title, and interest in the
12 ’311 and ’287 patents. A true and correct copy of the ’311 patent is attached
13 hereto as Exhibit 1. A true and correct copy of the ’287 patent is attached hereto as
14 Exhibit 2.

15 **KFx’s Innovative Surgical Technology**

16 11. Prior to advancements in arthroscopic surgeries, rotator cuff repairs
17 were performed as “open” surgeries, requiring large, invasive incisions. Although
18 arthroscopic procedures allowed surgeons to perform minimally invasive rotator
19 cuff repairs, they were difficult to execute, took a long time to learn, and required
20 the surgeon to have exceptional skill and dexterity to perform reproducibly or
21 reliably. For example, because the arthroscopic procedures were performed
22 through tubes or cannulas placed in tiny incisions in the shoulder, it was difficult to
23 manipulate the sutures within the surgical site, making it hard to tie suture knots.

24 12. In addition, many arthroscopic repairs did not create downward
25 pressure on the rotator cuff tendon over a wide enough area to sufficiently promote
26 re-attachment and healing of the injury.

27 13. KFx set out to address these and other shortcomings. The KFx
28 patents are directed to some of the inventive methods KFx developed that are

1 particularly useful in repairing torn rotator cuffs. The KFx methods made the
2 surgical procedure easier to perform in a reproducible manner and also improved
3 the strength of the repair.

4 14. In KFx’s method, suture is connected between at least two anchors—a
5 first anchor located underneath the soft tissue (the “medial” anchor) and a second
6 anchor located beyond an edge of the soft tissue (the “lateral” anchor). The use of
7 one or more medial anchors with one or more lateral anchors is often referred to as
8 a “double row” repair.

9 15. KFx’s patented methods generally include inserting a first anchor (the
10 medial anchor) into a bone wherein it is located underneath the soft tissue and
11 inserting a second anchor (the lateral anchor) beyond the edge of the soft tissue. A
12 length of suture passes through and over the soft tissue to connect the first (medial)
13 anchor to the second (lateral) anchor. After inserting the second anchor, the suture
14 is tensioned to compress the tendon to the bone surface. The suture is fixedly
15 secured to the second anchor without tying any knots to complete the repair.

16 16. By tensioning the suture after the second anchor has been inserted into
17 bone, the surgeon can fine-tune the degree to which the soft tissue is compressed to
18 the bone and determine exactly how the repair will look and feel in the final
19 construct.

20 17. In 2004, the named inventors filed three provisional patent
21 applications that led to the ’311 patent. In January 2006, the United States Patent
22 and Trademark Office published KFx Medical’s patent application (Application
23 No. 11/143,007), and on September 8, 2009 the ’311 patent issued.

24 18. The ’311 patent was later reexamined and the patentability of the
25 reexamined claims (1-3, 5-25, and 28-30) was confirmed by the United States
26 Patent and Trademark Office. No amendments were made to the ’311 patent
27 during this reexamination.

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1 01698, U.S. District Court for the Southern District of California (“Arthrex
2 Litigation”).

3 23. A jury in the Arthrex Litigation found the ’311 patent, and two related
4 KFx patents, not invalid and found that Arthrex infringed these patents. The jury
5 awarded KFx \$29 million in damages. The Court also taxed costs, awarded
6 additional damages, and awarded prejudgment and post-judgment interest for a
7 total award of approximately \$36 million.

8 24. On appeal, the Federal Circuit summarily affirmed the district court’s
9 judgment of patent validity, infringement, and damages. The Supreme Court later
10 denied Arthrex’s petition for certiorari.

11 **Stryker’s Knowledge of Its Need for a Patent License**

12 25. Stryker has been aware of the ‘311 patent since at least 2012.

13 26. On information and belief, Stryker has been aware of the ‘287 patent
14 since at least 2015 when the patent issued.

15 27. Stryker has been aware of the Arthrex Litigation on the ‘311 patent
16 and related patents since at least 2013.

17 28. Stryker has also been aware that its competitors have taken licenses
18 from KFx for the lawful right to practice the inventions of the ‘311 patent and
19 related patents.

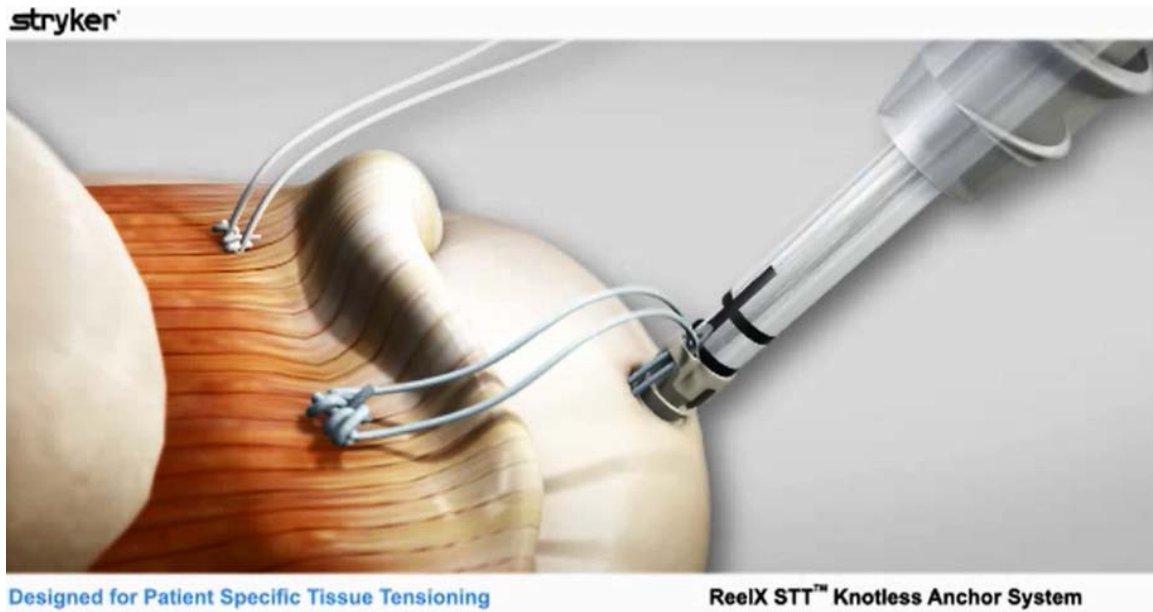
20 29. KFx informed Stryker that Stryker needed a license under the ‘311
21 patent estate on multiple occasions dating from at least 2012 to present.

22 30. Stryker has been aware that its products, namely the ReelX STT
23 suture anchors, when used for double-row repairs as promoted and advertised by
24 Stryker infringe the KFx patents.

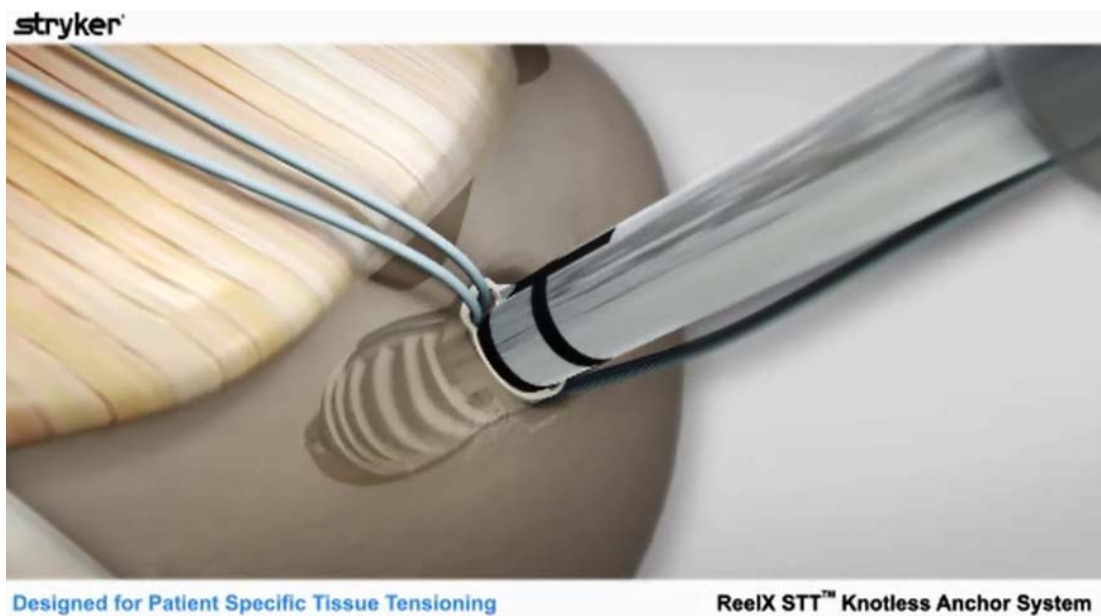
25 **Stryker’s Infringing Activities**

26 31. On information and belief, Defendants design, manufacture, and sell
27 knotless suture anchors under the ReelX brand, including the 4.5mm ReelX STT
28 Knotless Anchor System and the 5.5mm ReelX STT Knotless Anchor System.

1 36. The Stryker Instructional Animation further instructs the surgeon to
2 insert a second pair of anchors (the lateral anchors) into bone beyond the edge of
3 the soft tissue such that the anchors are not underneath the soft tissue. Insertion of
4 one such lateral anchor is shown below:



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16 37. The Stryker Instructional Animation further instructs the surgeon to
17 tension the sutures to compress an area of tissue to bone between the edge of the
18 soft tissue and the first anchor. This is shown below:



1 38. The Stryker Instructional Animation further instructs the surgeon to
2 fixedly secure the suture to the second pair of anchors without tying any knots.
3 The suture is secured to the second pair of anchors by compressing the suture
4 between at least two surfaces on each of the second anchors. A completed repair is
5 shown below:



17 39. Defendants also market the ReelX STT for repair of the Achilles
18 tendon. A true and correct copy of a Stryker technique guide for using the ReelX
19 STT in double-row Achilles tendon repair is attached as Exhibit 4 (“Stryker
20 Achilles Tendon Technique Guide”).

21 40. Step 7 of the Stryker Achilles Tendon Technique Guide (shown
22 below) instructs the surgeon to insert a first pair of anchors (with sutures attached
23 thereto) into bone wherein the first pair of anchors are positioned underneath the
24 soft tissue to be repaired.

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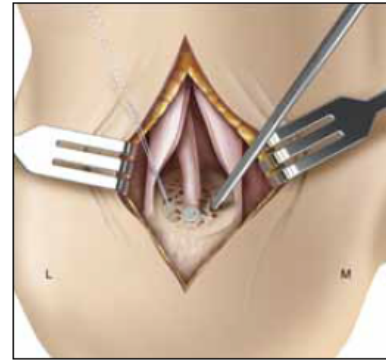
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1 **Step 7**

2 Using a 5mm BioZip drill, create a pilot hole medial and lateral to the
3 FHL tunnel. Both holes should be just anterior to the FHL tunnel. Insert
4 a 5.5mm PEEK Zip anchor into each of the pilot holes. Remove one of the
5 sutures from each anchor so the anchors are single-loaded.

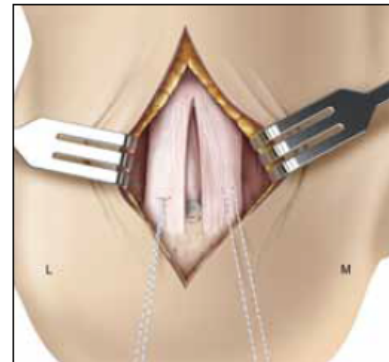


Step 7.

7 41. Step 8 of the Stryker Achilles Tendon Technique Guide (shown
8 below) instructs the surgeon to pass the sutures through and over the Achilles
9 tendon.

10 **Step 8**

11 Pass both limbs of the sutures through the corresponding half of the
12 Achilles, approximately 1cm from the distal end of the tendon. Tie the
13 sutures in a horizontal mattress or modified Mason Allen technique.



Step 8.

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17 42. Step 10 of the Stryker Achilles Tendon Technique Guide (shown
18 below) instructs the surgeon to insert the ReelX STT knotless suture anchor into
19 the bone such that it is not underneath the soft tissue and “twist the top of the
20 handle with 2 fingers clockwise until the sutures are pulled to the desired tension.
21 Cut the excess high strength sutures as they exit the ReelX STT anchor.”

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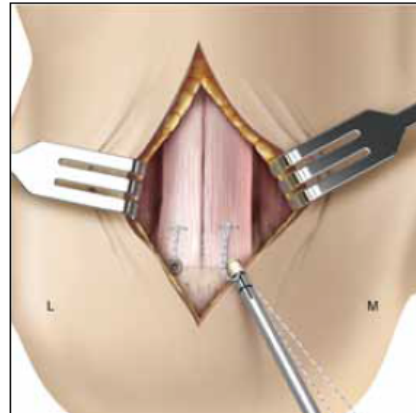
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Step 10

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Pass two of the limbs from the “proximal row” knots through a ReelX STT knotless suture anchor and insert the tip of the anchor into the lateral pilot hole. Make sure the vertical laser line on the inserter shaft faces the Achilles tendon and allow some slack in the suture. Impact the ReelX STT device until it is seated to the first laser line on the insertion shaft. Remove the white suture from the top of the ReelX STT handle and twist the top of the handle with 2 fingers clockwise until the sutures are pulled to the desired tension. Cut the excess high strength sutures as they exit the ReelX STT anchor. Repeat this process again with the remaining limbs from the “proximal row” knots through another ReelX STT anchor inserted on the medial aspect of the calcaneus.



Step 10.

43. The Stryker Achilles Tendon Technique Guide does not instruct the surgeon to tie any knots to fixedly secure the first length of suture to the second anchor. The suture is secured to the second pair of anchors by compressing the suture between at least two surfaces on each of the second anchors.

44. Defendants do not have a license to any KFx patents to make, use, sell, offer for sale, or import into the United States the ReelX STT products, or any other products.

FIRST CLAIM FOR RELIEF:

(Induced Patent Infringement of U.S. Patent No. 7,585,311)

(35 U.S.C. § 271(b))

45. KFx repeats and re-alleges the allegations of paragraphs 1-44 of this Complaint as if set forth fully herein.

46. Defendants' have induced infringement of the '311 patent, including at least Claim 1 of the '311 patent, under 35 U.S.C. § 271(b).

47. Defendants have actual knowledge of the '311 patent because, among other reasons, KFx has previously brought the patent to their attention.

48. Defendants have knowingly and actively induced infringement of the '311 patent by, *inter alia*, marketing and selling systems and devices used to attach soft tissue to bone, including for rotator cuff repairs, knowing and intending that such systems and devices, including the ReelX STT, be used by Defendants'

1 customers and users in a manner that infringes at least Claim 1 of the '311 patent.
2 To that end, Defendants provide instructions and teachings to their customers and
3 users that the ReelX STT be used in the manner claimed in at least Claim 1 of the
4 '311 patent.

5 49. As instructed by Defendants, surgeons have used the ReelX STT and
6 related products marketed by Defendants in a manner that directly infringes the
7 '311 patent, including at least Claim 1 of the '311 patent.

8 50. Defendants' acts of induced infringement of the '311 patent includes
9 at least their marketing, sale, promotion, and instructions for use of the systems
10 and devices that Defendants market as the ReelX STT Knotless Anchor System for
11 use in at least double-row rotator cuff and Achilles tendon repair.

12 51. Defendants' acts of induced infringement were undertaken without
13 permission or a license from KFx.

14 52. Defendants actions constitute willful infringement of the '311 patent,
15 entitling KFx to enhanced damages under 35 U.S.C. § 284 and attorneys' fees and
16 costs under 35 U.S.C. § 285.

17 53. On information and belief, Defendants have derived and received, and
18 will continue to derive and receive, gains, profits, and advantages from the
19 aforesaid acts of infringement in an amount that is not presently known to KFx.
20 By reason of the aforesaid infringing acts, KFx has been damaged and is entitled to
21 monetary relief in an amount to be determined.

22 54. If the aforesaid infringing acts were to continue unabated and without
23 an adequate on-going royalty paid to KFx, KFx would suffer great and irreparable
24 injury.

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1 **SECOND CLAIM FOR RELIEF:**

2 (Induced Patent Infringement of U.S. Patent No. 8,951,287)

3 (35 U.S.C. § 271(b))

4 55. KFx repeats and re-alleges the allegations of paragraphs 1-54 of this
5 Complaint as if set forth fully herein.

6 56. Defendants' have induced infringement of the '287 patent, including
7 at least Claim 1 of the '287 patent, under 35 U.S.C. § 271(b).

8 57. On information and belief, Defendants have actual knowledge of the
9 '287 patent.

10 58. Defendants have knowingly and actively induced infringement of the
11 '287 patent by, *inter alia*, marketing and selling systems and devices used to attach
12 soft tissue to bone, including for rotator cuff repairs, knowing and intending that
13 such systems and devices, including the ReelX STT, be used by Defendants'
14 customers and users in a manner that infringes at least Claim 1 of the '287 patent.
15 To that end, Defendants provide instructions and teachings to their customers and
16 users that the ReelX STT be used in the manner claimed in at least Claim 1 of the
17 '287 patent.

18 59. As instructed by Defendants, surgeons have used the ReelX STT and
19 related products marketed by Defendants in a manner that directly infringes the
20 '287 patent, including at least Claim 1 of the '287 patent.

21 60. Defendants' acts of induced infringement of the '287 patent includes
22 at least their marketing, sale, promotion, and instructions for use of the systems
23 and devices that Defendants market as the ReelX STT Knotless Anchor System for
24 use in at least double-row rotator cuff and Achilles tendon repair.

25 61. Defendants' acts of induced infringement were undertaken without
26 permission or a license from KFx.

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1 G. an award to KFx of its attorneys' fees incurred in connection with this
2 action; and

3 H. such other and further relief as the Court deems just and proper.
4

5 Respectfully submitted,

6 KNOBBE, MARTENS, OLSON & BEAR, LLP
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8 Dated: August 2, 2018

/s/ Joseph F. Jennings _____

9 Joseph F. Jennings
10 Brian C. Horne
11 Brandon G. Smith

12 Attorneys for Plaintiff
13 KFX MEDICAL, LLC
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1 **DEMAND FOR JURY TRIAL**

2 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff KFx
3 hereby demands a trial by jury on all issues so triable.

4
5 Respectfully submitted,
6 KNOBBE, MARTENS, OLSON & BEAR, LLP

7
8 Dated: August 2, 2018

9 /s/ Joseph F. Jennings
10 Joseph F. Jennings
11 Brian C. Horne
12 Brandon G. Smith

13
14 Attorneys for Plaintiff
15 KFX MEDICAL, LLC

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