

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LEXION MEDICAL, LLC.,)
)
Plaintiff)
)
v.)
)
)
NORTHGATE TECHNOLOGIES, INC.,)
SMITH & NEPHEW, INC. and)
LINVATEC CORPORATION)
)
Defendants)

CIVIL ACTION NO. 04-CV-5705
Hon. Charles P. Kocoras

JOINT MOTION TO ENTER FINAL JUDGMENT

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LEXION MEDICAL, LLC.,)
)
 Plaintiff)
)
 v.) CIVIL ACTION NO. 04-CV-5705
) Hon. Charles P. Kocoras
)
 NORTHGATE TECHNOLOGIES, INC.,)
 SMITH & NEPHEW, INC. and)
 LINVATEC CORPORATION)
)
 Defendants)

PROPOSED ORDER OF FINAL JUDGMENT

This Court granted summary judgment of infringement on Monday, April 27, 2009. The parties are in Agreement that a final judgment may be entered in this matter consistent with the mandate of the Court of Appeals for the Federal Circuit in its August 28, 2008 opinion in this matter.

Based upon this Court’s summary judgment of infringement and the earlier findings of the jury in this case on October 12 and October 13, 2006, IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. Defendants induced and contributed to the infringement of Claims 11 and 12 of United States Patent No. 5,411,474 (the ‘474 Patent).
2. Defendants shall pay plaintiff damages of \$759,714.48 for infringement of the ‘474 Patent.
3. Defendants shall pay plaintiff prejudgment interest on the damages awarded in the amount of \$232,528.21.
4. Defendants shall pay plaintiff its costs incurred in this matter in the amount of \$105,402.13 (See Dkt. No. 270). Because Plaintiff waived costs incurred in this Court in connection with the motions for summary judgment upon remand from the Court of Appeals for the Federal Circuit, no additional costs will be awarded beyond the \$105,402.13 previously awarded which Defendants shall pay to plaintiff.
5. Defendants shall pay plaintiff prejudgment interest on costs in the amount of \$21,305.92.
6. Defendants shall pay plaintiff postjudgment interest from the date of entry of the judgment. The rate shall be the rate equal to the weekly average 1-year constant maturity

Treasury yield as published by the Board of Governors of the Federal Reserve System for the calendar week preceding the date of the judgment. Postjudgment interest shall be computed daily from the date of this judgment until the date of payment and shall be compounded annually.

7. Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them (to whom this Order will refer, hereafter, as “defendants and their agents”), are permanently enjoined from inducing and contributing to infringement of the ‘474 Patent. Defendants and their agents shall not make, use, sell, offer to sell **[[within the United States]]**¹, or import into the United States the Humi-Flow device, or any component thereof, during the term of the ‘474 Patent. When this Order refers to the Humi-Flow device, it includes both versions of the device, regardless of the particular trademark used by any particular defendant to sell the device.

8. Defendants and their agents are permanently enjoined from advertising or providing instructions for use for the Humi-Flow device.

[9. Defendants and their agents shall, after this injunction has been sustained upon exhaustion of all rights of appeal in this matter, destroy their molds, engineering drawings, and design history files for the Humi-Flow device.]²

10. Defendants and their agents are permanently enjoined from transferring to any third party **[[within the United States]]** any molds, equipment, machinery, know-how, engineering drawings, or tooling used in the making, use, or sale of the Humi-Flow device.

11. Northgate shall pay plaintiff attorneys’ fees and costs incurred in bringing its earlier motion to alter or amend the judgment (see Dkt. No. 250) in the amount of \$11,058.13.

12. Pursuant to Federal Rule of Civil Procedure 62(d) and L.R. 62.1, to stay Plaintiff’s enforcement of the monetary judgment pending appeal, Defendants shall, within ten (10) days of the entry of the final judgment in this matter, cause their attorneys to hold a letter of credit in the amount of \$1,200,000 in the same form as the letter of credit attached as Exhibit A to Defendants’ Motion to Deposit Letter of Credit (Docket No. 264). The letter of credit shall be maintained in the care, custody, and control of Defendants’ counsel, Timothy Q. Delaney and Timothy P. Lucier, until further Order of the Court. Defendants’ counsel shall provide Plaintiff’s counsel with a copy of the letter of credit.

¹ Defendants seek inclusion of this language and the remaining language in this proposed order that is included in double brackets. Lexion opposes the inclusion of this language.

² Lexion seeks inclusion of this language included in single brackets. Defendants oppose the inclusion of this language.

This is a final, appealable judgment.

So Ordered and Signed on this ____ day of _____, 2009.

The Honorable Charles P. Kocoras
United States District Judge