

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION**

ETHICON ENDO-SURGERY, INC. and
ETHICON ENDO-SURGERY, LLC,

Plaintiffs,

v.

COVIDIEN, INC. and COVIDIEN LP,

Defendants.

Civil Action No.: 1:11-cv-871

Judge Timothy S. Black

JUDGMENT

In accordance with the Orders of this Court, dated January 22, 2014 (Dkt. Nos. 130, 131, 132, and 133), granting certain motions for summary judgment filed by Defendants Covidien, Inc. and Covidien LP (collectively “Covidien” or “Defendants”) (Dkt. Nos 101, 103, 104, and 105, respectfully):

1. Judgment is hereby entered in favor of Covidien and against Plaintiffs Ethicon Endo-Surgery, Inc. and Ethicon Endo-Surgery, LLC (collectively “Ethicon” or “Plaintiffs”) on Ethicon’s claims set forth in its Amended Complaint for Patent Infringement dated June 13, 2012 (the “Amended Complaint”) that Covidien has infringed, either directly or indirectly, the asserted claims of U.S. Patent No. 5,989,275 (the “’275 patent”) (Dkt. No. 45, Counts X-XII). Judgment is also hereby entered in favor of Covidien in regard to its affirmative defense and counterclaim that Defendants have not infringed and do not currently infringe, either directly or indirectly, any valid claim of the ’275 patent, as set forth in Defendants’ First Amended Answer to Plaintiffs’ Amended Complaint for Patent Infringement and Counterclaims (the “Amended Answer”), dated October 3, 2013 (Dkt. No. 99, Ninth Defense and Count VII). Accordingly, Counts X-XII of

Ethicon's Amended Complaint for direct and indirect infringement of the '275 patent are hereby dismissed with prejudice. (*See* Order Granting Defendants' Motion for Summary Judgment of Non-Infringement of U.S. Patent No. 5,989,275, Dkt. No. 130.)

2. Judgment is hereby entered in favor of Covidien and against Ethicon on Ethicon's claims set forth in the Amended Complaint that Covidien has infringed, either directly or indirectly, the asserted claims of U.S. Patent No. 8,182,501 (the "'501 patent) (Dkt. No. 45, Counts XIII-XV). Judgment is also hereby entered in favor of Covidien in regard to its affirmative defense and counterclaim that Defendants have not infringed and do not currently infringe, either directly or indirectly, any valid claim of the '501 patent, as set forth in the Amended Answer (Dkt. No. 99, Eleventh Defense and Count IX). Accordingly, Counts XIII-XV of Ethicon's Amended Complaint for direct and indirect infringement of the '501 patent are hereby dismissed with prejudice. (*See* Order Granting Defendants' Motion for Summary Judgment of Non-Infringement and Invalidity of U.S. Patent No. 8,182,501, Dkt. No. 131.)

3. Judgment is hereby entered in favor of Covidien in regard to its affirmative defense and counterclaim that the claims of the '501 patent are invalid for failure to satisfy the conditions of patentability under Title 35 of the U.S. Code. (Dkt. No. 99, Twelfth Defense and Count X). Accordingly, for this additional reason, Counts XIII-XV of Ethicon's Amended Complaint for direct and indirect infringement of the '501 patent are hereby dismissed with prejudice. (*See* Order Granting Defendants' Motion for Summary Judgment of Non-Infringement and Invalidity of U.S. Patent No. 8,182,501, Dkt. No. 131.)

4. Judgment is hereby entered in favor of Covidien and against Ethicon on Ethicon's claims set forth in the Amended Complaint that Covidien has infringed, either directly or

indirectly, U.S. Patent D661,801 (the “’801 patent) (Dkt. No. 45, Counts XVI-XVIII). Judgment is also hereby entered in favor of Covidien in regard to its affirmative defense and counterclaim that Defendants have not infringed and do not currently infringe, either directly or indirectly, any valid claim of the ’801 patent, as set forth in the Amended Answer (Dkt. No. 99, Fourteenth Defense and Count XII). Accordingly, Counts XVI-XVIII of Ethicon’s Amended Complaint for direct and indirect infringement of the ’801 patent are hereby dismissed with prejudice. (*See* Order Granting Defendants’ Motion for Partial Summary Judgment with Respect to Plaintiffs’ Claims of Design Patent Infringement, Dkt. No. 132.)

5. Judgment is hereby entered in favor of Covidien in regard to its affirmative defense and counterclaim that the claims of the ’801 patent are invalid for failure to satisfy the conditions of patentability under Title 35 of the U.S. Code. (Dkt. No. 99, Fifteenth Defense and Count XIII). Accordingly, for this additional reason, Counts XVI-XVIII of Ethicon’s Amended Complaint for direct and indirect infringement of the ’801 patent are hereby dismissed with prejudice. (*See* Order Granting Defendants’ Motion for Partial Summary Judgment with Respect to Plaintiffs’ Claims of Design Patent Infringement, Dkt. No. 132.)

6. Judgment is hereby entered in favor of Covidien and against Ethicon on Ethicon’s claims set forth in the Amended Complaint that Covidien has infringed, either directly or indirectly, U.S. Patent D661,802 (the “’802 patent) (Dkt. No. 45, Counts XIX-XXI). Judgment is also hereby entered in favor of Covidien in regard to its affirmative defense and counterclaim that Defendants have not infringed and do not currently infringe, either directly or indirectly, any valid claim of the ’802 patent, as set forth in the Amended Answer (Dkt. No. 99, Sixteenth Defense and Count XIV). Accordingly, Counts XIX-XXI of Ethicon’s Amended Complaint for

direct and indirect infringement of the '802 patent are hereby dismissed with prejudice. (*See* Order Granting Defendants' Motion for Partial Summary Judgment with Respect to Plaintiffs' Claims of Design Patent Infringement, Dkt. No. 132.)

7. Judgment is hereby entered in favor of Covidien in regard to its affirmative defense and counterclaim that the claims of the '802 patent are invalid for failure to satisfy the conditions of patentability under Title 35 of the U.S. Code. (Dkt. No. 99, Seventeenth Defense and Count XV). Accordingly, for this additional reason, Counts XIX-XXI of Ethicon's Amended Complaint for direct and indirect infringement of the '802 patent are hereby dismissed with prejudice. (*See* Order Granting Defendants' Motion for Partial Summary Judgment with Respect to Plaintiffs' Claims of Design Patent Infringement, Dkt. No. 132.)

8. Judgment is hereby entered in favor of Covidien and against Ethicon on Ethicon's claims set forth in the Amended Complaint that Covidien has infringed, either directly or indirectly, U.S. Patent D661,803 (the "'803 patent) (Dkt. No. 45, Counts XXII-XXIV). Judgment is also hereby entered in favor of Covidien in regard to its affirmative defense and counterclaim that Defendants have not infringed and do not currently infringe, either directly or indirectly, any valid claim of the '803 patent, as set forth in the Amended Answer. (Dkt. No. 99, Eighteenth Defense and Count XVI). Accordingly, Counts XXII-XXIV of Ethicon's Amended Complaint for direct and indirect infringement of the '803 patent are hereby dismissed with prejudice. (*See* Order Granting Defendants' Motion for Partial Summary Judgment with Respect to Plaintiffs' Claims of Design Patent Infringement, Dkt. No. 132.)

9. Judgment is hereby entered in favor of Covidien in regard to its affirmative defense and counterclaim that the claims of the '803 patent are invalid for failure to satisfy the

conditions of patentability under Title 35 of the U.S. Code. (Dkt. No. 99, Nineteenth Defense and Count XVII). Accordingly, for this additional reason, Counts XXII-XXIV of Ethicon's Amended Complaint for direct and indirect infringement of the '803 patent are hereby dismissed with prejudice. (*See* Order Granting Defendants' Motion for Partial Summary Judgment with Respect to Plaintiffs' Claims of Design Patent Infringement, Dkt. No. 132.)

10. Judgment is hereby entered in favor of Covidien and against Ethicon on Ethicon's claims set forth in the Amended Complaint that Covidien has infringed, either directly or indirectly, U.S. Patent D661,804 (the "'804 patent) (Dkt. No. 45, Counts XXV-XXVII). Judgment is also hereby entered in favor of Covidien in regard to its affirmative defense and counterclaim that Defendants have not infringed and do not currently infringe, either directly or indirectly, any valid claim of the '804 patent, as set forth in the Amended Answer. (Dkt. No. 99, Twentieth Defense and Count XVIII). Accordingly, Counts XXV-XXVII of Ethicon's Amended Complaint for direct and indirect infringement of the '804 patent are hereby dismissed with prejudice. (*See* Order Granting Defendants' Motion for Partial Summary Judgment with Respect to Plaintiffs' Claims of Design Patent Infringement, Dkt. No. 132.)

11. Judgment is hereby entered in favor of Covidien in regard to its affirmative defense and counterclaim that the claims of the '804 patent are invalid for failure to satisfy the conditions of patentability under Title 35 of the U.S. Code. (Dkt. No. 99, Twenty-First Defense and Count XIX). Accordingly, for this additional reason, Counts XXV-XXVII of Ethicon's Amended Complaint for direct and indirect infringement of the '804 patent are hereby dismissed with prejudice. (*See* Order Granting Defendants' Motion for Partial Summary Judgment with Respect to Plaintiffs' Claims of Design Patent Infringement, Dkt. No. 132.)

12. Judgment is hereby entered in favor of Covidien and against Ethicon on Ethicon's claims set forth in the Amended Complaint that Covidien has infringed, either directly or indirectly, the asserted claims of U.S. Patent No. 5,897,569 (the "'569 patent) (Dkt. No. 45, Counts IV-VI). Judgment is also hereby entered in favor of Covidien in regard to its affirmative defense and counterclaim that Defendants have not infringed and do not currently infringe, either directly or indirectly, any valid claim of the '569 patent, as set forth in the Amended Answer. (Dkt. No. 99, Fifth Defense and Count III). Accordingly, Counts IV-VI of Ethicon's Amended Complaint for direct and indirect infringement of the '569 patent are hereby dismissed with prejudice. (*See Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment of Non-Infringement and Invalidity of Claim 30 of U.S. Patent 5,897,569, Dkt. No. 133.*)

IT IS SO ORDERED.

Date: 2/18/14

Timothy S. Black
Timothy S. Black
United States District Judge

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