

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

DEPUY SYNTHES PRODUCTS, INC.
and DEPUY SYNTHES SALES, INC.,

Plaintiffs,

v.

VETERINARY ORTHOPEDIC
IMPLANTS, INC.

Defendant.

Civil Action No.

JURY TRIAL DEMANDED

**PLAINTIFFS' COMPLAINT FOR DESIGN PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL**

Plaintiffs DePuy Synthes Products, Inc. and DePuy Synthes Sales, Inc. (collectively, "DePuy Synthes"), by and through their undersigned attorneys, complain and allege against Defendant Veterinary Orthopedic Implants, Inc. ("VOI") as follows:

THE PARTIES

1. Plaintiff DePuy Synthes Products, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 325 Paramount Drive, Raynham, Massachusetts 02767.

2. Plaintiff DePuy Synthes Sales, Inc. is a corporation organized and existing under the laws of the State of Massachusetts with its principal place of business at 325 Paramount Drive, Raynham, Massachusetts 02767.

3. On information and belief, defendant VOI is a corporation organized and existing under the laws of the State of Florida with its principal place of business at 310 Commerce Lake Drive, Unit 107, St. Augustine, Florida 32095.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 et seq.

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a).

6. Defendant VOI is subject to this Court's specific and general jurisdiction consistent with the principles of due process and/or the Florida Long Arm Statute. On information and belief, this Court has personal jurisdiction over VOI at least because (i) VOI is a Florida corporation with a principal place of business in St. Augustine, Florida; (ii) VOI continuously and systematically transacts business within Florida; (iii) this lawsuit arises out of VOI's infringing activities including, without limitation, VOI's manufacturing, distributing, selling, and/or offering to sell infringing products in Florida, and/or importing infringing products and components into Florida; and (iv) VOI has made, used, sold, offered for sale, and/or imported their infringing products and placed such infringing products in the stream of interstate commerce with the expectation that such infringing products would be used, distributed, sold and/or offered for sale within Florida.

7. Venue is proper within this district pursuant to 28 U.S.C. §§ 1391 and 1400. Venue is also proper within this district because VOI resides in the Middle District of Florida, as it is a Florida corporation that maintains a principal place of business within the district in

St. Augustine, St. John’s County, Florida. Further, on information and belief, VOI has committed acts of infringement and maintains a regular and established place of business in the Middle District of Florida.

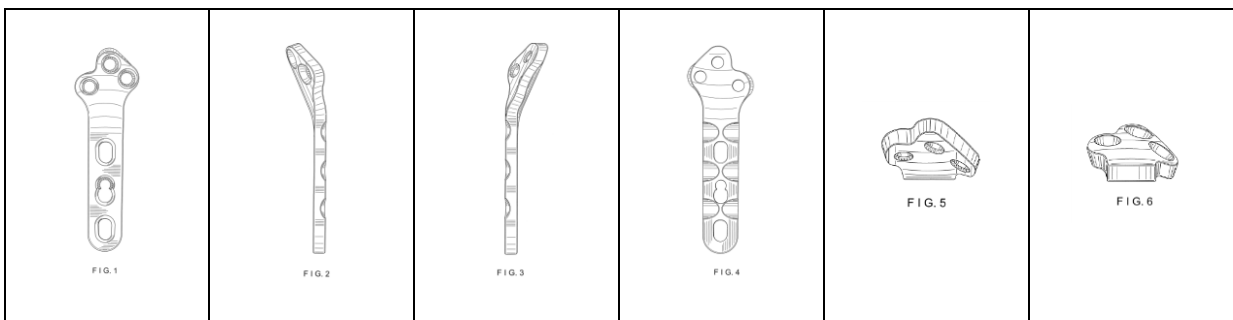
THE ASSERTED PATENT

8. On July 2, 2019, U.S. Patent No. D852957 (“the ’D957 patent”), entitled “Tibial Plateau Leveling Osteotomy Plate,” was duly and legally issued by the United States Patent and Trademark Office (“USPTO”) and names Timothy J. Horan, Christopher H. Scholl, and Daneen K. Touhalisky as inventors. A copy of the ’D957 patent is attached as Exhibit A.

9. By lawful assignment, plaintiff DePuy Synthes Products, Inc. is the owner of all rights, title and interest in and to the ’D957 patent.

10. By lawful license, DePuy Synthes Sales, Inc. is the exclusive licensee of the ’D957 patent from DePuy Synthes Products, Inc. with the exclusive right to sell and offer to sell products covered by the ’D957 patent to third parties.

11. The ’D957 patent discloses and claims the non-functional ornamental design for a tibial plateau leveling osteotomy (“TPLO”) plate, which is described and shown from multiple perspectives in Figures 1-6, reproduced below.



12. An example of the ornamental design disclosed and claimed by the 'D957 patent is embodied by Plaintiffs' TPLO Plates, which are available in a variety of sizes but embody the same non-functional ornamental features. An example from DePuy Synthes Vet's 2017 Catalog is depicted below.

TPLO Plates—*continued*

2.7 mm Tibial Plateau Leveling Osteotomy Plates

	Holes		
VP4400.L3	3	left	
VP4400.R3	3	right	

Head holes accept 2.7 mm Locking and 2.7 mm Cortex Screws.
 Shaft holes accept 2.7 mm Cortex Screws.
 Combi hole accepts 2.7 mm Locking or 2.7 mm Cortex Screw.

Profile
 Shaft Width: 8.0 mm
 Thickness: 2.5 mm
 Length: 46 mm



VOI'S INFRINGING DESIGNS

13. Defendant VOI manufactures, imports, sells, and/or offers for sale implants for veterinary orthopedic use, including plates for use in TPLO procedures.

14. On information and belief, Defendant VOI does not design products itself; does not employ engineers and designers of its own; and does not itself have any patents (utility or design) on orthopedic implant designs.¹ Instead, Defendant VOI's business model is to copy the intellectual property and designs of others. *See, e.g., DePuy Synthes Products, Inc., et al. v. Veterinary Orthopedic Implants, et al.*, Case No. 3:18-cv-01342 (M.D. Fla.)

¹ *See* USPTO Assignment Database, (<https://assignment.uspto.gov/patent/index.html#/patent/search/resultFilter?advSearchFilter=patAssigneeName:%22%22Veterinary%20Orthopedic%20Implants,%20Inc.%22%22&qc=1>).

(pending utility patent infringement case); *New Generation Devices, Inc. v. Veterinary Orthopedic Implants, Inc., et al.*, Case No. 2:07-cv-03197 (D.N.J.) (resulting in consent injunction prohibiting VOI from selling certain TPLO plates in contravention of plaintiff's patent rights); *New Generation Devices, Inc. v. Veterinary Orthopedic Implants, Inc., et al.*, Case No. 2:18-cv-12507 (D.N.J.) (patent infringement, breach of contract, and civil contempt proceeding involving aforementioned injunction and accused products).

15. Defendant VOI has manufactured, imported, sold, and/or offered for sale TPLO plates since before July 2, 2019.

16. On April 15, 2019, Plaintiffs notified Defendant VOI of the allowance of claims that issued in the 'D957 patent, and provided VOI with a copy of the claims that issued.

17. On information and belief, since receipt of the aforementioned letter, Defendant VOI has refused to change the design of its products, and has refused to discontinue its sales of the accused products.

18. On information and belief, Defendant VOI, with full knowledge of the asserted claim and the accused products, has acted with intentional disregard for the 'D957 patent.







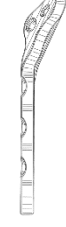





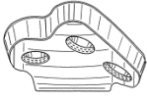





19. Defendant VOI's marketing literature depicts many plates used in TPLO procedures. Such plates include Defendant VOI's TPLO plates marketed under the following product numbers: 2 2.7 R3/L3, 2 2.7B R3/L3, 2 3.5 SM R3/L3, 2 3.5 R3/L3, 2 3.5B R4/L4, 2 DT 2.0 R3/L3, 2 DT 2.4 R3/L3, 2 DT 2.7 R3/L3, 2 DT 3.5 SM R3/L3, 2 DT 3.5 R3/L3, 2 DT 3.5B R4/L4, 3.5 JUMBO R/L, DT 3.5 JUMBO R/L, DT 4.0/5.0 JUMBO+

R/L, 4 S 2.7 R3/L3, 4 S 2.7B R3/L3, 4 S 3.5 SM R3/L3, 4 S 3.5 R3/L3, 4 S 3.5B R4/L4, 6 2.7B R3/L3, 6 3.5 R3/L3, 6 3.5B R4/L4, 6 4.2B R4/L4, 6 DT 2.0 R3/L3, 6 DT 2.4 R3/L3, 6 DT 2.7 R3/L3, 6 DT 3.5 R3/L3, 6 DT 3.5 SM R3/L3, 6 DT 3.5B R4/L4, 6 DT 2.0 R3/L3, 9 DT 2.0 R3/L3, 9 DT 2.4 R3/L3, 9 DT 2.7 R3/L3, 9 DT 2.7B R3/L3, 9 DT 3.5 SM R3/L3, 9 DT 3.5 R3/L3, 9 DT 3.5B R4/L4, 9 DT 3.5 JUMBO R/L (the “Accused Products”).










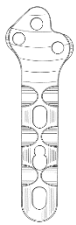





20. Images of samples of the Accused Products are identified in the charts below. On information and belief, these samples are designed for implantation on the animal’s right side. On information and belief, VOI also markets TPLO plates designed for implantation on the animal’s left side, which are mirror images of right side TPLO plates, but otherwise identical. On information and belief, VOI’s naming convention is such that it uses the letter “R” (*e.g.*, 6 DT 3.5 **R**3) for plates intended for implantation on the right leg of the animal and the letter “L” (*e.g.*, 6 DT 3.5 **L**3) for plates intended for implantation on the left leg of the animal. On information and belief, VOI’s TPLO plates that have the same model number except for an “R” or “L” are mirror images of each other.




21. As the exemplary side-by-side comparisons shown below reveal, Defendant VOI has misappropriated Plaintiffs’ patented TPLO plate designs in the Accused Products. The comparisons below are representative of all the Accused Products.

22. The chart below shows a comparison of the Figures of the ’D957 patent with a sample of VOI’s 6 2.7B R3 TPLO plate, as well as its mirror image, which would correspond to the 6 2.7B L3 TPLO plate.







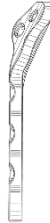


<u>View</u>	<u>'D957 Patent</u>	<u>Accused Product</u>	<u>Mirror Image</u>
Fig. 1			
Fig. 2			
Fig. 3			
Fig. 4			
Fig. 5			
Fig. 6			

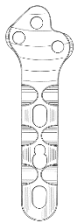





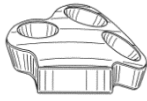


23. The chart below shows a comparison of the Figures of the 'D957 patent with a sample of VOI's 6 3.5 R3 TPLO plate, as well as its mirror image, which would correspond to the 6 3.5 L3 TPLO plate.

<u>View</u>	<u>'D957 Patent</u>	<u>Accused Product</u>	<u>Mirror Image</u>
Fig. 1			
Fig. 2			
Fig. 3			
Fig. 4			
Fig. 5			







<u>View</u>	<u>'D957 Patent</u>	<u>Accused Product</u>	<u>Mirror Image</u>
Fig. 6			




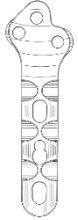








24. The chart below shows a comparison of the Figures of the 'D957 patent with a sample of VOI's 6 3.5B R4 TPLO plate, as well as its mirror image, which would correspond to the 6 3.5B L4 TPLO plate.

<u>View</u>	<u>'D957 Patent</u>	<u>Accused Product</u>	<u>Mirror Image</u>
Fig. 1			
Fig. 2			
Fig. 3			




<u>View</u>	<u>'D957 Patent</u>	<u>Accused Product</u>	<u>Mirror Image</u>
Fig. 4			
Fig. 5			
Fig. 6			




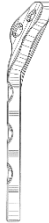







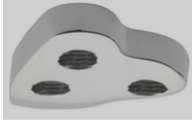


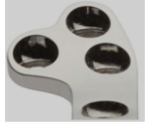
25. The chart below shows a comparison of the Figures of the 'D957 patent with a sample of VOI's 6 DT 2.0 R3 TPLO plate, as well as its mirror image, which would correspond to the 6 DT 2.0 L3 TPLO plate.

<u>View</u>	<u>'D957 Patent</u>	<u>Accused Product</u>	<u>Mirror Image</u>
Fig. 1			
Fig. 2			



















<u>View</u>	<u>'D957 Patent</u>	<u>Accused Product</u>	<u>Mirror Image</u>
Fig. 3			
Fig. 4			
Fig. 5			
Fig. 6			

26. The chart below shows a comparison of the Figures of the 'D957 patent with a sample of VOI's 6 DT 2.4 R3 TPLO plate, as well as its mirror image, which would correspond to the 6 DT 2.4 L3 TPLO plate.
















<u>View</u>	<u>'D957 Patent</u>	<u>Accused Product</u>	<u>Mirror Image</u>
Fig. 1			




<u>View</u>	<u>'D957 Patent</u>	<u>Accused Product</u>	<u>Mirror Image</u>
Fig. 2			
Fig. 3			
Fig. 4			
Fig. 5			
Fig. 6			

27. The chart below shows a comparison of the Figures of the 'D957 patent with a sample of VOI's 6 DT 2.7 R3 TPLO plate, as well as its mirror image, which would correspond to the 6 DT 2.7 L3 TPLO plate.

<u>View</u>	<u>'D957 Patent</u>	<u>Accused Product</u>	<u>Mirror Image</u>
Fig. 1			
Fig. 2			
Fig. 3			
Fig. 4			
Fig. 5			
Fig. 6			










28. The chart below shows a comparison of the Figures of the 'D957 patent with a sample of VOI's 6 DT 3.5 R3 TPLO plate, as well as its mirror image, which would correspond to the 6 DT 3.5 L3 TPLO plate.

<u>View</u>	<u>'D957 Patent</u>	<u>Accused Product</u>	<u>Mirror Image</u>
Fig. 1			
Fig. 2			
Fig. 3			
Fig. 4			
Fig. 5			







<u>View</u>	<u>'D957 Patent</u>	<u>Accused Product</u>	<u>Mirror Image</u>
Fig. 6			




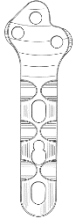








29. The chart below shows a comparison of the Figures of the 'D957 patent with a sample of VOI's 6 DT 3.5 SM R3 TPLO plate, as well as its mirror image, which would correspond to the 6 DT 3.5 SM L3 TPLO plate.

<u>View</u>	<u>'D957 Patent</u>	<u>Accused Product</u>	<u>Mirror Image</u>
Fig. 1			
Fig. 2			
Fig. 3			

<u>View</u>	<u>'D957 Patent</u>	<u>Accused Product</u>	<u>Mirror Image</u>
Fig. 4			
Fig. 5			
Fig. 6			

30. The chart below shows a comparison of the Figures of the 'D957 patent with a sample of VOI's 6 DT 3.5B R4 TPLO plate, as well as its mirror image, which would correspond to the 6 DT 3.5B L4 TPLO plate.

<u>View</u>	<u>'D957 Patent</u>	<u>Accused Product</u>	<u>Mirror Image</u>
Fig. 1			
Fig. 2			

<u>View</u>	<u>'D957 Patent</u>	<u>Accused Product</u>	<u>Mirror Image</u>
Fig. 3			
Fig. 4			
Fig. 5			
Fig. 6			

COUNT ONE
(VOI's Direct Infringement of the 'D957 Patent)

31. DePuy Synthes incorporates by reference and realleges each of the allegations set forth in paragraphs 1-30 above.

32. The 'D957 patent claims a non-functional ornamental design, specifically, an “ornamental design for a Tibial Plateau Leveling Osteotomy Plate.”

33. The Accused Products are TPLO plates with ornamental designs that infringe the 'D957 patent. As shown in the charts in paragraphs 22-30 above, the Accused Products

have appropriated the ornamental design for a TPLO plate as shown and described in the 'D957 patent.

34. In the eye of an ordinary observer, giving such attention as a purchaser usually gives, the non-functional ornamental design for a TPLO plate claimed in the 'D957 patent and the Accused Products are substantially the same, with resemblance such as to deceive an ordinary observer, inducing him or her to purchase an Accused Product supposing it to be the design claimed in the 'D957 patent.

35. On information and belief, VOI, without authority, has directly infringed and continues to directly infringe the 'D957 patent, under 35 U.S.C. § 271(a), at least by manufacturing, importing, distributing, selling, offering for sale, and/or using within the United States at least the Accused Products.

36. As a result of VOI's infringement of the 'D957 patent, DePuy Synthes has suffered and will continue to suffer damages. Depuy Synthes is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty, as permitted under 35 U.S.C. § 284, as well as all remedies for design patent infringement permitted under 35 U.S.C. § 289.

37. VOI's infringement of the 'D957 patent is willful, making this an exceptional case and entitling DePuy Synthes to enhanced damages and attorneys' fees.

38. On information and belief, VOI copied the design of DePuy Synthes's TPLO plates, which embody the design claimed in the 'D957 patent, to arrive at the design of the Accused Products.

39. VOI became aware of the issued claim of the 'D957 patent no later than DePuy Synthes's letter to VOI dated April 15, 2019. On information and belief, VOI has knowingly and willfully infringed the 'D957 patent by manufacturing, importing, using, selling, and offering to sell the Accused Products, including the Accused Products identified in this complaint.

40. Despite Defendant VOI's knowledge of its imminent and actual infringement of the 'D957 patent, VOI has continued to manufacture, import, use, sell, and offer to sell the Accused Products.

41. DePuy Synthes marks DePuy Synthes TPLO plates with the patent number of the 'D957 patent via its virtual marking webpage (<https://www.depuysynthes.com/patentmarking>).

42. DePuy Synthes has been irreparably harmed by VOI's infringement of the 'D957 patent and will continue to be harmed unless VOI's infringing conduct is restrained and enjoined by order of this Court.

PRAYER FOR RELIEF

WHEREFORE, DePuy Synthes respectfully requests that this Court:

1. Adjudge that VOI has directly infringed, literally or under the doctrine of equivalents, claim 1 of the 'D957 patent, and that the manufacture, use, sale, offer for sale, and/or importation of at least the Accused Products infringes claim 1 of the 'D957 patent;

2. Permanently enjoin VOI, its officers, agents, servants and employees, and those in active concert or participation with any of them, from infringing the 'D957 patent;

3. Award DePuy Synthes damages adequate to compensate for VOI's infringement of the 'D957 patent, but in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284, together with prejudgment interest from the date the infringement began;
4. Award DePuy Synthes the total profit made by VOI from its infringement of the 'D957 patent under 35 U.S.C. § 289;
5. Award DePuy Synthes increased damages under 35 U.S.C. § 284 for VOI's willful and deliberate infringement of the 'D957 patent;
6. Declare this to be an exceptional case under 35 U.S.C. § 285;
7. Award DePuy Synthes its attorney fees and costs incurred in prosecuting this action, together with pre-judgment and post-judgment interest; and
8. Grant DePuy Synthes such other and further relief as this Court deems just and proper, including an injunction.

JURY DEMAND

DePuy Synthes hereby respectfully requests a trial by jury of all issues so triable, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated this 3rd day of July 2019.

GRAYROBINSON, P.A.

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