

UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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DEPUY SYNTHES SALES, INC. and

DEPUY SYNTHES PRODUCTS, INC.,

Petitioners

v.

Patent Owner of

U.S. Patent No. 6,423,063 to Bonutti  
Appl. No. 09/569,020 filed May 11, 2000  
Issued October July 23, 2002

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IPR Trial No.     TBD    

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**DECLARATION OF HASSAN SERHAN, Ph.D.,**

I, Hassan A. Serhan, declares as follows:

1. I am employed by DePuy Synthes Spine (Johnson & Johnson Co.) (“DePuy Synthes”), formerly known as DePuy AcroMed, Inc., as Distinguished Engineering Fellow. I have been employed by DePuy Synthes Spine or its predecessors AcroMed since 1995 and have been engaged in design, biomechanical and preclinical testing of spinal implants throughout my employment there. Prior to my employment with AcroMed, I was a research assistant professor at the Neurosurgery Department, School of Medicine and Biomedical Science at the State University of New York. I received a Ph.D. degree and an M.S. degree in mechanical engineering from the State University of New York at Buffalo.

2. I have been asked to identify when Tan S.B. et al., “A Modified Technique of Anterior Lumbar Fusion with Femoral Cortical Allograft,” J. ORTHOPAEDIC SURGICAL TECHNIQUES, 5(3): 83-93 (1990) (“Tan”) (Attached as Exhibit A) was published and available to the public. Tan was published in 1990 and was available to the public within a few weeks or months thereafter.

3. Throughout my education and professional career I have kept abreast of the medical literature relating to spinal techniques and devices. For more than 25 years it has been my practice to read journal articles on such topics on regular

basis.

4. I am familiar with the peer-reviewed Journal of Orthopaedic Surgical Techniques and read it regularly at the times the specific issue attached to my declaration was published.

5. I have published numerous articles in biomedical journals that specializes in orthopedics and spine surgery such as the Spine Journal, European Spine Journal, Journal of Spinal Disorders & Techniques, and Spine to name few. For many years I have also served as a reviewer for several national and international peer reviewed journals. The purpose of these journals is to disseminate information relevant to the subject area of the journal to people working in the field and the public generally.

6. I am personally familiar with the convention of publication dates as printed on biomedical journals. The Journal of Orthopaedic Surgical Techniques prints the publication year along with volume and/or number of the issue. Thus, Tan was published and became publicly available in 1990. Shortly after a journal issues, the publisher mails the journal to its individual and institutional subscribers (libraries, universities, etc.) all over the world. Thus, Tan was distributed in this way shortly after it published in 1990.

7. I am also personally familiar with how libraries, in particular medical libraries, receive and make biomedical journal articles available to the public.

When a medical library receives a new issue of a journal it typically stamps the cover of the journal with its date stamp. Tan was date-stamped April 16, 1991 by the National Library of Medicine.

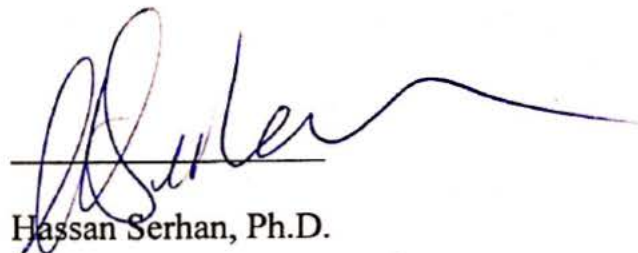
8. After having received and date-stamped a new issue of a biomedical journal, the medical library quickly makes the journal available to the public.

Journals are typically first made available in a designated reading room or area where recent editions of the journal and similar journals are displayed. Once a journal becomes a few months old the library moves it to its stacks. The library also enters the journal into its indexing and cataloguing system. This index and cataloging system is open and available to the public and permits any interested member of the public with ordinary knowledge of the subject matter to locate a specific journal or journal article. In and around 1990, I used the index and cataloging system of many libraries to locate journal articles such as Tan.

9. Tan was findable and available to interested members of the public as well as persons with a professional interest in the subject matter in many libraries in the United States and the rest of the world within a few weeks or months of its publication in 1990.

I declare under penalty of perjury of the laws of the United States that all statements made herein are of my own knowledge and are true and that all statements made on information and belief are believed to be true.

Executed December 22nd 2015 at Raynham, MA



Hassan Serhan, Ph.D.