

United States District Court,  
D. Oregon.

**ACUMED LLC, A Delaware limited liability company,**  
Plaintiff.

v.

**STRYKER CORPORATION, a Michigan Corporation, and Stryker Sales Corporation, a Michigan corporation,**  
Defendant.

No. CV. 04-0513-BR

**Oct. 7, 2004.**

Peter E. Heuser, James R. Abney, Kolisch Hartwell, P.C., Portland, OR, Paul K. Vickrey, Robert A. Vitale, Richard B. Megley, Jr., Frederick C. Laney, Niro, Scavone, Haller & Niro Chicago, IL, for Plaintiff Acumed LLC.

John F. Neupert, OSB, Miller Nash LLP, Portland, OR, Timothy J. Malloy, (pro hac vice), Gregory J. Vogler, (pro hac vice), Sharon A. Hwang, (pro hac vice), McAndrews, Held & Malloy, Ltd., Chicago, IL, for Defendants Stryker Corporation and Stryker Sales Corporation.

### **ORDER ON CLAIM CONSTRUCTION**

**ANNA J. BROWN, District Judge.**

Pursuant to the Court's Case Management Order, on August 13, 2004 Plaintiff Acumed LLC ("Acumed") and Defendants Stryker Corporation and Stryker Sales Corporation (collectively "Stryker") filed a table identifying the claim elements of the asserted claims that require interpretation, as well as the parties' proposed interpretations (See Docket Entry # 34). The selection of claim elements requiring interpretation is based on Acumed's representation in its interrogatory response that it is only asserting claims 1, 3, 4, 5, 10, 11, 14, 15, 16, and 17 of the '444 patent. Since that filing, the parties have reached an agreement on a few of the disputed terms. Accordingly, it is ORDERED that the following claim elements shall be construed as follows:

<b>Asserted Claim #</b>	<b>Claim Element</b>	<b>Agreed Claim Construction</b>
1, 3, 4, 5, 10, 11, 14, 15, 16, 17	"An elongated tapered nail"	A rod or nail that is stretched out (i.e., long in proportion to width) with the radius gradually decreasing or narrowing toward one end.
	"a contiguous butt portion extending proximally from the	The larger or thicker end portion of the rod or nail connected to the proximal end of the shank and

	shank and configured to occupy the humerat cortex" "each defining a hole axis"	configured to occupy the enlarged proximal end of the humerus that includes the "ball." The axis passing through the center of each transverse hole.
3	"butt portion defines a central axis" "each of the transverse holes is oriented on a respective hole axis"	The larger or thicker end portion of the rod or nail defines an axis passing through its center. Each of the transverse holes is oriented on a separate hole axis.
5	"the axis occupying a reference plane"	The central axis of the elongated tapered nail falls within the surface passing through the center of the nail.
14	"the entire butt portion has a straight cylindrical profile"	The entire larger or thicker end portion of the nail has a profile that is shaped like a straight cylinder.
15	"each of the transverse holes occupies a different plane"	The central axis of each of the transverse holes from the butt portion of the rod or nail is on a different plane as compared with each other.
17	"the transverse holes are closely grouped near the proximal end"	The transverse holes are located close to each other and near the proximal end of the nail or rod.

SO ORDERED.

D.Or.,2004.

Acumed LLC v. Stryker Corp.

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