

UNITED STATES DISTRICT COURT

Central District of California

ORTHOPEDIC DEVELOPMENT CORPORATION
and MINSURG CORPORATION

SUMMONS IN A CIVIL ACTION

V.

VIKINGCRAFT SPINE, INC.

CASE NUMBER:

SACV08-0188

AG (RNB)

TO: (Name and address of Defendant)
Vikingcraft Spine, Inc.
150 Paularino Avenue
Costa Mesa, California 92626-3301

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Darren M. Franklin

Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, CA 90071-1448
(213) 620-1780

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

SHERRI R. CARTER

FEB 19 2008

CLERK

DATE

(By) DEPUTY CLERK

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
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2 Including Professional Corporations
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11 Attorneys for Plaintiffs
ORTHOPEDIC DEVELOPMENT CORPORATION and
12 MINSURG CORPORATION

13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16
17 ORTHOPEDIC DEVELOPMENT
CORPORATION and
18 MINSURG CORPORATION,

19 Plaintiffs,

20 v.

21 VIKINGCRAFT SPINE, INC.,

22 Defendant.

Case No. SACV08-0188

AG
(RNBx)

**COMPLAINT FOR FALSE
DESIGNATION OF ORIGIN;
FALSE ADVERTISING; COMMON
LAW UNFAIR COMPETITION;
AND STATUTORY UNFAIR
COMPETITION**

DEMAND FOR JURY TRIAL

23
24
25 Plaintiffs Orthopedic Development Corporation ("ODC") and
26 MinSURG Corporation ("MinSURG," and together with ODC sometimes referred
27 to as "Plaintiffs") as and for their complaint ("Complaint") against defendant
28 Vikingcraft Spine, Inc. ("Vikingcraft") allege as follows:

PARTIES

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1. Plaintiffs ODC and MinSURG are corporations organized and existing under the laws of the State of Florida, with their principal place of business at 2730 McMullen Booth Road, Suite 203, Clearwater, Florida 33761.

2. MinSURG is a wholly-owned subsidiary of ODC. MinSURG develops, manufactures, markets, and sells, in interstate commerce, human allograft tissue products (the "Allografts"), as well as associated surgical instrument sets (the "Instruments") under the trademark TruFUSE® (the "TruFUSE® Product(s)").

3. Upon information and belief, Defendant Vikingcraft is a corporation organized and existing under the laws of the State of California, with its principal place of business at 150 Paularino Avenue, Costa Mesa, California 92626.

JURISDICTION AND VENUE

4. The Court has personal jurisdiction over Vikingcraft because, upon information and belief, it is incorporated in the State of California and transacts business in the State of California.

5. The Court has subject matter jurisdiction over this action under 28 U.S.C. §§1331, 1338; Section 3 of the Lanham Act, 15 U.S.C. § 1121; 28 U.S.C. § 1332 (diversity); and 28 U.S.C. § 1367 (supplemental jurisdiction). The amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Venue is proper under 28 U.S.C. § 1391 (b) and (c).

1 **FACTS COMMON TO ALL CLAIMS**

2 **Back Pain and Spinal Facet Fusion**

3 7. Back pain is one of the most common ailments in adults,
4 affecting an estimated 50 million people in the U.S. An estimated 80% of adults
5 will experience back pain at some point in their lives, while 50% of the working
6 population have back pain every year. The National Center for Health Statistics
7 reports that 14% of new patient visits to physician offices, or approximately 13
8 million annually, are for complaints of lower back pain. In the next 12 months,
9 there will be more episodes of back pain than any other disease except the common
10 cold. Facet joint disorders (degenerative conditions such as osteoarthritis) are
11 among the most common of all the recurrent disabling lower back problems that
12 cause serious symptoms. Facet joints are also gaining increasing favor as primary
13 and supplementary fusion sites. The American Academy of Orthopedic Surgeons
14 reports spinal fusion is the most commonly performed operation for back pain with
15 approximately two million fusion procedures performed since 1990, and
16 approximately 400,000 spinal fusions performed in 2007 in the U.S. alone.

17
18 **The TruFUSE® Products**

19 8. Plaintiffs' patent-pending TruFUSE® Product is a unique, novel
20 spinal facet fusion system invented by Dr. David A. Petersen, M.D., FAAOS that
21 offers a low-risk and minimally invasive surgical solution to back pain resulting
22 from facet joint degeneration and from mild spinal instability. Among other things,
23 the TruFUSE® Product significantly reduces a patient's time in the hospital, time
24 off of work, recovery time, and rehabilitation time as compared to traditional spinal
25 fusion surgeries. In most cases, the TruFUSE® surgery can be completed in less
26 than an hour and requires no more than a one-night hospital stay. The TruFUSE®
27 Product is sold through a network of over 40 distributors and is represented by some
28 300 sales representatives across the United States. As of January 15, 2008, over

1 2,500 TruFUSE® allograft sets have been sold in the United States, and over 200
2 surgical instrument sets designed exclusively for use in implanting TruFUSE®
3 allografts have been consigned to distributors, hospitals and surgeons. In addition,
4 more than 100 surgeons have used TruFUSE® Products, while more than 600
5 surgeons have been trained and certified in the technique and are awaiting hospital
6 clearances. The overwhelming majority of patients treated with the TruFUSE®
7 Products have reported a significant and lasting reduction in pain and a return to
8 daily living routines with minimal recovery time.

9

10 9. TruFUSE® Products are packaged in three formats: (1) a single
11 5.0 mm dowel including two preformed Allografts and one drill bit per box; (2) a
12 single spinal level 5.0 mm dowel including one preformed Allograft with one drill
13 bit for every two boxes; and (3) a single 7.5 mm dowel including one preformed
14 Allograft. Other Instruments designed for use with the Allografts (e.g., drill guides,
15 holders, inserters and tamps) are reusable. One complete set of 5.0 mm Instruments
16 is provided to each TruFUSE® certified surgeon upon completion of training. In
17 addition, each distributor receives one 7.5 mm Instrument set for every ten 7.5 mm
18 dowel sets ordered. MinSURG also provides TruFUSE® Allografts and
19 Instruments on consignment to both hospitals and distributors.

20

21

The TRUFUSE® Trademark

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10. ODC is the owner of the TRUFUSE® mark, Registration No.
3,290,465, filed on November 16, 2005, for use in connection with "human allograft
tissue" in International Class 5 (the "TRUFUSE® Mark"). The foregoing
registration is current and valid. ODC has continuously offered and sold Allografts
and associated Instruments under the TRUFUSE® Mark since at least January 1,
2006.

1 11. Plaintiffs have invested millions of dollars and have expended
2 significant effort in developing and refining the product design, technique and
3 surgical instruments, in addition to advertising and promoting the TruFUSE®
4 Products in conjunction with the TRUFUSE® Mark across the United States.
5 Plaintiffs prominently display the TRUFUSE® Mark on all TruFUSE® Products
6 and clinical, training and marketing materials. As a result, TruFUSE® Products
7 have become known and recognized by medical professionals throughout the United
8 States as a symbol of unique, proprietary and effective surgical techniques
9 performed using high quality human allograft tissue products and surgical
10 instruments.

11
12 **Nutech Medical Inc.'s Competing Facet Fusion Product**

13 12. On or about September 17, 2007, Plaintiffs received a report
14 from one of their distributors that another one of their distributors, Nutech Medical,
15 Inc. ("Nutech"), was developing and marketing a "TruFUSE® knock-off" facet
16 fusion product. Upon further investigation, Plaintiffs learned that Nutech was
17 planning to market a competitive facet fusion product under the confusingly similar
18 name "NUFUZE" and that the product, upon information and belief, incorporates
19 Plaintiffs' proprietary information and trade secrets provided to Nutech pursuant to
20 its distribution agreement with Plaintiffs and is a copy of the TruFUSE® Products.
21 Among other things, ODC received reports from one of its new hires that, prior to
22 commencing his employment with ODC, Nutech had engaged him as a consultant to
23 review designs for a new spinal facet fusion product that Nutech intended to market.
24 After reviewing the product, the surgeon came to the conclusion that Nutech's new
25 product was "essentially the same as TruFUSE®."

26
27 13. Upon hearing that the Nutech facet fusion product was to be
28 marketed under the "NUFUZE" mark, Plaintiffs conducted a United States Patent

1 and Trademark Office (the "USPTO") database search and confirmed that Nutech
2 had indeed registered the trademark NUFUZE, along with the trademark BIOFUZE,
3 in the category of "[s]urgical implants compromising allograft or other processed
4 human or animal tissue and associated surgical instrument sets" (the "Nutech
5 Trademark Applications"). On December 5, 2007, ODC filed a Notice of
6 Opposition to the Nutech Trademark Applications with the Trademark Trial and
7 Appeal Board. On January 14, 2008, Nutech filed an answer to ODC's Opposition
8 to the Nutech Trademark Applications abandoning its application for registration of
9 the NUFUZE and BIOFUZE marks.

10

11 14. Plaintiffs further learned that Kenneth Horton ("Horton"),
12 Nutech's President and sole owner and an ODC shareholder, had incorporated
13 NuFuze, Inc. as a corporate entity separate from Nutech in the State of Alabama on
14 March 1, 2007 and that NuFuze, Inc.'s corporate name was changed to NuFix, Inc.
15 on August 7, 2007. Horton is listed as the incorporator and sole shareholder of
16 NuFix and the address of the corporation is the same as that of Nutech.

17

18 15. Beginning in or about December 2007, Plaintiffs learned that
19 Nutech began marketing its competing allograft product to TruFUSE®-trained
20 surgeons under the brand names "NuFuze" and/or "NuFix." On or about December
21 31, 2007, Plaintiffs received confirmation of a report from its Los Angeles-based
22 distributor that a surgeon who uses TruFUSE® in his practice reported being
23 contacted by Vikingcraft offering "NUFUZE" at a "drastically reduced price."

24

25 16. On or about January 9, 2008, Plaintiffs received a report from
26 their Michigan distributor that Silver Surgical Supply, one of Plaintiffs' former
27 distributors, had commenced marketing and selling Nutech's facet fusion product
28 under the brand name "NuFix" to surgeons and hospitals in Ohio and Michigan.

1 17. On January 22, 2008, ODC received a report from its Ohio
2 distributor that, according to a surgeon who uses TruFUSE® Products in his
3 practice, a surgical product distribution company attempted to convince him to use
4 NuFix instead of TruFUSE® Products on the same day as a planned surgery, saying
5 that “they use the same [surgical] instrumentation [as TruFUSE®] and that the only
6 difference is that the product has ridges.”
7

8 18. On February 7, 2008, ODC and MinSURG filed a complaint in
9 the United States District Court, Middle District of Florida against Nutech, NuFix,
10 Horton, and Todd Gilbert ("Gilbert"), another ODC shareholder involved in the
11 creation of Nutech's/NuFix's facet fusion product ("Florida Complaint"). The
12 Florida Complaint alleges, among other things, that the sale of Nutech's/NuFix's
13 facet fusion product constitutes trademark infringement, unfair competition and
14 false advertising under both the Lanham Act and state law, entitling Plaintiffs to
15 both injunctive relief and damages. In addition, the Florida Complaint alleges
16 misappropriation of trade secrets and breaches of contract against Nutech, Horton
17 and Gilbert.
18

19 19. On the same day, Plaintiffs sent a separate letter to Vikingcraft
20 putting the distributor on formal notice of the claims asserted against Nutech,
21 NuFix, Horton and Gilbert in connection with the sale of Nutech's/NuFix's facet
22 fusion product, demanding that Vikingcraft discontinue all infringing activities
23 related to Nutech's/NuFix's facet fusion product and provide assurances to Plaintiffs
24 that it had ceased all of its infringing activities within ten (10) days, by February 18,
25 2008. A true and correct copy of Plaintiffs' cease and desist letter is attached hereto
26 as Exhibit "A".
27
28

1 24. The foregoing conduct of Defendant constitutes direct and
2 contributory unfair competition, false designation of origin, and false and
3 misleading descriptions and/or representations of fact that are likely to cause
4 confusion or mistake, or to deceive consumers as to the affiliation, connection, or
5 association of Nutech's competing facet fusion product with the TruFUSE®
6 Products or as to the origin, sponsorship, or approval of Nutech's facet fusion
7 product or other commercial activities, in violation of 15 U.S.C. § 1125(a)(1)(A).

8
9 25. As a result, Plaintiffs have suffered and continue to suffer
10 monetary damages in an amount to be determined at trial, inclusive of attorneys'
11 fees and costs under 15 U.S.C. § 1117.

12
13 26. The damage caused by Defendant's actions is not entirely
14 susceptible to ready or precise calculation in that such damage also involves lost
15 profits, lost business opportunities, loss of goodwill and reputation, and confusion of
16 consumers, such that monetary damages alone cannot adequately compensate
17 Plaintiffs for Defendant's misconduct. Unless permanently enjoined by the Court,
18 Defendant will continue to make false descriptions and representations and to pass
19 off its facet fusion product as affiliated with Plaintiffs, all to Plaintiffs' irreparable
20 injury.

21
22 **SECOND CAUSE OF ACTION**

23 **(Lanham Act Unfair Competition – False Advertising)**

24 **(15 U.S.C. § 1125(a)(1)(B))**

25 27. Plaintiffs reallege and incorporate by reference Paragraphs 1
26 through 26 of the Complaint as if fully set forth herein.

1 (a) That Defendant and all persons acting in concert or privity with
2 Defendant, including Defendant's officers, agents, servants, employees, successors
3 and assigns, jointly and severally, be permanently enjoined from committing any
4 further acts constituting direct and/or contributory unfair competition and false
5 advertising;

6
7 (b) That Defendant be directed to immediately cease distributing any
8 infringing bone allograft products on behalf of Nutech/NuFix or any other entity;

9
10 (c) That Defendant be required to file with this Court and serve on
11 Plaintiffs' counsel within 14 days after issuance of a permanent injunction herein, or
12 within such reasonable time as this Court shall direct, a report in writing and under
13 oath setting forth in detail the manner and form in which Defendant has complied
14 with such injunction;

15
16 (d) That Plaintiffs have judgment against Defendant for
17 disgorgement of profits, lost profits and compensatory damages in connection with
18 Defendant's distribution of Nutech's/NuFix's competing facet fusion product;

19
20 (e) That Plaintiffs be awarded statutory damages, attorney's fees,
21 costs, and prejudgment interest pursuant to 15 U.S.C. § 1117, including but not
22 limited to damages for willful infringement under 15 U.S.C. § 1125(c);

23
24 (f) That Plaintiffs be awarded the costs and disbursements of this
25 action, together with reasonable attorney's fees; and

26
27 ///

1 (g) That Plaintiffs be awarded such other and further relief as the
2 Court deems just and proper.

3
4 Dated: February 19, 2008

5 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

6
7 By *Darren Franklin*

8 DARREN M. FRANKLIN
9 Attorneys for Plaintiffs
10 ORTHOPEDIC DEVELOPMENT
11 CORPORATION and
12 MINSURG CORPORATION

13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs ODC and MinSURG hereby demand a jury trial on all issues
15 triable of right by a jury.

16 Dated: February 19, 2008

17 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

18
19 By *Darren Franklin*

20 DARREN M. FRANKLIN
21 Attorneys for Plaintiffs
22 ORTHOPEDIC DEVELOPMENT
23 CORPORATION and
24 MINSURG CORPORATION
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February 7, 2008

Our File Number: 14XL-129844

VIA FEDERAL EXPRESS

Mr. Eric Hansen
President
Vikingcraft Spine
150 Paularino Ave
Costa Mesa, CA 92626-3301

Re: Orthopedic Development Corporation and MinSURG Corporation
v. NuTech Medical, Inc., NuFix, Inc., Kenneth Horton, and Todd Gilbert
Civil Action No. 8:08-cv-00262-T-30TGW
United States District Court for the Middle District of Florida

Dear Mr. Hansen:

We represent Orthopedic Development Corporation ("ODC") and MinSURG Corporation ("MinSURG") in intellectual property matters.

ODC and MinSURG have initiated legal action against Nutech Medical, Inc. and NuFix, Inc. ("Nutech") and their principal, Ken Horton, and employee, Todd Gilbert, charging, among other things, trade secret misappropriation, trademark infringement, unfair competition, false advertising, and breach of contract. These claims are based, in part, on Nutech's marketing and selling a facet fusion device that is virtually identical to the MinSURG TRUFUSE® facet fusion product and on Nutech's use of the confusingly similar NUFUZE, BIOFUZE and/or NUFIX brand names to market and sell its competing facet fusion products ("Nutech Products"). It is our understanding that Nutech has contracted you to represent and sell the Nutech Products that are the subject of this litigation and that you are actively marketing them.

IF YOU DO NOT IMMEDIATELY CEASE AND DESIST MARKETING AND SELLING THE NUTECH PRODUCTS UNDER ANY BRAND NAME IN VIOLATION OF THE RIGHTS OF ODC AND MINSURG, OUR CLIENT HAS AUTHORIZED US TO TAKE ALL STEPS NECESSARY TO PROTECT ITS VALUABLE RIGHTS, INCLUDING BY COMMENCING LITIGATION AGAINST YOU.

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Mr. Eric Hansen
February 7, 2008
Page 2

Please be aware that if you should decide to continue these activities and to litigate this matter, under the Lanham Act, 15 U.S.C. §1117, ODC/MinSURG will be entitled to disgorge from you any profits from the sale of the Nutech Products. ODC/MinSURG will also be entitled to recover actual damages in addition to court costs and attorneys' fees.

In addition, ODC has a pending patent application covering the TruFUSE® facet fusion product and the associated method. This application was published under U.S. Patent Application Serial No. 11/232,519 (Publication No. 2006/0111782) on May 25, 2006. A copy of the published application is enclosed. If you are distributing the Nutech Products, you may also be liable for reasonable royalties for the infringement of ODC's systems, methods, and devices covered by the claims of the published patent application during the time beginning on the date the application was published. We expect to receive from the USPTO a Notice of Allowance in this application shortly.

ODC/MinSURG is hopeful that this matter can be resolved amicably with you without having to resort to costly and time-consuming litigation, however, we must have your reply to this letter within ten (10) calendar days. If we do not hear from you within this time period, we will assume that you are not interested in pursuing a settlement and we will advise ODC/MinSURG to proceed accordingly. The foregoing does not constitute a complete statement of the rights and remedies of ODC and MinSURG, none of which is waived or prejudiced hereby, and all of which are expressly reserved.

If you have any questions or wish more information on this matter, please contact me directly or through your legal counsel.

Very truly yours,



Don J. Pelto

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-EAST:9DJF1\200065865.1
Encl.



US 20060111782A1

(19) **United States**

(12) **Patent Application Publication**

(10) **Pub. No.: US 2006/0111782 A1**

Petersen

(43) **Pub. Date:**

May 25, 2006

(54) **SPINAL PLUG FOR A MINIMALLY INVASIVE FACET JOINT FUSION SYSTEM**

Publication Classification

(73) **Inventor: David A. Petersen, Clearwater, FL (US)**

(51) **Int. Cl. A61F 2/44 (2006.01)**

(52) **U.S. CL. 623/17.11**

Correspondence Address: LARSON AND LARSON 11199 69TH STREET NORTH LARGO, FL 33773

(57) **ABSTRACT**

(73) **Assignee: ORTHOPEDIC DEVELOPMENT CORPORATION**

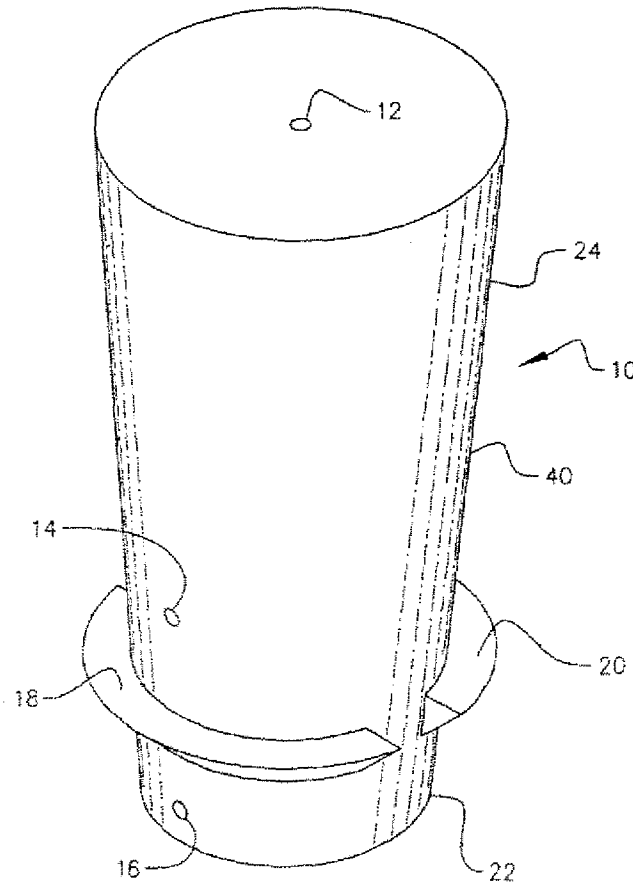
A frustum shaped body has an aperture in a top surface and a pair of first and second opposed apertures in a side surface. first and second horizontal internal channels connect both the first and second opposed apertures. A vertical channel from the top aperture connects with the first and second channels. After the body is inserted into a hole in a facet joint, compatible synthetic or biologic material is inserted into the vertical channel until the material exits from the first and second apertures in the side surface. At least one pair of flanges on a portion of an exterior side surface of the body acts as a detent to hold the body in place within the facet joint hole.

(21) **Appl. No.: 11/232,519**

(22) **Filed: Sep. 22, 2005**

Related U.S. Application Data

(63) **Continuation-in-part of application No. 10/992,720, filed on Nov. 22, 2004.**



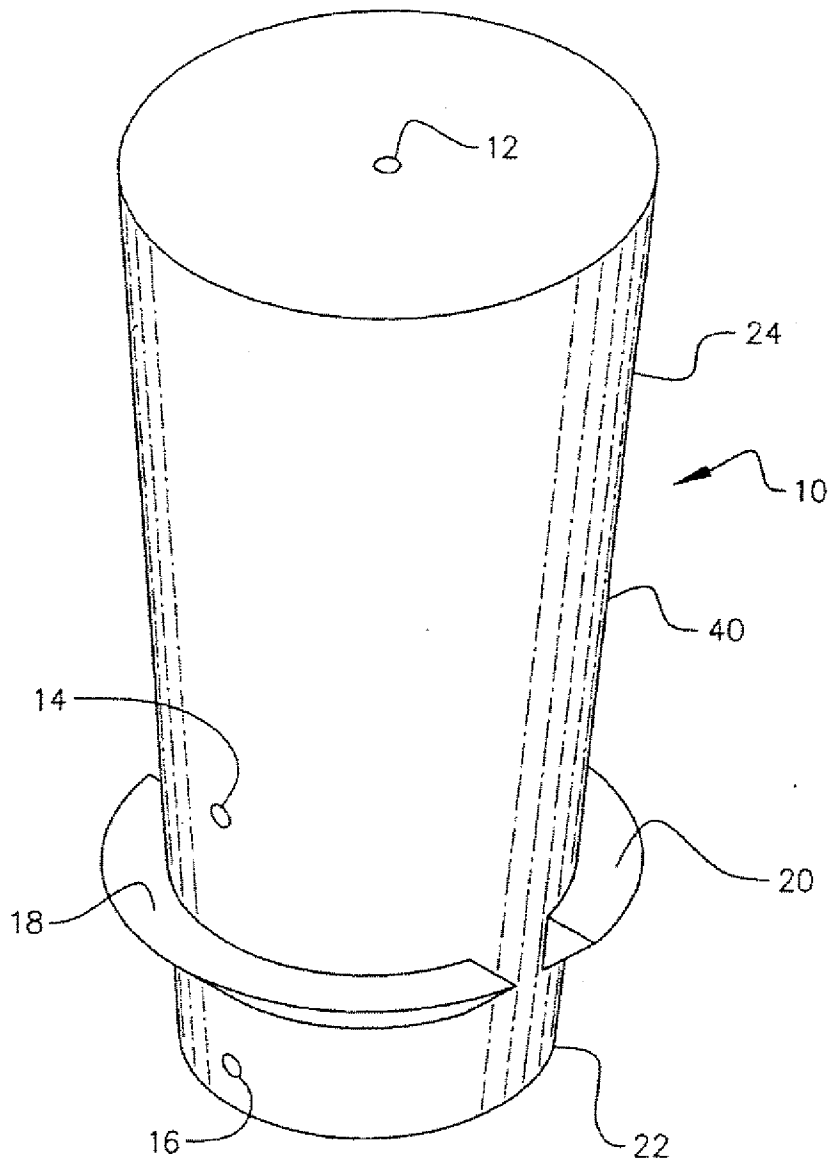


FIG. 1

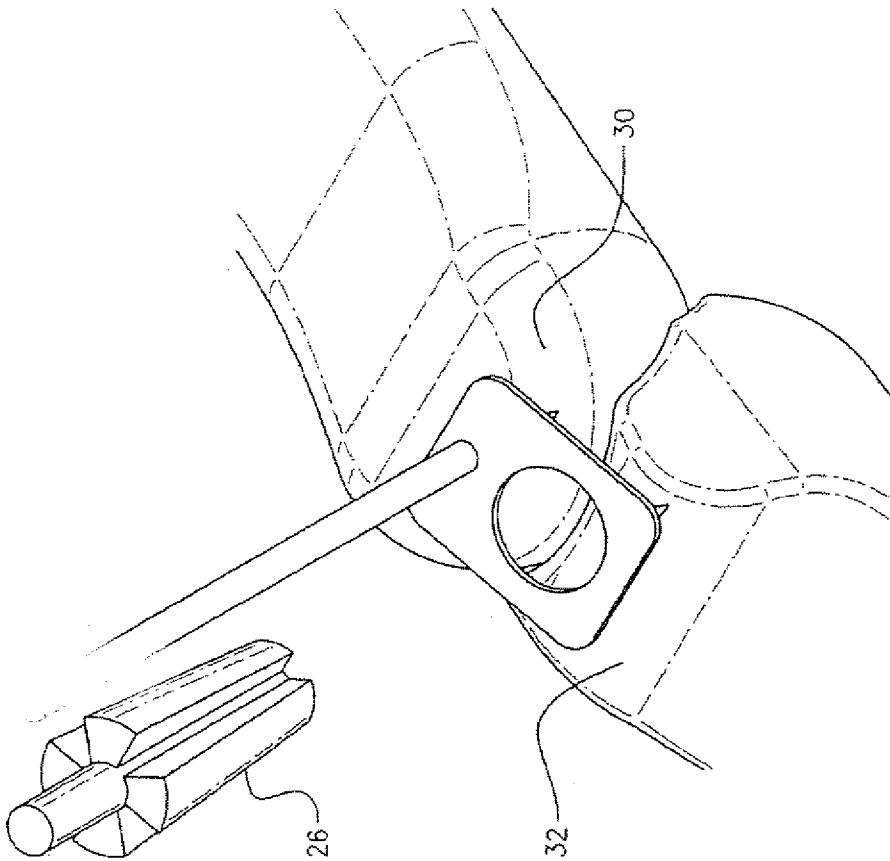


FIG. 2

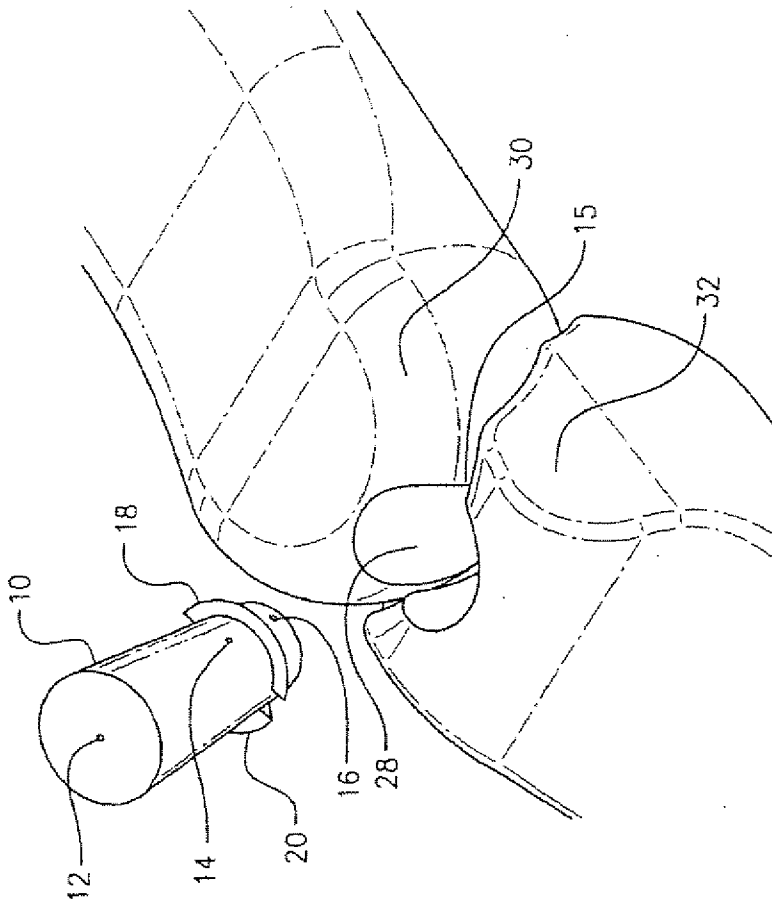


FIG. 3

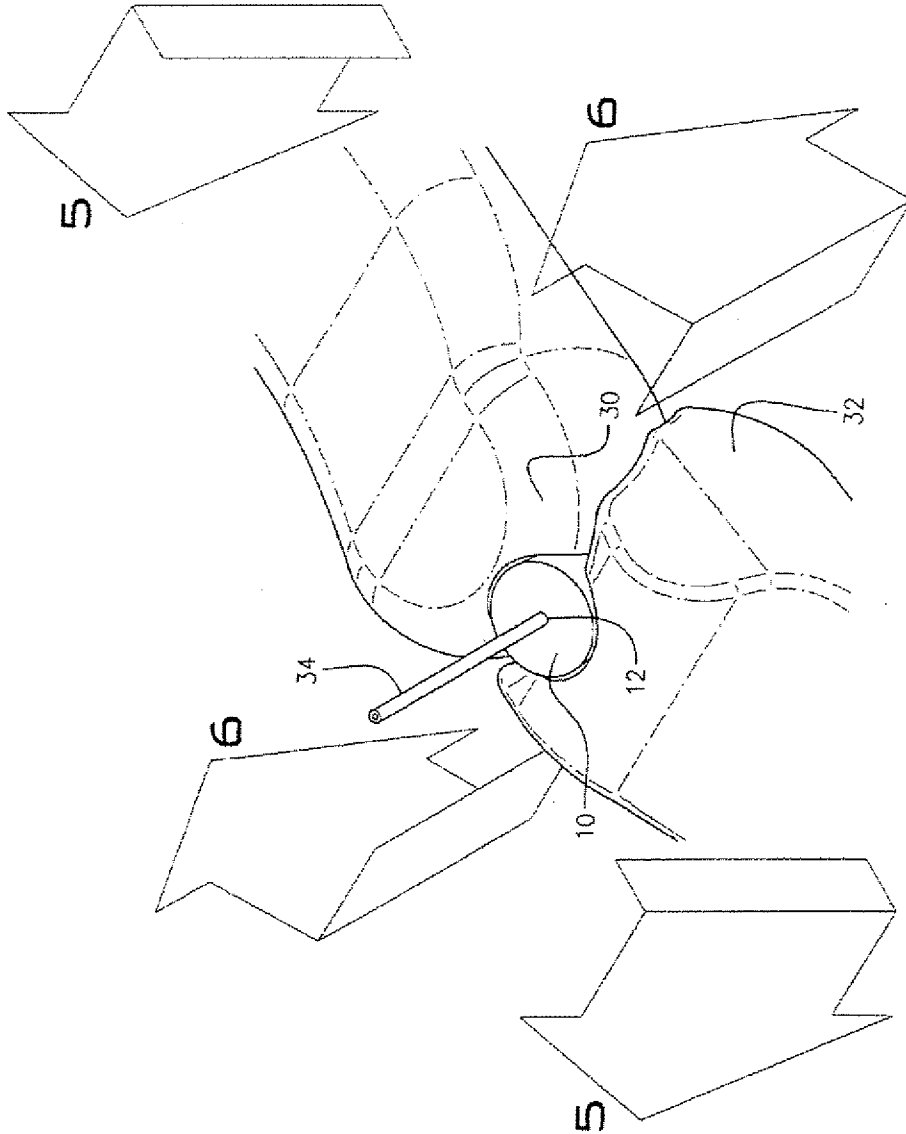


FIG. 4

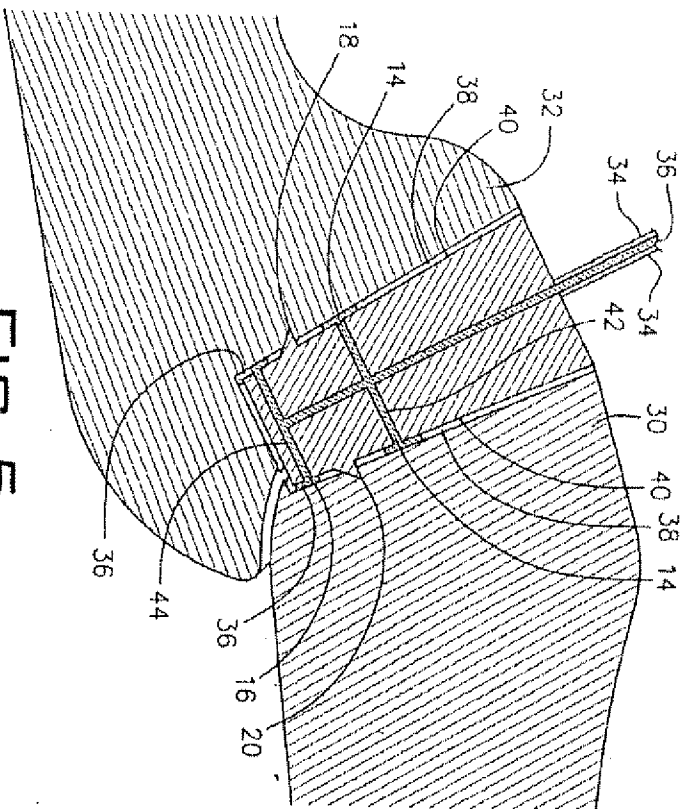


FIG. 5

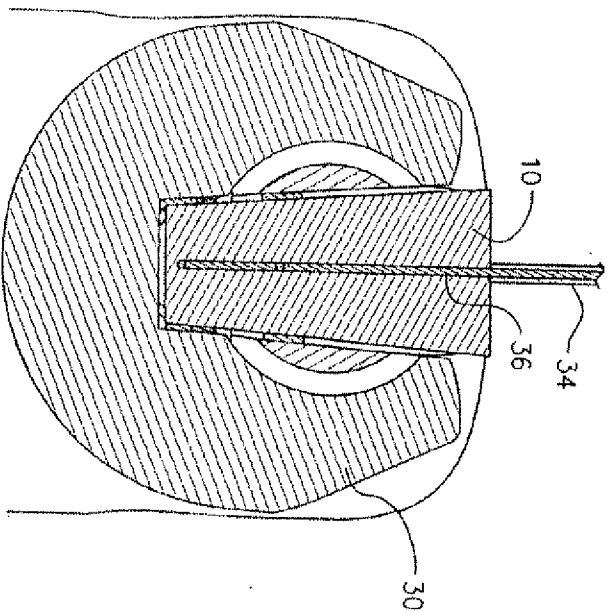


FIG. 6

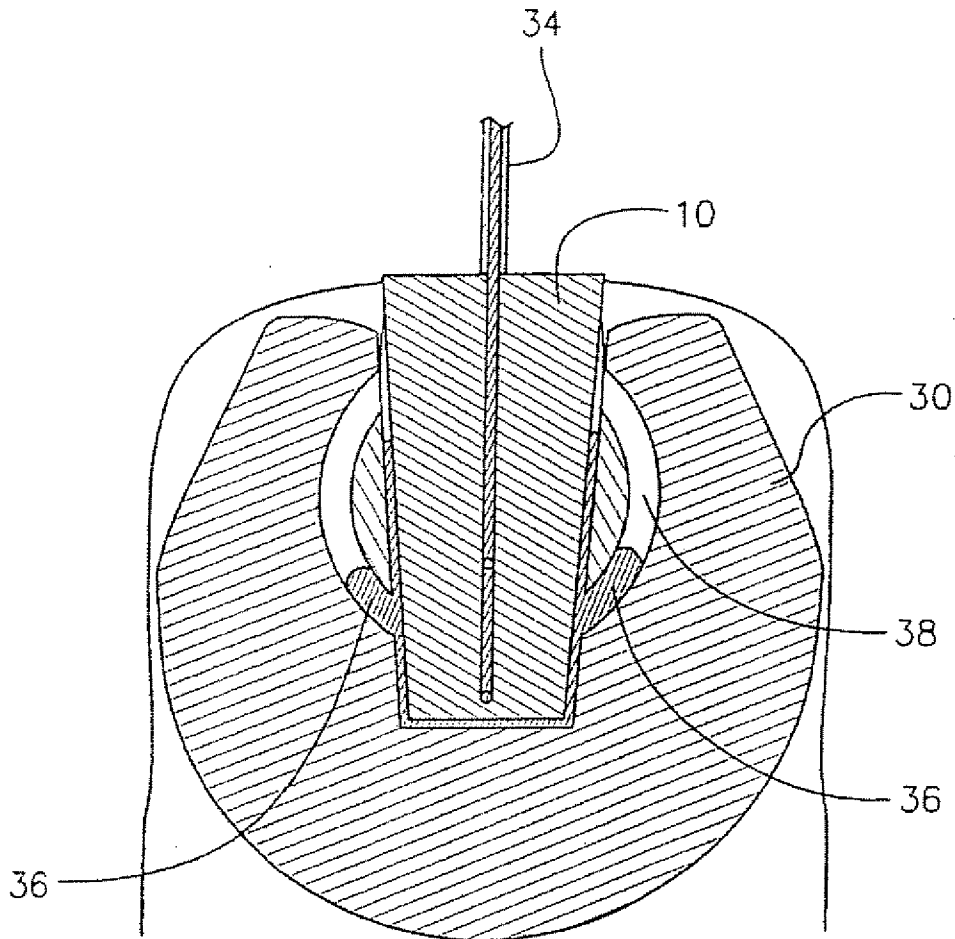


FIG. 7

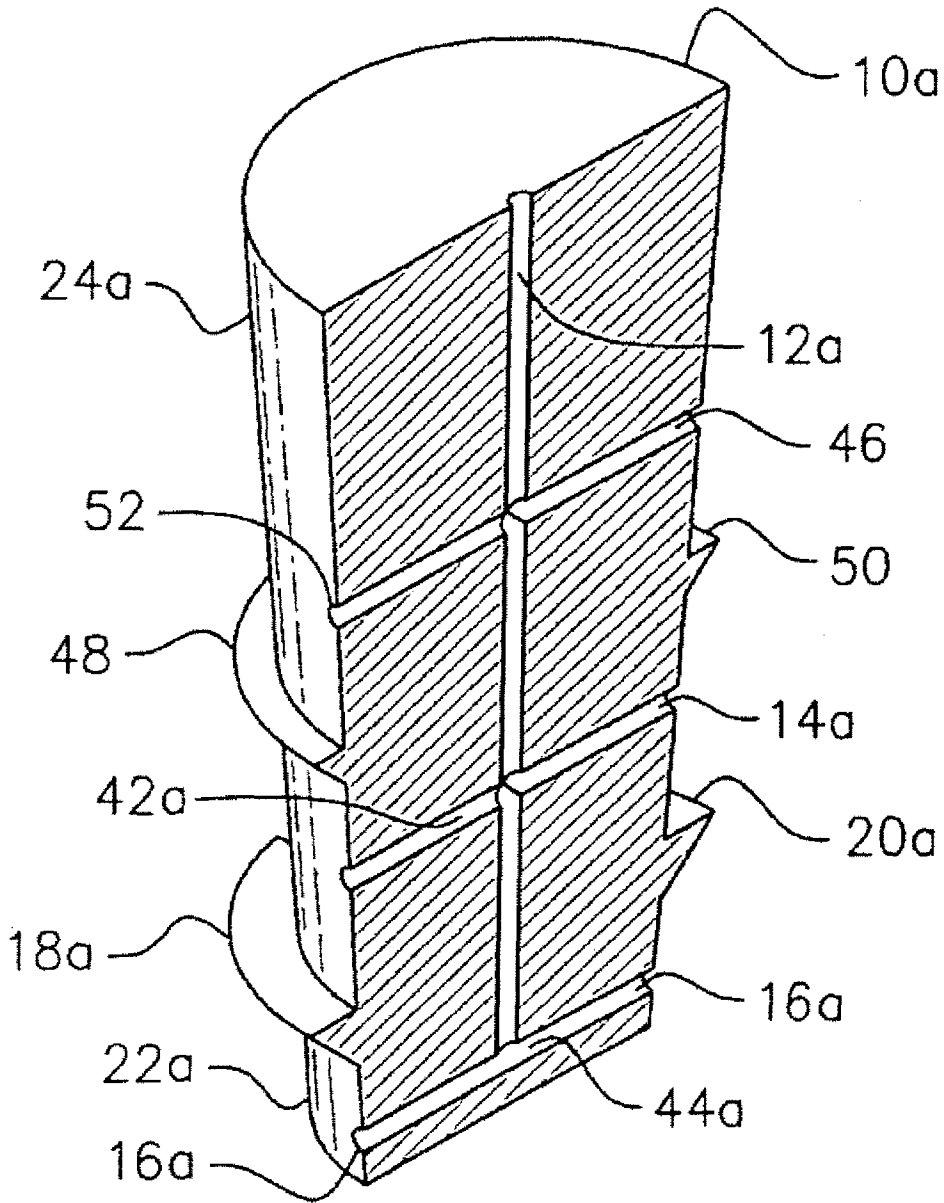


FIG. 9

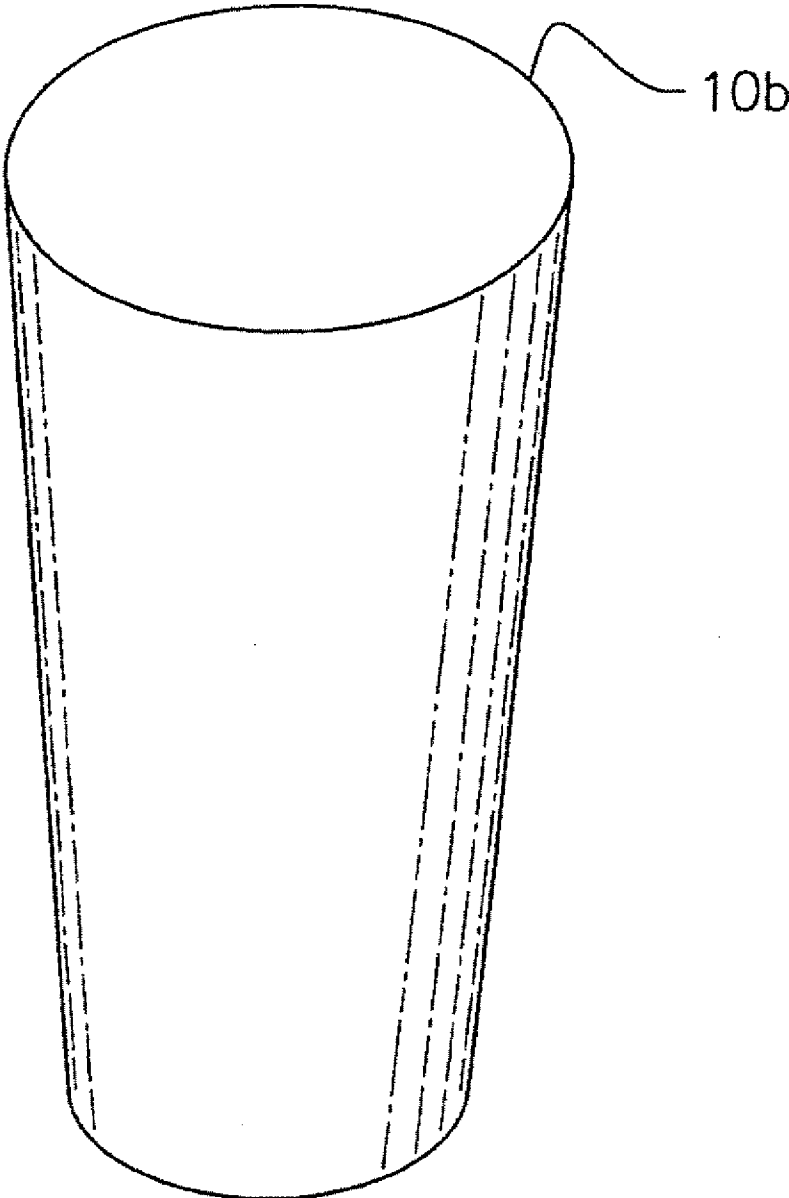


FIG. 10

US 2006/0111782 A1

May 25, 2006

1

SPINAL PLUG FOR A MINIMALLY INVASIVE FACET JOINT FUSION SYSTEM

PRIOR APPLICATIONS

[0001] This application is a continuation-in-part from application Ser. No. 10/992,720, filed Nov. 22, 2004.

BACKGROUND OF THE INVENTION

[0002] 1. Field of the Invention

[0003] The present invention relates generally to minimally invasive spine surgery and, more particularly, to using an arthroscopic type portal or open facet joint fusion surgical instrumentation for insertion of either pre-made, pre-shaped synthetic cortical bone or harvested and compacted iliac crest grafts, autologous or cadaveric allografts. The graft and fusion system is limited to the forty-eight facet joints located on the spine, C1-C2 through L5-S1.

[0004] 2. Description of the Prior Art

[0005] In the United States alone, about 10% of the entire population will suffer from back pain sometime in the next twelve months. More people will contract back pain in the next year than any other injury or disease except the common cold and flu. About one-third will not recover and have to live with persistent, disabling symptoms. The number is cumulative year after year.

[0006] One of the root causes of back pain, particularly the persistent and disabling kind, are facet joints, small joints located behind adjacent vertebrae in the spine that allow for spinal motion.

[0007] Present surgical solutions available for the millions of people with facet joint dysfunctions are complex, invasive, pedicle screw based high-risk operations with prolonged recovery times, from 6 to 24 months, and uncertain outcomes. High risk equates to frequent litigation, which forces non-surgical symptomatic treatment while the disease or consequences of injury progressively worsen. Some of these efforts provide intervertebral fusion described in U.S. Pat. No. 6,485,518 and U.S. Patent Application Serial Number 2003/0032960. Numerous patents have been granted for general fusion of the spine that may or may not involve the facet joint by proximity or design.

[0008] With the advent of new, safer and less invasive surgical techniques and technology, the growth of spine surgery now outpaces every other orthopedic surgery segment. Its growth is further fueled by an enormous demand.

SUMMARY OF THE INVENTION

[0009] The use of pre-shaped, harvested or synthetic bone as a structural fixation for facet joint fusion offers three distinct advantages over pedicle or compression screws, which are presently used in facet fusion procedures; i.e., (1) using bone instead of metal allowing for natural bone ingrowth and a stronger, permanent fusion; and (2) the natural or synthetic graft cannot work its way loose over time, a concern with screw type fixation.

[0010] The grafts and system are specifically designed for use in a minimum invasive or an arthroscopic type portal for stand-alone procedures and provide a stronger, unique and superior fusion when used as an adjunct to instrumented

vertebral fusion by greatly reducing risk of facet joint pain resulting from persistent facet joint motion.

[0011] The minimally invasive facet joint fusion for the treatment of a diseased or painful facet joint that is not appropriate for resurfacing or replacement, involves the use of instrumentation and autograft, cadaveric allograft or FDA approved pre-made, pre-shaped synthetic cortical bone graft for use in minimally invasive, outpatient, arthroscopic spine surgery or classic open surgery and, more specifically, to fuse spinal facet joints from C1-C2 through L5-S1. This system serves as a primary or a revision surgery.

[0012] The present invention accomplishes a superior spinal facet joint fusion by providing a grafting alternative to facilitate fusion using arthroscopic portal or open surgical techniques of the C1-C2 through L5-S1 spinal facet joints.

[0013] According to one broad aspect of the present invention, the arthroscopic facet joint fusion system comprises a punch or drill that creates a hole through both sides of the facet joint in a conical pattern. The hole is filled with either the patient's own harvested and compacted bone plug using iliac crest autograft, pre-made, pre-shaped cortical cadaveric allograft (the autograft or allograft formed by bone plug press or machining) or FDA approved pre-made, pre-shaped synthetic grafts.

[0014] The punch or drill includes any number of components capable of performing the creation of a hole through both sides of the spinal facet joint using an arthroscope or similar portal to access the joint or during classic open surgery. By way of example only, the punch/drill includes a hand actuator that will create sufficient pressure to create a specific sized hole through both sides of the spinal facet joint using a mechanical arrangement similar to that of common pliers resized to work through an arthroscopic opening. Additionally, a drill guide can be placed and a specifically sized and shaped drill head can be used to create the opening, either in a horizontal or vertical direction through the facet joint.

[0015] The bone plug press (graft forming or compression instrument) includes any number of components capable of using harvested autograft, cadaveric allograft cortical bone or a synthetic alternative to match the bone tunnel made by the punch or drill. By way of example only, the bone plug press includes a mechanism similar to common pliers or a more standard hand press that will transfer sufficient force to form bone plugs by squeezing the handles together to form the bone plug and compress the bone or synthetic alternative to the proper density and shape.

[0016] The impactor or tamp includes any number of components capable of pushing and compressing the bone plug into the bone tunnels. A suture or metallic overlay also can be applied to provide additional structural stability to the joint during graft incorporation.

BRIEF DESCRIPTION OF THE DRAWINGS

[0017] Many advantages of the present invention will be apparent to those skilled in the art with a reading of this specification in conjunction with the attached drawings, wherein like reference numerals are applied to like elements and wherein:

[0018] FIG. 1 shows a frustum shaped bone plug of this invention for employment in a facet joint fusion;

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[0019] FIG. 2 shows a tapered drill used to prepare for the bone plug;

[0020] FIG. 3 shows a hole prepared for the bone plug;

[0021] FIG. 4 shows a bone plug inserted in the hole of FIG. 3 and with an application tube for inserting synthetic or biologic material;

[0022] FIG. 5 is a cross-section along line 5-5 of FIG. 4;

[0023] FIG. 6 is a cross-section along line 6-6 of FIG. 4;

[0024] FIG. 7 is a cross-section according to FIG. 6 showing synthetic or biologic material cementing the bone plug in place;

[0025] FIG. 8 shows a first alternative frustum shaped bone plug;

[0026] FIG. 9 shows a cross-section of the frustum shaped bone plug of FIG. 8 along lines 9-9; and

[0027] FIG. 10 shows a second alternative frustum shaped bone plug.

DETAILED DESCRIPTION OF THE INVENTION

[0028] Referring to FIG. 1, the bone plug of this invention is an inverted frustum shaped device 10 having a vertical central channel 12 for insertion of a synthetic or biologic material to assist in fusing the bone plug 10 in place in a spinal joint 15. The bone plug 10 has multiple side parts 14 and 16 for excretion of the synthetic or biologic material from the central channel 12. A pair of opposed flanges 18 and 20 on the same plane partially circumvent the bone plug 10 near bottom end 22 having a smaller diameter than the top end 24.

[0029] In order to fuse a spinal facet joint, a tapered drill 26, shown in FIG. 2, is employed to prepare a hole 28 shown in FIG. 3 between two bones 30 and 32. As seen in FIG. 4, an application tube 34 is inserted in channel 12 to permit insertion of a synthetic or biologic material 36 into bone plug 10. The biologic material 36 flows down channel 12 as shown in FIG. 5, and excess biologic material flows out of side parts 14 and 16 through channels 42 and 44, respectively, into a space 38 between the bones 30 and 32, and an exterior side wall 40 of the bone plug 10. The flanges 18 and 20 act as detents to hold the bone plug 10 in place within hole 28. As seen further in FIG. 7, the biologic material 36 flows outwardly from openings 14 and 16 into a space 38 to cement the plug 10 in place.

[0030] An alternative plug 10a is shown in FIGS. 8 and 9. A central channel 12a feeds biologic material to side channels 46, 42 and 44a. In like manner, biologic material 36 flows out through openings 52, 14a and 16a and promotes bonding to the bone. A second parallel pair of flanges 48 and 50 are added to flanges 18a and 20a to increase the strength of the plug 10a in the hole 28. Side wall 40a in like manner to plug 10 is narrower in diameter at a bottom end 22a than its top end 24a.

[0031] If the joint is determined to be too badly damaged or diseased for present replacement methods or prospective methods such as facet joint hemi-arthroplasty, minimally invasive facet joint fusion is prospectively a superior alternative for three primary reasons:

[0032] 1. It is minimally invasive surgery that can be performed in an outpatient setting as opposed to major surgery performed in a hospital. This procedure can also be performed during open surgery if the facet joints need to be fused as determined by a physician particularly in conjunction with instrumented vertebral fusion;

[0033] 2. Recovery times are estimated to be a few weeks as opposed to 6 to 12 months; and

[0034] 3. It takes full advantage of advances in biomaterials and synthetic alternatives.

[0035] The present invention is directed at overcoming, or at least improving upon, the disadvantages of the prior art by achieving the following:

[0036] Reversal of the cost/benefit ratio of present procedures versus the invention;

[0037] A minimally invasive procedure versus major open surgery;

[0038] Outpatient versus inpatient surgery (about 20 minutes per joint versus hours). Note: this procedure may also be performed during open surgery at the discretion of the physician;

[0039] Can be used to augment present open fusion techniques to lessen the need for bone stimulation especially in high risk groups such as smokers and multi-level cases;

[0040] Reduced morbidity;

[0041] Reduced blood loss;

[0042] Reduced time under anesthesia;

[0043] Reduced risk;

[0044] Recovery time dramatically reduced;

[0045] Minimal scarring that decreases the risk of failed back syndrome and improves revision surgery outcome;

[0046] Reduced risk of post operative infection by significantly reducing operating room time and soft tissue destruction;

[0047] No preclusion of other surgical or non-invasive treatment options; and.

[0048] Projected high success rate by utilizing accepted arthroscopic procedures employing a new technique and taking advantage of either existing cortical bone harvesting procedures in combination with unique instrumentation to shape and prepare the bone or new pre-shaped, pre-made synthetic cortical bone alternatives as they are made generally available by FDA approval.

[0049] It is anticipated that the availability of this system and graft alternatives will dramatically increase the number of surgeries performed because they offer the first safe outpatient surgical solution to the predominant cause of spinal joint pain. It is expected that virtually all patients receiving this procedure will be able to walk out the same day and be fully functional within a few weeks. Present surgical solutions require hospitalization of about three days and six to twenty-four months recovery.

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[0050] Aside from the obvious positive clinical outcome, the significant favorable financial impact on disability, worker's compensation and health care insurers is considerable.

[0051] Spinal facet implant units are calculated per joint. Each patient has two joints per spinal segment and twenty-four segments, C1-C2 through L5-S1 for a total of forty-eight facet joints. Each surgery is likely to involve multiple joints.

[0052] The present invention is directed at overcoming, or at least improving upon, the disadvantages of the prior art.

[0053] In inserting the plug 10, the tapered drill is specifically used through an arthroscopic type portal allowing access to the joint through a small incision and progressive dilation of the intervening soft tissue. The instrument design does not preclude its use in a classic open surgery or by access to the facet joint through an otherwise limited incision. The opening 28 is marginally smaller than the bone plug 10 to create proper fixation of the plug 10 and the joint.

[0054] Referring again to FIGS. 1 and 8, a fused facet joint plug 10, 10a or 10b is shown with one shaped autograft, cadaveric allograft or FDA approved synthetic pre-made, pre-shaped cortical bone plug. The anterior end 22 or 22a of the plug 10 or 10a is 3-8 mm and the posterior end 24 or 24a of the plug 10, 10a or 10b is 4-12 mm in diameter in a frustum shape with the wider portion located in the posterior portion to facilitate fixation during bone graft incorporation. The procedure is envisioned to require only one bone plug per facet joint and two per level. Permanent fixation occurs when bone in-growth occurs into the joint itself and into the plug over time.

[0055] The frustum shaped bone graft 10b, as shown in FIG. 10, can be employed when no additional biologic material is required.

[0056] Other equivalent elements can be substituted for the elements disclosed herein to produce substantially the same results in substantially the same way.

Having thus described the invention what is claimed and desired to be secured by Letters Patent is:

1. A facet joint fusion plug comprising:

a substantially solid frustum shaped body having an aperture in a top surface and a pair of first opposed apertures in a side surface and a pair of second opposed apertures in the side surface, both the first and second opposed apertures positioned in a lower portion of the body distal from the top surface;

a vertical channel directed downwardly from the aperture in the top surface, the vertical channel intersecting with a first horizontal channel connecting the first opposed pair of apertures and terminating at a second horizontal channel connecting the second opposed pair of apertures;

at least one pair of flanges partially surrounding a bottom portion of an exterior surface of the body; and

the body formed from a material selected from the group consisting of synthetic cortical bone, a harvested synthetic cortical and compacted iliac crest graft and a cadaveric allograft.

2. The facet joint fusion plug according to claim 1, wherein there is a third pair of opposed apertures in a side surface of the body and the vertical channel intersects with a third horizontal channel connecting the third pair of apertures.

3. The facet joint fusion plug according to claim 1, wherein a second pair of flanges partially surrounds a bottom portion of the exterior surface of the body.

4. The facet joint fusion plug according to claim 2, wherein a second pair of flanges partially surrounds a bottom portion of the exterior surface of the body.

5. The facet joint fusion plug according to claim 1, wherein the first and second horizontal channels are on parallel horizontal planes.

6. The facet joint fusion plug according to claim 2, wherein the third horizontal channel is on a parallel horizontal plane above the first and second horizontal channels.

7. The facet joint fusion plug according to claim 1, wherein the body is formed from synthetic cortical bone.

8. The facet joint fusion plug according to claim 1, wherein the body is formed from a harvested and compacted iliac crest graft.

9. The facet joint fusion plug according to claim 1, wherein the body is formed from a cadaveric allograft.

10. A plug mounted in a hole between bones forming a facet joint, the plug comprising:

a substantially solid frustum shaped body having an aperture in a top surface, the top surface having a greater diameter than a bottom surface;

a first pair of opposed apertures in a side surface of the body, the first pair of apertures connected by a first horizontal channel;

a second pair of opposed apertures in a side surface of the body, the second pair of apertures connected by a second horizontal channel in a parallel plane to the first horizontal channel;

a vertical channel directed downwardly from the aperture in the top surface, the vertical channel intersecting with the first horizontal channel and terminating in the second horizontal channel;

at least one pair of flanges partially surrounding a bottom portion of an exterior surface of the body; and

a synthetic or biologic material compatible with bone passing through the top aperture and exiting from the first and second pair of apertures in the side surface of the body.

11. The plug mounted in a hole between bones forming a facet joint according to claim 10, wherein a third pair of opposed apertures are connected by a third horizontal channel intersecting with the vertical channel, the synthetic or biologic material exiting from the third pair of apertures.

12. The plug mounted in a hole between bones forming a facet joint according to claim 10, wherein there are two pair of flanges spaced apart partially surrounding a bottom portion of an exterior surface of the body.

13. The plug mounted in a hole between bones forming a facet joint according to claim 10, wherein the body is formed from a material selected from the group consisting of a synthetic cortical bone, a harvested and compacted iliac crest graft and a cadaveric allograft.

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14. The plug body according to claim 13, formed from a synthetic cortical bone.

15. The plug body according to claim 13, formed from a harvested and compacted iliac crest graft.

16. The plug body according to claim 13, formed from an iliac cadaveric allograft.

17. A method of mounting a plug in a facet joint C1-C2 and L5-S1, the method comprising:

cutting an arthroscopic type portal in the tissue of a patient outside a diseased or damaged facet joint;

creating a hole between two opposed bones forming the facet joint;

inserting a frustum preshaped plug into the hole, the plug having a shape substantially the same as the hole;

providing the plug with an aperture on a top surface, the top surface diameter being greater than a bottom surface diameter;

providing the plug with at least one pair of flanges partially surrounding an outside side wall and at least a first and second opposed pair of side apertures in the side wall of the plug;

providing an internal cortical channel from the top surface aperture to a first horizontal channel connecting the first

pair of apertures and a second horizontal channel connecting the second pair of apertures;

inserting an applicator tube into the aperture in the top surface;

inserting a synthetic or biologic material compatible with bone into the applicator tube; and

providing sufficient pressure on the synthetic or biologic material to cause egress of the material from the side wall apertures.

18. The method according to claim 17, wherein the preshaped plug is provided as a synthetic cortical bone.

19. The method according to claim 17, wherein the preshaped plug is provided as a compacted iliac crest graft.

20. The method according to claim 17, wherein the preshaped plug is provided as a cadaveric allograft.

21. A solid plug mounted in a hole between bones forming a facet joint, the plug consisting of a substantially frustum shaped body having a posterior end with a diameter of 4 to 12 mm and an anterior end with a diameter less than the posterior end.

* * * * *

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Andrew Guilford and the assigned discovery Magistrate Judge is Robert N. Block.

The case number on all documents filed with the Court should read as follows:

SACV08- 188 AG (RNBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

<p>1 (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Orthopedic Development Corporation and MinSURG Corporation</p>	<p>DEFENDANTS Vikingcraft Spine, Inc.</p>
<p>(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):</p>	<p>County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only): Orange County, California</p>
<p>(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Darren M. Franklin Sheppard, Mullin, Richter & Hampton LLP 333 South Hope Street, 48th Floor Los Angeles, California 90071-1448 (213) 620-1780</p>	<p>Attorneys (If Known)</p>

<p>II. BASIS OF JURISDICTION (Place an X in one box only.)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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V. ORIGIN (Place an X in one box only.)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify): 6 Multi District Litigation 7 Appeal to District Judge from Magistrate Judge

VI. REQUESTED IN COMPLAINT: **JURY DEMAND:** Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$** _____

VII. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
15 U.S.C. § 1125(a)(1)(A) (false designation of origin); 15 U.S.C. § 1125(a)(1)(B) (false advertising); statutory, common law unfair comp.

VIII. NATURE OF SUIT (Place an X in one box only.)

<p>OTHER STATUTES</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc.</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities /Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Act</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Info. Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>	<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p> <p>REAL PROPERTY</p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Fed. Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury-Med Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury-Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p>	<p>TORTS - U.S.</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p> <p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>CIVIL RIGHTS</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 444 Welfare</p> <p><input type="checkbox"/> 445 American with Disabilities - Employment</p> <p><input type="checkbox"/> 446 American with Disabilities - Other</p> <p><input type="checkbox"/> 440 Other Civil Rights</p>	<p>PRISONER PETITIONS</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus/Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p>POST-PRISONER PETITIONS</p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food & Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. & Truck</p> <p><input type="checkbox"/> 650 Airline Regs</p> <p><input type="checkbox"/> 660 Occupational Safety /Health</p> <p><input type="checkbox"/> 690 Other</p>	<p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input checked="" type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI(405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS-Third Party 26 USC 7609</p>
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III(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? No Yes
yes, list case number(s): _____

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

VENUE: List the California County, or State if other than California, in which EACH named plaintiff resides (Use an additional sheet if necessary)

Check here if the U.S. government, its agencies or employees is a named plaintiff.

Florida

List the California County, or State if other than California, in which EACH named defendant resides. (Use an additional sheet if necessary).

Check here if the U.S. government, its agencies or employees is a named defendant.

Orange County, California

List the California County, or State if other than California, in which EACH claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

Orange County, California

SIGNATURE OF ATTORNEY (OR PRO PER): Darren Franklin Date February 19, 2007

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HLA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))