

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RSB SPINE, LLC, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 19-1515-RGA
 :
 DEPUY SYNTHES SALES, INC., et al., :
 :
 Defendants. :

MEMORANDUM ORDER

The parties have briefed two issues. First, the role of inventor testimony and secondary considerations in determining an interference-in-fact. (D.I. 355, 356, 357, 358). Second, whether DePuy’s ‘207 may claim priority to the ‘089 PCT Application. (D.I. 359, 360). I have reviewed the parties’ briefing.

Regarding the first issue, Mr. Lechmann may testify in the interference-in-fact section of the trial but will be limited to testimony about facts within his personal knowledge. He may not testify about the SynFix-LR or about secondary considerations of (non)-obviousness.

Regarding the second issue, the ‘599 continuation application underlying the ‘207 patent contained a “specific reference” with the required information in the first sentence of its specification when it was filed. 35 U.S.C. § 120; (D.I. 359-1 at 4 of 20, 37 C.F.R. § 1.78(a)(2)(i), (iii); D.I. 359-5 at 6 of 16). The ‘599 application did not need to be amended to contain this

information. A reference to 35 U.S.C. § 120 itself was not required. Accordingly, the '207 patent is entitled to claim priority to the filing date of the PCT application.

IT IS SO ORDERED this 4th day of April 2025.

/s/ Richard G. Andrews
United States District Judge