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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CA
10 SAN JOSE DIVISION

11 MCLUEN DESIGN, INC.) **Case No.**
12)
13 Plaintiff,) **JURY TRIAL DEMANDED**
14 vs.)
15 BIOSEARCH TECHNOLOGIES, INC.)
16 Defendant.)

17 **COMPLAINT FOR PATENT INFRINGEMENT**

18 Plaintiff McLuen Design, Inc. for its complaint against Defendant Biosearch
19 Technologies, Inc. hereby alleges as follows:

20 **Parties**

- 21 1. Plaintiff McLuen Design, Inc. (“McLuen Design”) is a Washington Corporation
22 having its principal place of business at 2023 Sims Way, #321, Port Townsend, WA 98368.
23 2. Upon information and belief. Defendant Biosearch Technologies, Inc.
24 (“Biosearch”) is a California Corporation having its principal place of business at 81 Digital
25 Drive, Novato, CA 94949.

1 **Jurisdiction and Venue**

2 3. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
3 1338(a) because this action arises under the patent laws of the United States.

4 4. This court has personal jurisdiction over the Defendant because the alleged acts of
5 infringement have occurred and are occurring in this state.

6 5. Venue is proper in this district under 28 U.S.C. § 1391(b). The alleged acts of
7 infringement giving rise to the claim occurred and are occurring in this district.

8 **Factual Background**

9 6. McLuen Design has developed a multi-well rotary synthesizer, cartridge and vials
10 for synthesizing polymer chains. McLuen Design has developed proprietary technology and
11 know-how related to the manufacture, design and use of disposable vials for use in DNA
12 Synthesizers. Multiple third-party manufacturers have licensed McLuen Design’s proprietary
13 technology including its processes, products, inventions and know-how.

14 7. McLuen Design is the owner of all right, title and interest in United States Patent
15 No. 6,270,730 (“’730” Patent) entitled “Multi-Well Rotary Synthesizer.” A true and correct
16 copy of the ‘730 Patent is attached as Exhibit A.

17 8. McLuen Design is the owner of all right, title and interest in United States Patent
18 No. 6,811,755 (“’755” Patent) entitled “Multi-Well Rotary Synthesizer.” A true and correct
19 copy of the ‘755 Patent is attached as Exhibit B.

20 9. McLuen Design is the owner of all right, title and interest in United States Patent
21 No. 8,147,776 (“’776” Patent) entitled “Multi-Well Rotary Synthesizer.” A true and correct
22 copy of the ‘776 Patent is attached as Exhibit C.

23 10. McLuen Design is the owner by assignment of all right, title and interest in
24 United States Patent No. 8,158,085 (“’085” Patent) entitled “Multi-Well Rotary Synthesizer.” A
25 true and correct copy of the ‘085 Patent is attached as Exhibit D.

1 11. McLuen Design is the owner of all right, title and interest in United States Patent
2 No. 8,404,196 (“‘196” Patent) entitled “Multi-Well Rotary Synthesizer.” A true and correct
3 copy of the ‘196 Patent is attached as Exhibit E.

4 **Count 1– Biosearch’s Infringement of the 6,270,730 Patent**

5 12. McLuen Design incorporates by reference the material factual allegations above.

6 13. Biosearch has induced infringement of the ‘730 Patent and/or committed acts of
7 contributory infringement of the ‘730 Patent by knowingly selling, marketing and/or offering for
8 sale precision fit vials that are compatible with the ABI 3900 DNA Synthesizer based on
9 technology licensed from McLuen Design and embodied within the patented invention described
10 and claimed within the ‘730 Patent.

11 14. Biosearch’s activities have been without express or implied license from McLuen
12 Design.

13 15. Biosearch will continue to infringe the ‘730 Patent unless enjoined by this court.
14 As a result of the Biosearch’s infringing conduct, McLuen Design has suffered, and will
15 continue to suffer, irreparable harm for which there is no adequate remedy at law. McLuen
16 Design is entitled to preliminary and permanent injunctive relief against such 35 § 283.

17 16. As a result of the infringement of the ‘730 Patent, McLuen Design has been
18 damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant
19 to 35 U.S.C. § 284, in an amount to be determined at trial.

20 **Count 2– Biosearch’s Infringement of the 6,811,755 Patent**

21 17. McLuen Design incorporates by reference the material factual allegations above.

22 18. Biosearch has induced infringement of the ‘755 Patent and/or committed acts of
23 contributory infringement of the ‘755 Patent by knowingly selling, marketing and/or offering for
24 sale precision fit vials that are compatible with the ABI 3900 DNA Synthesizer based on
25 technology licensed from McLuen Design and embodied within the patented invention described
26 and claimed within the ‘755 Patent.

1 19. Biosearch’s activities have been without express or implied license from McLuen
2 Design.

3 20. Biosearch will continue to infringe the ‘755 Patent unless enjoined by this court.
4 As a result of Biosearch’s infringing conduct, McLuen Design has suffered, and will continue to
5 suffer, irreparable harm for which there is no adequate remedy at law. McLuen Design is
6 entitled to preliminary and permanent injunctive relief against such 35 § 283.

7 21. As a result of the infringement of the ‘755 Patent, McLuen Design has been
8 damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant
9 to 35 U.S.C. § 284, in an amount to be determined at trial.

10 **Count 3– Biosearch’s Infringement of the 8,147,776 Patent**

11 22. McLuen Design incorporates by reference the material factual allegations above.

12 23. Biosearch has infringed and is continuing to infringe the ‘776 Patent by
13 knowingly selling, marketing and/or offering for sale precision fit vials that are compatible with
14 the ABI 3900 DNA Synthesizer based on technology licensed from McLuen Design and
15 embodied within the patented invention described and claimed within the ‘776 Patent.

16 24. Biosearch has induced infringement of the ‘776 Patent and/or committed acts of
17 contributory infringement of the ‘776 Patent by knowingly selling, marketing and/or offering for
18 sale precision fit vials that are compatible with the ABI 3900 DNA Synthesizer based on
19 technology licensed from McLuen Design and embodied within the patented invention described
20 and claimed within the ‘776 Patent.

21 25. Biosearch’s activities have been without express or implied license from McLuen
22 Design.

23 26. Biosearch will continue to infringe the ‘776 Patent unless enjoined by this court.
24 As a result of the Biosearch’s infringing conduct, McLuen Design has suffered, and will
25 continue to suffer, irreparable harm for which there is no adequate remedy at law. McLuen
26 Design is entitled to preliminary and permanent injunctive relief against such 35 § 283.

1 27. As a result of the infringement of the '776 Patent, McLuen Design has been
2 damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant
3 to 35 U.S.C. § 284, in an amount to be determined at trial.

4 **Count 4– Biosearch’s Infringement of the 8,158,085 Patent**

5 28. McLuen Design incorporates by reference the material factual allegations above.

6 29. Biosearch has infringed and is continuing to infringe the '085 Patent by
7 knowingly selling, marketing and/or offering for sale precision fit vials that are compatible with
8 the ABI 3900 DNA Synthesizer based on technology licensed from McLuen Design and
9 embodied within the patented invention described and claimed within the '085 Patent.

10 30. Biosearch has induced infringement of the '085 Patent and/or committed acts of
11 contributory infringement of the '085 Patent by knowingly selling, marketing and/or offering for
12 sale precision fit vials that are compatible with the ABI 3900 DNA Synthesizer based on
13 technology licensed from McLuen Design and embodied within the patented invention described
14 and claimed within the '085 Patent.

15 31. Biosearch’s activities have been without express or implied license from McLuen
16 Design.

17 32. Biosearch will continue to infringe the '085 Patent unless enjoined by this court.
18 As a result of Biosearch’s infringing conduct, McLuen Design has suffered, and will continue to
19 suffer, irreparable harm for which there is no adequate remedy at law. McLuen Design is
20 entitled to preliminary and permanent injunctive relief against such 35 § 283.

21 33. As a result of the infringement of the '085 Patent, McLuen Design has been
22 damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant
23 to 35 U.S.C. § 284, in an amount to be determined at trial.

24 **Count 5– Biosearch’s Infringement of the 8,404,196 Patent**

25 34. McLuen Design incorporates by reference the material factual allegations above.

26 35. Biosearch has infringed and is continuing to infringe the '196 Patent by
27 knowingly selling, marketing and/or offering for sale precision fit vials that are compatible with

1 the ABI 3900 DNA Synthesizer based on technology licensed from McLuen Design and
2 embodied within the patented invention described and claimed within the '196 Patent.

3 36. Biosearch has induced infringement of the '196 Patent and/or committed acts of
4 contributory infringement of the '196 Patent by knowingly selling, marketing and/or offering for
5 sale precision fit vials that are compatible with the ABI 3900 DNA Synthesizer based on
6 technology licensed from McLuen Design and embodied within the patented invention described
7 and claimed within the '196 Patent.

8 37. Biosearch's activities have been without express or implied license from McLuen
9 Design.

10 38. Biosearch will continue to infringe the '196 Patent unless enjoined by this court.
11 As a result of the Biosearch's infringing conduct, McLuen Design has suffered, and will
12 continue to suffer, irreparable harm for which there is no adequate remedy at law. McLuen
13 Design is entitled to preliminary and permanent injunctive relief against such 35 § 283.

14 39. As a result of the infringement of the '196 Patent, McLuen Design has been
15 damaged, will be further damaged, and is entitled to be compensated for such damages, pursuant
16 to 35 U.S.C. § 284, in an amount to be determined at trial.

17 **Prayer for Relief**

18 Wherefore, McLuen Design requests entry of judgment in its favor against Defendant as
19 follows:

20 A. Enter Judgment that the Biosearch has indirectly and/or indirectly infringe one or
21 more claims of the '730 Patent, the '755 Patent, the '776 Patent, the '998 Patent, the '085 Patent,
22 and/or the '196 Patent;

23 B. Preliminary and permanently enjoin Biosearch, their directors, officers,
24 employees, servants, agents, affiliates, subsidiaries, others controlled by them, and all persons in
25 active concert or participation with them, from further infringing the McLuen Design Patents;

26 C. Award actual damages to compensate McLuen Design for Biosearch's
27 infringement of the '730 Patent, the '755 Patent, the '776 Patent, the '998 Patent, the '085

1 Patent, and/or the '196 Patent pursuant to 35 U.S.C. § 284 including lost profits and price
2 erosion, but in no case less than a reasonable royalty, to be assessed by or under the Court's
3 discretion;

4 D. Order that Biosearch, their directors, officers, employees, servants, agents,
5 affiliates, subsidiaries, others controlled by them, and all persons in active concert or
6 participation with them, or any of them, be ordered to destroy or offer up to McLuen Design for
7 destruction any and all products within the scope of any claim of the '730 Patent, the '755
8 Patent, the '776 Patent, the '998 Patent, the '085 Patent, and/or the '196 Patent that are within
9 the Biosearch's possession, custody or control;

10 E. Award McLuen Design enhanced damages pursuant to 35 U.S.C. § 284;

11 F. Award McLuen Design pre-judgment and post-judgment interest and costs to
12 McLuen Design in accordance with 35 U.S.C. § 284;

13 G. Award McLuen Design its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
14 and

15 H. For any such other and further relief as the Court may deem just, proper, and
16 equitable under the circumstances.

17 **Demand for Jury Trial**

18 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, McLuen Design respectfully
19 demands a trial by jury on all claims and issues so triable.

20
21 Respectfully submitted,

22
23
24 Dated: August 21, 2013

By: /Jonathan O. Owens/

25 Jonathan O. Owens
26 Matthew Rykels

27 HAVERSTOCK & OWENS LLP

Attorneys for Plaintiff McLuen Design, Inc.

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