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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

PEREGRINE SEMICONDUCTOR CORPORATION, a Delaware corporation,

Plaintiff-Counterdefendant,

v.

RF MICRO DEVICES, INC., a North Carolina corporation,

Defendant- Counterclaimant.

PEREGRINE SEMICONDUCTOR CORPORATION, a Delaware corporation,

Plaintiff,

v.

ROBERT BENTON, an individual,

Defendant.

CONSOLIDATED CASE NO.:
3:12-cv-00911-H (WMC)
CONSOLIDATED WITH:
3:13-cv-00725-H (WMC)

FIRST AMENDED COMPLAINT FOR

- (1) DECLARATORY RELIEF;
- (2) BREACH OF CONTRACT AND SPECIFIC PERFORMANCE;
- (3) INTENTIONAL INTERFERENCE WITH CONTRACT;
- (4) PATENT INFRINGEMENT UNDER 35 U.S.C. §§ 271, 281, 283-85;
- (5) DAMAGES

DEMAND FOR JURY TRIAL

Judge: Hon. Marilyn L. Huff

1 For its First Amended Complaint against Defendants RF Micro Devices,
2 Inc. (“RFMD”) and Robert Benton, Plaintiff Peregrine Semiconductor
3 Corporation (“Peregrine”) complains and alleges as follows:

4 **NATURE OF ACTION**

5 This is an action for: (1) declaratory relief and specific performance against
6 Robert Benton arising from Robert Benton’s failure to perform his contractual
7 and/or equitable obligation to assign certain patents to Peregrine; (2) declaratory
8 and injunctive relief against RFMD arising from the invalid assignment of patent
9 rights to RFMD from Robert Benton; (3) intentional interference with contract
10 arising from RFMD’s knowing and intentional disruption of Peregrine’s contract
11 with Robert Benton; and (4) patent infringement arising under Title 35 of the
12 United States Code, including without limitation 35 U.S.C. §§ 271 *et seq.*
13 Peregrine seeks declaratory relief, specific performance, preliminary and/or
14 permanent injunctive relief, damages, attorneys’ fees, and costs. In the event that
15 preliminary and/or permanent injunctive relief is not granted, Peregrine seeks
16 supplemental damages.

17 **JURISDICTION**

18 1. This Court has subject matter jurisdiction over this case pursuant to
19 28 U.S.C. §§ 1331 and 1338(a), because this action arises under the patent laws of
20 the United States, Title 35 of the United States Code.

21 2. This Court has supplemental jurisdiction over claims arising under
22 state law against Robert Benton and RFMD pursuant to 28 U.S.C. § 1367.

23 3. This Court has personal jurisdiction over Robert Benton because
24 Robert Benton resides in the state of California.

25 4. This Court has personal jurisdiction over RFMD based upon the
26 following: (a) RFMD maintains an office in California; (b) RFMD transacts
27 substantial business in and maintains continuous and systematic contacts with the
28 State of California; (c) RFMD has committed tortious acts that RFMD knew or

1 should have known would cause injury to Peregrine in California; and (d) RFMD
2 has appointed an agent in the State of California to receive service of process.

3 5. Venue is proper in the United States District Court for the Southern
4 District of California under 28 U.S.C. §§ 1391(b)-(d), 1400(b).

5 **PARTIES**

6 6. Peregrine is a Delaware corporation with a principal place of business
7 at 9380 Carroll Park Drive, San Diego, California 92121. Peregrine maintains or
8 has maintained offices other than in San Diego, including one in Campbell,
9 California. Peregrine is a leading provider of radio frequency (“RF”) integrated
10 circuits, including RF switch circuits. Peregrine is in the business of inventing
11 new technology and intellectual property for the ever-evolving RF market.
12 Peregrine’s products leverage its valuable and highly-praised intellectual property
13 to provide industry-leading performance in a broad range of applications and
14 markets. Peregrine has hired and continues to hire the most talented engineers to
15 develop its intellectual property and industry-leading products.

16 7. On information and belief, Defendant Robert Benton is and at all
17 times herein mentioned was an individual residing in the State of California,
18 within Santa Clara County. On information and belief, Robert Benton is currently
19 employed at Nexyn Corporation (“Nexyn”), a California corporation. Robert
20 Benton was employed as a Senior RF Design Engineer at Peregrine from April 13,
21 1994 through December 10, 1997.

22 8. Upon information and belief, RFMD is a North Carolina corporation
23 with a principal place of business at 7628 Thorndike Road, Greensboro, North
24 Carolina 27409.

25 **FACTUAL ALLEGATIONS**

26 ***Robert Benton’s Employment at Peregrine***

27 9. Peregrine hired Robert Benton on or about April 13, 1994 as a Senior
28 RF Design Engineer in Peregrine’s Campbell, California office. In 1994,

1 Peregrine had been incorporated for three years and was increasing its research
2 and development efforts. Robert Benton was hired and employed at Peregrine to
3 design, develop and test novel RF circuits. In the course of his work, Robert
4 Benton was expressly assigned to conduct experimentation and design transistors
5 for use in RF circuits, including for use in novel RF switch circuits.

6 10. At the time Robert Benton was hired, as well as throughout the entire
7 duration of his employment at Peregrine, Peregrine had a written employment
8 policy requiring every employee to assign all patent rights to Peregrine that result
9 from work done at Peregrine. This policy was written into Peregrine's Employee
10 Policy Manual ("Policy Manual") and it was in force at the time Mr. Benton was
11 hired. *See* Exhibit A.

12 11. It was at the time of Mr. Benton's employment Peregrine's policy to
13 provide a copy of the Policy Manual to every new employee and require each to
14 sign an acknowledgement of receipt before they could begin working.

15 12. Peregrine's policy also required all employees to sign an
16 "Employment, Confidential Information and Invention Assignment Agreement"
17 ("Employment and Assignment Agreement") as consideration for employment at
18 Peregrine. *See* Exhibit A at 25. The Employment and Assignment Agreement
19 was a separately executed Appendix to the Policy Manual. The Employment and
20 Assignment Agreement states, in relevant part:

21 **Assignment of Inventions:** I agree that I will promptly
22 make full written disclosure to the Company, will hold
23 in trust for the sole right and benefit of the Company,
24 and hereby assign to the Company, or its designee, all of
25 my right, title, and interest in and to any and all
26 inventions, original works of authorship, developments,
27 concepts, improvements or trade secrets, whether or not
28 patentable or registrable under copyright or similar laws,
which I may solely or jointly conceive or develop or
reduce to practice, or cause to be conceived or developed
or reduced to practice during the period of time I am in
the employ of the Company (collectively referred to as
"Inventions"), except as provided in Section 3(f) below.

Id. at 27. The Employment and Assignment Agreement also states:

1 **Patent and Copyright Registrations:** I agree to assist
2 the Company, or its designee, at the Company's
3 expense, in every proper way to secure the Company's
4 rights in the inventions and any copyrights, patents,
5 mask work rights or other intellectual property relating
6 thereto in any and all countries, including the disclosure
7 to the Company of all pertinent information and data
8 with respect thereto, the execution of all applications,
9 specifications, oaths, assignments and all other
10 instruments which the Company shall deem necessary in
11 order to apply for and obtain such rights and in order to
12 assign and convey to the Company, its successors,
13 assigns and nominees the sole and exclusive rights, title
14 and interest in and to such inventions, and any
15 copyrights, patents, mask work rights or other
16 intellectual property rights relating thereto. I further
17 agree that my obligation to execute or cause to be
18 executed, any such instrument or papers shall continue
19 after the termination of this Agreement. If the Company
20 is unable to secure my signature to apply for or to pursue
21 any application for any United States or foreign patents
22 or copyright registrations assigned to the Company, then
23 I hereby irrevocably designate and appoint the Company
24 as my agent and attorney in fact, to act for and in my
25 behalf and stead to execute and file any such
26 applications and to do all other lawfully permitted act to
27 further the prosecution and issuance of letters, patent or
28 copyright registrations thereon with the same legal force
 and effect as if executed by me.

16 *Id.* at 28.

17 13. The Policy Manual also includes an Intellectual Property Incentive
18 Program ("Incentive Program"), whereby employees would receive a monetary
19 incentive for being named an inventor on a filed patent application, and an
20 additional monetary incentive if the application issued as a U.S. Patent. *See id.* at
21 25.

22 14. At or around the time he was hired by Peregrine, Robert Benton
23 signed Peregrine's Employment and Assignment Agreement. By the terms of the
24 Employment and Assignment Agreement, Robert Benton assigned to Peregrine his
25 rights in any and all inventions he solely or jointly conceived, developed, reduced
26 to practice, or caused to be conceived or reduced to practice during the time he
27 was in the employ of Peregrine. *Id.* at 27. Robert Benton was obligated to assist
28 Peregrine to secure Peregrine's intellectual property rights, including the

1 execution of all applications, specifications, oaths, assignments and all other
2 instruments which Peregrine deems necessary in order to apply for and obtain
3 such rights and in order to assign and convey to Peregrine the sole and exclusive
4 rights, title and interest in and to such intellectual property rights. *Id.* at 28. By
5 the terms of the Employment and Assignment Agreement, Robert Benton's
6 obligation to execute such instruments or papers survived termination of the
7 Employment and Assignment Agreement. *Id.*

8 15. During his employment at Peregrine, Robert Benton worked on the
9 design of transistors used as the switching transistors for an RF switch circuit,
10 including stacked transistors. The switching transistors designed by Robert
11 Benton for the RF switch circuit did not include control circuitry to generate
12 signals to control the switching transistors.

13 16. Mark Burgener, one of the Peregrine co-founders, designed control
14 circuitry including a charge pump for an RF switch circuit. Dr. Burgener's control
15 circuitry was used to control stacked switching transistors. Dr. Burgener's control
16 circuitry did not work with the stacked transistors in an operational design. Dr.
17 Burgener and Dr. Jim Cable subsequently collaborated to redesign the RF switch
18 circuit. Peregrine's design efforts on RF switch circuits, including RF switch
19 circuits utilizing stacked transistors, led to the development of the technology
20 claimed in U.S. Patent Nos. 6,804,502 ("the '502 patent"), 7,123,898 ("the '898
21 patent"), 7,460,852 ("the '852 patent"), 7,796,969 ("the '969 patent"), and
22 7,860,499 ("the '499 patent") (collectively, "the '502 family of patents"). *See*
23 Exhibits B-F. These patents relate to various features of RF switch circuits.

24 17. Robert Benton's employment at Peregrine terminated on or about
25 December 10, 1997, years before Peregrine filed patent applications which led to
26 the '502 family of patents.

27 18. On or about October 10, 2001, when Peregrine filed the first of the
28 patent applications which led to the '502 family of patents, Peregrine was unaware

1 of Robert Benton's contribution to the inventions claimed in the patents and did
2 not name Robert Benton as an inventor to the Patent Office. The two named
3 inventors of the '502 family of patents, Drs. Burgener and Cable, were current
4 Peregrine employees at the time Peregrine filed the applications. Each assigned
5 his rights in the '502 family of patents to Peregrine. *See* Exhibits B-F. Each
6 received the monetary awards contemplated in Peregrine's Incentive Program, as
7 set forth in the Policy Manual.

8 ***Discovery of Robert Benton's Inventorship and Initial Communications with***
9 ***Robert Benton***

10 19. Peregrine subsequently instituted several legal actions against RF
11 Micro Devices, Inc. ("RFMD") and others, asserting infringement of the '898,
12 '852, '969, and '499 patents ("Asserted Patents"), including through the filing of
13 the original complaint in this action. *See, e.g., In the Matter of Certain Radio*
14 *Frequency Integrated Circuits and Devices Containing Same*, International Trade
15 Commission Investigation No. 337-TA-848.

16 20. Through the discovery process in the litigations against RFMD,
17 Peregrine discovered that Robert Benton may have contributed to the technology
18 claimed in the '502 family of patents. Dr. Ronald Reedy ("Dr. Reedy"), Co-
19 Founder and Chief Technology Officer of Peregrine, contacted Robert Benton on
20 or about August 20, 2012 to discuss his contribution to the technology claimed in
21 the '502 family of patents. After further investigation and discussions, it was
22 determined that Robert Benton had made a contribution to the technology claimed
23 in the '502 family of patents. On or about March 1, 2013, Dr. Reedy informed
24 Robert Benton that he would be named an inventor of the '502 family of patents,
25 and would need to execute the necessary papers to assist Peregrine to secure its
26 intellectual property rights in the '502 family of patents.

27 21. Shortly thereafter, on or around March 12, 2013, Joyce Benton,
28 Robert Benton's wife and the Chief Executive Officer of Nexyn, where Robert

1 Benton is currently employed, contacted Dr. Reedy. In this and subsequent
2 communications, Joyce Benton told Dr. Reedy that Robert Benton would not
3 execute the necessary papers to assist Peregrine to secure its intellectual property
4 rights in the '502 family of patents. Joyce Benton had been made aware of the
5 litigation between Peregrine and RFMD concerning the '502 family of patents,
6 and she expressed her view that Robert Benton was "extremely busy" and did not
7 have time to "be bothered with a lawsuit or another project of any kind." Joyce
8 Benton repeatedly inquired into "Rob's compensation", and stated that "[i]t would
9 have to be enough to make it worthwhile."

10 22. In response, Peregrine informed Joyce Benton that Robert Benton
11 was obligated to execute the necessary papers pursuant to his Employment and
12 Assignment Agreement. Peregrine also informed Joyce Benton that, pursuant to
13 its Policy Manual in force during Robert Benton's employment, all Peregrine
14 employees were required to assign Peregrine their rights to patents claiming
15 inventions invented at Peregrine. Joyce Benton again indicated that Robert
16 Benton would not execute the necessary papers to assist Peregrine to secure its
17 intellectual property rights in the '502 family of patents.

18 23. On or about April 18, 2013, Joyce Benton requested that Peregrine
19 send her a copy of Robert Benton's Employment and Assignment Agreement.
20 Peregrine attempted to locate Robert Benton's Employment and Assignment
21 Agreement. However, Peregrine was informed by its human resources department
22 that Robert Benton's employment file, including his Employment and Assignment
23 Agreement, had been destroyed many years earlier. Nevertheless, Peregrine was
24 able to locate copies of the Employment and Assignment Agreement signed by
25 other Peregrine employees hired in Peregrine's Campbell office around the same
26 time Robert Benton was hired at Peregrine (the "Contemporaneously Executed
27 Employment and Assignment Agreements"). *See* Exhibit G. Peregrine also
28

1 located the Policy Manual in force at the time Robert Benton was hired. *See*
2 Exhibit A.

3 24. On or about April 26, 2013, Peregrine was informed that the Bentons
4 had engaged the law firm of Brinks Hofer Gilson & Lione to represent them
5 regarding the inventorship issues that Peregrine raised. Through counsel,
6 Peregrine presented Robert Benton and Joyce Benton with a copy of the Policy
7 Manual in force at the time Robert Benton was hired. *See* Exhibit A. Through
8 counsel, Peregrine also presented the Bentons with copies of the
9 Contemporaneously Executed Employment and Assignment Agreements. *See*
10 Exhibit G. Through counsel, Peregrine asked that Robert Benton search his files
11 to determine if he had retained a copy of his Employment and Assignment
12 Agreement. Peregrine was informed that Robert Benton could not locate a copy
13 of his Employment and Assignment Agreement.

14 25. On or about June 5, 2013, Peregrine offered to the Bentons' counsel
15 that, in exchange for Robert Benton's assistance, Peregrine would (1) provide
16 Robert Benton a monetary award pursuant to Peregrine's Incentive Program; (2)
17 compensate Robert Benton at a reasonable consulting rate for any time spent in
18 connection with his efforts to assist Peregrine to secure its intellectual property
19 rights to the '502 family of patents; and (3) pay Robert Benton's reasonable
20 attorneys' fees relating to securing Peregrine's rights to the '502 family of patents.

21 26. Robert Benton, through his counsel, rejected Peregrine's offer on or
22 about July 18, 2013. The Bentons did not make a counter-offer to Peregrine's
23 proposal.

24 27. On or about July 31, 2013, Dr. Reedy contacted the Bentons (with the
25 permission of their counsel) to request an in-person meeting. Joyce Benton met
26 with Dr. Reedy on August 7, 2013. At the meeting, Joyce Benton reiterated her
27 concerns regarding the impact on Robert Benton's time should Robert Benton
28 assist Peregrine in securing its rights to the '502 family of patents, and stated to

1 Dr. Reedy that her counsel had informed her that Robert Benton's assignment of
2 the '502 family of patents could be worth a large sum of money. Dr. Reedy
3 reiterated the offer Peregrine had previously made, which Joyce Benton again
4 rejected. Joyce Benton reaffirmed that Robert Benton would not execute the
5 papers unless Peregrine paid a significant sum of money. Dr. Reedy concluded
6 the meeting.

7 28. At present, Robert Benton has not executed the necessary papers to
8 correct inventorship in the '502 family of patents to Peregrine, and continues to
9 refuse to do so. Were Robert Benton to execute the necessary papers, however,
10 Peregrine, remains ready to (1) provide Robert Benton a monetary award pursuant
11 to Peregrine's Incentive Program; (2) compensate Robert Benton at a reasonable
12 consulting rate for any time spent in connection with his efforts to assist Peregrine
13 to secure its intellectual property rights to the '502 family of patents; and (3) pay
14 Robert Benton's reasonable attorneys' fees relating to securing Peregrine's rights
15 to the '502 family of patents.

16 29. On November 11, 2013, RFMD informed Peregrine that Robert and
17 Joyce Benton had assigned to RFMD rights in certain Peregrine patents, both
18 asserted and not asserted in this litigation (collectively the "Purportedly Assigned
19 Patents") and served Peregrine with a copy of the purported assignment.

20 ***RFMD's Infringement of Peregrine's Patents***

21 30. U.S. Patent No. 7,910,993 (the "'993 Patent") is entitled "Method and
22 Apparatus for Use in Improving Linearity of MOSFETs Using an Accumulated
23 Charge Sink" and issued March 22, 2011. *See* Exhibit E. The '898 Patent is
24 entitled "Switch Circuit and Method of Switching Radio Frequency Signals" and
25 issued October 17, 2006. *See* Exhibit B. The '499 Patent is entitled "Switch
26 Circuit and Method of Switching Radio Frequency Signals" and issued December
27 28, 2010. *See* Exhibit C. Lastly, U.S. Patent No. 8,405,147 (the "'147 Patent") is
28 entitled "Method and Apparatus for Use in Improving Linearity of MOSFETs

1 Using an Accumulated Charge Sink,” and issued on March 26, 2013. *See* Exhibit
2 I.

3 31. Peregrine is the assignee of all rights, title, and interest in and to the
4 ’993 Patent, the ’898 Patent, the ’499 Patent, and the ’147 Patent (collectively the
5 “Asserted Patents”). RFMD has no legitimate right, title, or interest in or to those
6 patents, as described in the preceding paragraphs.

7 32. The Asserted Patents disclose advanced integrated circuit
8 technologies for use in RF circuits, including but not limited to RF switches. RF
9 circuits practicing the Asserted Patents can be used in a variety of devices
10 including, for example, antenna tuning circuits, devices that use diversity or
11 multiple-input and multiple-output (MIMO) antennas, and mobile wireless devices
12 that use cellular technologies and wireless local area network (WLAN)
13 technologies.

14 33. Mobile wireless devices that use RF circuits practicing the Asserted
15 Patents may (a) transmit and/or receive wireless signals more efficiently while
16 consuming less power, (b) be smaller in size because the Asserted Patents disclose
17 techniques that allow the integration of functions that previously had to be handled
18 by separate components, and (c) be less expensive to manufacture due to the
19 ability to leverage the established global Complementary Metal Oxide
20 Semiconductor (“CMOS”) manufacturing infrastructure, rather than needing to
21 rely on the more specialized manufacturing processes required by the devices that
22 utilized previously available technologies and techniques.

23 34. Mobile wireless devices that use RF circuits practicing the Asserted
24 Patents may also transmit and receive wireless signals more efficiently and
25 effectively, since the claimed inventions reduce harmonic and intermodulation
26 distortion and thereby improve linearity and performance of RF circuits.

27 35. After significant investments in research and development,
28 engineering, labor, plant and equipment, manufacturing and marketing, Peregrine-

1 branded RF switches that practice the Asserted Patents have been selected for use
2 in wireless handsets by many of the leading wireless handset manufacturers
3 including Apple, LG, Nokia, Samsung, and Sony Ericsson.

4 36. Upon information and belief, RFMD has and continues to infringe,
5 and/or induce infringement of the Asserted Patents by knowingly and actively (1)
6 making, having made, importing, using, offering for sale and/or selling products
7 that infringe one or more claims of the Asserted Patents, including RFMD's
8 Silicon-on-Insulator (SOI) RF switches and products incorporating such switches
9 and inducing others to do the same.

10 37. RFMD has induced infringement of the Asserted Patents. Upon
11 information and belief, RFMD has knowingly sold infringing components to
12 entities who in turn import, use, offer for sale and/or sell products incorporating
13 those infringing components within the United States. Upon information and
14 belief RFMD knows and intends that such infringing products will be imported,
15 used, offered for sale and/or sold within the United States. Upon information and
16 belief, RFMD also knows that this activity infringes the patents at issue.

17 38. RFMD became aware of the '993, '499, and '898 Patents no later
18 than February 14, 2012, when Peregrine filed its Complaints in *Peregrine*
19 *Semiconductor Corporation v. RF Micro Devices, Inc. et. al.*, Case No. 3:12-cv-
20 00911-H-WMC (S.D. Cal.) and *In the Matter of Certain Radio Frequency*
21 *Integrated Circuits and Devices Containing Same*, International Trade
22 Commission Investigation No. 337-TA-848, in which Peregrine asserted
23 infringement of the above-referenced patents.

24 39. RFMD became aware of the '147 patent no later than March 26,
25 2013, when Peregrine served upon RFMD a Complaint in *Peregrine*
26 *Semiconductor Corporation v. RF Micro Devices, Inc.*, Case No. 3:13-CV-00725-
27 H -WMC (S.D. Cal.), in which Peregrine asserted infringement of the '147 patent.

28 40. RFMD has sold infringing components to many of the leading sellers

1 of handsets in the United States. For example, RFMD has sold components that
2 practice the Asserted Patents to Motorola Mobility Holdings, Inc. (“MMI”) for
3 incorporation into its handsets. MMI, in turn, has imported, used, offered for sale
4 and/or sold products incorporating these components within the United States,
5 including but not limited to MMI’s DROID RAZR and DROID BIONIC handsets
6 (Model Nos. XT912 and XT875, respectively).

7 41. RFMD also has sold infringing components to HTC. HTC, in turn,
8 has incorporated these components into its handsets, including HTC's One S
9 handset, which contains the RF8889A integrated circuit. On information and
10 belief, HTC has sold the HTC One S within, and imported it into, the United
11 States.

12 42. Upon information and belief, RFMD knows and intends that its
13 infringing components will be integrated into products destined for sale within the
14 United States and will be resold within the United States. RFMD sells its products
15 to some of the largest sellers of handsets in the United States markets, including
16 MMI, HTC, Samsung and others.

17 43. RFMD offers customer support and technical assistance within the
18 United States; to take just one example, its datasheets list a United States phone
19 number for contact.

20 44. RFMD touts compliance of its switches with standards utilized in the
21 United States. For example, RFMD sells an SP10T antenna switch module under
22 the RF switch device name RF8889A. RFMD advertises through its RF8889A
23 Datasheet that “[t]he RF8889A is ideal for multi-mode GSM, EDGE, CDMA,
24 WCDMA, LTE and TD-SCDMA applications.” RFMD further designs its
25 products to target the smartphone market, of which the United States is a major
26 component. According to a press release, certain of its products are “optimized to
27 solve the complex RF requirements of 3G/4G smartphones related to high band
28 count and harmonics.”

1 45. Finally, RFMD, through its terms and conditions of sale, indemnifies
2 its customers against claims of infringement of United States patents.

3 **FIRST CAUSE OF ACTION**

4 **(Declaratory Relief Against Defendant Robert Benton)**

5 46. Peregrine incorporates the allegations in the preceding paragraphs as
6 if fully set forth herein.

7 47. Peregrine alleges and contends, and seeks a judicial declaration that
8 (1) Robert Benton entered into an Employment and Assignment Agreement with
9 Peregrine, and/or that Robert Benton entered into an implied-in-fact agreement
10 during his employment at Peregrine, and that pursuant to the Employment and
11 Assignment Agreement and/or the implied-in-fact agreement he assigned his
12 rights in the Purportedly Assigned Patents if any, to Peregrine and is obligated to
13 assist Peregrine in securing Peregrine's rights in the same patents, including to
14 execute any and all applications, specifications, oaths, assignments, and all other
15 instruments which Peregrine shall deem necessary in order to secure such rights;
16 (2) Robert Benton was hired to invent RF switch circuits and as a result of his
17 employment he assigned, or is required to assign, his rights, if any, to any patents
18 to which he contributed by his activities as an employee, including the Purportedly
19 Assigned Patents; (3) under Cal. Labor Code § 2860, Peregrine is the rightful
20 owner of patents that Robert Benton contributed to in the course and scope of his
21 employment, and that pursuant to Cal. Labor Code § 2860 he assigned, or is
22 obligated to assign his rights, if any, to any patents to which he contributed by his
23 activities as an employee, including the Purportedly Assigned Patents.

24 48. An actual and justiciable controversy now exists between Peregrine
25 and Robert Benton within the meaning of 28 U.S.C. §§ 2201-02 in that Peregrine
26 contends that Robert Benton entered into an Employment and Assignment
27 Agreement, was hired to invent the subject matter of the patents in suit, and/or is
28 subject to Labor Code § 2860, any and all of which resulted in an assignment to

1 Peregrine, or in the alternative require him to assign to Peregrine, his rights, if any,
2 in the Purportedly Assigned Patents, and to assist Peregrine in securing
3 Peregrine's rights in the same patents, including to execute any and all
4 applications, specifications, oaths, assignments, and all other instruments which
5 Peregrine shall deem necessary in order to secure such rights, whereas Robert
6 Benton disputes these contentions and contends that he has not and is not
7 obligated to assign his rights in the disputed patents to Peregrine or assist
8 Peregrine in securing Peregrine's rights in the disputed patents, including to
9 execute any and all applications, specifications, oaths, assignments, and all other
10 instruments which Peregrine shall deem necessary in order to secure such rights.

11 49. A judicial declaration is necessary and appropriate at this time under
12 the circumstances in order that Peregrine may ascertain its rights with respect to
13 the Purportedly Assigned Patents, and would serve in a practical way to stabilize
14 the dispute between Peregrine and Robert Benton, which otherwise would defer
15 the realization of the purposes of the Employment and Assignment Agreement, the
16 hired to invent doctrine, and Cal. Labor Code § 2860.

17 **SECOND CAUSE OF ACTION**

18 **(Breach of Contract and Specific Performance Against Defendant Robert** 19 **Benton)**

20 50. Peregrine incorporates the allegations in the preceding paragraphs as
21 if fully set forth herein.

22 51. On or about April 13, 1994, Robert Benton was hired and employed
23 as a Senior RF Design Engineer at Peregrine, in part, to design novel RF circuits
24 and to invent technology related to thereto. Robert Benton and Peregrine entered
25 into the Employment and Assignment Agreement and/or an implied-in-fact
26 agreement whereby Robert Benton assigned his rights in the Purportedly Assigned
27 Patents, and agreed and was obligated to assist Peregrine in securing Peregrine's
28 rights in the Purportedly Assigned Patents, including to execute any and all

1 applications, specifications, oaths, assignments, and all other instruments which
2 Peregrine shall deem necessary in order to secure such rights.

3 52. Robert Benton received a salary for his design work at Peregrine,
4 which provides consideration for his obligation to assign any patent rights to
5 Peregrine.

6 53. Peregrine has performed fully each and all of the conditions,
7 covenants, and obligations imposed on it under the terms of the Employment and
8 Assignment Agreement and/or the implied-in-fact agreement.

9 54. Robert Benton has failed and refused, and continues to fail and
10 refuse, to perform the conditions, covenants, and obligations of the Employment
11 and Assignment Agreement and/or the implied-in-fact agreement between Robert
12 Benton and Peregrine in that he refuses to assign his rights in the Purportedly
13 Assigned Patents to Peregrine, to assist Peregrine in securing Peregrine's rights in
14 the Purportedly Assigned Patents, or to execute any and all applications,
15 specifications, oaths, assignments, and all other instruments which Peregrine shall
16 deem necessary in order to secure such rights.

17 55. For the reasons heretofore stated, Peregrine has no adequate legal
18 remedy for the harm resulting from Robert Benton's actions. For example,
19 because the full extent of Peregrine's opportunities to exploit the Purportedly
20 Assigned Patents in the future is unknown, the damages Peregrine will suffer as a
21 result of Robert Benton's refusal to comply with the terms of the Employment and
22 Assignment Agreement and/or implied-in-fact agreement cannot be quantified.

23 56. Accordingly, Peregrine is entitled to an order of specific performance
24 requiring Robert Benton to assist Peregrine in securing Peregrine's rights in the
25 Purportedly Assigned Patents including to execute any and all applications,
26 specifications, oaths, assignments, and all other instruments which Peregrine shall
27 deem necessary in order to secure such rights.

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THIRD CAUSE OF ACTION

(Declaratory Relief Against Defendants Robert Benton and RFMD)

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3 57. Peregrine incorporates the allegations in the preceding paragraphs as
4 if fully set forth herein.

5 58. Peregrine alleges and contends, and seeks a judicial declaration that,
6 because Robert Benton had assigned, or is obligated to assign, his rights in the
7 Purportedly Assigned Patents and is obligated to assist Peregrine in securing
8 Peregrine's rights in the Purportedly Assigned Patents, the supposed assignment
9 entered into between Robert Benton and RFMD is void, and that RFMD is
10 accordingly constrained from licensing, assigning, offering to license or assign,
11 and/or recording the purported assignment of the Purportedly Assigned Patents,
12 and that any existing licenses and/or assignments granted or recorded by RFMD
13 are also void.

14 59. An actual and justiciable controversy now exists within the meaning
15 of 28 U.S.C. §§ 2201-02 between Peregrine and Defendants Robert Benton and
16 RFMD in that Peregrine contends that Robert Benton and RFMD entered into an
17 invalid assignment of rights and that Peregrine is the sole and rightful owner of
18 each patent, whereas Robert Benton and RFMD deny that the assignment is
19 invalid.

20 60. A judicial declaration is necessary and appropriate at this time under
21 the circumstances in order that Peregrine may ascertain its rights with respect to
22 the Purportedly Assigned Patents, and would serve in a practical way to stabilize
23 the dispute between Peregrine and RFMD.

24 61. Peregrine is therefore entitled to declaratory and injunctive relief
25 preventing RFMD licensing, assigning, offering to license or assign, and/or
26 recording the purported assignment of the Purportedly Assigned Patents
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FOURTH CAUSE OF ACTION

**(Intentional Interference With Contractual Relations Against Defendant
RFMD)**

62. Peregrine incorporates the allegations in the preceding paragraphs as if fully set forth herein.

63. On or about April 13, 1994, Robert Benton was hired and employed as a Senior RF Design Engineer at Peregrine, in part, to design novel RF switch circuits and to invent technology related to thereto. Robert Benton and Peregrine entered into the Employment and Assignment Agreement and/or an implied-in-fact agreement whereby Robert Benton assigned his rights in Purportedly Assigned Patents and to agreed and was obligated to assist Peregrine in securing Peregrine's rights in the Purportedly Assigned Patents, including to execute any and all applications, specifications, oaths, assignments, and all other instruments which Peregrine shall deem necessary in order to secure such rights.

64. On information and belief, and at all relevant times, RFMD was aware of Robert Benton's Employment and Assignment Agreement and/or implied-in-fact agreement and that he is obligated to assign his rights in the Purportedly Assigned Patents, and to assist Peregrine in securing Peregrine's rights in the Purportedly Assigned Patents, including to execute any and all applications, specifications, oaths, assignments, and all other instruments which Peregrine shall deem necessary in order to secure such rights. In addition, on information and belief, RFMD was aware that under common law and Cal. Labor Code § 2860 Peregrine is the rightful owner of all patents that Robert Benton contributed to in the course and scope of his employment at Peregrine and that Robert Benton was employed by Peregrine as a design engineer for the purpose of inventing RF technologies including those disclosed in the Purportedly Assigned Patents .

1 in and to the '993 Patent. Peregrine therefore has standing to sue for infringement
2 of the '993 Patent.

3 72. RFMD infringes, literally and/or under the doctrine of equivalents,
4 one or more claims of the '993 Patent, by making, having made, importing, using,
5 offering to sell, or selling RF integrated circuit switches that infringe one or more
6 claims of the '993 Patent, including but not limited RFMD's SOI RF switches,
7 and by knowingly and actively inducing the infringement of the '993 Patent by
8 others.

9 73. RFMD has knowledge and notice of the '993 patent and its
10 infringement since no later than February 14, 2012.

11 74. Peregrine has complied with 35 U.S.C. § 287.

12 75. As a direct and proximate result of RFMD's infringement, Peregrine
13 has suffered, and will continue to suffer, injury.

14 76. As a result of the harm suffered as alleged herein, Peregrine is
15 entitled to all of the remedies available under the Patent Act, including damages
16 adequate to compensate it for such infringement, but in no event less than a
17 reasonable royalty, costs and attorneys' fees.

18 **SIXTH CAUSE OF ACTION**

19 **(Infringement of the '898 Patent Against Defendant RFMD)**

20 77. Peregrine incorporates the allegations in the preceding paragraphs as
21 if fully set forth herein.

22 78. Peregrine is the owner by assignment of all rights, title, and interest
23 in and to the '898 Patent. Peregrine therefore has standing to sue for infringement
24 of the '898 Patent.

25 79. RFMD infringes, literally and/or under the doctrine of equivalents,
26 one or more claims of the '898 Patent, by making, having made, importing, using,
27 offering to sell, or selling RF integrated circuit switches that infringe one or more
28 claims of the '898 Patent, including but not limited RFMD's SOI RF switches,

1 and by knowingly and actively inducing the infringement of the '898 Patent by
2 others.

3 80. RFMD has knowledge and notice of the '898 patent and its
4 infringement since no later than February 14, 2012.

5 81. Peregrine has complied with 35 U.S.C. § 287.

6 82. As a direct and proximate result of RFMD's infringement, Peregrine
7 has suffered, and will continue to suffer, injury.

8 83. As a result of the harm suffered as alleged herein, Peregrine is
9 entitled to all of the remedies available under the Patent Act, including damages
10 adequate to compensate it for such infringement, but in no event less than a
11 reasonable royalty, costs and attorneys' fees.

12 **SEVENTH CAUSE OF ACTION**

13 **(Infringement of the '499 Patent Against Defendant RFMD)**

14 84. Peregrine incorporates the allegations in the preceding paragraphs as
15 if fully set forth herein.

16 85. Peregrine is the owner by assignment of all rights, title, and interest
17 in and to the '499 Patent. Peregrine therefore has standing to sue for infringement
18 of the '499 Patent.

19 86. RFMD infringes, literally and/or under the doctrine of equivalents,
20 one or more claims of the '499 Patent, by making, having made, importing, using,
21 offering to sell, or selling RF integrated circuit switches that infringe one or more
22 claims of the '499 Patent, including but not limited RFMD's SOI RF switches,
23 and by knowingly and actively inducing the infringement of the '499 Patent by
24 others.

25 87. RFMD has knowledge and notice of the '499 patent and its
26 infringement since no later than February 14, 2012.

27 88. Peregrine has complied with 35 U.S.C. § 287.

28 89. As a direct and proximate result of RFMD's infringement, Peregrine

1 has suffered, and will continue to suffer, injury.

2 90. As a result of the harm suffered as alleged herein, Peregrine is
3 entitled to all of the remedies available under the Patent Act, including damages
4 adequate to compensate it for such infringement, but in no event less than a
5 reasonable royalty, costs and attorneys' fees.

6 **EIGHTH CAUSE OF ACTION**

7 **(Infringement of the '147 Patent Against Defendant RFMD)**

8 91. Peregrine incorporates the allegations in the preceding paragraphs as
9 if fully set forth herein.

10 92. Peregrine is the owner by assignment of all rights, title, and interest
11 in and to the '147 Patent. Peregrine therefore has standing to sue for infringement
12 of the '147 Patent.

13 93. RFMD infringes, literally and/or under the doctrine of equivalents,
14 one or more claims of the '147 Patent, by making, having made, importing, using,
15 offering to sell, or selling RF integrated circuit switches that infringe one or more
16 claims of the '147 Patent, including but not limited RFMD's SOI RF switches,
17 and by knowingly and actively inducing the infringement of the '147 Patent by
18 others.

19 94. RFMD has knowledge and notice of the '147 patent and its
20 infringement since at least March 26, 2013.

21 95. Peregrine has complied with 35 U.S.C. § 287.

22 96. As a direct and proximate result of RFMD's infringement, Peregrine
23 has suffered, and will continue to suffer, injury.

24 97. As a result of the harm suffered as alleged herein, Peregrine is
25 entitled to all of the remedies available under the Patent Act, including damages
26 adequate to compensate it for such infringement, but in no event less than a
27 reasonable royalty, costs and attorneys' fees.

28 **PRAYER FOR RELIEF**

1 **WHEREFORE**, Peregrine respectfully prays that the Court grant the
2 following relief:

3 A. For a judicial declaration that Robert Benton assigned or is obligated
4 to assign his rights, if any, to the Purportedly Assigned Patents to Peregrine and is
5 obligated to assist Peregrine in securing Peregrine’s rights in the same patents,
6 including to execute any and all applications, specifications, oaths, assignments,
7 and all other instruments which Peregrine shall deem necessary in order to secure
8 such rights;

9 B. For an order of specific performance requiring Robert Benton to
10 assign to Peregrine his rights in and to the Purportedly Assigned Patents, if any,
11 and to assist Peregrine in securing Peregrine’s rights in the Purportedly Assigned
12 Patents including to execute any and all applications, specifications, oaths,
13 assignments, and all other instruments which Peregrine shall deem necessary in
14 order to secure such rights;

15 C. For a judicial declaration that the purported assignment entered into
16 between Robert Benton and RFMD is void and that RFMD is accordingly
17 constrained from licensing, assigning, offering to license or assign, and/or
18 recording the purported assignment of the Purportedly Assigned Patents, and that
19 any existing sublicenses of the Purportedly Assigned Patents granted or recorded
20 by RFMD are also void;

21 D. A preliminary and permanent injunction preventing RFMD from
22 licensing, assigning, offering to license or assign, and/or recording the purported
23 assignment of the Purportedly Assigned Patents;

24 E. The entry of judgment in favor of Peregrine and against RFMD on all
25 claims;

26 F. An award of damages adequate to compensate Peregrine for RFMD’s
27 intentional interference with Peregrine’s contract with Robert Benton;

28 G. An award of punitive damages based on RFMD’s malicious and

1 oppressive conduct in interfering with Peregrine's contract with Robert Benton;

2 H. A permanent injunction prohibiting RFMD, its respective officers,
3 agents, servants, employees and/or all persons acting in concert or participation
4 with them, or any of them, from engaging in further infringement of the Asserted
5 Patents;

6 I. An award of damages adequate to compensate Peregrine for the
7 infringement of the Asserted Patents, as well as prejudgment interest from the date
8 the infringement began, but in no event less than a reasonable royalty as permitted
9 by 35 U.S.C. § 285;

10 J. An award of supplemental damages;

11 K. A finding that, to the extent RFMD knew of its infringing activities,
12 RFMD's infringement was willful;

13 L. An award of treble damages for the period of any willful
14 infringement pursuant to 35 U.S.C. § 284;

15 M. A finding that this case is exceptional and an award of interest, costs
16 and attorneys' fees incurred by Peregrine in prosecuting this action as provided by
17 35 U.S.C. § 285;

18 N. For any other orders necessary to accomplish complete justice
19 between the parties; and

20 O. For such other and further relief as this Court or a jury may deem just
21 and proper.

22 **JURY DEMAND**

23 Peregrine demands a trial by jury on all issues triable by jury.

24
25 DATED: November 21, 2013

COVINGTON & BURLING LLP

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27 By: /s/ Alan H. Blankenheimer
28 Robert T. Haslam
COVINGTON & BURLING LLP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the following document has been served on November 21, 2013 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4:

FIRST AMENDED COMPLAINT

Any other counsel of record will be served by electronic mail, facsimile, and/or overnight delivery.

I declare under penalty of perjury under the laws of United States that the foregoing is true and correct and that this proof of service was executed on November 21, 2013 at San Diego, California.

/s/ Alan H. Blankenheimer
Alan H. Blankenheimer