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16 *Peregrine Semiconductor Corporation*

17 UNITED STATES DISTRICT COURT  
 18 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

19 PEREGRINE SEMICONDUCTOR  
20 CORPORATION, a Delaware  
21 corporation,

22 Plaintiff-Counterdefendant,

23 v.

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

26 Defendant- Counterclaimant.

27 PEREGRINE SEMICONDUCTOR  
28 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