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MASSIVELY PARALLEL INSTRUMENTS, INC.

6
7 **UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
9 **OAKLAND DIVISION**

10 MASSIVELY PARALLEL
11 INSTRUMENTS, INC.,

12 Plaintiff,

13 v.

14 WATERS CORPORATION and WATERS
15 TECHNOLOGIES CORPORATION,

16 Defendants.

Case No.

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

17
18 Plaintiff Massively Parallel Instruments, Inc. (“MPIi”), for its complaint against
19 Defendants Waters Corporation and Waters Technologies Corporation (collectively, “Waters”),
20 alleges as follows:

21 **NATURE OF THE ACTION**

22 1. This is an action arising under the patent laws of the United States based on
23 infringement by Waters of claims in the patents owned by MPIi. MPIi seeks damages for Waters’
24 infringement, enhancement of damages due to Waters’ willful infringement and a permanent
25 injunction restraining Waters from further infringement.

26 **PARTIES**

27 2. MPIi is a corporation organized and existing at all times relevant herein under the
28 laws of California with its principal place of business located at 5055 Preston Avenue, Livermore,



1 California 95020.

2 3. On information and belief, Waters Corporation is a corporation organized and
3 existing under the laws of Delaware, with a principal place of business at 34 Maple Street,
4 Milford, Massachusetts 01757.

5 4. On information and belief Waters Technologies Corporation is a corporation
6 organized and existing under the laws of the state of Delaware, with a principal place of business
7 at 34 Maple Street, Milford, Massachusetts 01757. On information and belief, Waters Corporation
8 is a holding company, doing business throughout the world, including this district, through its
9 wholly-owned subsidiary, Waters Technologies Corporation.

10 **JURISDICTION AND VENUE**

11 5. This is an action for patent infringement arising under the patent laws of the United
12 States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to
13 28 U.S.C. §§1331 and 1338(a). This Court has personal jurisdiction over Defendant Waters
14 because, on information and belief, Waters has purposely availed itself of the privilege of
15 conducting activities within this State and District, at a minimum, by marketing and selling the
16 Accused Products in this State and District. Additionally, Waters has placed the Accused
17 Products into the stream of interstate commerce, knowing they would be sold to consumers in this
18 State and District. Waters does business in, and is registered to do business in this State.

19 6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391 and 1400(b)
20 as Waters has done business in this judicial district and has committed and continues to commit
21 acts of patent infringement in this judicial district.

22 7. Jurisdiction and venue are also proper in this District because Waters has a regular
23 and established place of business at 5720 Stoneridge Drive, Suite 200, Pleasanton, CA 94588,
24 within this District, through and from which it develops business for, sells, offers to sell, and
25 services its products, including the accused products, throughout substantial parts of California,
26 including this District, and western Nevada. Waters also conducts periodic training courses at its
27 Pleasanton, CA office regarding the characteristics, operation, and use of its products, including
28 the Accused Products, for its customers, potential customers, users, and owners of such products.



BACKGROUND

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2 8. MPIi is the owner and assignee of United States Patent No. 5,811,820 (“the ‘820
3 patent”) entitled, “Parallel Ion Optics and Apparatus for High Current Low Energy Ion Beams”
4 The ‘820 patent was duly and legally issued by the United States Patent and Trademark Office on
5 September 22, 1998, to MPIi by assignment of the inventors, Nicholas J. Kirchner, Felix G.
6 Gutman, Oleg V. Alexandrov, Efim A. Dynin. A true and correct copy of the ‘820 patent is
7 attached hereto as Exhibit A.

8 9. MPIi was formed on May 29, 1992 and conducts and has conducted research and
9 development on a wide variety of types of ion beam instrumentation. These research activities
10 have related to mass spectrometry, ion implantation, ion deposition, and ion source technologies.
11 MPIi has also has conducted research and development in other areas ranging from high output
12 current alternators to novel solid state laser systems.

13 10. In about 2003, Waters, through Paul Tardiff, approached Nicholas Kirchner,
14 President of MPIi about obtaining a license under United States Patent No. 5,206,506 (“the 506
15 patent”), which also issued to MPIi, by assignment of the inventor of the ‘506 patent, Nicholas
16 Kirchner. Effective March 10, 2003, MPIi and Waters entered into a Patent License Agreement
17 under which Waters obtained a worldwide license under the ‘506 and ‘820 patents and their
18 foreign counterparts (“the Licensed Patents”) to make, have made, use, sell, offer to sell, supply,
19 or otherwise commercialize certain Analytical Mass Spectrometry products, commonly referred to
20 as Mass Spectrometers, in exchange for certain installment payments and for a percentage,
21 payable quarterly, of the Net Sales revenue obtained by Waters in respect of sales or other
22 commercialization of instruments that included Mass Spectrometers covered by the licensed
23 Patents.

24 11. Waters made quarterly payments and reports to MPIi under the March 2003
25 Agreement in respect of Waters’ sales through February 2012. Each report referred to the license
26 agreement with Waters for both the ‘506 patent and the ‘820 patent and their foreign counterparts.

27 12. In 2010, Waters introduced and began to sell and offer to sell Mass Spectrometers,
28 beginning with Waters’ Xevo TQ-S that incorporated a new “StepWave” technology that



1 included stacked electrode rings arranged to form two parallel, conjoined ion channels. According
2 to Waters, the use of StepWave technology increased signal transmission through the mass
3 spectrometers that utilize this technology by a factor of over 25 (over standard mass spectrometers
4 that did not incorporate the StepWave feature), which significantly increased sensitivity and the
5 signal-to-noise ratio.

6 13. Since the introduction of StepWave in the Xevo TQ-S in 2010, Waters has
7 introduced, and is currently selling and offering to sell additional mass spectrometers and mass
8 spectrometry-based detectors that incorporate the StepWave technology, including at least the
9 following models:

- 10 - Synapt G2-S
- 11 - SYNAPT G2-Si MS
- 12 - MALDI SYNAPT G2-Si MS
- 13 - SYNAPT G2-Si HDMS
- 14 - MALDI SYNAPT G2-Si HDMS
- 15 - Acquity QDa Detector
- 16 - Xevo G2-XS ToF
- 17 - Xevo TQ-S micro

18 14. On January 10, 2012, Waters notified MPIi by letter that, as permitted under the
19 terms of the 2003 agreement, it was terminating the 2003 agreement, upon the expiration of the
20 foreign counterparts of the '506 patent on February 11, 2012; the '506 patent itself had expired
21 February 11, 2011. Waters has since paid no royalties and made no reports to MPIi.

22 15. Following receipt of Waters' January 10, 2012, Nicolas Kirchner, president of
23 MPIi, informed Paul Tardiff, Waters' Vice president of Mergers & Acquisitions, of his belief that
24 the StepWave technology was covered by claims of the '820 patent and that Waters continued to
25 need a license under the '820 patent. Several e-mail exchanges between representatives of MPIi
26 and Waters followed, and MPIi's counsel sent Waters counsel a claim chart comparing certain
27 claims of the '820 patent to the StepWave device, indicating why MPIi believed that Waters
28 needed a continued license under the '820 patent in order to continue to sell and offer to sell mass



1 spectrometry equipment including the StepWave technology in the United States or in other
2 countries in which MPIi had corresponding patent rights.

3 16. No agreement was reached on a license under the '820 patent or its corresponding
4 non-US patent rights, with the result that, since February 11, 2012, Waters has had no right or
5 authorization to sell or offer to sell StepWave-equipped mass spectrometers or mass spectrometry
6 detectors under the '820 patent.

7 17. Since February 11, 2012, Waters has continued to sell, offer to sell, and distribute
8 mass spectrometers or mass spectrometry detectors that incorporate the StepWave technology,
9 train and instruct its customers and prospective customers to use, mass spectrometers or mass
10 spectrometry detectors that incorporate the StepWave technology, all with knowledge and notice
11 of the '820 patent and MPIi's views that such acts constituted infringement of the '820 patent.

12 18. Since February 11, 2012, Waters has engaged in, and continues to engage in, a
13 pattern of conduct demonstrating: Waters' awareness of the '820 patent; the objectively high
14 likelihood that Waters' actions constituted and continue to constitute infringement of claims of the
15 '820 patent; and that the patent is valid and enforceable. This objectively-defined risk was so
16 obvious that Waters should have known it; and that Waters in fact knew of this objectively-
17 defined risk.

18 **FIRST CLAIM FOR RELIEF**

19 (Infringement of U.S. Patent No. 5,811,820)

20 19. MPIi incorporates by reference paragraphs 1 through 18 above.

21 20. Waters directly, indirectly, contributorily and/or by inducement, literally and/or
22 under the doctrine of equivalents, has infringed and continues to infringe the '820 patent by its use
23 (or inducement of others to use), sale (or inducement of others to sell), offer for sale (or
24 inducement of others to offer for sale) and/or importation of (or inducement of others to import)
25 mass spectrometers or mass spectrometry detectors that incorporate the StepWave technology
26 within this judicial district and elsewhere in the United States that infringe one or more claims of
27 the '820 patent, including at least claims 1, 8, 34, 50, 51, 52, 54, and 55.

28 21. Waters' infringement of the '820 patent has caused and, unless enjoined, will



1 continue to cause, irreparable harm to MPIi. MPIi has no adequate remedy at law and is entitled
2 to a permanent injunction against further infringement.

3 22. MPIi has suffered and will continue to suffer damage to its business by reason of
4 Waters' acts of infringement of the '820 patent as alleged herein and MPIi is entitled to recover
5 from Waters the damages sustained as a result of Waters' acts pursuant to 35 U.S.C. § 284.

6 23. MPIi is informed and believes and, on that basis, alleges that Waters' actions make
7 this an exceptional case within the meaning of 35 U.S.C. § 285, which entitles MPIi to an award
8 of attorneys' fees.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Massively Parallel Instruments, Inc., prays for the following relief:

11 1. That judgment be entered in favor of Massively Parallel Instruments, Inc. with a
12 finding that Waters Corporation and Waters Technologies Corporation have infringed and are
13 infringing claims of United States Patent No. 5,811,820 in violation of 35 U.S.C. §271;

14 2. That Massively Parallel Instruments, Inc. be granted an accounting of all damages
15 sustained as a result of the infringement of Waters Corporation and Waters Technologies
16 Corporation of United States Patent No. 5,811,820 as herein alleged;

17 3. That Massively Parallel Instruments, Inc. be awarded actual damages with
18 prejudgment interest according to proof and enhanced damages pursuant to 35 U.S.C. §284;

19 4. That a permanent injunction be issued pursuant to 35 U.S.C. §283 enjoining Waters
20 Corporation and Waters Technologies Corporation, their officers, agents, servants, employees,
21 successors, assigns, and all other persons acting in concert or participation with them from further
22 infringement of United States Patent No. 5,811,820;

23 5. That this case be decreed an "exceptional case" within the meaning of 35 U.S.C.
24 §285, and that reasonable attorneys' fees, expenses, and costs be awarded to Massively Parallel
25 Instruments, Inc. and

26 6. That Massively Parallel Instruments, Inc. be awarded such further relief as the
27 Court deems just and proper.

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DATED: March 26, 2015

Respectfully submitted,
KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/ Theodore G. Brown, III
THEODORE G. BROWN, III

Attorneys for Plaintiff
Massively Parallel Instruments, Inc.



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DEMAND FOR JURY TRIAL

Massively Parallel Instruments, Inc. hereby demands a jury trial as to all issues triable to a jury.

DATED: March 26, 2015

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/ Theodore G. Brown, III
THEODORE G. BROWN, III

Attorneys for Plaintiff
Massively Parallel Instruments, Inc.

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