

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THE UNIVERSITY OF PITTSBURGH –	)	
OF THE COMMONWEALTH SYSTEM	)	
OF HIGHER EDUCATION,	)	Civil Action No. 2:15-cv-00674-CB
	)	
Plaintiff,	)	
	)	Honorable Judge Cathy Bissoon
v.	)	
	)	
PERKINELMER, INC.,	)	Jury Trial Demanded
	)	
Defendant.	)	
	)	

**SECOND AMENDED COMPLAINT**

The University of Pittsburgh – of the Commonwealth System of Higher Education d/b/a The University of Pittsburgh (the “University”), through its undersigned counsel, files the instant Second Amended Complaint against PerkinElmer, Inc. (“PerkinElmer”), and states as follows:

**The University and the Subject Patents**

1. The University is a state-related institution of higher education with its principal place of business at 4200 Fifth Avenue, Pittsburgh, Pennsylvania 15260.
2. The University is the owner by assignment of U.S. Patent Nos. 6,008,010 (“the ‘010 patent”); 7,867,752; 8,445,261; and 8,859,263 (collectively the “Subject Patents”) (attached as Exhibits A-D).
3. The lead inventor named on the Subject Patents is Joel S. Greenberger, Professor and Chair of the Department of Radiation Oncology at the University of Pittsburgh School of Medicine, and Co-Director of the Lung and Esophageal Cancer Program at the University of Pittsburgh Cancer Institute.

4. The Subject Patents are generally related to an integrated system for incubating cells in a dynamically controlled environment and automatically determining the state of the incubated cells.

5. Representative claim 1 of the '010 patent reads as follows:

An apparatus for incubating and determining the state of individual cells within a plurality of cells comprising:

a mechanism for incubating cells, said incubating mechanism having a housing having a biochamber, said biochamber being a dynamically controlled closed environment in which the cells are grown, which is maintained in a desired condition and in which each individual cell can be examined while the cells remain in place in a location in which they are grown relative to the biochamber and while the environment is dynamically controlled and maintained in the desired condition;

and a mechanism for automatically determining the state of said individual cell over time while said cell remains in place in the location in which it is grown relative to the biochamber and while the environment is dynamically controlled and maintained in the desired condition, said determining mechanism in communication with the incubating mechanism.

### **PerkinElmer and the Accused Systems**

6. Upon information and belief, PerkinElmer is a Massachusetts corporation with a principal place of business at 940 Winter Street, Waltham, Massachusetts 02451.

7. Upon information and belief, from approximately 2002 to the present, PerkinElmer has been manufacturing, using, selling, or offering for sale within the United States, including within this Judicial District, or importing into the United States, high-content screening and imaging systems, including but not limited to the Opera® High Content Screening System (“Opera”), Opera Phenix™ High Content Screening System (“Opera Phenix”), and Operetta® High Content Imaging System (“Operetta”).

8. Upon information and belief, during this same time period, PerkinElmer has been manufacturing, using, selling, or offering for sale within the United States, including within this

Judicial District, or importing into the United States, automated applications for the Opera, Opera Phenix, and Operetta, including but not limited to the cell::explorer™, plate::explorer™, and plate::handler™ robotic automation platforms.

9. Upon information and belief, during this same time period, PerkinElmer has been manufacturing, using, selling, or offering for sale within the United States, including within this Judicial District, or importing into the United States, software applications for the Opera, Opera Phenix, and Operetta, including but not limited to Harmony® High Content Imaging and Analysis Software.

10. Upon information and belief, by manufacturing, using, selling, or offering for sale within the United States, or importing into the United States, the products described in paragraphs 7-9, above (collectively, the “Accused Systems”), PerkinElmer directly infringes the Subject Patents.

11. On January 14, 2011, the University originally provided PerkinElmer with notice that it infringed the Subject Patents.

### **Jurisdiction and Venue**

12. This Court has subject matter jurisdiction pursuant to 35 U.S.C. § 1338(a).

13. Venue is proper in this Judicial District pursuant to 35 U.S.C. § 1400(b).

14. This Court has personal jurisdiction over PerkinElmer by virtue of PerkinElmer’s sales of and offers to sell the Accused Systems in this Judicial District.

### **Count I – Direct Infringement**

15. The University hereby incorporates by reference the allegations contained in paragraphs 1-14, above.

16. PerkinElmer has and continues to manufacture, use, sell, or offer for sale within the United States, or import into the United States, the Accused Systems.

17. PerkinElmer's acts constitute direct infringement of the Subject Patents in contravention of 35 U.S.C. § 271(a).

18. PerkinElmer's direct infringement of the Subject Patents has caused injury to the University.

19. PerkinElmer's continued direct infringement of the Subject Patents, while knowing about such patents and the infringement thereof, is, upon information and belief, willful.

20. The University demands a trial by jury.

**Prayers for Relief**

21. WHEREFORE, the University respectfully requests that this Honorable Court:

- (a) Find that PerkinElmer directly infringes the Subject Patents;
- (b) Award compensatory damages to the University equal to no less than a reasonable royalty to compensate for PerkinElmer's infringement of the Subject Patents pursuant to 35 U.S.C. § 284, along with interest thereon;
- (c) Award treble such damages in light of PerkinElmer's willfulness; and
- (d) Award the University such further relief as the Court deems appropriate.

Dated: September 1, 2015

Respectfully submitted,

/s/ Christopher H. St. Peter

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