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POLYMER TECHNOLOGY SYSTEMS, INC.
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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

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12 POLYMER TECHNOLOGY
SYSTEMS, INC., an Indiana
13 corporation,
14 Plaintiff,
15 v.
16 ACON LABORATORIES, INC., a
17 California corporation, and ACON
18 BIOTECH (HANGZHOU) CO.,
19 LTD., a Chinese company,
20 Defendants.

Case No. '18CV0805 AJB JLB

COMPLAINT FOR:

- (1) PATENT INFRINGEMENT ('397 PATENT);**
- (2) PATENT INFRINGEMENT ('721 PATENT);**
- (3) PATENT INFRINGEMENT ('818 PATENT)**

DEMAND FOR JURY TRIAL

1 Plaintiff Polymer Technology Systems, Inc. (“PTS”), by and through its
2 attorneys, alleges as follows:

3 **THE PARTIES**

4 1. PTS is a corporation organized under the laws of the State of Indiana
5 with its principal place of business at 7736 Zionsville Road, Indianapolis, Indiana
6 46268.

7 2. Defendant ACON Laboratories, Inc. (“ACON Labs”) is a corporation
8 organized under the laws of the State of California with its principal place of
9 business at 10125 Mesa Rim Road, San Diego, California 92121.

10 3. Defendant ACON Biotech (Hangzhou) Co., Ltd. (“ACON Biotech”) is a Chinese company with its principal place of business at No. 210 Zhenzhoong
11 Road, West Lake District, Hangzhou Zhejiang, China 310030.

12 4. Defendant ACON Labs and Defendant ACON Biotech are
13 collectively referred to herein as “Defendants” or “ACON.”
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15 **JURISDICTION AND VENUE**

16 5. This is a civil action arising under United States Patent Act, 35
17 U.S.C. §§ 100 et seq.

18 6. Jurisdiction over this action exists under 28 U.S.C. §§ 1331 and
19 1338(a).

20 7. This Court has personal jurisdiction over Defendants because they
21 have sufficient contacts with the State and the judicial district in which this Court
22 sits and they regularly conduct business within this judicial district.

23 8. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and
24 1400(b). On information and belief, Defendant ACON Labs is incorporated in
25 California and has a regular and established place of business in San Diego,
26 California. See 28 U.S.C. § 1400(b); *TC Heartland v. Kraft Foods Grp. Brands*
27 *LLC* 137 S.Ct. 1514, 1516, 1521 (2017). Defendant ACON Biotech is a Chinese
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1 company and may be sued in any district. *See* 28 U.S.C. § 1391; *Brunette Mach.*
2 *Works, Ltd. v. Kockum Indus., Inc.*, 406 U.S. 706, 706–07 (1972)

3 9. On information and belief, Defendants are corporations that are
4 subject to personal jurisdiction within this State and within this district. On
5 information and belief, the Court has personal jurisdiction over Defendants at least
6 because they have substantial and continuous business contacts in California and in
7 this District. On information and belief, Defendants have engaged in business
8 activities including transacting business in this District and purposefully directing
9 business activities related to the Mission Cholesterol Monitoring System, including
10 at least a portion of the infringements alleged herein, to this District.

11 **BACKGROUND**

12 10. PTS produces a hand-held, point-of-care testing system that can test
13 for (1) total cholesterol (which includes low density lipoproteins (“LDL”), very
14 low density lipoproteins (“VLDL”), and high density lipoproteins (“HDL”)), (2)
15 HDL cholesterol, and (3) triglycerides. The testing system can be used at home, a
16 doctor’s office, or a corporate health fair and employee wellness event, with results
17 in as few as 90 seconds. The system uses a test strip, which is referred to as a
18 “Multi-Analyte Strip” (an “analyte” is a chemical substance being identified and
19 measured). The test results and the LDL and total cholesterol-to-HDL ratio
20 calculated from them provide for the ready determination of major risk factors for
21 heart disease.

22 11. Heart disease is the leading cause of death in the United States.
23 Coronary heart disease is the most common type of heart disease. One of the main
24 risk factors for heart disease is high blood cholesterol. LDL and VLDL cholesterol
25 are referred to as “bad” cholesterol, while HDL cholesterol is referred to as “good”
26 cholesterol. This is because there is a positive correlation between the amount of
27 bad cholesterol in a patient’s blood and coronary heart disease, and there is a
28 negative correlation between the amount of good cholesterol in a patient’s blood

1 and coronary heart disease. Total cholesterol levels are not generally regarded as
2 an adequate predictor of the risk of coronary heart disease because they do not
3 reveal the ratio of bad cholesterol to good cholesterol. Accordingly, to better
4 assess the risk of heart disease, it is important to determine the amount of HDL
5 cholesterol in addition to total cholesterol. Historically, checking for high blood
6 cholesterol required a patient to visit a laboratory, which could take a vial of the
7 patient's blood and analyze the levels of total cholesterol and HDL cholesterol in
8 the sample. The patient would then be contacted with the results, sometimes
9 requiring an additional appointment with the patient's doctor to discuss the results.
10 The entire process typically took a week or more.

11 12. ACON has developed infringing blood cholesterol test strips and
12 associated systems containing the same that test for total cholesterol, HDL
13 cholesterol, and triglycerides. This system is marketed and sold by ACON under
14 the designation "Mission Cholesterol Monitoring System," "Mission Cholesterol
15 Pro Monitoring System," and "Mission Lipid Panel Monitoring System" and
16 includes a "Mission Cholesterol Meter" and "Mission Cholesterol Test Devices 3-1
17 Lipid Panel" (collectively, the "Accused Systems and Accused Test Devices").¹

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20 ¹ ACON received approval from the FDA to modify the name of the Mission
21 Cholesterol Monitoring System from "Mission Cholesterol Pro Monitoring
22 System" to "Mission Lipid Panel Monitoring System," include a disinfecting wipe,
23 and change the material used on the device buttons. The intended use and the
24 fundamental scientific technology of the Mission Lipid Panel Monitoring System
25 are unchanged from the Mission Cholesterol Pro Monitoring System. On March
26 28, 2018, ACON received approval from the FDA to market the Mission Lipid
27 Panel Monitoring System in the United States.
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1 13. ACON’s Distributor Sell Sheet, available on ACON’s website at
2 <https://www.aconlabs.com/intl/cholesterol/mission/>, identifies the catalog numbers
3 for the Accused Systems and Accused Test Devices as follows: (1) Mission
4 Cholesterol Meter (C111-2021), (2) Test Devices- 3-1 Lipid Panel (C131-2041),
5 and (3) Test Devices- 3-1 Lipid Panel (with Safety Lancets) (C131-2051).
6 Additionally, ACON’s Sell Sheets, packaging, and packaging inserts for the
7 Accused Systems and Accused Test Devices identify the same catalog numbers.

8 **A. THE PATENTS AT ISSUE**

9 **1. U.S. Patent No. 7,087,397 (the “397 Patent”)**

10 14. On August 8, 2006, the U.S. Patent and Trademark Office duly and
11 lawfully issued the ’397 Patent, titled “Method for determining HDL concentration
12 from whole blood or plasma,” to PTS.

13 15. The ’397 Patent has 20 claims. Claims 1 and 19 are independent
14 claims and claims 2–18 and 20 are dependent claims. ACON infringes at least
15 independent claims 1 and 19, and dependent claims 2, 3, 5, 10, 13, 14, 17, 18, and
16 20 of the ’397 Patent.

17 16. A copy of the ’397 Patent is attached hereto as Exhibit A.

18 **2. U.S. Patent No. 7,625,721 (the “721 Patent”)**

19 17. On December 1, 2009, the U.S. Patent and Trademark Office duly and
20 lawfully issued the ’721 Patent, titled “Non-precipitating bodily fluid analysis
21 system,” to PTS.

22 18. PTS is the sole owner and assignee of the ’721 Patent.

23 19. The ’721 Patent has 16 claims. Claim 1 is an independent claim and
24 claims 2–16 are dependent claims. ACON infringes at least independent claim 1
25 and dependent claims 2–9, and 13–15 of the ’721 Patent.

26 20. A copy of the ’721 Patent is attached hereto as Exhibit B.

27 **3. U.S. Patent No. 7,494,818 (the “818 Patent”)**

28 21. On February 24, 2009, the U.S. Patent and Trademark Office duly and

1 lawfully issued the '818 Patent, titled "Method for determining concentration of
2 multiple analytes in a single fluid sample," to PTS.

3 22. The '818 Patent has 14 claims. Claims 1, 8, and 14 are independent
4 claims and claims 2–7, and 9–13 are dependent claims. ACON infringes at least
5 independent claim 8 and dependent claims 9–11 of the '818 Patent.

6 23. A copy of the '818 Patent as Exhibit C.

7 24. PTS is the sole owner and assignee of the '397 Patent, '721 Patent and
8 '818 Patent. ACON is not authorized to use the methods and devices covered by
9 any of the patents-in-suit.

10 **FIRST CLAIM FOR RELIEF**

11 **INFRINGEMENT OF THE '397 PATENT**

12 25. PTS hereby restates and realleges the allegations set forth in
13 paragraphs 1 through 24 above and incorporates them by reference.

14 26. On information and belief, Defendants have directly infringed and
15 continue to directly infringe the '397 Patent by using the Accused Systems and
16 Accused Test Devices. On information and belief, ACON has induced, or
17 contributed to, infringement of the '397 Patent. An infringement chart detailing
18 ACON's infringement of the '397 Patent is attached hereto as Exhibit D and
19 incorporated herein for all purposes.

20 27. On information and belief, Defendants' infringement of PTS's '397
21 Patent has been, and will continue to be, willful, wanton, and deliberate.

22 28. PTS is damaged and irreparably injured by Defendants' infringing
23 activities and will continue to be so damaged and irreparably injured unless
24 Defendants' infringing activities are enjoined by this Court.

25 29. Defendants are thus liable to PTS for infringement of the '397 Patent
26 pursuant to 35 U.S.C. § 271.

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1 **SECOND CLAIM FOR RELIEF**

2 **INFRINGEMENT OF THE '721 PATENT**

3 30. PTS hereby restates and realleges the allegations set forth in
4 paragraphs 1 through 29 above and incorporates them by reference.

5 31. On information and belief, Defendants have directly infringed and
6 continue to directly infringe the '721 Patent by using the Accused Systems and
7 Accused Test Devices in the United States. On information and belief, ACON has
8 induced, or contributed to, infringement of the '721 Patent. An infringement chart
9 detailing ACON's infringement of the '721 Patent is attached hereto as Exhibit E
10 and incorporated herein for all purposes.

11 32. On information and belief, Defendants' infringement of PTS's '721
12 Patent has been, and will continue to be, willful, wanton, and deliberate.

13 33. PTS is damaged and irreparably injured by Defendants' infringing
14 activities and will continue to be so damaged and irreparably injured unless
15 Defendants' infringing activities are enjoined by this Court.

16 34. Defendants are thus liable to PTS for infringement of the '721 Patent
17 pursuant to 35 U.S.C. § 271.

18 **THIRD CLAIM FOR RELIEF**

19 **INFRINGEMENT OF THE '818 PATENT**

20 35. PTS hereby restates and realleges the allegations set forth in
21 paragraphs 1 through 34 above and incorporates them by reference.

22 36. On information and belief, Defendants have directly infringed and
23 continue to directly infringe the '818 Patent by using the Accused Systems and
24 Accused Test Devices in the United States. On information and belief,
25 Defendants' infringement of PTS's '818 Patent has been, and will continue to be,
26 willful, wanton, and deliberate. An infringement chart detailing ACON's
27 infringement of the '818 Patent is attached hereto as Exhibit F and incorporated
28 herein for all purposes.

1 37. On information and belief, Defendants' infringement of PTS's '818
2 Patent has been, and will continue to be, willful, wanton and deliberate.

3 38. PTS is damaged and irreparably injured by Defendants' infringing
4 activities and will continue to be so damaged and irreparably injured unless
5 Defendants' infringing activities are enjoined by this Court.

6 39. Defendants are thus liable to PTS for infringement of the '818 Patent
7 pursuant to 35 U.S.C. § 271.

8 **PRAYER**

9 WHEREFORE, Plaintiff prays for an order of the Court:

10 1. Entering judgment holding Defendants liable for infringement of
11 PTS's Patents;

12 2. Finding that Defendants' infringement has been and continues to be
13 willful;

14 3. Awarding PTS monetary damages for infringement of PTS's Patents
15 according to proof, but no less than a reasonable royalty;

16 4. Enjoining Defendants and their agents, employees, and all those
17 acting in concert with them, during the pendency of this action and permanently
18 thereafter from infringing PTS's Patents;

19 5. Awarding PTS increased damages pursuant to 35 U.S.C. § 284;

20 6. Finding this case exceptional and awarding PTS costs and attorneys'
21 fees, including pursuant to 35 U.S.C. § 285;

22 7. Awarding to PTS pre-judgment and post-judgment interest; and

23 8. Awarding PTS such other and further relief as the Court may deem
24 just and proper.

1 DATED: April 26, 2018

By: /s/ Kenneth G. Parker

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Polymer Technology Systems, Inc. demands a trial by jury on all issues triable as of right by a jury.

DATED: April 26, 2018

By: /s/ Kenneth G. Parker
Kenneth G. Parker

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 26, 2018, I filed the foregoing document: **COMPLAINT FOR: PATENT INFRINGEMENT ('397) PATENT); PATENT INFRINGEMENT ('721) PATENT); AND PATENT INFRINGEMENT ('818) PATENT); DEMAND FOR JURY TRIAL** with the Court through this district's CM/ECF system. Pursuant to Local Rule 5.4, the "Notice of Electronic Filing" automatically generated by the CM/ECF at the time the document is filed with the system constitutes automatic service of the document on counsel of record who have consented to electronic service.

/s/ Kenneth G. Parker
Kenneth G. Parker