

1 Joseph F. Jennings (State Bar No. 145,920)  
joe.jennings@knobbe.com  
2 Jared C. Bunker (State Bar No. 246,946)  
jared.bunker@knobbe.com  
3 Kendall M Loebbaka (State Bar No. 285,908)  
kendall.loebbaka@knobbe.com  
4 KNOBBE, MARTENS, OLSON & BEAR, LLP  
5 2040 Main Street, 14th Floor  
Irvine, CA 92614  
6 Phone: (949) 760-0404  
7 Facsimile: (949) 760-9502

8 Ashley C. Morales (State Bar No. 306,621)  
ashley.morales@knobbe.com  
9 KNOBBE, MARTENS, OLSON & BEAR, LLP  
10 12790 El Camino Real  
San Diego, CA 92130  
11 Phone: (858) 707-4000  
12 Facsimile: (858) 707-4001

13 Attorneys for Plaintiff  
14 Rembrandt Diagnostics, LP

15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

17 REMBRANDT DIAGNOSTICS, LP,  
18 Plaintiff

19 v.

20 ALERE, INC., ALERE  
21 TOXICOLOGY SERVICES, INC.,  
INNOVACON, INC., INSTANT  
22 TECHNOLOGIES, INC.,  
AMEDITECH, INC., AMEDICA  
23 BIOTECH, INC., INSTANT TECH  
SUBSIDIARY ACQUISITION, INC.  
24 dba U.S. DIAGNOSTICS, BRANAN  
MEDICAL CORPORATION,  
25 REDWOOD TOXICOLOGY  
LABORATORY, INC., ABBOTT  
26 RAPID DX NORTH AMERICA, LLC  
FKA ALERE NORTH AMERICA,  
27 LLC, AVEE LABORATORIES INC.,  
and DOES 1-10

28 Defendants.

Case No.: 16-cv-0698 CAB (NLS)

**REMBRANDT DIAGNOSTICS,  
LP'S FIFTH AMENDED  
COMPLAINT**

**DEMAND FOR JURY TRIAL**

Courtroom: 4C  
Honorable Cathy Ann Bencivengo

1 Rembrandt hereby files this Fifth Amended Complaint against  
2 Defendants Alere, Inc. (“Alere”); Alere Toxicology Services, Inc. (“Alere  
3 Toxicology”); Innovacon, Inc. (“Innovacon”); Instant Technologies, Inc.  
4 (“Instant Technologies”); Ameditech, Inc. (“Ameditech”); Amedica Biotech,  
5 Inc. (“Amedica”); Instant Tech Subsidiary Acquisition, Inc. dba U.S.  
6 Diagnostics (“Subsidiary Acquisition”); Branan Medical Corporation  
7 (“Branan”); Redwood Toxicology Laboratory, Inc. (“Redwood”); Abbott Rapid  
8 Dx North America, LLC fka Alere North America, LLC (“Rapid Dx”); Avee  
9 Laboratories, Inc. (“Avee”); and DOES 1–10 (collectively “Defendants”); and  
10 alleges as follows:

11 **THE RELEVANT PARTIES**

12 1. Rembrandt is a limited partnership organized and existing under  
13 the laws of the Commonwealth of Virginia, having its principal place of  
14 business at 401 City Avenue, Suite 900, Bala Cynwyd, PA 19004.

15 2. Rembrandt is informed and believes, and thereon alleges, that  
16 Alere is a corporation organized and existing under the laws of the State of  
17 Delaware, having a place of business at 9975 Summers Ridge Rd, San Diego,  
18 CA 92121, 9995 Summers Ridge Rd, San Diego, CA 92121, and 12707 High  
19 Bluff Dr., Ste. 200, San Diego, CA 92130.

20 3. Rembrandt is informed and believes, and thereon alleges, that  
21 Alere Toxicology is a corporation organized and existing under the laws of the  
22 State of Louisiana, having a place of business at 9975 Summers Ridge Rd, San  
23 Diego, CA 92121, 9995 Summers Ridge Rd, San Diego, CA 92121, and 12707  
24 High Bluff Dr., Ste. 200, San Diego, CA 92130. Alere Toxicology is a wholly-  
25 owned subsidiary of Alere or is commonly owned with Alere. Alere  
26 Toxicology and Alere have overlapping officers and report their business  
27 operations in consolidated financial statements.

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1           4.     Rembrandt is informed and believes, and thereon alleges, that  
2     Innovacon is a corporation organized and existing under the laws of the State of  
3     Delaware, having a place of business at 9975 Summers Ridge Rd, San Diego,  
4     CA 92121, 9995 Summers Ridge Rd, San Diego, CA 92121, and 12707 High  
5     Bluff Dr., Ste. 200, San Diego, CA 92130.   Innovacon is a wholly-owned  
6     subsidiary of Alere or is commonly owned with Alere.   Innovacon and Alere  
7     have overlapping officers and report their business operations in consolidated  
8     financial statements.

9           5.     Rembrandt is informed and believes, and thereon alleges, that  
10    Instant Technologies is a corporation organized and existing under the laws of  
11    the Commonwealth of Virginia, having a place of business at 9975 Summers  
12    Ridge Rd, San Diego, CA 92121, 9995 Summers Ridge Rd., San Diego, CA  
13    92121, and 12707 High Bluff Dr., Ste. 200, San Diego, CA 92130.   Instant  
14    Technologies is a wholly-owned subsidiary of Alere or is commonly owned  
15    with Alere.   Instant Technologies and Alere have overlapping officers and  
16    report their business operations in consolidated financial statements.

17          6.     Rembrandt is informed and believes, and thereon alleges, that  
18    Ameditech is a corporation organized and existing under the laws of California,  
19    having a place of business at 10340 Camino Santa Fe, Suite F, San Diego, CA  
20    92121, as well as 9975 Summers Ridge Rd, San Diego, CA 92121, 9995  
21    Summers Ridge Rd., San Diego, CA 92121, and 12707 High Bluff Dr., Ste.  
22    200, San Diego, CA 92130.   Ameditech is a wholly-owned subsidiary of Alere  
23    or is commonly owned with Alere.   Ameditech and Alere have overlapping  
24    officers and report their business operations in consolidated financial  
25    statements.

26          7.     Rembrandt is informed and believes, and thereon alleges, that  
27    Amedica is a corporation organized and existing under the laws of California,  
28    having a place of business at 9975 Summers Ridge Rd, San Diego, CA 92121,

1 9995 Summers Ridge Rd., San Diego, CA 92121, and 12707 High Bluff Dr.,  
2 Ste. 200, San Diego, CA 92130. Amedica is a wholly-owned subsidiary of  
3 Alere or is commonly owned with Alere. Amedica and Alere have overlapping  
4 officers and report their business operations in consolidated financial  
5 statements.

6 8. Rembrandt is informed and believes, and thereon alleges, that  
7 Subsidiary Acquisition is a corporation organized and existing under the laws of  
8 Delaware, having a place of business at 9975 Summers Ridge Rd, San Diego,  
9 CA 92121, 9995 Summers Ridge Rd., San Diego, CA 92121, and 12707 High  
10 Bluff Dr., Ste. 200, San Diego, CA 92130. Subsidiary Acquisition is a wholly-  
11 owned subsidiary of Alere or is commonly owned with Alere. Subsidiary  
12 Acquisition and Alere have overlapping officers and report their business  
13 operations in consolidated financial statements.

14 9. Rembrandt is informed and believes, and thereon alleges, that  
15 Branam is a corporation organized and existing under the laws of Nevada,  
16 having a place of business at 9975 Summers Ridge Rd, San Diego, CA 92121,  
17 9995 Summers Ridge Rd., San Diego, CA 92121, and 12707 High Bluff Dr.,  
18 Ste. 200, San Diego, CA 92130. Branam is a wholly-owned subsidiary of Alere  
19 or is commonly owned with Alere. Branam and Alere have overlapping officers  
20 and report their business operations in consolidated financial statements.

21 10. Rembrandt is informed and believes, and thereon alleges, that  
22 Redwood is a corporation organized and existing under the laws of California,  
23 having a place of business at 9975 Summers Ridge Rd, San Diego, CA 92121,  
24 9995 Summers Ridge Rd., San Diego, CA 92121, and 12707 High Bluff Dr.,  
25 Ste. 200, San Diego, CA 92130. Redwood is a wholly-owned subsidiary of  
26 Alere or is commonly owned with Alere. Redwood and Alere have overlapping  
27 officers and report their business operations in consolidated financial  
28 statements.

1 11. Rembrandt is informed and believes, and thereon alleges, that  
2 Rapid Dx is a limited liability company organized and existing under the laws  
3 of Delaware, having a place of business at 10340 Camino Santa Fe, Suite F, San  
4 Diego, CA 92121, as well as 9975 Summers Ridge Rd, San Diego, CA 92121,  
5 9995 Summers Ridge Rd., San Diego, CA 92121, and 12707 High Bluff Dr.,  
6 Ste. 200, San Diego, CA 92130. Rapid Dx is a wholly-owned subsidiary of  
7 Alere or is commonly owned with Alere. Rapid Dx and Alere have overlapping  
8 officers and report their business operations in consolidated financial  
9 statements.

10 12. Rembrandt is informed and believes, and thereon alleges, that Avee  
11 is a corporation organized and existing under the laws of Florida, having a place  
12 of business at 9975 Summers Ridge Rd, San Diego, CA 92121, 9995 Summers  
13 Ridge Rd., San Diego, CA 92121, and 12707 High Bluff Dr., Ste. 200, San  
14 Diego, CA 92130. Avee is a wholly-owned subsidiary of Alere or is commonly  
15 owned with Alere. Avee and Alere have overlapping officers and report their  
16 business operations in consolidated financial statements.

17 13. Rembrandt is ignorant of the identity of all Defendants sued herein  
18 as DOES 1–10. Rembrandt is informed and believes, and thereon alleges, that  
19 DOES 1–10 are responsible for some of the acts complained of herein, as well  
20 as other acts of infringement. Rembrandt is informed and believes, and thereon  
21 alleges, that DOES 1–10 are corporate affiliates and/or agents of one or more of  
22 the other Defendants in performing the acts complained of herein.

23 **JURISDICTION AND VENUE**

24 14. This is an action for patent infringement arising under the patent  
25 laws of the United States, 35 U.S.C. § 100 *et seq.*, and more particularly, 35  
26 U.S.C. §§ 271 and 281. This Court has original subject matter jurisdiction over  
27 this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

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1           15. Defendants are subject to personal jurisdiction in this Court, and  
2 venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b).

3           16. Rembrandt is informed and believes, and thereon alleges, that  
4 Alere has committed acts of infringement in this judicial district, including  
5 making and selling some of the infringing products in this judicial district, and  
6 Alere has a regular and established place of business in this judicial district,  
7 including the places of business identified above, which are used specifically for  
8 making and/or selling some of the infringing products.

9           17. Rembrandt is informed and believes, and thereon alleges, that  
10 Alere Toxicology has committed acts of infringement in this judicial district,  
11 including making and selling some of the infringing products in this judicial  
12 district, and Alere Toxicology has a regular and established place of business in  
13 this judicial district, including the places of business identified above, which are  
14 used specifically for making and/or selling some of the infringing products.

15           18. Rembrandt is informed and believes, and thereon alleges, that  
16 Innovacon has committed acts of infringement in this judicial district, including  
17 selling some of the infringing products in this judicial district, and Innovacon  
18 has a regular and established place of business in this judicial district, including  
19 the places of business identified above, which are used specifically for selling  
20 some of the infringing products.

21           19. Rembrandt is informed and believes, and thereon alleges, that  
22 Instant Technologies has committed acts of infringement in this judicial district,  
23 including selling some of the infringing products in this judicial district, and  
24 Instant Technologies has a regular and established place of business in this  
25 judicial district, including the places of business identified above, which are  
26 used specifically for selling some of the infringing products.

27           20. Rembrandt is informed and believes, and thereon alleges, that  
28 Ameditech has committed acts of infringement in this judicial district, including

1 making and selling some of the infringing products in this judicial district, and  
2 Ameditech has a regular and established place of business in this judicial  
3 district, including the places of business identified above, which are used  
4 specifically for making and/or selling some of the infringing products.

5 21. Rembrandt is informed and believes, and thereon alleges, that  
6 Amedica has committed acts of infringement in this judicial district, including  
7 making and selling some of the infringing products in this judicial district, and  
8 Amedica has a regular and established place of business in this judicial district,  
9 including the places of business identified above, which are used specifically for  
10 making and/or selling some of the infringing products.

11 22. Rembrandt is informed and believes, and thereon alleges, that  
12 Subsidiary Acquisition has committed acts of infringement in this judicial  
13 district, including selling some of the infringing products in this judicial district,  
14 and Subsidiary Acquisition has a regular and established place of business in  
15 this judicial district, including the places of business identified above, which are  
16 used specifically for selling some of the infringing products.

17 23. Rembrandt is informed and believes, and thereon alleges, that  
18 Branam has committed acts of infringement in this judicial district, including  
19 making and selling some of the infringing products in this judicial district, and  
20 Branam has a regular and established place of business in this judicial district,  
21 including the places of business identified above, which are used specifically for  
22 making and/or selling some of the infringing products.

23 24. Rembrandt is informed and believes, and thereon alleges, that  
24 Redwood has committed acts of infringement in this judicial district, including  
25 selling some of the infringing products in this judicial district, and Redwood has  
26 a regular and established place of business in this judicial district, including the  
27 places of business identified above, which are used specifically for selling some  
28 of the infringing products.





1 Syntron is a corporation organized and existing under the laws of the State of  
2 California, having a place of business in this judicial district at 2774 Loker  
3 Avenue West, Carlsbad, CA 92010. At least some of Syntron's test cups are  
4 covered by one or more claims of the '019 patent. Syntron is a licensee under  
5 the '019 patent. Syntron has been marking its QuikScreen® test cups or their  
6 packaging with the '019 patent number.

7 **Defendants' Products**

8 29. Rembrandt is informed and believes, and thereon alleges, that  
9 Alere makes, uses, imports, offers to sell, and/or sells in the United States test  
10 cups under the tradenames "iCup Dx Pro," "Amedicheck," "DrugSmart," "iCup  
11 A.D," and "UScreen," or has done so in the past. Rembrandt is informed and  
12 believes, and thereon alleges, that Alere makes, offers to sell, and sells one or  
13 more of these test cups in this judicial district, or has done so in the past.  
14 Rembrandt is informed and believes, and thereon alleges, that Alere also makes,  
15 uses, imports, offers to sell, and/or sells in the United States other test cups that  
16 are substantially the same in design and function as the above test cups.

17 30. Rembrandt is informed and believes, and thereon alleges, that  
18 Alere Toxicology makes, uses, imports, offers to sell, and/or sells in the United  
19 States test cups under the tradenames "iCup Dx Pro," "Amedicheck,"  
20 "DrugSmart," "iCup A.D," and "UScreen," or has done so in the past.  
21 Rembrandt is informed and believes, and thereon alleges, that Alere Toxicology  
22 makes, offers to sell, and sells one or more of these test cups in this judicial  
23 district, or has done so in the past. Rembrandt is informed and believes, and  
24 thereon alleges, that Alere Toxicology also makes, uses, imports, offers to sell,  
25 and/or sells in the United States other test cups that are substantially the same in  
26 design and function as the above test cups.

27 31. Rembrandt is informed and believes, and thereon alleges, that  
28 Innovacon makes, uses, imports, offers to sell, and/or sells in the United States

1 the iCup A.D. test cups, or has done so in the past. Rembrandt is informed and  
2 believes, and thereon alleges, that Innovacon offers to sell and sells these test  
3 cups in this judicial district, or has done so in the past. Rembrandt is informed  
4 and believes, and thereon alleges, that Innovacon also makes, uses, imports,  
5 offers to sell, and/or sells in the United States other test cups that are  
6 substantially the same in design and function as the above test cup.

7 32. Rembrandt is informed and believes, and thereon alleges, that  
8 Instant Technologies makes, uses, imports, offers to sell, and/or sells in the  
9 United States test cups under the tradenames “iCup Dx Pro,” “Amedicheck,”  
10 “DrugSmart,” “iCup A.D,” and “UScreen,” or has done so in the past.  
11 Rembrandt is informed and believes, and thereon alleges, that Instant  
12 Technologies offers to sell and sells these test cups in this judicial district, or  
13 has done so in the past. Rembrandt is informed and believes, and thereon  
14 alleges, that Instant Technologies also makes, uses, imports, offers to sell,  
15 and/or sells in the United States other test cups that are substantially the same in  
16 design and function as the above test cups.

17 33. Rembrandt is informed and believes, and thereon alleges, that  
18 Ameditech makes, uses, imports, offers to sell, and/or sells in the United States  
19 test cups under the tradenames “iCup Dx Pro,” “Amedicheck,” and  
20 “DrugSmart,” or has done so in the past. Rembrandt is informed and believes,  
21 and thereon alleges, that Ameditech makes, offers to sell, and sells one or more  
22 of these test cups in this judicial district, or has done so in the past. Rembrandt  
23 is informed and believes, and thereon alleges, that Ameditech also makes, uses,  
24 imports, offers to sell, and/or sells in the United States other test cups that are  
25 substantially the same in design and function as the above test cups.

26 34. Rembrandt is informed and believes, and thereon alleges, that  
27 Amedica makes, uses, imports, offers to sell, and/or sells in the United States  
28 test cups under the tradenames “iCup Dx Pro,” “Amedicheck,” and

1 “DrugSmart,” or has done so in the past. Rembrandt is informed and believes,  
2 and thereon alleges, that Amedica makes, offers to sell, and sells one or more of  
3 these test cups in this judicial district, or has done so in the past. Rembrandt is  
4 informed and believes, and thereon alleges, that Amedica also makes, uses,  
5 imports, offers to sell, and/or sells in the United States other test cups that are  
6 substantially the same in design and function as the above test cups.

7 35. Rembrandt is informed and believes, and thereon alleges, that  
8 Subsidiary Acquisition makes, uses, imports, offers to sell, and/or sells in the  
9 United States test cups under the tradenames “iCup Dx Pro,” “Amedicheck,”  
10 “DrugSmart,” and “UScreen,” or has done so in the past. Rembrandt is  
11 informed and believes, and thereon alleges, that Subsidiary Acquisition offers to  
12 sell and sells these test cups in this judicial district, or has done so in the past.  
13 Rembrandt is informed and believes, and thereon alleges, that Subsidiary  
14 Acquisition also makes, uses, imports, offers to sell, and/or sells in the United  
15 States other test cups that are substantially the same in design and function as  
16 the above test cups.

17 36. Rembrandt is informed and believes, and thereon alleges, that  
18 Branam makes, uses, imports, offers to sell, and/or sells in the United States test  
19 cups under the tradenames “iCup Dx Pro,” “Amedicheck,” and “DrugSmart,” or  
20 has done so in the past. Rembrandt is informed and believes, and thereon  
21 alleges, that Branam makes, offers to sell, and sells one or more of these test  
22 cups in this judicial district, or has done so in the past. Rembrandt is informed  
23 and believes, and thereon alleges, that Branam also makes, uses, imports, offers  
24 to sell, and/or sells in the United States other test cups that are substantially the  
25 same in design and function as the above test cups.

26 37. Rembrandt is informed and believes, and thereon alleges, that  
27 Redwood makes, uses, imports, offers to sell, and/or sells in the United States  
28 test cups under the tradenames “iCup Dx Pro,” “Amedicheck,” “DrugSmart,”

1 “iCup A.D,” and “UScreen,” or has done so in the past. Rembrandt is informed  
2 and believes, and thereon alleges, that Redwood makes, offers to sell, and sells  
3 these test cups in this judicial district, or has done so in the past. Rembrandt is  
4 informed and believes, and thereon alleges, that Redwood also makes, uses,  
5 imports, offers to sell, and/or sells in the United States other test cups that are  
6 substantially the same in design and function as the above test cup.

7 38. Rembrandt is informed and believes, and thereon alleges, that  
8 Rapid Dx makes, uses, imports, offers to sell, and/or sells in the United States  
9 test cups under the tradenames “iCup Dx Pro,” “Amedicheck,” “DrugSmart,”  
10 and “iCup A.D,” or has done so in the past. Rembrandt is informed and  
11 believes, and thereon alleges, that Rapid Dx makes, offers to sell, and sells these  
12 test cups in this judicial district, or has done so in the past. Rembrandt is  
13 informed and believes, and thereon alleges, that Rapid Dx also makes, uses,  
14 imports, offers to sell, and/or sells in the United States other test cups that are  
15 substantially the same in design and function as the above test cup.

16 39. Rembrandt is informed and believes, and thereon alleges, that Avee  
17 makes, uses, imports, offers to sell, and/or sells in the United States test cups  
18 under the tradenames “iCup Dx Pro,” “Amedicheck,” and “DrugSmart,” or has  
19 done so in the past. Rembrandt is informed and believes, and thereon alleges,  
20 that Avee makes, offers to sell, and sells these test cups in this judicial district,  
21 or has done so in the past. Rembrandt is informed and believes, and thereon  
22 alleges, that Avee also makes, uses, imports, offers to sell, and/or sells in the  
23 United States other test cups that are substantially the same in design and  
24 function as the above test cup.

25 **FIRST CLAIM FOR RELIEF**

26 **(Infringement of U.S. Patent No. 6,548,019 by all Defendants)**

27 40. Rembrandt repeats, realleges, and incorporates by reference the  
28 allegations set forth in Paragraphs 1–39 of this Complaint.

1           41. This is a claim for patent infringement and arises under the Patent  
2 Laws of the United States and, in particular, under 35 U.S.C. §§ 271, *et seq.*

3           42. Rembrandt is informed and believes, and thereon alleges, that  
4 Defendants have in the past infringed and are currently infringing, both literally  
5 and under the doctrine of equivalents, Claims 3-6 and 10 of the '019 patent in  
6 violation of 35 U.S.C. § 271(a) by making, using, importing, offering to sell,  
7 and selling in the United States test cups under the tradenames “iCup Dx Pro,”  
8 “Amedicheck,” “DrugSmart,” “iCup A.D,” and “UScreen.” Rembrandt is  
9 informed and believes, and thereon alleges, that Defendants have also in the past  
10 infringed and are also currently infringing, both literally and under the doctrine  
11 of equivalents, Claims 3-6 and 10 of the '019 patent in violation of 35 U.S.C.  
12 § 271(a) by making, using, importing, offering to sell, and selling in the United  
13 States test cups under different tradenames but that are substantially the same in  
14 design and function as the above test cups.

15           43. The test cups marketed under the tradenames “iCup Dx Pro,”  
16 “Amedicheck,” “DrugSmart,” and “UScreen” include all of the limitations of  
17 Claim 3, including an assay test strip, a sample fluid container, and a flow  
18 control channel inside the sample fluid container. The channel in Defendants’  
19 test cups includes a liquid pervious side oriented toward the base of the  
20 container, with the liquid pervious side joined to liquid impervious sides and  
21 one of the liquid impervious sides formed as a portion of a liquid impervious  
22 backing. The assay test strip in the Defendants’ test cups is positioned within  
23 the flow control channel and has a sample loading zone that contacts the sample  
24 fluid at the liquid pervious side of the flow control channel. The channel in  
25 Defendants’ test cups is also oriented such that sample fluid, when added to the  
26 container, is delivered to the sample loading zone of the assay test strip through  
27 the liquid pervious side of the channel without migrating through an  
28 intermediate structure. Further, the channel in Defendants’ test cups is also

1 oriented such that entry of fluid into the channel creates an ambient pressure  
2 within the channel equivalent to the ambient pressure outside the channel,  
3 thereby eliminating a pressure gradient along which excess sample fluid could  
4 flow into the channel. These test cups also include a holder with a slot formed  
5 therein to receive the liquid impervious backing.

6 44. The iCup A.D. includes all of the limitations of Claim 10. The  
7 iCup A.D. includes a flow control channel disposed inside a sample fluid  
8 container, with multiple test strips disposed within the flow control channel.  
9 The channel in the iCup A.D. includes a liquid pervious side oriented toward the  
10 base of the container, with the liquid pervious side joined to liquid impervious  
11 sides. The channel is also oriented such that sample fluid, when added to the  
12 container, is delivered to the sample loading zone of the assay test strips through  
13 the liquid pervious side of the channel without migrating through an  
14 intermediate structure. Further, the iCup A.D. channel is structured and oriented  
15 such that entry of fluid into the channel creates an ambient pressure within the  
16 channel equivalent to the ambient pressure outside the channel, thereby  
17 eliminating a pressure gradient along which excess sample fluid could flow into  
18 the channel.

19 45. Defendants are aware of the '019 patent. Rembrandt is informed  
20 and believes, and thereon alleges, that Defendants are aware of the '019 patent  
21 and their infringement of the '019 patent at least through discussions between  
22 Dr. Lee and Defendants' affiliates in 2004, 2009, and 2012 regarding the '019  
23 patent, as well as Defendants' affiliates' requests for a license to the '019 patent.  
24 On September 29, 2004, Alere's predecessor sought and obtained a license to  
25 the '019 patent for itself and its affiliates. At the same time, Alere's predecessor  
26 and Tianjin New Bay Bioresearch Co Ltd. entered into a related manufacturing  
27 and supply agreement. Dr. Lee consistently told Alere representatives that the  
28

1 test cup products Alere and its affiliates were selling infringed Dr. Lee's patents,  
2 including the '019 patent.

3 46. Further, in 2012, an Alere representative, Lorraine Cogan, met with  
4 Dr. Lee at Syntron's facility in this judicial district. Among other things, Dr.  
5 Lee explained to Ms. Cogan how the iCup A.D. and other Alere test cups  
6 infringed the '019 patent. Ms. Cogan reported the details of the meeting and Dr.  
7 Lee's explanations of infringement to other Alere representatives.

8 47. Regardless, any marking obligations under 35 U.S.C. § 287 have  
9 been complied with.

10 48. Upon information and belief, Defendants' infringement of the '019  
11 patent has been and continues to be deliberate and willful. In 2004, Alere  
12 sought and obtained a license to the '019 patent for itself and its affiliates. After  
13 terminating or voiding the supply and manufacturing agreement, Alere and its  
14 affiliates continued to recognize the need for a license under the '019 patent.

15 49. In email communications, counsel for Alere stated several times  
16 that they were interested in retaining rights to the patents licensed in 2004. For  
17 example, in late 2004, Alere's counsel asked whether Dr. Lee would "consider  
18 us keeping the license to the cup so that we could move forward with our own  
19 510(k)." Rembrandt is informed and believes, and thereon alleges, that, Alere  
20 and its affiliates were then infringing the '019 patent.

21 50. Over the next decade, Defendants and Defendants' affiliates  
22 continued to recognize the value of Dr. Lee's intellectual property and sought to  
23 acquire it. In email communications in 2008-2010, Alere's global head of  
24 toxicology referred to Dr. Lee's patents as "damn good IP" and "a killer no-step  
25 patent."

26 51. In 2012, Alere again sought a license to the '019 patent for itself  
27 and its affiliates. As discussed above, during the negotiations, an Alere  
28 representative (Lorraine Cogan) met with Dr. Lee in late 2012, and Dr. Lee

1 explained to her how the iCup A.D. and other Alere test cups infringe the '019  
2 patent. Dr. Lee did not accept an offer to license the '019 patent because,  
3 among other reasons, the offered royalty rate and minimum royalty payments  
4 did not reflect the value of the patent. Despite failing to acquire a license to the  
5 '019 patent, Defendants continued to make, use, import, offer to sell, and sell in  
6 the United States the infringing test cups.

7 52. Rembrandt is informed and believes, and thereon alleges, that  
8 Defendants have derived, received, and will continue to derive and receive  
9 gains, profits, and advantages from these acts of infringement in an amount that  
10 is not fully known to Rembrandt. Due to Defendants' infringement of the '019  
11 patent, Rembrandt has been damaged and is entitled to monetary relief in an  
12 amount to be determined at trial, which amount is no less than a reasonable  
13 royalty. Pursuant to 35 U.S.C. § 284, Rembrandt is also entitled to an increase  
14 of damages up to three times the amount found or assessed at least due to  
15 Defendants' willful and deliberate infringement. And because Defendants'  
16 infringement presents an exceptional case, Rembrandt is also entitled to an  
17 award of its attorney fees under 35 U.S.C. § 285.

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**PRAYER FOR RELIEF**

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WHEREFORE, Rembrandt prays for judgment in its favor against Defendants, and each of them, as follows:

- a) a judgment that Defendants have infringed and willfully infringed the '019 patent;
- b) an accounting of all gains, profits, and advantages Defendants derived by their infringement of the '019 patent, and for damages adequate to compensate Rembrandt for such infringement of the '019 patent;
- c) an award of treble damages and/or for exemplary damages under 35 U.S.C. § 284;
- d) a judgment that this is an exceptional case under 35 U.S.C. § 285;
- e) an award to Rembrandt of its attorney fees under 35 U.S.C. § 285;
- f) an award to Rembrandt of pre-judgment and post-judgment interest and costs; and
- g) such other and further relief as the Court deems just and proper.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: November 3, 2020

By: /s/ Jared C. Bunker

Joseph F. Jennings  
Jared C. Bunker  
Kendall Loebbaka  
Ashley Morales

Attorneys for Plaintiff  
Rembrandt Diagnostics, LP

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**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rules of Civil Procedure 38(b), Plaintiff Rembrandt Diagnostics, LP hereby demands a trial by jury on all issues so triable that are raised herein or that hereinafter may be raised in this action.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: November 3, 2020 By: /s/ Jared C. Bunker  
Joseph F. Jennings  
Jared C. Bunker  
Kendall Loebbaka  
Ashley Morales  
Attorneys for Plaintiff Rembrandt  
Diagnostics, LP

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 3, 2020, I caused the **REMBRANDT DIAGNOSTICS. LP'S FIFTH AMENDED COMPLAINT** to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such filing to the following counsel of record:

**Counsel for Defendants**

James F. Hurst  
[james.hurst@kirkland.com](mailto:james.hurst@kirkland.com)  
Amanda Hollis  
[ahollis@kirkland.com](mailto:ahollis@kirkland.com)  
KourtneyBaltzer  
[Kourtney.baltzer@kirkland.com](mailto:Kourtney.baltzer@kirkland.com)  
KIRKLAND & ELLIS LLP  
300 North LaSalle  
Chicago, IL 60654  
312-862-2011

Daniel P. Gross  
[Daniel.gross@kirkland.com](mailto:Daniel.gross@kirkland.com)  
KIRKLAND & ELLIS LLP  
609 Main Street  
Houston, TX 77002  
713-836-3600

[Abbott Rembrandt@kirkland.com](mailto:Abbott.Rembrandt@kirkland.com)

David J. Noonan  
[dnoonan@noonanlance.com](mailto:dnoonan@noonanlance.com)  
NOONAN LANCE BOYER &  
BANACH LLP  
701 Island Avenue, Suite 400  
San Diego, CA 92101  
619-780-0880

/s/ Jared C. Bunker  
Jared C. Bunker

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