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★ FEB 13 2009 ★

BROOKLYN OFFICE

09-0633

THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

-----	X	
	)	Civil Action No.
INTEMA LIMITED	)	
	)	
Plaintiff,	)	
	)	DEMAND FOR JURY TRIAL
v.	)	
	)	
NTD LABORATORIES, INC., and	)	
PERKINELMER, INC.	)	
	)	
Defendants.	)	
	)	
	)	
-----	X	

SPATT, J.

BOYLE, M.J.

**COMPLAINT**

Plaintiff, Intema Limited, complaining of the Defendants herein, alleges as follows:

**THE PARTIES**

1. Plaintiff, Intema Limited ("Intema" or "Plaintiff") is a business entity organized and existing under the laws of the United Kingdom. Intema has its principal place of business at c/o Saffery Champness, Lion House, Red Lion Street, London WC1R 4GB, United Kingdom.

2. Defendant PerkinElmer, Inc. ("PerkinElmer") is a corporation organized under the laws of the Commonwealth of Massachusetts, with its principal place of business located at 940 Winter Street, Waltham, Massachusetts 02451.

3. Defendant NTD Laboratories, Inc. ("NTD Labs") is a corporation organized under the laws of the State of New York, with its principal place of business located at 80 Ruland Road, Ste 1, Melville, New York 11747. NTD Labs is a wholly-owned subsidiary of PerkinElmer.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction of this action under the Patent Laws of the United States, 35 U.S.C. § 100, et seq.

5. This Court has personal jurisdiction over Defendant PerkinElmer because of its presence in the State of New York, including but not limited to the incorporation and presence of NTD Labs, a wholly-owned subsidiary of PerkinElmer, its sufficient contacts with the State of New York, and/or its committing acts of infringement in the State of New York and in this judicial district. Venue in the Eastern District of New York is proper under 28 U.S.C. §§ 1391 and 1400.

6. This Court has personal jurisdiction over Defendant NTD Labs because of its incorporation and presence in the State of New York, its sufficient contacts with the State of New York, and/or its committing acts of infringement in the State of New York and in this judicial district. Venue in the Eastern District of New York is proper under 28 U.S.C. §§ 1391 and 1400.

### **BACKGROUND**

7. Intema is the owner by right and assignment of U.S. Patent No. 6,573,103 (the “’103 Patent”), entitled “Antenatal Screening For Down’s Syndrome” which issued on June 3, 2003. A copy of the ‘103 Patent is attached hereto as Exhibit A.

8. Nicholas J. Wald is the named inventor on the ‘103 Patent and Director of Intema.

9. Intema has been in negotiations concerning the ‘103 Patent with PerkinElmer since 2001, prior to the issuance of the ‘103 Patent, when PerkinElmer approached Dr. Wald for a license. Negotiations continued without result and were ongoing until the Defendants filed an improper anticipatory declaratory judgment action on February 5, 2009 in violation of the first-filed rule, captioned *PerkinElmer, Inc. and NTD Laboratories, Inc. v. Intema Limited*, Civil Action No. 1:09-CV-10176-NG (the “Massachusetts Action”).

10. On information and belief PerkinElmer and NTD Labs (collectively the “Defendants”) have each known of the ‘103 patent since at least soon after its issuance on June 3, 2003.

### **COUNT I FOR PATENT INFRINGEMENT**

11. Plaintiff repeats and realleges the allegations of complaint set forth in paragraphs 1 through 10 above as though fully set forth herein.

12. Count I is an action for infringement arising under Section 271 of the Patent Laws, 35 U.S.C. § 271 et seq. Plaintiff seeks relief for the infringement of the ‘103 Patent by each of the Defendants.

13. On information and belief, Defendant PerkinElmer, through the actions of its employees, divisions and/or subsidiaries, including, but not limited to NTD Labs, has directly infringed

and/or induced infringement of, and continues to directly infringe and/or induce infringement of the '103 Patent.

14. On information and belief, Defendant NTD Labs has directly infringed and/or induced infringement of, continues to directly infringe and/or induce infringement of the '103 Patent by the practice of the methods covered by the claims of the '103 Patent.

15. Having full knowledge of Intema's patent rights, the Defendants' acts of infringement constitute willful infringement of the '103 Patent and are in violation of 35 U.S.C. § 271 et seq. of the Patent Laws.

16. By reason of the foregoing, Intema is being irreparably damaged and will continue to be irreparably damaged unless Defendants PerkinElmer and NTD Labs are enjoined, preliminarily and permanently, from performing, using, selling and/or offering for sale the methods covered by the '103 Patent or otherwise inducing the infringement of the '103 Patent.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief:

A. That Defendants PerkinElmer and NTD Labs be adjudged to have directly infringed and/or to have induced infringement of the '103 Patent and that such infringement be deemed willful;

B. That each of the Defendants, their respective officers, agents, servants, employees and attorneys and all persons in active concert or participation with any of them who receive

actual notice of the order by personal service or otherwise, be preliminarily and permanently enjoined and restrained from directly infringing and inducing others to infringe the '103 Patent.

C. That Plaintiff be awarded its damages by reason of Defendants' direct infringement and inducing infringement of the '103 Patent in an amount not less than a reasonably royalty;

D. That Plaintiff be awarded treble damages to compensate for the willful infringement of its patent;

E. That Plaintiff be awarded its costs and expenses including reasonable attorney fees;

F. That Defendants and those in privity with the Defendants be enjoined from prosecuting the Massachusetts Action or any other action in any other jurisdiction in connection with the '103 Patent, against Plaintiff and its representatives, agents, subsidiaries, and licensees.

G. That Plaintiff have such other and further relief, which the Court may deem just, or proper under the circumstances.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Intema hereby demands a trial by jury of all issues so triable.

Dated: New York, New York  
February 13, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lawrence Rosenthal", is written over a horizontal line.

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