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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

<p>BRIGHAM YOUNG UNIVERSITY (a Utah Corporation) AND TORION TECHNOLOGIES, INC. (a Utah Corporation),</p> <p>Plaintiffs</p> <p>vs.</p> <p>HITACHI HIGH TECHNOLOGIES AMERICA, INC. (a Delaware Corporation),</p> <p>Defendant</p>	<p>COMPLAINT</p> <p>Civil No.: 2:09-CV-302</p> <p>Honorable: Judge Dee Benson</p> <p>JURY TRIAL DEMANDED</p>
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Plaintiffs, Brigham Young University ("BYU") and Torion Technologies, Inc. ("Torion")
by and through their attorneys, hereby complain of Defendant Hitachi High Technologies
America, Inc., and for causes of action allege as follows:

STATUS OF PARTIES

1. Brigham Young University is a corporation organized and existing under the laws of the state of Utah, and has a principal place of business at A357 ASB BYU, Provo, Utah 84602.

2. Torion Technologies, Inc. is a corporation organized and existing under the laws of the state of Utah, and has a principal place of business at 796 E. Utah Valley Drive, Suite 200 American Fork, Utah.

3. On information and belief, defendant, Hitachi High Technologies America, Inc. is a corporation organized and existing under the laws of the state of Delaware, and has a principle place of business at 10 N. Martingale Rd., Suite 500, Schaumburg, Illinois 60173.

JURISDICTION AND VENUE

4. This is an action for infringement under the patent laws of the United States, 35 U.S.C. § 271. This Court has subject matter jurisdiction over the patent related claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over the Defendant because, on information and belief, Defendant has committed certain of the acts alleged herein within this Judicial District and because defendant conducts business within this Judicial District.

6. Venue is proper in this Court under 28 U.S.C. §§ 1400(a)-(b) and 1391(c), because, on information and belief, Defendant has committed certain of the acts alleged herein within this Judicial District, and because Defendant is subject to personal jurisdiction in this state

and, therefore, resides within this judicial district for purposes of venue.

GENERAL ALLEGATIONS

7. Edgar D. Lee, Alan L. Rockwood, Bingfang Yue and Milton L. Lee (hereinafter the “Inventors”) invented an electron ionization source for othogonal acceleration time-of-flight mass spectrometry (the “Invention”).

8. On or about July 13, 2004, the Inventors assigned all of the patent rights in the Invention, including the right to sue for infringement, to BYU. The assignment was recorded in the United States Patent and Trademark Office on July 29, 2004 at Reel/Frame: 015620/0209.

9. On March 3, 2003, BYU caused United States provisional patent application serial number 60/451,908 (the “’908 application”) to be filed with the United States Patent and Trademark Office entitled “NOVEL ELECTRON IONIZATION SOURCE FOR OTHOGONAL ACCELERATION TIME-OF-FLIGHT MASS SPECTROMETRY.”

10. On March 3, 2004, BYU caused a non-provisional patent application, claiming priority to the ‘908 application, entitled “ELECTRON IONIZATION SOURCE FOR OTHOGONAL ACCELERATION TIME-OF-FLIGHT MASS SPECTROMETRY” to be filed with the United States Patent and Trademark Office.

11. The non-provisional patent application issued as U.S. Patent Number 7,060,987 on June 13, 2006 (the “’987 patent”). A copy of the ‘987 patent is attached hereto as Exhibit “A.”

12. The ‘987 patent includes four independent claims, namely, claims 1, 29, 52 and 61. Claims 1 and 52 are method claims, and claims 29 and 61 are apparatus claims.

13. On March 19, 2008, by written agreement, BYU granted Torion an exclusive license to make, manufacture, use, sell, and otherwise practice the inventions described in the '987 patent. The agreement grants Torion the right to enforce the '987 patent as well.

14. Torion has invested substantial resources in the development of products embodying these inventions.

15. Defendant manufactures, uses, sells and/or offers for sale a device named the NanoFrontier eLD LCMS (the "NanoFrontier"). A copy of a brochure of the NanoFrontier is attached hereto as (Exhibit B).

16. The NanoFrontier infringes at least claims 1, 29, 52 and 61 of the '987 patent.

17. As a component of the NanoFrontier, Defendant manufactures, uses, sells and/or offers for sale a device referred to as a RF ECD (the "RF ECD"). A copy of literature describing the RF ECD is attached hereto as Exhibit C).

18. Defendant caused to be filed at least three patent applications describing the NanoFrontier and/or the RF ECD, including the application that issued as U.S. Patent No. 7,309,860 B2 (the "'860 patent") entitled MASS SPECTROMETER filed on January 26, 2006 and issued on December 18, 2007, U.S. Patent Application Publication No. 2006/0169892 (the "'892 application") filed on January 25, 2006 and U.S. Patent Application Publication No. 2008/0078930 (the "'930 application") filed on October 31, 2007.

19. The '860 patent, the '892 application and the '930 application are assigned to Defendant.

20. On November 16, 2006, the U.S. Patent Office issued an Office Action rejecting claims of the '860 patent.

21. In the Office Action, the Examiner rejected claims of the '860 patent as being anticipated by the '987 patent.

22. In February 2007, Defendant amended the claims of the '860 patent in an attempt to overcome the rejections set forth by the Examiner, and more specifically to overcome the rejections based on the '987 patent as the primary reference.

23. At least as early as November 2006, the date of the Office Action rejecting the claims of the application that became the '860 patent citing the '987 patent as the primary reference, Defendant knew of the '987 patent.

24. In spite of this knowledge, Defendant has manufactured, used, sold and/or offered for sale devices that infringe the claims of the '987 patent.

25. On information and belief, Defendant has promoted and offered for sale its NanoFrontier and/or the RF ECD to customers and prospective customers in Utah.

FIRST CLAIM FOR RELIEF

(Patent Infringement - 35 U.S.C. § 271)

26. Plaintiff incorporates the allegations of each and every previous paragraph of this Complaint as if fully set forth herein.

27. All maintenance fees due for the '987 patent have been timely paid, and the '987 patent has at all time subsequent to its respective issue date been fully enforceable and is now fully enforceable.

28. BYU is the assignee of record and holds all right under the '987 patent, including the right to sue for patent infringement.

29. Torion is the exclusive licensee of the '987 patent and has the exclusive right to make, manufacture, use, sell, and otherwise practice the inventions described in the '987 patent, including the right to sue for patent infringement.

30. Defendant has been, and continues to be making, using, selling, and/or offering to sell, or causing others to make, use, sell, and/or offer to sell its NanoFrontier and/or the RF ECD products, which alone or in combination with other products offered by Defendant or third parties, comes within the scope of one or more claims of the '987 patent and infringe one or more claims of the '987 patent.

31. Defendant has been, and continues to be making, using, selling, and/or offering to sell, or causing others to make, use, sell, and/or offer to sell its NanoFrontier and/or the RF ECD products, which alone or in combination with other products offered by Defendant or third parties, comes within a range of equivalents of the claims of the '987 patent. Defendant has thereby infringed one or more claims of the '987 Patent.

32. The making, using, selling, offering to sell, or causing others to make, use, sell, and/or offer to sell infringing products by Defendant has been without authority or license from BYU or Torion and in violation of BYU's and Torion's exclusive rights, thereby infringing (either literally or through the doctrine of equivalents) the '987 patent.

33. Defendant has caused and will continue to cause BYU and Torion substantial damage and irreparable injury by infringing the '987 patent.

34. BYU and Torion will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Defendant is enjoined from infringing the '989 patent.

35. BYU and Torion are entitled to recover from Defendant damages in an amount sufficient to compensate it for Defendant's infringement of the '987 patent, together with prejudgment interest thereon.

36. Upon information and belief, Defendant's infringement was and is willful, intentional, and deliberate. Accordingly, this case is exceptional under 35 U.S.C. § 285, and BYU and Torion are entitled to recover treble damages and their reasonable attorneys' fees, expenses, and costs incurred in this action.

SECOND CLAIM FOR RELIEF

(Induced Infringement - 35 U.S.C. § 271(b))

37. Plaintiff incorporates the allegations of each and every previous paragraph of this Complaint as if fully set forth herein.

38. Defendant has been, and continues to be selling its NanoFrontier and/or the RF ECD products

39. Use of Defendant's NanoFrontier and/or the RF ECD products by customers of or third parties associated with Defendant comes within the scope of one or more claims of the '987 patent and infringe one or more claims of the '987 patent. Defendant has thereby induced others to infringe one or more claims of the '987 Patent.

40. Use of Defendant's NanoFrontier and/or the RF ECD products by customers of or third parties associated with Defendant comes within a range of equivalents of the claims of the '987 patent. Defendant has thereby induced others to infringe one or more claims of the '987 Patent.

41. The selling of the NanoFrontier and/or the RF ECD products by Defendant has been without authority or license from BYU or Torion and in violation of BYU's and Torion's exclusive rights, thereby inducing infringement (either literally or through the doctrine of equivalents) by others of the '987 patent.

42. Defendant has caused and will continue to cause BYU and Torion substantial damage and irreparable injury by inducing others to infringe the '987 patent.

43. BYU and Torion will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Defendant is enjoined from selling the NanoFrontier and/or the RF ECD products.

44. BYU and Torion are entitled to recover from Defendant damages in an amount sufficient to compensate it for Defendant's inducement of infringement of the '987 patent, together with prejudgment interest thereon.

45. Upon information and belief, Defendant's inducement of infringement was and is willful, intentional, and deliberate. Accordingly, this case is exceptional under 35 U.S.C. § 285, and BYU and Torion are entitled to recover treble damages and their reasonable attorneys' fees, expenses, and costs incurred in this action.

THIRD CLAIM FOR RELIEF

(Contributory Infringement - 35 U.S.C. § 271(c))

46. The Plaintiff incorporates the allegations of each and every paragraph of this Complaint as if fully alleged herein.

47. The Defendant RF ECD products is/are material component(s) of a machine, combination, or apparatus that infringes (either literally or through the doctrine of equivalents) the '987 patent, or for use in practicing the '987 patent's process. On information and belief, Defendant's RF ECD products has knowingly been especially made or adapted for use in infringing the '987 patent.

48. The Defendant RF ECD products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

49. On information and belief, Defendant has been and is contributing to the infringement of the '987 patent by marketing, distributing, selling and/or offering for sale its RF

ECD products in this District and elsewhere, which is then used by its customers to infringe the '987 patent.

50. Defendant has caused and will continue to cause Plaintiffs substantial damage and irreparable injury by contributorily infringing the '987 patent.

51. Plaintiff will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Defendant is enjoined from contributorily infringing the '987 patent.

52. Plaintiff is entitled to recover from Defendant damages in an amount sufficient to compensate it for Defendant's contributory infringement of the '987 patent, together with prejudgment interest thereon.

53. On information and belief, Defendant's contributory infringement was and is willful, intentional and deliberate. Accordingly, this case is exceptional under 35 U.S.C. § 285, and Plaintiff is entitled to recover treble damages and its reasonable attorneys' fees, expenses, and costs incurred in this action.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court enter judgment and relief against Defendant as follows:

1. That the Court adjudge that United States Patent No. 7,060,987 valid and infringed by the Defendant;
2. For a judgment that Defendant has induced others to infringe the '987 patent;
3. For a judgment that Defendant has contributorily infringed the '987 patent;
4. For an order enjoining Defendant and its officers, agents, attorneys, servants, employees, parents, subsidiaries, affiliates, divisions, successors, and all persons in privity or active concert or participation with them from infringing the '987 patent;

5. For an order directing Defendant to file with this Court and serve on counsel for Plaintiff, within 30 days after service of any injunction in this case (or within such extended period as the Court may direct), a report in writing under oath setting forth in detail the manner and form by which they have complied with the injunction requested in paragraph 1b above;

6. For an order directing that all documents, materials, and things, including but not limited to products, advertising and promotional materials, sales and marketing plans, and the like, which infringe or otherwise violate Plaintiff's rights in the '987 patent be delivered up to Plaintiff or destroyed;

7. For an order directing Defendant to file with this Court and serve on counsel for Plaintiff, within 30 days after this Court's Order, a statement in writing and under oath confirming that the material described in paragraph 1d above has been destroyed or delivered to Plaintiff;

8. For an award of compensatory and consequential damages in an amount subject to proof at trial, together with pre- and post-judgment interest thereon;

9. For an order directing Defendants to account for all revenue derived from the unlawful conduct alleged above;

10. For judgment of damages in an amount to be determined at trial, or in the alternative, a reasonable royalty;

11. For an order declaring that Defendant's infringement was and is willful and that this case is exceptional under 35 U.S.C. § 285 and awarding Plaintiff treble damages, its reasonable attorneys' fees, expenses, and costs incurred in this action;

12. For an order permanently enjoining Defendant from resuming its illegal and

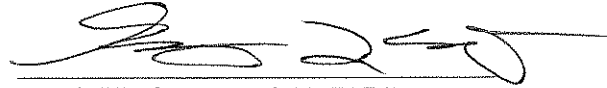
damaging conduct in the future; and

13. For an award of such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury for this action on all issues so triable.

DATED this 7th day of April, 2009.



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