

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CELSIS IN VITRO, INC.  
a Maryland Corporation,

*Plaintiff,*

v.

CELLZDIRECT, INC., a Delaware Corporation  
and wholly-owned subsidiary of INVITROGEN  
CORPORATION; and INVITROGEN  
CORPORATION, a Delaware Corporation.

*Defendants.*

Case No. \_\_\_\_\_

**COMPLAINT**

Plaintiff Celsis In Vitro, Inc. (“Celsis IVT” or “Plaintiff”) for its Complaint for patent infringement against Defendants CellzDirect, Inc. (“CellzDirect”) and Invitrogen Corporation (“Invitrogen”) (collectively, “Defendants”) alleges as follows:

**Nature of the Action**

1. Plaintiff Celsis IVT brings this action for infringement of United States Patent No. 7,604,929 B2 (“the ‘929 patent”) (Exhibit A) arising under the Patent Law of the United States, 35 U.S.C. § 100 *et seq.* This action relates to processes and methods used to manufacture, use, sell, offer for sale, and/or export cryopreserved hepatocyte products and the *in vitro* services performed by Defendants CellzDirect and/or Invitrogen, that infringe one or more claims of the ‘929 patent.

**Plaintiff Celsis IVT**

2. Plaintiff Celsis IVT (formerly known as In Vitro Technologies, Inc.) is a Maryland corporation having a principal place of business located at 1450 South Rolling Road, Baltimore, Maryland 21227, and a corporate office located within this judicial district at 600 West Chicago Avenue, Suite 625, Chicago, Illinois 60654.

3. Plaintiff Celsis IVT is a subsidiary of Celsis Holdings, Inc., which is a subsidiary of Celsis International Ltd., an international leading provider of innovative life science products and laboratory services to the pharmaceutical and consumer products industries.

4. Plaintiff Celsis IVT is a leading global supplier of high-quality cryopreserved and fresh liver cells (hepatocytes) for *in vitro* research in preclinical drug discovery and development. Such hepatocytes are used in research to determine Absorption, Distribution, Metabolism, Excretion, and Toxicity (ADMET) characterizations of potential drugs.

5. Plaintiff Celsis IVT has proprietary expertise in hepatocyte and cryopreservation technologies which enable it to supply innovative testing products to customers in the pharmaceutical and biotechnology industries. By screening candidate compounds for their ADMET properties early in the drug discovery and development phases using Celsis IVT's products, companies may reduce the time and development cost associated with developing new drugs.

6. Plaintiff Celsis IVT has undertaken substantial efforts to protect its proprietary rights in its cryopreserved hepatocyte technologies by developing a

comprehensive intellectual property portfolio in the United States and in foreign countries.

7. As evidence of its innovative and inventive efforts, on April 21, 2005, Celsis IVT filed U.S. Patent Application No. 11/110,879 (“the ‘879 application”), entitled “Novel Cellular Compositions and Methods for their Preparation.”

8. On October 27, 2005, the ‘879 application published as U.S. Patent Application Publication No. 2005/0239042 A1 (“the Published ‘042 Application”) (Exhibit B).

9. On October 20, 2009, the United States Patent and Trademark Office duly and legally issued the ‘879 application as the ‘929 patent. The ‘929 patent is directed to processes and methods for producing multi-cryopreserved hepatocyte preparations, as well as processes and methods for investigating *in vitro* drug metabolism using multi-cryopreserved hepatocyte preparations.

10. The invention claimed and disclosed in the ‘929 patent is substantially identical to the invention claimed and disclosed in the Published ‘042 Application.

11. Plaintiff Celsis IVT is the assignee of all right, title, and interest in and to the ‘929 patent, including all rights to sue and recover all damages for infringement.

12. Plaintiff Celsis IVT manufactures, sells, and markets pooled multi-cryopreserved hepatocyte products in this judicial district under the trade name LiverPool™. Plaintiff Celsis IVT uses the processes and methods of the ‘929 patent to produce the LiverPool™ products.

13. At all relevant times Plaintiff Celsis IVT has marked and continues to mark the LiverPool™ products in accordance with 35 U.S.C. § 287(a).

**The Defendants CellzDirect and Invitrogen**

14. Upon information and belief, Defendant CellzDirect, Inc. is a Delaware corporation with a principal place of business at 4301 Emperor Boulevard, Durham, North Carolina 27703.

15. Upon information and belief, Defendant Invitrogen Corporation is a Delaware corporation with its principal place of business at 1600 Faraday Avenue, Carlsbad, California 92008 and offices at 7305 Executive Way, Frederick, Maryland 21704. Invitrogen is a part of Life Technologies.

16. Upon information and belief, on or about January 10, 2008, Defendant Invitrogen purchased Defendant CellzDirect and now CellzDirect is a wholly-owned subsidiary of Invitrogen.

17. Upon information and belief, Defendants CellzDirect and Invitrogen actively sell, offer to sell, and export pooled multi-cryopreserved hepatocyte products to and perform *in vitro* drug testing services for customers, including those who reside in Illinois and this judicial district.

18. Upon information and belief, Defendants CellzDirect and Invitrogen employ sales personnel who service their customers and potential customers within Illinois and this judicial district.

19. Upon information and belief, the relevant actions of Defendant CellzDirect are under the direct control of Invitrogen.

**The Process for Producing Pooled Cryopreserved Hepatocytes Products and the  
Performance of Services Using Pooled Cryopreserved Hepatocytes**

20. By January 2007, Plaintiff Celsis IVT became aware that Defendant CellzDirect was actively engaged in making, using, selling, offering for sale, and/or exporting pooled multi-cryopreserved hepatocyte products to and performing *in vitro* testing services using pooled multi-cryopreserved hepatocyte products for the same customers who had purchased or may purchase Plaintiff Celsis IVT's LiverPool™ products.

21. Upon information and belief, by March 2008, Defendants CellzDirect and Invitrogen had begun investigating Plaintiff Celsis IVT's LiverPool™ products, and as a result, became aware that Plaintiff Celsis IVT's LiverPool™ products bore a "patent pending" designation.

22. On or about March 19, 2008, Defendants CellzDirect and Invitrogen sent Plaintiff Celsis IVT a letter, *inter alia*, acknowledging that the parties were selling pooled hepatocyte products to the same customer base, admitting that the LiverPool™ products bore a "patent pending" designation, and requesting intellectual property information directed to the LiverPool™ products (Exhibit C).

23. On or about March 20, 2008, Plaintiff Celsis IVT responded to Defendants CellzDirect's and Invitrogen's request and provided them a copy of the Published '042 Application ("Celsis IVT Notice Letter").

24. Upon information and belief, after receiving the Celsis IVT Notice Letter, Defendants CellzDirect and Invitrogen reviewed and analyzed the invention claimed and disclosed in the Published '042 Application.

25. Defendants CellzDirect and Invitrogen had constructive notice of the invention claimed and disclosed in the Published '042 Application on or about its October 27, 2005 publication date, and had actual notice of the Published '042 Application at least as early as March 20, 2008.

26. On or about October 20, 2009, Defendants CellzDirect and Invitrogen attended and exhibited at the 2009 International Society of the Study of Xenobiotics ("ISSX") Conference in Baltimore, Maryland.

27. On information and belief, Defendants CellzDirect and Invitrogen learned that the '929 patent had issued to Celsis IVT during the ISSX Conference and thus Defendants CellzDirect and Invitrogen had actual notice of the '929 patent.

28. Notwithstanding their actual knowledge of the Published '042 Application and the '929 patent, Defendants CellzDirect and Invitrogen have continued to sell pooled multi-cryopreserved hepatocyte products produced from infringing processes and methods and continue to use pooled multi-cryopreserved products produced from infringing processes and methods for its drug testing services, all of which have infringed and continue to infringe at least one claim of the '929 patent in

willful and wanton disregard of Plaintiff Celsis IVT's patent rights.

29. Plaintiff Celsis IVT has been irreparably harmed and continues to be irreparably harmed by Defendants CellzDirect's and Invitrogen's infringing activities.

30. Upon information and belief, Defendant Invitrogen, by itself or at the direction of another, directed Defendant CellzDirect to continue selling and using infringing pooled multi-cryopreserved hepatocyte products and related testing services in the United States, including in Illinois and this judicial district, even after CellzDirect and Invitrogen received the Celsis IVT Notice Letter.

31. As such, Defendant Invitrogen, by itself or at the direction of another, caused tortious injury to Celsis IVT by directing and controlling CellzDirect's infringing activities in Illinois and this judicial district.

### **Jurisdiction and Venue**

32. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338.

33. This Court has personal jurisdiction over Defendants by virtue of, *inter alia*: (1) their presence in Illinois and this judicial district; (2) their systematic and continuous contacts with Illinois and this judicial district; and (3) their tortious acts directed at Illinois and this judicial district under 735 I.L.C.S. § 5/2-209(a)(2).

34. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b).

**COUNT I**

**Patent Infringement under 35 U.S.C. § 271(a)**

35. Plaintiff Celsis IVT incorporates by reference paragraphs 1-34 of this Complaint.

36. On information and belief, Defendant CellzDirect uses the processes and methods within the scope of one or more claims of the '929 patent by selling, offering to sell, and/or performing *in vitro* drug testing services using pooled multi-cryopreserved hepatocytes.

37. On information and belief, Defendant CellzDirect has intentionally and willfully infringed the '929 patent.

38. Plaintiff Celsis IVT has been substantially and irreparably harmed by Defendant CellzDirect's infringing activities and has been and will continue to be irreparably damaged as a result of such infringing activities.

39. Plaintiff Celsis IVT does not have an adequate remedy at law.

40. Plaintiff Celsis IVT is entitled to damages as a result of Defendant CellzDirect's infringing activities under 35 U.S.C. §§ 283, 284, and 285, as well as 35 U.S.C. § 154(d), because the invention claimed and disclosed in the '929 patent is substantially identical to the invention claimed and disclosed in the Published '042 Application and the '929 patent issued less than six (6) years ago.



**COUNT II**

**Patent Infringement under 35 U.S.C. § 271(b)**

41. Plaintiff Celsis IVT incorporates by reference paragraphs 1-40 of this Complaint.

42. On information and belief, Defendant CellzDirect knowingly and actively induced and continues to induce others to make, use, sell, offer to sell, and/or export pooled multi-cryopreserved hepatocyte products which are made by a process or processes within the scope of one or more claims of the '929 patent.

43. On information and belief, Defendant CellzDirect has intentionally and willfully infringed the '929 patent.

44. Plaintiff Celsis IVT has been substantially and irreparably harmed by Defendant CellzDirect's infringing activities and has been and will continue to be irreparably damaged as a result of such infringing activities.

45. Plaintiff Celsis IVT does not have an adequate remedy at law.

46. Plaintiff Celsis IVT is entitled to damages as a result of Defendant CellzDirect's infringing activities under 35 U.S.C. §§ 283, 284, and 285, as well as 35 U.S.C. § 154(d), because the invention claimed and disclosed in the '929 patent is substantially identical to the invention claimed and disclosed in the Published '042 Application and the '929 patent issued less than six (6) years ago.

**COUNT III**

**Patent Infringement under 35 U.S.C. § 271(g)**

47. Plaintiff Celsis IVT incorporates by reference paragraphs 1-46 of this Complaint.

48. On information and belief, Defendant CellzDirect makes, uses, sells, offers to sell, and/or exports pooled multi-cryopreserved hepatocyte products, which are made by a process or processes within the scope of one or more claims of the '929 patent.

49. On information and belief, Defendant CellzDirect has intentionally and willfully infringed the '929 patent.

50. Plaintiff Celsis IVT has been substantially and irreparably harmed by Defendant CellzDirect's infringing activities and has been and will continue to be irreparably damaged as a result of such infringing activities.

51. Plaintiff Celsis IVT does not have an adequate remedy at law.

52. Plaintiff Celsis IVT is entitled to damages as a result of Defendant CellzDirect's infringing activities under 35 U.S.C. §§ 283, 284, and 285, as well as 35 U.S.C. § 154(d), because the invention claimed and disclosed in the '929 patent is substantially identical to the invention claimed and disclosed in the Published '042 Application and the '929 patent issued less than six (6) years ago.

**COUNT IV**

**Patent Infringement under 35 U.S.C. § 271(c)**

53. Plaintiff Celsis IVT incorporates by reference paragraphs 1-52 of this Complaint.

54. On information and belief, Defendant CellzDirect sells, offers to sell, and/or exports pooled multi-cryopreserved hepatocyte products from within the United States for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made for use in infringing one or more claims of the '929 patent.

55. On information and belief, Defendant CellzDirect has intentionally and willfully infringed the '929 patent.

56. Plaintiff Celsis IVT has been substantially and irreparably harmed by Defendant CellzDirect's infringing activities and has been and will continue to be irreparably damaged as a result of such infringing activities.

57. Plaintiff Celsis IVT does not have an adequate remedy at law.

58. Plaintiff Celsis IVT is entitled to damages as a result of Defendant CellzDirect's infringing activities under 35 U.S.C. §§ 283, 284, and 285, as well as 35 U.S.C. § 154(d), because the invention claimed and disclosed in the '929 patent is substantially identical to the invention claimed and disclosed in the Published '042 Application and the '929 patent issued less than six (6) years ago.

**COUNT V**

**Patent Infringement under 35 U.S.C. § 271(b)**

59. Plaintiff Celsis IVT incorporates by reference paragraphs 1-58 of this Complaint.

60. On information and belief, Defendant Invitrogen actively induced and continues to induce Defendant CellzDirect to make, use, sell, offer to sell, and/or export pooled multi-cryopreserved hepatocyte products which are made by a process or processes within the scope of one or more claims of the '929 patent.

61. On information and belief, Defendant Invitrogen, by itself or at the direction of another, has intentionally and willfully infringed the '929 patent.

62. Plaintiff Celsis IVT has been substantially and irreparably harmed by Defendant Invitrogen's infringing activities and has been and will continue to be irreparably damaged as a result of such infringing activities.

63. Plaintiff Celsis IVT does not have an adequate remedy at law.

64. Plaintiff Celsis IVT is entitled to damages as a result of Defendant Invitrogen's infringing activities under 35 U.S.C. §§ 283, 284, and 285, as well as 35 U.S.C. § 154(d), because the invention claimed and disclosed in the '929 patent is substantially identical to the invention claimed and disclosed in the Published '042 Application and the '929 patent issued less than six (6) years ago.

**COUNT VI**

**Patent Infringement under 35 U.S.C. § 271(g)**

65. Plaintiff Celsis IVT incorporates by reference paragraphs 1-64 of this Complaint.

66. On information and belief, Defendant Invitrogen makes, uses, sells, offers to sell, and/or exports pooled multi-cryopreserved hepatocyte products which are made by a process or processes within the scope of one or more claims of the '929 patent.

67. On information and belief, Defendant Invitrogen has intentionally and willfully infringed the '929 patent.

68. Plaintiff Celsis IVT has been substantially and irreparably harmed by Defendant Invitrogen's infringing activities and has been and will continue to be irreparably damaged as a result of such infringing activities.

69. Plaintiff Celsis IVT does not have an adequate remedy at law.

70. Plaintiff Celsis IVT is entitled to damages as a result of Defendant Invitrogen's infringing activities under 35 U.S.C. §§ 283, 284, and 285, as well as 35 U.S.C. § 154(d), because the invention claimed and disclosed in the '929 patent is substantially identical to the invention claimed and disclosed in the Published '042 Application and the '929 patent issued less than six (6) years ago.

**RELIEF SOUGHT**

A) A preliminary injunction restraining and enjoining Defendants CellzDirect and/or Invitrogen and their respective officers, agents, servants, and employees, and those persons in active concert or participation with any of them, from engaging in the commercial manufacturing, sale, offer for sale or use within the United States, or exportation from the United States a product manufactured using the processes and methods of the '929 patent or perform drug testing services using the processes and methods of the '929 patent until after the final resolution of all claims in this action at trial;

B) A judgment and decree that the '929 patent is valid and enforceable;

C) A judgment that Defendant CellzDirect infringed the '929 patent under 35 U.S.C. §§ 271(a), 271(b), 271(c), and/or 271(g);

D) A judgment that Defendant Invitrogen infringed the '929 patent under 35 U.S.C. §§ 271(b) and/or 271(g);

E) A permanent injunction restraining and enjoining Defendants CellzDirect and/or Invitrogen and their respective officers, agents, servants, and employees, and those persons in active concert or participation with any of them, from engaging in the commercial manufacturing, sale, offer for sale or use within the United States, or exportation from the United States a product manufactured using the processes and methods of the '929 patent or perform drug testing services using the processes and

methods of the '929 patent prior to March 6, 2026, the day after the current expiration of the '929 patent;

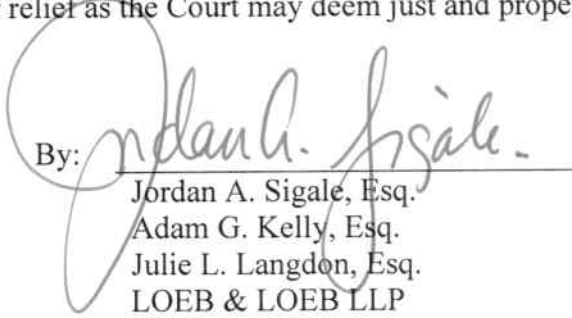
F) An award of monetary relief under at least 35 U.S.C. §§ 154(d) and 284 for Defendant CellzDirect's and/or Invitrogen's infringement of the '929 patent within the United States prior to the expiration of that patent, including any later expiration of any patent term extension or exclusivity for the patent to which Plaintiff Celsis IVT becomes entitled, and that any such monetary relief be awarded to Celsis IVT with prejudgment interest;

G) A declaration that this case is exceptional and that Plaintiff Celsis IVT is entitled to an award of attorneys' fees and up to treble damages from Defendants CellzDirect and/or Invitrogen under 35 U.S.C. § 285; and

H) Such other and further relief as the Court may deem just and proper.

Dated: June 29, 2010

By:



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**CERTIFICATE OF SERVICE**

I, Adam G. Kelly, hereby certify that a copy of the foregoing **Complaint** was served via FedEx upon the following on this 30<sup>th</sup> day of June, 2010:

TO: Stephen G. Whiteside, Ph.D., Esq.  
Invitrogen Corporation  
7305 Executive Way  
Frederick, MD 21704  
stephen.whiteside@invitrogen.com

Dated: June 29, 2010

By: /s/ Jordan A. Sigale  
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