

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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MASSACHUSETTS

GEORGE PIECZENIK and I.C.)
TECHNOLOGIES AMERICA, INC.,)
)
Plaintiffs,)
)
v.)
)
DYAX CORPORATION,)
)
Defendant.)

**COMPLAINT FOR PATENT
INFRINGEMENT AND
DEMAND FOR JURY TRIAL**

00CV 11370 RGS

INTRODUCTION

Pursuant to Fed. R. Civ. P. 15(a), the plaintiffs, George Pieczenik ("Pieczenik") and I.C. Technologies America, Inc. ("ICT"), bring this action against Dyax Corporation seeking permanent injunctive relief and damages as a result of the defendant's infringement of the plaintiffs' patent rights.

THE PARTIES

1. Plaintiff Pieczenik is an individual residing at 412 East 55th Street, Apartment 1F, New York, New York 10022.
2. Plaintiff ICT is a corporation duly organized and existing under the laws of the State of New York, with a place of business c/o The Law Offices of Gerry E. Feinberg, P.C., 11 Martine Avenue, White Plains, New York 10606.
3. Upon information and belief, defendant Dyax Corp. ("Dyax") is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with an office and place of business located at One Kendall Square, Building 600, 5th Floor, Cambridge, Massachusetts 02139.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code. This Court has jurisdiction pursuant to 28 U.S.C. §§1331 and 1338(a).

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

COUNT I FOR PATENT INFRINGEMENT
(U.S. Patent No. 4,359,535)

6. On November 16, 1982, United States Patent No. 4,359,535, entitled “AUTONOMOUSLY REPLICATING DNA CONTAINING INSERTED DNA SEQUENCES,” was duly and lawfully issued by the United States Patent and Trademark Office in the name of George Pieczenik (“Pieczenik 535 patent”). The Pieczenik 535 patent has expired. The Pieczenik 535 patent contains claims to unique DNA and vector populations. Plaintiff Pieczenik is the owner of all rights, title and interest in and to the Pieczenik 535 patent. A copy of the Pieczenik 535 patent is attached hereto as **Exhibit A**.

7. Dyax owns United States patents claiming methods and products used in the surface display of peptides on virus and bacteria and in DNA sequencing (“Dyax patents”). Products disclosed in Dyax’s patents are subsumed by claims of the Pieczenik 535 patent.

8. Upon information and belief, Dyax licenses rights under the Dyax patents to companies located in New York and elsewhere.

9. By virtue of its licensing activities, Dyax has actively induced infringement of the Pieczenik 535 patent, and therefore, is liable as an infringer under 35 U.S.C. §271(b).

10. Upon information and belief, Dyax has also infringed the Pieczenik 535 patent under 35 U.S.C. §271(a) by making, and/or using, and/or selling, and/or offering to sell, without leave or license from Pieczenik, unique DNA and vector populations meeting the requirements of

one or more of the patent's claims.

11. Dyax's acts of infringement have damaged and will continue to damage Pieczenik under 35 U.S.C. §284 in an amount no less than a reasonable royalty for the use made of the invention by Dyax.

12. Upon information and belief, Dyax's acts of infringement have been willful and deliberate, without color of right.

COUNT II FOR PATENT INFRINGEMENT
(U.S. Patent No. 4,528,266)

13. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 12 as if fully set forth herein.

14. On July 9, 1985, United States Letters Patent No. 4,528,266, entitled "METHOD OF INSERTING UNIQUE DNA SEQUENCES INTO DNA VECTORS," was duly and lawfully issued by the United States Patent and Trademark Office in the name of George Pieczenik ("Pieczenik 266 Patent"). The Pieczenik 266 patent is now in full force and effect. The Pieczenik 266 patent is a divisional of the Pieczenik 535 patent, contains a patent specification virtually identical to the Pieczenik 535 patent specification, and claims methods for preparing the unique DNA and vector populations claimed in the Pieczenik 535 patent. Plaintiff Pieczenik is the owner of all rights, title and interest in and to the Pieczenik 266 patent. A copy of the Pieczenik 266 patent is attached hereto as **Exhibit B**.

15. Methods disclosed in the Dyax patents are subsumed by claims of the Pieczenik 266 patent. Dyax, by virtue of licensing rights under the Dyax patents to companies located in New York and elsewhere, has actively induced infringement of the Pieczenik 266 patent, and therefore, is liable as an infringer under 35 U.S.C. §271(b).

16. Upon information and belief, Dyax has also infringed the Pieczenik 266 patent

under 35 U.S.C. §271(a) by making, and/or using, and/or selling, and/or offering to sell, without leave or license from Pieczenik, methods meeting the requirements of one or more of the patent's claims.

17. Dyax's acts of infringement have damaged and will continue to damage Pieczenik under 35 U.S.C. §284 in an amount no less than a reasonable royalty for the use made of the invention by Dyax.

18. Upon information and belief, Dyax's acts of infringement have been willful and deliberate, without color of right. Upon information and belief, Dyax will continue to infringe the Pieczenik 266 patent unless enjoined.

COUNT III FOR PATENT INFRINGEMENT
(U.S. Patent No. 5,866,363)

19. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 18 as if fully set forth herein.

20. On February 2, 1999, United States Letters Patent No. 5,866,363, entitled "METHOD AND MEANS FOR SORTING AND IDENTIFYING BIOLOGICAL INFORMATION," was duly and lawfully issued by the United States Patent and Trademark Office in the name of George Pieczenik ("Pieczenik 363 patent"). The Pieczenik 363 patent is now in full force and effect. ICT is the owner of all the rights, title and interest in the Pieczenik 363 patent by way of assignment. A copy of the 363 patent is attached hereto as **Exhibit C**.

21. Methods and products disclosed in the Dyax patents are subsumed by claims of the Pieczenik 363 patent. Dyax, by virtue of licensing rights under the Dyax patents to companies located in New York and elsewhere, has actively induced infringement of the Pieczenik 363 patent, and therefore, is liable as an infringer under 35 U.S.C. §271(b).

22. Upon information and belief, Dyax has also infringed the Pieczenik 363 patent

under 35 U.S.C. §271(a) by making, and/or using, and/or selling, and/or offering to sell, without leave or license from ICT, methods of making, and products of, unique DNA, vector populations, and combinatorial libraries, and information derived therefrom, that meet the requirements of one or more of the patent's claims.

23. Dyax's acts of infringement have damaged and will continue to damage ICT under 35 U.S.C. §284 in an amount no less than a reasonable royalty for the use made of the invention by Dyax.

24. Upon information and belief, Dyax's acts of infringement have been willful and deliberate, without color of right. Upon information and belief, Dyax will continue to infringe the Pieczenik 363 patent unless enjoined.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs Pieczenik and ICT pray for judgment:

1. Holding that Dyax has infringed the Pieczenik 535 patent;
2. Holding that Dyax has infringed the Pieczenik 266 patent;
3. Holding that Dyax has infringed the Pieczenik 363 patent;
4. Holding that Dyax's infringement of the Pieczenik 535, 266 and 363 patents has been willful and deliberate;
5. Permanently enjoining Dyax, and all officers, agents, servants, employees and persons in active concert or participation with them, from: (a) making, using, selling, licensing, or offering for sale any method that embodies one or more claims of the Pieczenik 266 patent; and (b) from actively inducing infringement of the Pieczenik 266 patent by others;
6. Permanently enjoining Dyax, and all officers, agents, servants, employees and persons in active concert or participation with them, from: (a) making, using, selling, licensing, or offering for sale any method or product that embodies one or more claims of the Pieczenik

363 patent; and (b) from actively inducing infringement of the Pieczenik 363 patent by others;

7. Awarding Pieczenik and ICT such damages adequate to compensate them for Dyax's infringement of the Pieczenik 535, 266 and 363 patents under 35 U.S.C. §284;

8. Awarding Pieczenik and ICT treble damages by reason of Dyax's willful and deliberate infringement under 35 U.S.C. §284;

9. Finding that this is an exceptional case and awarding Pieczenik and ICT their reasonable attorneys' fees under 35 U.S.C. §285, plus the costs and disbursements of this action; and

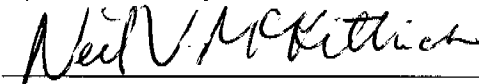
10. Awarding Pieczenik and ICT such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs Pieczenik and ICT demand trial by jury on their claims for relief.

GEORGE PIECZENIK AND I.C.
TECHNOLOGIES AMERICA, INC.

By their attorneys,



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Dated: July 12, 2000

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