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12 Attorneys for Plaintiffs
CELECTRICON AB and GYROS AB

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

18 CELECTRICON AB and GYROS AB,

19 Plaintiffs,

20 v.

21 FLUXION BIOSCIENCES, INC.,

22 Defendant.

Civil Action No. 5:09-cv-03150-RMW

**SECOND AMENDED COMPLAINT
FOR PATENT INFRINGEMENT OF
U.S. PATENTS NOS. 5,376,252, 7,390,650,
7,470,518, AND
7,563,614**

AND

DEMAND FOR JURY TRIAL

Honorable Ronald M. Whyte
United States District Judge

1 Plaintiffs CELLECTRICON AB (“CELLECTRICON”) and GYROS AB (“GYROS”)
2 bring this action for patent infringement against Defendant, FLUXION BIOSCIENCES, INC.
3 (“FLUXION”), and allege as follows:

4 **PARTIES**

5 1. CELLECTRICON is organized as an Aktiebolag (i.e., corporation) under the laws
6 of Sweden and has a principal place of business in Göteborg, Sweden.

7 2. CELLECTRICON develops and markets microfluid assay tools, real time cell-
8 based screening devices, for increased productivity and high precision for applications in the fields
9 of biotechnology, biomedical research and drug discovery.

10 3. GYROS is organized as an Aktiebolag (i.e., corporation) under the laws of Sweden
11 and has a principal place of business in Uppsala, Sweden.

12 4. GYROS is a leader in the miniaturization and integration of laboratory applications
13 through its proprietary microfluidics platform.

14 5. On information and belief, FLUXION is a corporation organized and existing
15 under the laws of the State of Delaware and has a principal place of business in South San
16 Francisco, California.

17 **JURISDICTION**

18 6. This is an action for patent infringement arising under the Patent Laws of the
19 United States, 35 U.S.C. § 1 *et seq.*

20 7. This Court has jurisdiction over the subject matter of these claims under 28 U.S.C.
21 §§ 1331 and 1338(a).

22 8. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), 1391(c), and
23 1400(b).

24 **INTRADISTRICT ASSIGNMENT**

25 9. Because this action is an Intellectual Property Action as specified in Civil L.R. 3-
26 2(c), it is to be assigned on a district-wide basis.

1 **FIRST CLAIM FOR RELIEF**

2 **(Infringement of U.S. Patent No. 5,376,252)**

3 10. Plaintiffs reallege and incorporate herein by reference the allegations set forth in
4 paragraphs 1-9 above.

5 11. United States Patent No. 5,376,252 (“the ‘252 Patent”) is titled “Microfluidic
6 Structure And Process For Its Manufacture.” The ‘252 Patent was duly and legally issued on
7 December 27, 1994 and claims priority to a Swedish patent application filed on May 10, 1990.
8 The ‘252 Patent is valid, subsisting, and enforceable. A copy of the ‘252 Patent is attached hereto
9 as **Exhibit 1**.

10 12. GYROS is the owner of the ‘252 Patent.

11 13. CELLECTRICON is a licensee of the ‘252 Patent.

12 14. On information and belief, FLUXION manufactures, sells, offers to sell, and/or
13 uses in the United States “IonFlux,” an automated high throughput electrophysiology system,
14 which infringes one or more claims of the ‘252 Patent in violation of one or more of the provisions
15 of 35 U.S.C. § 271.

16 15. On information and belief, FLUXION will continue to infringe the ‘252 Patent
17 unless enjoined by this Court.

18 **SECOND CLAIM FOR RELIEF**

19 **(Infringement of U.S. Patent No. 7,390,650)**

20 16. Plaintiffs reallege and incorporate herein by reference the allegations set forth in
21 paragraphs 1-15 above.

22 17. United States Patent No. 7,390,650 (“the ‘650 Patent”) is titled “System And
23 Method For Obtaining And Maintaining High-Resistance Seals In Patch Clamp Recordings.” The
24 ‘650 Patent was duly and legally issued on June 24, 2008 and claims priority to a United States
25 provisional patent application filed on August 21, 2002. The ‘650 Patent is valid, subsisting, and
26 enforceable. A copy of the ‘650 Patent is attached hereto as **Exhibit 2**.

27 18. CELLECTRICON is the owner of the ‘650 Patent.

28 19. On information and belief, FLUXION manufactures, sells, offers to sell, and/or

1 uses in the United States “IonFlux,” an automated high throughput electrophysiology system,
2 which infringes one or more claims of the ‘650 Patent in violation of one or more of the provisions
3 of 35 U.S.C. § 271.

4 20. On information and belief, FLUXION will continue to infringe the ‘650 Patent
5 unless enjoined by this Court.

6 **THIRD CLAIM FOR RELIEF**

7 **(Infringement of U.S. Patent No. 7,470,518)**

8 21. Plaintiffs reallege and incorporate herein by reference the allegations set forth in
9 paragraphs 1-20 above.

10 22. United States Patent No. 7,470,518 (“the ‘518 Patent”) is titled “Systems And
11 Methods For Rapidly Changing The Solution Environment Around Sensors.” The ‘518 Patent
12 was duly and legally issued on December 30, 2008 and claims priority to a United States
13 provisional patent application filed on February 12, 2002. The ‘518 Patent is valid, subsisting, and
14 enforceable. A copy of the ‘518 Patent is attached hereto as **Exhibit 3**.

15 23. CELLECTRICON is the owner of the ‘518 Patent.

16 24. On information and belief, FLUXION manufactures, sells, offers to sell, and/or
17 uses in the United States “IonFlux,” an automated high throughput electrophysiology system,
18 which infringes one or more claims of the ‘518 Patent in violation of one or more of the provisions
19 of 35 U.S.C. § 271.

20 25. On information and belief, FLUXION will continue to infringe the ‘518 Patent
21 unless enjoined by this Court.

22 **FOURTH CLAIM FOR RELIEF**

23 **(Infringement of U.S. Patent No. 7,563,614)**

24 26. Plaintiffs reallege and incorporate herein by reference the allegations set forth in
25 paragraphs 1-25 above.

26 27. United States Patent No. 7,563,614 (“the ‘614 Patent”) is titled “Systems And
27 Methods For Rapidly Changing The Solution Environment Around Sensors.” The ‘614 Patent
28 was duly and legally issued on July 21, 2009 and claims priority to a United States provisional

1 patent application filed on February 12, 2002. The ‘614 Patent is valid, subsisting, and
2 enforceable. A copy of the ‘614 Patent is attached hereto as **Exhibit 4**.

3 28. CELLECTRICON is the owner of the ‘614 Patent.

4 29. On information and belief, FLUXION manufactures, sells, offers to sell, and/or
5 uses in the United States “IonFlux,” an automated high throughput electrophysiology system,
6 which infringes one or more claims of the ‘614 Patent in violation of one or more of the provisions
7 of 35 U.S.C. § 271.

8 34. On information and belief, FLUXION will continue to infringe the ‘614 Patent
9 unless enjoined by this Court.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs request judgment against FLUXION and respectfully pray that
12 this Court enter orders:

- 13 (a) Finding that FLUXION has infringed and is infringing the ‘252 Patent;
- 14 (b) Finding that FLUXION has infringed and is infringing the ‘650 Patent;
- 15 (c) Finding that FLUXION has infringed and is infringing the ‘518 Patent;
- 16 (d) Finding that FLUXION has infringed and is infringing the ‘614 Patent;
- 17 (e) Enjoining FLUXION, its agents, servants, employees and attorneys, and all those in
18 active participation or privity with any of them, from infringing any of United States Patents Nos.
19 5,376,252, 7,390,650, 7,470,518, and 7,563,614;
- 20 (f) Awarding compensatory damages to Plaintiffs pursuant to 35 U.S.C. § 284;
- 21 (g) Awarding Plaintiffs pre-judgment and post-judgment interest on the damages
22 awarded;
- 23 (h) Awarding Plaintiffs their costs of suit pursuant to Federal Rule of Civil Procedure
24 54(d)(1); and

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1 (i) Granting Plaintiffs such other and further relief as they are entitled to as a matter of
2 law or that the Court deems just and proper.

3
4 Respectfully submitted,

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6 Dated: January 22, 2010

By: /s/ Nathaniel Bruno

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12 *and GYROS AB*

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