

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION, ST. LOUIS**

IRIDEX CORPORATION, a Delaware	)	
corporation,	)	
	)	CASE NO. 4:05CV1916 CDP
Plaintiff,	)	
	)	
v.	)	JURY TRIAL DEMANDED
	)	
SYNERGETICS, INC., a Missouri	)	
corporation,	)	
	)	
and	)	
	)	
SYNERGETICS USA, INC., a Delaware	)	
corporation,	)	
	)	
Defendants.	)	
_____	)	

**IRIDEX'S AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

**PARTIES**

1. Plaintiff IRIDEX Corporation is a corporation duly organized and existing under the laws of the State of Delaware having a principal place of business at 1212 Terra Bella Avenue, Mountain View, California.

2. On information and belief, Defendant Synergetics USA, Inc. is a corporation duly organized and existing under the laws of the State of Delaware doing business in this judicial district, and has a principal place of business at 3845 Corporate Centre Drive, St. Charles, Missouri.

3. On information and belief, Defendant Synergetics, Inc. is a corporation duly organized and existing under the laws of the State of Missouri doing business in this judicial district, and has a principal place of business at 3845 Corporate Centre Drive, St. Charles, Missouri.

## **JURISDICTION AND VENUE**

4. This is an action for damages and injunctive relief based upon patent infringement arising under Title 35 of the United States Code.

5. Upon information and belief, defendant Synergetics USA, Inc. has transacted business in this District, contracted to supply goods or services in this District, and has otherwise purposely availed itself of the privileges and benefits of the laws of the state of Missouri. This Court has jurisdiction over Synergetics because Synergetics is headquartered in this District and has committed acts of patent infringement during the course of its business in this District.

6. Upon information and belief, defendant Synergetics, Inc. has transacted business in this District, contracted to supply goods or services in this District, is a corporation duly organized and existing under the laws of the State of Missouri, and has otherwise purposely availed itself of the privileges and benefits of the laws of the state of Missouri. This Court has jurisdiction over Synergetics, Inc. because Synergetics, Inc. is headquartered in this District and has committed acts of patent infringement during the course of its business in this District.

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

8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1400(b) and 1391.

## **THE PATENT IN SUIT**

9. On February 4, 1992, United States Patent No. 5,085,492 (the '492 patent), entitled "Optical fiber with electrical encoding," was duly and legally issued to IRIS Medical Instruments, Inc. In 1996, IRIS Medical changed its name to IRIDEX Corporation. IRIDEX is the owner of the entire right, title, and interest in and to the '492 patent. A true and correct copy of the '492 Patent is attached as Exhibit A to this Complaint.

## **CLAIM I**

### **INFRINGEMENT OF THE '492 PATENT BY SYNERGETICS INC.**

10. IRIDEX realleges and incorporates herein by reference the allegations contained in paragraphs 1-9.

11. On information and belief, Synergetics Inc. has infringed and continues to infringe; has induced and continues to induce others to infringe; and/or has committed and continues to commit acts of contributory infringement of, one or more of the claims of the '492 patent. Synergetics' infringing activities in the United States and this District include the development, manufacture, use, importation, sale, and/or offer for sale of products, including but not limited to its Quick Disconnect laser probes and its Quick Disconnect Laser Probe Adapter, and contributing to and inducing others to do the same. Such products have no substantial non-infringing use. Synergetics' infringing activities violate 35 U.S.C. § 271.

12. On information and belief, Synergetics Inc.'s infringement has been, and continues to be, willful and deliberate, and has caused substantial damage to IRIDEX.

13. On information and belief, Synergetics Inc.'s infringement in violation of the federal patent laws will continue to injure IRIDEX unless otherwise enjoined by this Court.

## **CLAIM II**

### **INFRINGEMENT OF THE '492 PATENT BY SYNERGETICS USA, INC.**

14. IRIDEX realleges and incorporates herein by reference the allegations contained in paragraphs 1-13.

15. On information and belief, Synergetics USA, Inc. is the alter ego of Synergetics, Inc. Synergetics, Inc. is the wholly owned subsidiary of Synergetics USA, Inc. The officers and directors of Synergetics, Inc. consist entirely of officers of Synergetics USA, Inc. Synergetics, Inc. is so dominated by Synergetics USA, Inc. that it is a mere instrument of and indistinct from its parent. In addition to its own acts, as the exclusive owner of Synergetics Inc., Synergetics USA Inc. is liable for the wrongful activities of Synergetics Inc. under the equitable doctrines of joint business enterprise, single business enterprise, and alter ego.

16. For example, on November 30, 2006, Synergetics USA, Inc. pled that Synergetics USA, Inc. "designs, manufactures, and sells ophthalmic equipment to physicians and hospitals for use in eye surgeries." In that same pleading, Synergetics USA, Inc. sued IRIDEX for defamation, injurious falsehood, and violations of the Lanham Act. But not until nine months

later did Synergetics USA, Inc. ask IRIDEX to substitute Synergetics, Inc. as the alleged “real party in interest.” During those nine months, Synergetics USA, Inc. apparently believed it was the proper party, not believing there to be a distinction between it and Synergetics, Inc.

17. On information and belief, Synergetics USA, Inc. has infringed and continues to infringe; has induced and continues to induce others (including its subsidiary, Synergetics, Inc.) to infringe; and/or has committed and continues to commit acts of contributory infringement of, one or more of the claims of the ‘492 patent. Synergetics USA’s infringing activities in the United States and this District include the development, manufacture, use, importation, sale, and/or offer for sale of products, including but not limited to its Quick Disconnect laser probes and its Quick Disconnect Laser Probe Adapter, and contributing to and inducing others to do the same. Such products have no substantial non-infringing use. Synergetics USA, Inc.’s infringing activities violate 35 U.S.C. § 271.

18. On information and belief, Synergetics USA, Inc.’s infringement has been, and continues to be, willful and deliberate, and has caused substantial damage to IRIDEX.

19. On information and belief, Synergetics USA, Inc.’s infringement in violation of the federal patent laws will continue to injure IRIDEX unless otherwise enjoined by this Court.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment and relief as follows:

1. A judgment that Synergetics USA, Inc. and Synergetics, Inc. have infringed, induced infringement of, and contributorily infringed, the ‘492 patent in violation of 35 U.S.C. § 271;

2. Preliminary and permanent injunctive relief enjoining defendant Synergetics USA, Inc. and Synergetics, Inc., their officers, agents, servants, employees and attorneys and all other persons in active concert or participation with them, as follows:

- (i) from selling or offering to sell any product falling within the scope of the claims of the ‘492 patent;
- (ii) from importing any product into the United States which falls within the scope of

the claims of the '492 patent;

- (iii) from manufacturing any product falling within the scope of the claims of the '492 patent;
- (iv) from using any product falling within the scope of any of the claims of the '492 patent;
- (v) from actively inducing others to infringe any of the claims of the '492 patent;
- (vi) from engaging in acts constituting contributory infringement of any of the claims of the '492 patent;
- (vii) from all other acts of infringement of any of the claims of the '492 patent;

3. A declaration that Synergetics USA, Inc.'s and Synergetics, Inc.'s infringement of the '492 patent was willful and deliberate and that this case is exceptional pursuant to 35 U.S.C. §§ 284 and 285;

4. An award of damages adequate to compensate IRIDEX for Synergetics USA, Inc.'s and Synergetics, Inc.'s infringement of the '492 patent;

5. An award of treble damages resulting from Synergetics USA, Inc.'s and Synergetics, Inc.'s willful and deliberate infringement, and all other categories of damages allowed by 35 U.S.C. § 284;

6. An award of IRIDEX's costs, expenses and attorneys' fees incurred in bringing and prosecuting this action, including pursuant to 35 U.S.C. § 285;

7. An award of pre-judgment interest; and

8. For such further relief as this Court deems IRIDEX may be entitled to in law and in equity.

**JURY DEMAND**

IRIDEX demands a jury trial on all issues triable to a jury in this matter.

DATED: November 1, 2006

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served via the Court's electronic filing system, on November 1, 2006, on the following:

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