

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

APERIO TECHNOLOGIES, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. _____
	)	
OLYMPUS AMERICA INC.,	)	<b>DEMAND FOR JURY TRIAL</b>
HAMAMATSU CORPORATION and	)	
HAMAMATSU PHOTONICS KK,	)	
	)	
Defendants.	)	

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff APERIO TECHNOLOGIES, INC. (“Aperio”) hereby complains of Defendants OLYMPUS AMERICA INC., HAMAMATSU CORPORATION and HAMAMATSU PHOTONICS KK (collectively, “Defendants”) and alleges as follows:

**I. PARTIES**

1. Plaintiff Aperio is a corporation incorporated under the laws of California and has its principal place of business at 1360 Park Center Dr., Vista, CA 92081. Aperio offers its patented digital pathology products nationwide, including the State of Delaware.

2. Upon information and belief, Defendant Olympus America Inc. (“Olympus”) is a New York corporation, having its principal place of business at 3500 Corporate Parkway, P.O. Box 610, Center Valley, PA, 18034, and is registered to do business in Delaware. Olympus conducts substantial and continuous business in Delaware and is subject to personal jurisdiction in Delaware. In particular, Olympus offers products that infringe Aperio’s patents, including the NanoZoomer HT and RS Digital Pathology Systems, in the State of Delaware directly and through dealers.

3. Upon information and belief, Defendant Hamamatsu Corporation is a New Jersey corporation having its principal place of business at 360 Foothill Road, Box 6910, Bridgewater, NJ 08807. Hamamatsu Corporation conducts substantial and continuous business in Delaware and is subject to personal jurisdiction in Delaware.

4. Upon information and belief, Defendant Hamamatsu Photonics KK (“Hamamatsu Photonics”) is a corporation organized and existing under the laws of Japan having its principal place of business at 325-6, Sunayama-cho, Naka-ku, Hamamatsu City, Shizuoka Pref., 430-8587, Japan. Hamamatsu Photonics conducts substantial and continuous business throughout the United States including Delaware and is subject to personal jurisdiction in Delaware.

5. Upon information and belief, in April of 2007, Hamamatsu Corporation and Hamamatsu Photonics entered into an exclusive distribution agreement (“Agreement”) with Olympus, whereby infringing products manufactured by Hamamatsu Photonics, including the NanoZoomer HT and RS Digital Pathology Systems, are offered for sale and distributed exclusively by Olympus and its dealers in the United States and Canada. According to a press release from Olympus dated April 13, 2007: “Olympus America Inc. has signed an agreement with Hamamatsu Corporation for distribution of the NanoZoomer Digital Pathology system in the United States and Canada. The NanoZoomer is a virtual microscopy system that quickly delivers automated, high throughput slide scanning with outstanding image quality. Olympus offers a comprehensive family of imaging-based systems and solutions for the pathology suite. Manufactured by Hamamatsu, NanoZoomer allows researchers to do fast, accurate slide scanning for analysis, publication or archiving.”

6. Upon information and belief, pursuant to the Agreement, Olympus and its dealers have engaged in substantial marketing, sales and distribution activities involving the infringing products, including entering into distribution agreements for such products directed at the State of Delaware. As one example, Olympus on its web site advertises B & B Microscopes Ltd. as its dealer for the infringing NanoZoomer HT and RS Digital Pathology Systems in the State of Delaware. This arrangement is also advertised on the web site of B & B Microscopes Ltd.

## **II. JURISDICTION AND VENUE**

7. This is an action for patent infringement arising under 35 U.S.C. §§ 271 and 281.

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over each Defendant because each Defendant has purposefully availed itself of the privilege of conducting business in this district and/or because each Defendant has committed acts of infringement in this district, including importing into the United States and offering infringing products for sale to customers in this district.

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

## **III. THE PATENTS-IN-SUIT**

11. Aperio is a worldwide leader in digital pathology. Digital pathology refers to hardware and software systems for the management and interpretation of pathology information that is enabled by the digitization of a glass slide. Aperio's award-winning line of

digital pathology systems, including its ScanScope® scanners and Spectrum Plus software, delivers automated high-speed digital slide creation, management, and analysis for pathology. The United States Patent and Trademark Office has recognized Aperio's contributions to the field of digital pathology with numerous patents, including those asserted in this action.

12. Aperio is the owner by assignment of U.S. Patent No. 6,917,696 entitled "Fully Automatic Rapid Microscope Slide Scanner" ("the '696 patent"), which the United States Patent and Trademark Office lawfully and duly issued on July 12, 2005. A true and correct copy of the '696 patent is attached hereto as Exhibit 1.

13. Aperio is the owner by assignment of U.S. Patent No. 7,457,446 entitled "Fully Automatic Rapid Microscope Slide Scanner" ("the '446 patent"), which the United States Patent and Trademark Office lawfully and duly issued on November 25, 2008. A true and correct copy of the '446 patent is attached hereto as Exhibit 2.

14. Aperio is the owner by assignment of U.S. Patent No. 7,518,652 entitled "Method And Apparatus For Pre-Focus In A Linear Array Based Slide Scanner" ("the '652 patent"), which the United States Patent and Trademark Office lawfully and duly issued on April 14, 2009. A true and correct copy of the '652 patent is attached hereto as Exhibit 3.

#### **IV. DEFENDANTS' ACTIVITIES**

15. Upon information and belief, Defendants have made, used, offered to sell, and/or sold within the United States, and/or have imported into the United States, products that infringe the '696, '446 and '652 patents, including at least the NanoZoomer HT and RS Digital Pathology Systems.

**V. FIRST CLAIM FOR RELIEF (THE '696 PATENT)**

16. Aperio realleges and reincorporates the allegations set forth in Paragraphs 1 through 15.

17. Upon information and belief, Defendants' products, including at least the NanoZoomer HT and RS Digital Pathology Systems, infringe the '696 patent under 35 U.S.C. § 271(a), (b) and/or (c).

18. Aperio has notified Defendants of the existence of the '696 patent, and, despite such notice, Defendants have continued their acts of infringement.

19. Upon information and belief, Defendants' infringement of the '696 patent has been, and continues to be, willful, deliberate, and intentional as they continue their acts of infringement after being placed on notice of their infringement, thus acting in reckless disregard of Aperio's patent rights.

20. Upon information and belief, Defendants will continue to infringe the '696 patent unless and until they are enjoined by this Court.

21. Defendants have caused, and will continue to cause, Aperio irreparable injury and damages by infringing the '696 patent. Aperio will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Defendants are enjoined from infringing the '696 patent.

**VI. SECOND CLAIM FOR RELIEF (THE '446 PATENT)**

22. Aperio realleges and reincorporates the allegations set forth in Paragraphs 1 through 21.

23. Upon information and belief, Defendants' products, including at least the NanoZoomer HT and RS Digital Pathology Systems, infringe the '446 patent under 35 U.S.C. § 271(a), (b) and/or (c).

24. Aperio has notified Defendants of the existence of the '446 patent, and, despite such notice, Defendants have continued their acts of infringement.

25. Upon information and belief, Defendants' infringement of the '446 patent has been, and continues to be, willful, deliberate, and intentional as they continue their acts of infringement after being placed on notice of their infringement, thus acting in reckless disregard of Aperio's patent rights.

26. Upon information and belief, Defendants will continue to infringe the '446 patent unless and until they are enjoined by this Court.

27. Defendants have caused, and will continue to cause, Aperio irreparable injury and damages by infringing the '446 patent. Aperio will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Defendants are enjoined from infringing the '446 patent.

#### **VII. THIRD CLAIM FOR RELIEF (THE '652 PATENT)**

28. Aperio realleges and reincorporates the allegations set forth in Paragraphs 1 through 27.

29. Upon information and belief, Defendants' products, including at least the NanoZoomer HT and RS Digital Pathology Systems, infringe the '652 patent under 35 U.S.C. § 271(a), (b) and/or (c).

30. Upon information and belief, Defendants will continue to infringe the '652 patent unless and until they are enjoined by this Court.

31. Defendants have caused, and will continue to cause, Aperio irreparable injury and damages by infringing the '652 patent. Aperio will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Defendants are enjoined from infringing the '652 patent.

**VIII. PRAYER FOR JUDGMENT AND RELIEF**

WHEREFORE, Aperio requests judgment as follows:

(1) That Defendants have infringed Aperio's '696, '446, and '652 patents through the manufacture, use, importation, offer for sale, and/or sale of infringing products and/or any of the other acts prohibited by 35 U.S.C. § 271(a), (b) and (c);

(2) Pursuant to 35 U.S.C. § 283, a permanent injunction enjoining Defendants and their officers, agents, servants, employees, attorneys and all others in active concert and/or participation with them from infringing Aperio's '696, '446, and '652 patents through the manufacture, use, importation, offer for sale, and/or sale of infringing products and/or any of the other acts prohibited by 35 U.S.C. § 271(a), (b), and (c);

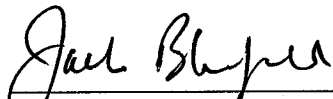
(3) Pursuant to 35 U.S.C. § 284, an award to Aperio of damages adequate to compensate Aperio for infringement of the '696, '446, and '652 patents by payment of not less than a reasonable royalty on Defendants' sales of infringing products, and including lost profits, together with pre-judgment and post-judgment interest and costs;

(4) Pursuant to 35 U.S.C. § 284, an award to Aperio increasing damages up to three times the amount found or assessed by the jury for infringement of the '696 and '446 patents by Defendants in view of the willful and deliberate nature of their infringement;

(5) Pursuant to 35 U.S.C. § 285, a finding that this is an exceptional case, and an award to Aperio of its reasonable costs and attorneys' fees; and

(6) That Aperio be granted such other and further relief as the Court deems just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP



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