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3:04-CV-02381 BIOSITE INCORPORATED V. ROCHE DIAGNOSTICS

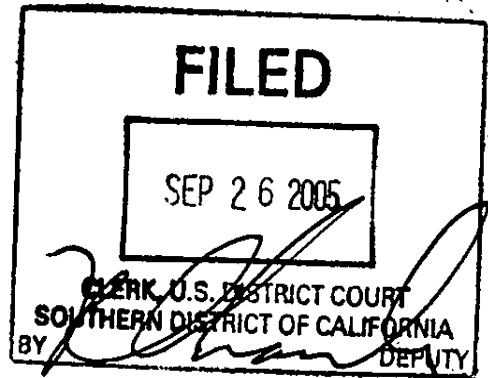
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11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

13 BIOSITE INCORPORATED, a Delaware  
14 corporation,

15 Plaintiff,

16 v.

17 ROCHE DIAGNOSTICS CORPORATION,  
18 an Indiana Corporation; and ROCHE  
19 DIAGNOSTICS GMBH, a German  
20 corporation,

21 Defendants.

Case No. 04 CV 2381 B (LSP)

[PROPOSED]

FIRST AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT; DEMAND FOR  
JURY TRIAL

22 COMPLAINT

23 Plaintiff Biosite Incorporated, for its Complaint against defendants Roche Diagnostics  
24 Corporation and Roche Diagnostics GmbH, alleges as follows:

25 THE PARTIES

26 1. Plaintiff Biosite Incorporated (hereinafter "Biosite") is a corporation existing  
27 under the laws of the state of Delaware having its principal place of business in San Diego,  
28

1 California.

2 2. Defendant Roche Diagnostics Corporation is a corporation or other entity  
3 organized under the laws of the State of Indiana, having its principal place of business in  
4 Indianapolis, Indiana.

5 3. Defendant Roche Diagnostics GmbH is a German corporation with its principal  
6 place of business in Mannheim, Germany.

7 **JURISDICTION AND VENUE**

8 4. This is an action for patent infringement arising under the patent laws of the  
9 United States, Title 35, United States Code.

10 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338(a).

11 6. Venue is proper under 28 U.S.C. §§ 1391(b) & (c) and 28 U.S.C. § 1400(b).  
12 Defendants transact substantial business, including generally and specifically in relation to the  
13 causes of action and acts of infringement alleged herein, either directly or through their agents, on  
14 an ongoing basis in this judicial district.

15 **BACKGROUND**

16 7. On August 18, 1998, the United States Patent and Trademark Office duly and  
17 legally issued U.S. Patent No. 5,795,725 (hereinafter "the '725 patent") entitled "Methods for the  
18 Assay of Troponin I and T and Selection of Antibodies for use in Immunoassays." A true copy of  
19 the '725 patent is attached as Exhibit A.

20 8. On January 16, 2001, the United States Patent and Trademark Office duly and  
21 legally issued U.S. Patent No. 6,174,686 (hereinafter "the '686 patent"), a continuation-in-part of  
22 the '725 patent. A true copy of the '686 patent is attached as Exhibit B.

23 9. On September 6, 2005, the United States Patent and Trademark Office duly and  
24 legally issued U.S. Patent No. 6,939,678 (hereinafter "the '678 patent"), a divisional of the '686  
25 patent. A true copy of the '678 patent is attached as Exhibit C.

26 10. Biosite is the assignee of the '725, '686 and '678 patents.

27 **CLAIM OF INFRINGEMENT**

28 11. Defendant Roche Diagnostics Corporation and defendant Roche Diagnostics

1 GmbH (collectively "Roche") make, use, offer for sale, and/or sell in the State of California  
2 and/or elsewhere in the United States, and/or import into the State of California and/or elsewhere  
3 in the United States, troponin T assays including but not limited to assays sold under the names  
4 Troponin T STAT, TROPT sensitive, CARDIAC T Quantitative, and Troponin T (hereinafter  
5 "the Troponin T Assays").

6 12. Roche's Troponin T Assays fall within the scope of the claims of the '725, '686  
7 and '678 patents.

8 13. Roche's acts in making, using, offering to sell, and/or selling, within the State of  
9 California and/or elsewhere in the United States, and/or importing into the State of California  
10 and/or elsewhere in the United States the Troponin T Assays infringe, induce infringement,  
11 and/or contribute to the infringement of the claims of the '725 patent under 35 U.S.C. § 271  
12 without authority to do so.

13 14. Roche's acts in making, using, offering to sell, and/or selling, within the State of  
14 California and/or elsewhere in the United States, and/or importing into the State of California  
15 and/or elsewhere in the United States, the Troponin T Assays infringe, induce infringement,  
16 and/or contribute to the infringement of the claims of the '686 patent under 35 U.S.C. § 271  
17 without authority to do so.

18 15. Roche's acts in making, using, offering to sell, and/or selling, within the State of  
19 California and/or elsewhere in the United States, and/or importing into the State of California  
20 and/or elsewhere in the United States the Troponin T Assays infringe, induce infringement,  
21 and/or contribute to the infringement of the claims of the '678 patent under 35 U.S.C. § 271  
22 without authority to do so.

23 16. On information and belief, Roche's acts of infringement, inducing infringement,  
24 and/or contributing to the infringement of the '725 and '686 patents alleged above are and have  
25 been willful, knowing, and deliberate.

26 17. On information and belief, Roche's acts of infringement, inducing infringement,  
27 and/or contributing to the infringement of the '678 patent alleged above are willful, knowing, and  
28 deliberate.



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Dated: September 12, 2005

COOLEY GODWARD LLP  
KENT M. WALKER (173700)



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Kent M. Walker

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