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18 Counterclaimants LIFE TECHNOLOGIES
19 CORPORATION, APPLIED BIOSYSTEMS, LLC,
20 INSTITUTE FOR PROTEIN RESEARCH,
21 ALEXANDER CHETVERIN, HELENA
22 CHETVERINA, and WILLIAM HONE

23 *[Additional counsel of record appear on signature page]*

24 UNITED STATES DISTRICT COURT
25 SOUTHERN DISTRICT OF CALIFORNIA

26 LIFE TECHNOLOGIES CORPORATION,
27 APPLIED BIOSYSTEMS, LLC, INSTITUTE
28 FOR PROTEIN RESEARCH, ALEXANDER
CHETVERIN, HELENA CHETVERINA, and
WILLIAM HONE,

Plaintiffs,

v.

ILLUMINA, INC. and SOLEXA, INC.,

Defendants.

Case No. 11-CV-0703 JAH (POR)
**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

AND RELATED COUNTERCLAIMS

1 Plaintiffs Life Technologies Corporation (“LIFE”); Applied Biosystems, LLC (“AB”); the
2 Institute for Protein Research; Alexander Chetverin; Helena Chetverina; and William Hone
3 (collectively, the “Plaintiffs”), allege as follows:

4 **NATURE OF THE ACTION**

5 1. This is an action arising under the patent laws of the United States based upon
6 infringement by Defendants Illumina, Inc. and Solexa, Inc. (collectively, the “Defendants”) of
7 three patents owned by the Institute for Protein Research, Alexander Chetverin, Helena
8 Chetverina, and William Hone (collectively, the “Patentees”). Exclusive rights in and to each of
9 these three patents have been granted to Plaintiff AB. Plaintiffs seek damages for Defendants’
10 infringement and a permanent injunction restraining Defendants from further infringement.

11 **THE PARTIES**

12 2. Plaintiff LIFE is a Delaware corporation that has a principal place of business at
13 5791 Van Allen Way, Carlsbad, California 92008.

14 3. Plaintiff AB is a wholly owned subsidiary of Plaintiff LIFE and is a Delaware
15 limited liability corporation that has a principal place of business at 850 Lincoln Centre Drive,
16 Foster City, CA 94404.

17 4. Plaintiff the Institute for Protein Research of the Russian Academy of Sciences is
18 an academic research institute organized under the authority of the Russian Academy of Sciences
19 and is located at Pushchino, 14 22 92, Moscow Region, Russia.

20 5. Plaintiff Alexander Chetverin is an individual having an address at 24 Mikroraion
21 AB, Apt. 238, Pushchino, Moscow Region 14 22 90, Russia.

22 6. Plaintiff Helena Chetverina is an individual having an address at 24 Mikroraion
23 AB, Apt. 238, Pushchino, Moscow Region 14 22 90, Russia.

24 7. Plaintiff William Hone is an individual having an address at 6 Barbara Lane,
25 Irvington, NY 10533.

26 8. Upon information and belief, Defendant Illumina, Inc. is a Delaware corporation
27 that has a principal place of business at 9865 Towne Centre Drive, San Diego, CA 92121-1975.
28

1 17. AB is the exclusive licensee of the '478 Patent, the '698 Patent and the '568
2 Patent.

3 18. Defendants' DNA sequencing products and services, including but not limited to
4 Defendants' Genome Analyzer and Genome Analyzer II, infringe the '478 Patent, the '698 Patent
5 and the '568 Patent.

6 **FIRST CLAIM FOR RELIEF**

7 **(INFRINGEMENT OF THE '478 PATENT)**

8 19. The allegations of paragraphs 1-18 are incorporated herein by reference.

9 20. On information and belief, the Defendants have been and are currently directly
10 infringing one or more claims of the '478 patent, pursuant to 35 U.S.C. § 271(a), in connection
11 with certain of their products, services, methods and/or systems, including without limitation
12 Defendants' Genome Analyzer and Genome Analyzer II products.

13 21. On information and belief, the Defendants have been and are currently inducing
14 others to infringe one or more claims of the '478 patent, in connection with certain of their
15 products, services, methods and/or systems, including without limitation Defendants' Genome
16 Analyzer and Genome Analyzer II products, and are liable for infringement under 35 U.S.C. §
17 271(b).

18 22. On information and belief, the Defendants have been and are currently
19 contributing to the infringement of one or more claims of the '478 patent, in connection with
20 certain of their products, services, methods and/or systems, including without limitation
21 Defendants' Genome Analyzer and Genome Analyzer II products, and are liable for contributory
22 infringement under 35 U.S.C. § 271(c).

23 23. Unless enjoined, Defendants will continue to infringe the '478 patent, directly
24 and/or indirectly under section 271.

25 24. Defendants' infringement of the '478 patent has caused, and unless enjoined will
26 continue to cause, irreparable harm to Plaintiffs. Plaintiffs have no adequate remedy at law and
27 are entitled to a permanent injunction against further infringement.
28

1 Defendants' Genome Analyzer and Genome Analyzer II products, and are liable for contributory
2 infringement under 35 U.S.C. § 271(c).

3 34. Unless enjoined, Defendants will continue to infringe the '698 patent, directly
4 and/or indirectly under section 271.

5 35. Defendants' infringement of the '698 patent has caused, and unless enjoined will
6 continue to cause, irreparable harm to Plaintiffs. Plaintiffs have no adequate remedy at law and
7 are entitled to a permanent injunction against further infringement.

8 36. Defendants have been put on notice of the '698 patent before the filing of this First
9 Amended Complaint.

10 37. Defendants had actual and constructive knowledge of the '698 patent before the
11 filing of the original Complaint in this action.

12 38. Defendants' infringement of the '698 patent has been and is willful and, pursuant
13 to 35 U.S.C. § 284, Plaintiffs are entitled to treble damages.

14 39. Plaintiffs LIFE and AB have suffered and will continue to suffer substantial
15 damage to their business by reason of Defendants' acts of infringement as alleged herein, and
16 Plaintiffs are entitled to recover from Defendants the damages sustained as a result of
17 Defendants' acts pursuant to 35 U.S.C. § 284.

18 40. Plaintiffs are informed and believe, and on that basis allege, that Defendants' acts
19 make this an exceptional case within the meaning of 35 U.S.C. § 285, which entitles Plaintiffs to
20 an award of attorneys' fees.

21 **THIRD CLAIM FOR RELIEF**

22 **(INFRINGEMENT OF THE '568 PATENT)**

23 41. The allegations of paragraphs 1-18 are incorporated herein by reference.

24 42. On information and belief, the Defendants have been and are currently directly
25 infringing one or more claims of the '568 patent, pursuant to 35 U.S.C. § 271(a), in connection
26 with certain of their products, services, methods and/or systems, including without limitation
27 Defendants' Genome Analyzer and Genome Analyzer II products.
28

1 43. On information and belief, the Defendants have been and are currently inducing
2 others to infringe one or more claims of the '568 patent, in connection with certain of their
3 products, services, methods and/or systems, including without limitation Defendants' Genome
4 Analyzer and Genome Analyzer II products, and are liable for infringement under 35 U.S.C. §
5 271(b).

6 44. On information and belief, the Defendants have been and are currently
7 contributing to the infringement of one or more claims of the '568 patent, in connection with
8 certain of their products, services, methods and/or systems, including without limitation
9 Defendants' Genome Analyzer and Genome Analyzer II products, and are liable for contributory
10 infringement under 35 U.S.C. § 271(c).

11 45. Unless enjoined, Defendants will continue to infringe the '568 patent, directly
12 and/or indirectly under section 271.

13 46. Defendants' infringement of the '568 patent has caused, and unless enjoined will
14 continue to cause, irreparable harm to Plaintiffs. Plaintiffs have no adequate remedy at law and
15 are entitled to a permanent injunction against further infringement.

16 47. Defendants have been put on notice of the '568 patent before the filing of this First
17 Amended Complaint.

18 48. Defendants had actual and constructive knowledge of the '568 patent before the
19 filing of the original Complaint in this action.

20 49. Defendants' infringement of the '568 patent has been and is willful and, pursuant
21 to 35 U.S.C. § 284, Plaintiffs are entitled to treble damages.

22 50. Plaintiffs LIFE and AB have suffered and will continue to suffer substantial
23 damage to their business by reason of Defendants' acts of infringement as alleged herein, and
24 Plaintiffs are entitled to recover from Defendants the damages sustained as a result of
25 Defendants' acts pursuant to 35 U.S.C. § 284.

26 51. Plaintiffs are informed and believe, and on that basis allege, that Defendants' acts
27 make this an exceptional case within the meaning of 35 U.S.C. § 285, which entitles Plaintiffs to
28 an award of attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

A. That Defendants be adjudged to have willfully infringed the '478, '698, and '568 Patents;

B. That Defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, be permanently restrained and enjoined from infringing in any manner the '478, '698, and '568 Patents;

C. That Defendants be ordered to deliver to Plaintiffs, for destruction at Plaintiffs' option, all products that infringe the '478, '698, and '568 Patents;

D. An accounting for damages by virtue of Defendants' infringement of the '478, '698, and '568 Patents;

E. An award of damages pursuant to 35 U.S.C. § 284 to compensate Plaintiffs for Defendants' willful infringement of the '478, '698, and '568 Patents;

F. An assessment of pre-judgment and post-judgment interest and costs against Defendants, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284;

G. That Defendants be directed to pay Plaintiffs attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285; and

H. That the Court grant such other and further relief as this Court may deem just and proper.

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JURY DEMAND

Plaintiffs hereby request a trial by jury, pursuant to Fed. R. Civ. P. 38(b), on all issues so triable.

Dated: July 15, 2011

/s/ Kurtis D. MacFerrin
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WILLIAM HONE

1 *Life Technologies Corp et al. v. Illumina, Inc. et al.*
2 *United States District Court Case No. 11-CV-0703-JAH (POR)*

3 **CERTIFICATE OF SERVICE**

4 I, Kurtis D. MacFerrin, hereby certify that on **July 15, 2011**, I caused to be electronically
5 filed the following documents with the Clerk of the Court for the United States District Court,
6 Southern District of California by using the CM/ECF system:

7 **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

8 Participants in the case who are registered CM/ECF users, as listed below, will be served by the
9 CM/ECF system:

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