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Attorneys for Plaintiffs
 THE REGENTS OF THE UNIVERSITY OF
 CALIFORNIA, ABBOTT MOLECULAR INC., and
 ABBOTT LABORATORIES INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

THE REGENTS OF THE UNIVERSITY
 OF CALIFORNIA, ABBOTT
 MOLECULAR INC., and ABBOTT
 LABORATORIES INC.,

Plaintiffs,

v.

DAKO NORTH AMERICA, INC. and
 DAKO DENMARK A/S,

Defendants.

Case No. C 05-03955 MHP

**SECOND AMENDED COMPLAINT FOR
 PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

AND RELATED COUNTERCLAIMS.

Plaintiffs The Regents of the University of California (“The Regents”), Abbott Molecular Inc. (“Abbott Molecular”), and Abbott Laboratories Inc. (“Abbott Labs. Inc.”) hereby aver for their Second Amended Complaint (“Complaint”) against defendants Dako North America, Inc. (formerly known as DakoCytomation California, Inc.) and Dako Denmark A/S (collectively “defendants”) as follows:

1 **NATURE OF THE ACTION**

2 1. This is a civil action for the infringement of United States Patent No. 5,447,841 (“the
3 ’841 Patent” or the “patent-in-suit”), brought pursuant to the patent laws of the United States,
4 Title 35 of the United States Code.

5 **PARTIES**

6 2. Plaintiff The Regents is a public, non-profit corporation organized and existing under
7 the laws of the State of California, with central administrative offices located at 1111 Franklin
8 Street, Oakland, California. The Regents is an educational and research institution with campuses
9 throughout California. The Regents owns, by valid assignment, all rights, title and interest in the
10 patent-in-suit.

11 3. Plaintiff Abbott Labs. Inc. is a corporation organized and existing under the laws of
12 the State of Delaware, with its principal place of business at 100 Abbott Park Road, Abbott Park,
13 Illinois. Abbott Labs. Inc. sells products that incorporate the patent-in-suit and is a wholly-owned
14 subsidiary of Abbott Laboratories, a leading health care company that develops, manufactures
15 and sells pharmaceutical and medical diagnostic products, including genomic assessment
16 products which aid in the detection, evaluation and management of cancer and other genetic
17 diseases.

18 4. Plaintiff Abbott Molecular is a corporation organized and existing under the laws of
19 the State of Delaware, with its principal place of business at 1300 East Touhy Avenue, Des
20 Plaines, Illinois. Abbott Molecular develops DNA-based clinical products that enable clinicians
21 to detect and evaluate genetic abnormalities associated with disease. Abbott Molecular is a
22 wholly-owned subsidiary of Abbott Laboratories.

23 5. Plaintiffs Abbott Labs. Inc. and Abbott Molecular have exclusive rights to make, use,
24 sell and distribute the inventions claimed in the patent-in-suit.

25 6. On or about November 1, 2005, “DakoCytomation California, Inc.” changed its name
26 to “Dako North America, Inc.” On information and belief, defendant Dako North America, Inc.
27 is a corporation organized and existing under the laws of the State of California with its
28 headquarters at 6392 Via Real, Carpinteria, California. On information and belief, Dako North

1 America, Inc. regularly does and solicits business in California and elsewhere in the United
2 States. On information and belief, Dako North America, Inc. is a wholly owned subsidiary of
3 Dako Denmark A/S, and Dako Denmark A/S controls the business of Dako North America, Inc.
4 On information and belief, the operations of Dako North America, Inc. and Dako Denmark A/S
5 are significantly integrated and are directed by a single executive management team.

6 7. On information and belief, defendant Dako Denmark A/S is a Danish corporation
7 with headquarters at Produktionsvej 42, DK-2600 Glostrup, Denmark. Dako Denmark A/S has
8 agreed in writing to assume liability for any damages owed by Dako A/S (now known as Harno
9 Invest A/S) for acts of infringement alleged in this complaint. On information and belief, Dako
10 Denmark A/S regularly does and solicits business in California and elsewhere in the United
11 States.

12 8. On information and belief, the defendants manufacture, import, offer for sale, sell
13 and/or distribute in this District and elsewhere in the United States molecular pathology probe
14 sets for analyzing genetic material that infringe the patent-in-suit. These products include, but are
15 not limited to, the HER2 FISH pharmDx™ kit for determination of HER2 gene amplification
16 (product code no. K5331), the Split Signal FISH DNA Probes, and the FISH DNA/PNA Probe
17 Mixes.

18 **JURISDICTION**

19 9. This is an action for patent infringement arising under the Patent Laws of the United
20 States, Title 35 of the United States Code, Sections 271 *et seq.* This Court has subject matter
21 jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

22 **VENUE**

23 10. Venue is proper in this court pursuant to 28 U.S.C. §§ 1391(b) and 1400(b) in that
24 defendants do business in this District, plaintiff The Regents resides in this District, and a
25 substantial part of the events giving rise to this action occurred in this District.

26 **FIRST CLAIM FOR RELIEF**

27 **(Infringement of the '841 Patent)**

28 11. Plaintiffs incorporate the averments of paragraphs 1 through 10 above as if fully set

1 forth herein.

2 12. The '841 Patent discloses and claims an invention entitled "Methods for
3 Chromosome-Specific Staining." The '841 Patent was duly and legally issued by the USPTO on
4 September 5, 1995, naming Drs. Joe W. Gray and Daniel Pinkel as inventors. A copy of the '841
5 Patent is attached hereto as Exhibit 1. The Regents owns, by valid assignment, all rights, title and
6 interest in the '841 Patent.

7 13. Plaintiffs Abbott Labs. Inc. and Abbott Molecular have exclusive rights to make, use,
8 sell and distribute the inventions claimed in the '841 Patent.

9 14. Defendants have been and still are infringing, and will continue to infringe, literally
10 and/or under the doctrine of equivalents, one or more claims of the '841 Patent by making, using,
11 selling, offering to sell and/or importing molecular pathology probe sets that employ the patented
12 invention, including, but not limited to, the HER2 FISH pharmDx™ kit for determination of
13 HER2 gene amplification (product code no. K5331), the Split Signal FISH DNA Probes, and the
14 FISH DNA/PNA Probe Mixes.

15 15. Defendants have been and still are infringing, and will continue to infringe, literally
16 and/or under the doctrine of equivalents, as a contributor, one or more claims of the '841 Patent
17 by importing, selling and/or offering to sell probe sets that are especially made or adapted for use
18 in practicing the patented invention and that are not suitable for a substantial noninfringing use,
19 including, but not limited to, the HER2 FISH pharmDx™ kit for determination of HER2 gene
20 amplification (product code no. K5331), the Split Signal FISH DNA Probes, and the FISH
21 DNA/PNA Probe Mixes.

22 16. Defendants have been and still are actively inducing others to infringe, and will
23 continue to actively induce others to infringe, literally and/or under the doctrine of equivalents,
24 one or more claims of the '841 Patent by knowingly causing to be made, used, sold, offered for
25 sale and/or imported probe sets that employ the patented invention, including, but not limited to,
26 the HER2 FISH pharmDx™ kit for determination of HER2 gene amplification (product code no.
27 K5331), the Split Signal FISH DNA Probes, and the FISH DNA/PNA Probe Mixes.

28 17. Defendants' acts of infringement under 35 U.S.C. § 271(a)-(c) are willful and

1 deliberate as defendants knew or should have known of the '841 Patent and that its conduct
2 would infringe the '841 Patent.

3 18. As a direct and proximate consequence of defendants' infringement and willful
4 infringement of the '841 Patent, plaintiffs have suffered and will continue to suffer irreparable
5 injury and damages, in an amount not yet determined, for which plaintiffs are entitled to relief.
6 Accordingly, pursuant to 35 U.S.C. § 284, plaintiffs are entitled to damages and treble damages.
7 Plaintiffs are also entitled to preliminary and final injunctive relief against further infringement.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, plaintiffs request entry of judgment in their favor and against defendants
10 as follows:

11 A. For entry of a judgment declaring that defendants have directly and/or indirectly
12 infringed one or more claims of the '841 Patent;

13 B. For preliminary and permanent injunctive relief restraining and enjoining defendants
14 and their officers, agents, servants, employees, attorneys, and those persons in active concert or
15 participation with defendants who receive actual notice of the order by personal service or
16 otherwise, from any further infringement of the '841 Patent;

17 C. For damages to compensate plaintiffs for defendants' infringement, pursuant to 35
18 U.S.C. § 284, said damages to be trebled because of defendants' willful infringement;

19 D. For an award of pre-judgment and post-judgment interest and costs to plaintiffs in
20 accordance with 35 U.S.C. § 284;

21 E. For an award of plaintiffs' reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
22 and

23 F. For such other and further relief as the Court may deem just and fair.
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26
27
28

1 Dated: August 4, 2008

FENWICK & WEST LLP

2 By: /s/ Lynn H. Pasahow

3 Lynn H. Pasahow

4 Attorneys for Plaintiffs
5 THE REGENTS OF THE UNIVERSITY OF
6 CALIFORNIA, ABBOTT MOLECULAR
7 INC., and ABBOTT LABORATORIES INC.

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, plaintiffs demand a jury trial on all issues so triable in this Complaint.

Dated: August 4, 2008

FENWICK & WEST LLP

By: /s/ Lynn H. Pasahow
Lynn H. Pasahow

Attorneys for Plaintiffs
THE REGENTS OF THE UNIVERSITY OF
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