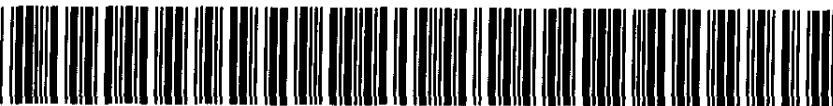
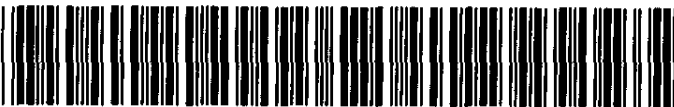


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3:01-CV-00278 INVITROGEN CORP V. DISPLAY SYS BIOTECH

1

CMP.

ORIGINAL

1 MAZZARELLA, DUNWOODY & CALDARELLI, LLP
 William J. Caldarelli (California State Bar No. 149573)
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 5 Attorneys for Plaintiff INVITROGEN CORPORATION

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 CLERK OF DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

INVITROGEN CORPORATION,
 Plaintiff,

vs.

DISPLAY SYSTEMS BIOTECH, INC.,
 Defendant.

) Civil (Title No.) 01 CV 00278 R LAB
)
) COMPLAINT OF INVITROGEN
) CORPORATION FOR: (1) DIRECT
) PATENT INFRINGEMENT; AND (2)
) INDUCEMENT TO INFRINGE
)
) Jury Demanded
)
)

COMPLAINT

Plaintiff Invitrogen Corporation ("Invitrogen"), for its complaint against Defendant Display Systems Biotech, Inc. ("DSB"), alleges as follows:

PARTIES

1. Plaintiff Invitrogen is a corporation organized and existing under the laws of the State of Delaware, with its principle place of business at 1600 Faraday Ave., Carlsbad, CA 92008

2. On information and belief, Defendant DSB is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 1260 Liberty Way, Vista, CA 92083.

CRMS

1

1 11. Defendant DSB has manufactured and sold a product styled
2 “displayTHERMO-RT Reverse Transcriptase”.

3 12. Defendant DSB has manufactured and sold a product styled
4 “displayPROFILE”, which contains as a component Defendant DSB’s “displayTHERMO-RT
5 Reverse Transcriptase”.

6 13. Defendant DSB has manufactured and sold a product styled “displayGREEN
7 cDNA Library Construction Kit”, which contains as a component Defendant DSB’s
8 “displayTHERMO-RT Reverse Transcriptase”.

9 14. On information and belief, Defendant DSB has manufactured and/or sold
10 “displayGREEN Pre-made Libraries”, which was manufactured using Defendant DSB’s
11 “displayTHERMO-RT Reverse Transcriptase” and/or any other reverse transcriptase product
12 covered by one or more claims of Invitrogen’s Patents.

13 15. On information and belief, Defendant DSB’s “displayTHERMO-RT Reverse
14 Transcriptase” product is a polypeptide having DNA polymerase activity and reduced RNase
15 H activity.

16 16. On information and belief, Defendant DSB’s “displayTHERMO-RT Reverse
17 Transcriptase” product is a polypeptide having DNA polymerase activity and substantially
18 reduced RNase H activity.

19 17. On information and belief, Defendant DSB’s “displayTHERMO-RT Reverse
20 Transcriptase” product is a polypeptide having DNA polymerase activity and substantially no
21 RNase H activity.

22 18. On information and belief, Defendant DSB’s “displayTHERMO-RT Reverse
23 Transcriptase” product may be used in the preparation of full length cDNA.

24 19. On information and belief, Defendant DSB’s “displayTHERMO-RT Reverse
25 Transcriptase” product can synthesize full length cDNA from an mRNA template.

26 20. On information and belief, Defendant DSB’s “displayTHERMO-RT Reverse
27 Transcriptase” product does not significantly degrade an mRNA template during first strand
28 cDNA synthesis.

1 21. On information and belief, Defendant DSB's "displayTHERMO-RT Reverse
2 Transcriptase" product allows an mRNA template to remain intact during cDNA synthesis.

3 22. On information and belief, Defendant DSB's "displayTHERMO-RT Reverse
4 Transcriptase" product is a polypeptide encoded by a modified reverse transcriptase
5 nucleotide sequence.

6 23. On information and belief, Defendant DSB's "displayTHERMO-RT Reverse
7 Transcriptase" product is a polypeptide encoded by a modified reverse transcriptase
8 nucleotide sequence that encodes a modified amino acid sequence with the result that the
9 polypeptide has substantially reduced RNase H activity.

10 24. On information and belief, Defendant DSB's "displayTHERMO-RT Reverse
11 Transcriptase" product is a modified reverse transcriptase that has been modified in the region
12 corresponding to amino acids 498-611 of M-MLV reverse transcriptase.

13 25. On information and belief, Defendant DSB's "displayTHERMO-RT Reverse
14 Transcriptase" product is a modified reverse transcriptase that has been modified within the
15 RNase H domain.

16 26. On information and belief, Defendant DSB's "displayTHERMO-RT Reverse
17 Transcriptase" product is a polypeptide encoded by a modified reverse transcriptase
18 nucleotide sequence that encodes an amino acid sequence modified within the RNase H
19 domain.

20 27. On information and belief, Defendant DSB's "displayTHERMO-RT Reverse
21 Transcriptase" product is a polypeptide encoded by a modified reverse transcriptase
22 nucleotide sequence derived from a retrovirus.

23 28. On information and belief, Defendant DSB's "displayTHERMO-RT Reverse
24 Transcriptase" product is a polypeptide encoded by a modified reverse transcriptase
25 nucleotide sequence derived from Moloney murine leukemia virus.

26 29. On information and belief, Defendant DSB's "displayTHERMO-RT Reverse
27 Transcriptase" product is obtained by modifying a nucleotide sequence coding for a reverse
28 transcriptase, transforming a host cell with the modified nucleotide sequence, culturing the

1 transformed host cell under conditions which produces the reverse transcriptase, and isolating
2 the reverse transcriptase.

3 30. On information and belief, Defendant "DSB's M-MLV Reverse Transcriptase,
4 RNase H" product is used for the preparation of cDNA of which at least 34% is full length.

5 31. On information and belief, Defendant DSB's "displayTHERMO-RT Reverse
6 Transcriptase" product can synthesize at least 42% more full length cDNA than the amount of
7 full length cDNA that can be synthesized by a reverse transcriptase that has not been modified
8 to have reduced RNase H activity.

9 32. On information and belief, Defendant DSB has made, obtained, and/or used a
10 DNA molecule having a Moloney murine leukemia virus ("M-MLV") reverse transcriptase
11 nucleotide sequence that has been modified in the RNase H domain.

12 33. On information and belief, Defendant DSB has made, obtained, and/or used a
13 vector containing a DNA molecule having an M-MLV reverse transcriptase nucleotide
14 sequence that has been modified in the RNase H domain.

15 34. On information and belief, Defendant DSB has made, obtained, and/or used a
16 host cell containing a DNA molecule having an M-MLV reverse transcriptase nucleotide
17 sequence that has been modified in the RNase H domain.

18 35. On information and belief, Defendant DSB has made, obtained, and/or used a
19 host cell containing a vector, which contains a DNA molecule having an M-MLV reverse
20 transcriptase nucleotide sequence that has been modified in the RNase H domain.

21 36. On information and belief, Defendant and/or Defendant's customers use and/or
22 have used Defendant DSB's "displayTHERMO-RT Reverse Transcriptase" product to make
23 cDNA molecules by mixing the "displayTHERMO-RT Reverse Transcriptase" product with
24 an mRNA template and incubating the mixture under conditions sufficient to make a cDNA
25 molecule that is complementary to the mRNA template.

26 37. On information and belief, Defendant DSB has made the "displayTHERMO-
27 RT Reverse Transcriptase" product by culturing a host cell containing a DNA molecule
28 having an M-MLV reverse transcriptase nucleotide sequence that has been modified in the

1 RNase H domain under conditions sufficient to produce the reverse transcriptase, and by
2 isolating the reverse transcriptase.

3 38. On information and belief, Defendant has made the “displayTHERMO-RT
4 Reverse Transcriptase” product by culturing a host cell containing a vector, which contains a
5 DNA molecule having an M-MLV reverse transcriptase nucleotide sequence that has been
6 modified in the RNase H domain under conditions sufficient to produce the reverse
7 transcriptase, and by isolating the reverse transcriptase.

8 39. Defendant DSB’s “displayTHERMO-RT Reverse Transcriptase” product falls
9 squarely within the scope of one or more claims of Plaintiff Invitrogen’s Patents.

10 40. On information and belief, Defendant DSB had and has actual and/or
11 constructive notice of Plaintiff Invitrogen’s Patents.

12 41. At no time has Plaintiff Invitrogen granted to Defendant DSB a license to
13 make, sell or use its “displayTHERMO-RT Reverse Transcriptase” product,
14 “displayPROFILE” product, “displayGREEN cDNA Library Construction Kit” product, or
15 “displayGREEN Pre-made Libraries” product.

16 42. Defendant DSB did not and does not have a license under any one of Plaintiff
17 Invitrogen’s Patents to make, sell or use its “displayTHERMO-RT Reverse Transcriptase”
18 product, “displayPROFILE” product, “displayGREEN cDNA Library Construction Kit”
19 product, or “displayGREEN Pre-made Libraries” product.

20 43. Defendant DSB has advertised its “displayTHERMO-RT Reverse
21 Transcriptase” product, “displayPROFILE” product, “displayGREEN cDNA Library
22 Construction Kit” product, and “displayGREEN Pre-made Libraries” product, in its websites
23 and/or product catalogues which it distributed, free of charge, to customers and potential
24 customers throughout the world.

25 44. Defendant DSB has advertised its “displayTHERMO-RT Reverse
26 Transcriptase” product as a reverse transcriptase with a reduced RNase H activity.

27 45. Defendant DSB has advertised its “displayTHERMO-RT Reverse
28 Transcriptase” product as a reverse transcriptase having a very low RNase H activity.

1 FIRST CLAIM FOR RELIEF

2 (Direct Patent Infringement)

3 46. Plaintiff Invitrogen repeats and realleges each and every allegation contained
4 in paragraphs 1 through 45 above as if fully repeated herein.

5 47. Defendant DSB has infringed one or more claims of Plaintiff Invitrogen's
6 Patents by making, using, selling, and/or causing to be used in this Judicial District and
7 elsewhere in the United States, for commercial purposes and without authority one or more of
8 a polypeptide, reverse transcriptase, nucleotide sequence, vector, cDNA, cDNA library,
9 and/or host cell as described in Paragraphs 1 through 45 above, including Defendant DSB's
10 "displayTHERMO-RT Reverse Transcriptase" product, "displayPROFILE" product,
11 "displayGREEN cDNA Library Construction Kit" product, and "displayGREEN Pre-made
12 Libraries" product.

13 48. Plaintiff Invitrogen has been damaged by the aforesaid infringing acts of
14 Defendant DSB.

15 49. Defendant DSB's infringing acts will continue unless enjoined by this Court.

16 50. Upon information and belief, the acts of infringement complained of herein
17 have been carried out willfully and with full knowledge by Defendant DSB of Plaintiff
18 Invitrogen's Patents.

19 SECOND CLAIM FOR RELIEF

20 (Inducement to Infringe)

21 51. Plaintiff Invitrogen repeats and realleges each and every allegation contained
22 in paragraphs 1 through 50 above as if fully repeated herein.

23 52. Defendant DSB has actively induced others to infringe one or more claims of
24 Plaintiff Invitrogen's Patents by publishing advertisements and instructions intended to
25 persuade others to use and/or make without authority one or more of a polypeptide, reverse
26 transcriptase, nucleotide sequence, vector, cDNA, cDNA library, and/or host cell as described
27 in Paragraphs 1 through 45 above, including Defendant DSB's "displayTHERMO-RT
28

1 Reverse Transcriptase”, “displayPROFILE” product, “displayGREEN cDNA Library
2 Construction Kit” product, and “displayGREEN Pre-made Libraries” product.

3 53. Defendant DSB’s customers who purchased and are using and/or have used
4 Defendant DSB’s “displayTHERMO-RT Reverse Transcriptase” product, “displayPROFILE”
5 product, “displayGREEN cDNA Library Construction Kit” product, and/or “displayGREEN
6 Pre-made Libraries” product, are directly infringing and/or have directly infringed one or
7 more claims of Plaintiff Invitrogen’s Patents.

8 54. Plaintiff Invitrogen has been damaged and will continue to be damaged by the
9 aforesaid infringing acts of Defendant DSB.

10 55. Defendant DSB’s infringing acts will continue unless enjoined by this Court.

11 56. On information and belief, the acts of infringement complained of herein have
12 been carried out willfully and with full knowledge by Defendant DSB of Plaintiff Invitrogen’s
13 Patents.

14 RELIEF REQUESTED

15 WHEREFORE, Plaintiff Invitrogen prays for the following:

16 (a) A permanent injunction against continued patent infringement, either by direct
17 infringement or by inducing the infringement of others, by Defendant DSB, its officers,
18 agents, servants, employees and attorneys, and upon those persons in active concert or
19 participation with them;

20 (b) An accounting for profits and damages, or general damages to be assessed by
21 or under the Court’s discretion, occasioned by the acts of Defendant DSB of which Complaint
22 is made, together with pre- and post-judgment interest;

23 (c) An increase of said damages not to exceed three times the amount found or
24 assessed;

25 (d) An award of Plaintiff Invitrogen’s costs herein;

26 (e) An award of Plaintiff Invitrogen’s reasonable attorneys’ fees; and

27 (f) Judgment for such other and further relief as the Court may deem just and
28 proper.

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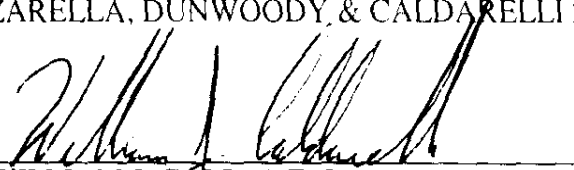
DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38, Fed. R. Civ. P., Plaintiff Invitrogen hereby demands a jury trial of the issues raised in the foregoing Complaint

Dated: February 15, 2001

MAZZARELLA, DUNWOODY, & CALDARELLI LLP

By:


WILLIAM J. CALDARELLI
CYNTHIA C. ILLIFF
Attorneys for Plaintiffs INVITROGEN
CORPORATION

AO 120 (3/85)

TO: Commissioner of Patents and Trademarks Washington, D.C. 20231	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT
---	--

In compliance with the Act of July 19, 1952 (66 Stat. 814; 35 U.S.C. 290) you are hereby advised
 that a court action has been filed on the following patent(s) in the U.S. District Court:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
01cv278R(LAB)	02/15/01	United States District Court, Southern District of California
PLAINTIFF		DEFENDANT
Invitrogen Corporation		Display Systems Biotech, Inc.
PATENT NO.	DATE OF PATENT	PATENTEE
1 5,668,005	09/16/1997	Michael Kotevicz and Gary Gerard
2 5,224,797	09/14/1993	Michael Kotewicz and Gary Gerard
3		
4		
5		

In the above-entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY	
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT NO.	DATE OF PATENT	PATENTEE
1		
2		
3		
4		
5		

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1 - Upon initiation of action, mail this copy to Commissioner Copy 3 - Upon termination of action, mail this copy to Commissioner
 Copy 2 - Upon filing document adding patent(s), mail this copy to Commissioner Copy 4 - Case file copy

ORIGINAL

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Invitrogen Corporation

DEFENDANTS

01 FEB 15 PM 4:06
Display Systems Biotech, Inc.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego

CLERK OF DISTRICT COURT
COUNTY OF SAN DIEGO, CALIFORNIA
COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

William J. Caldarelli
MAZZARELLA, DUNWOODY & CALDARELLI
550 West "C" Street, Suite 700
San Diego, CA 92101 (619) 238-4900

ATTORNEYS (IF KNOWN)

UNKNOWN
01 CV 00278 R LAB.

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- U.S. Government Plaintiff
- Federal Question (U.S. Government Not a Party) **XX**
- U.S. Government Defendant
- Diversity (Indicate Citizenship of Parties in Item III) **XX**

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)

	PT	DEF		PT	DEF
Citizen of This State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated or Principal Place of Business in This State	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/>	<input type="checkbox"/>
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

35 U.S.C. § 271 - Patent Infringement

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<ul style="list-style-type: none"> • 110 Insurance • 120 Marine • 130 Miller Act • 140 Negotiable Instrument • 150 Recovery of Overpayment & Enforcement of Judgment • 151 Medicare Act • 152 Recovery of Defuncted Student Loans (Excl. Veterans) • 153 Recovery of Overpayment of Veterans Benefits • 160 Stockholders Suits • 190 Other Contract • 195 Contract Product Liability 	<p>PERSONAL INJURY</p> <ul style="list-style-type: none"> • 310 Airplane • 315 Asbestos Product Liability • 320 Assault, Libel & Slander • 330 Federal Employees' Liability • 340 Marine • 345 Marine Product Liability • 350 Motor Vehicle • 353 Motor Vehicle Product Liability • 360 Other Personal Injury 	<p>PERSONAL INJURY</p> <ul style="list-style-type: none"> • 362 Personal Injury - Medical Malpractice • 363 Personal Injury - Product Liability • 364 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <ul style="list-style-type: none"> • 370 Other Fraud • 371 Fraud in Lending • 380 Other Personal Property Damage • 385 Property Damage Product Liability 	<ul style="list-style-type: none"> • 610 Agriculture • 620 Other Food & Drug • 625 Drug Related Seizure of Property 21 USC 881 • 630 Vapor Cans • 640 RR & Truck • 650 Airline Regs • 660 Occupational Safety Health • 660 Other <p>LABOR</p> <ul style="list-style-type: none"> • 710 Fair Labor Standards Act • 720 Labor Mgmt. Relations • 730 Labor Mgmt. Reporting & Disclosure Act • 740 Railway Labor Act • 790 Other Labor Litigation • 791 Empl. Ret. Inc. Security Act 	<ul style="list-style-type: none"> • 422 Appeal 28 USC 158 • 424 Woburn 18 USC 157 <p>PROPERTY RIGHTS</p> <ul style="list-style-type: none"> • 804 Eminent Domain • 830 Patent XX • 840 Trademark <p>SOCIAL SECURITY</p> <ul style="list-style-type: none"> • 867 SSA (1953) • 862 Black Lung (923) • 863 DIWA (4892) • 864 SSI Title XVI • 865 SSI Title XII <p>FEDERAL TAX SUITS</p> <ul style="list-style-type: none"> • 870 Taxes of S Plaintiff or Defendant • 871 IRS - Third Party 26 USC 7504 	<ul style="list-style-type: none"> • 400 State Reapportionment • 410 Antitrust • 450 Banks and Banking • 450 Commerce ICC Rate-of-Ret. • 460 Deportation • 470 Racketeer Influenced and Corrupt Organizations • 810 Selective Service • 830 Securities Commissioners Exchange • 875 Customer Chitfrage (27 USC) • 891 Agricultural Acts • 892 Economic Sanctions Act • 893 Environmental Matters • 894 Regs. Allocation Act • 895 Freedom of Information Act • 900 Appeal of Tax Determination Under Equal Access to Justice • 930 Constitutionality of State • 990 Other Statutory Actions
<p>REAL PROPERTY</p> <ul style="list-style-type: none"> • 210 Land Condemnation • 220 Foreclosure • 240 Rent Lease & Easement • 240 Ten to Land • 245 Tort Product Liability • 260 All Other Real Property 	<p>CIVIL RIGHTS</p> <ul style="list-style-type: none"> • 441 Voting • 442 Employment • 447 Housing Accommodations • 444 Welfare • 440 Other Civil Rights 	<p>PRISONER PETITIONS</p> <ul style="list-style-type: none"> • 510 Motions to Vacate Sentence Habeas Corpus • 530 General • 535 Death Penalties • 540 Anonymous & Other • 550 Civil Rights • 553 Prisoner Conditions 			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding **XX**
- 2 Removal from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ Permanent Injunction

Check YES only if demanded in complaint. JURY DEMAND: **XX** YES • NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

DATE February 15, 2001

SIGNATURE OF ATTORNEY OF RECORD

William J. Caldarelli

#685110 #B: 570-858-4