

Andrew F. Halaby (#017251)  
ahalaby@swlaw.com  
Ahron D. Cohen (#028602)  
acohen@swlaw.com  
**SNELL & WILMER LLP**  
One Arizona Center  
400 East Van Buren Street  
Phoenix, AZ 85004-2202  
Telephone: (602) 382-6000  
Fax: (602) 382-6070

Kenneth A. Liebman (Minn. No. 236731)  
(admitted *pro hac vice*)  
ken.liebman@FaegreBD.com  
David J. F. Gross (Minn. No. 208772)  
(admitted *pro hac vice*)  
david.gross@FaegreBD.com  
Timothy E. Grimsrud (Minn. No. 34283X)  
(admitted *pro hac vice*)  
tim.grimsrud@FaegreBD.com  
**FAEGRE BAKER DANIELS LLP**  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402-3901  
Telephone: (612) 766-7000  
Fax: (612) 766-1600

Attorneys for Plaintiff  
TSI, Incorporated

**UNITED STATES DISTRICT COURT**

**DISTRICT OF ARIZONA**

TSI, Incorporated, a Minnesota  
corporation,

Plaintiff,

vs.

Azbil BioVigilant, Inc., a Delaware  
corporation,

Defendant.

Civil No. 12-CV-00083-DGC

**FIRST AMENDED COMPLAINT  
AND  
DEMAND FOR JURY TRIAL**

1 Plaintiff TSI, Incorporated (“TSI”), for its First Amended Complaint against  
2 Defendant Azbil BioVigilant, Inc. (“BioVigilant”), formerly known as BioVigilant  
3 Systems, Inc., alleges as follows:

4 **PARTIES**

5 1. Plaintiff TSI is a corporation organized and existing under the laws of the  
6 state of Minnesota, with its principal place of business at 500 Cardigan Road, Shoreview,  
7 MN 55126.

8 2. On information and belief, Defendant BioVigilant is a corporation organized  
9 and existing under the laws of the state of Delaware, with its principal place of business at  
10 2005 W. Ruthrauff Road, Suite 151, Tucson, AZ 85705, and with its domestic address, as  
11 listed by the Arizona Corporation Commission, at 2015 W. Ruthrauff Road, No. 153,  
12 Tucson, AZ 85705.

13 3. BioVigilant is believed to have received significant funding from Alerion  
14 Capital Group, LLC, which is located in Scottsdale, AZ. One of BioVigilant’s directors  
15 also is listed with the Arizona Corporation Commission as having an address at Alerion  
16 Capital Group, LLC, in Scottsdale, AZ.

17 4. On information and belief, in or about 2009, Tokyo-based Yamatake  
18 Corporation of the azbil Group acquired a majority interest in BioVigilant and is currently  
19 the majority or sole owner of BioVigilant.

20 5. On January 5, 2012, BioVigilant announced that it changed its name from  
21 BioVigilant Systems, Inc. to Azbil BioVigilant, Inc. According to BioVigilant’s  
22 announcement, the change reflects the company’s alignment with its corporate parent,  
23 Yamatake Corporation of the azbil Group.

24 6. On information and belief, the azbil Group’s head office in the United States  
25 is in Phoenix, AZ, at 9033 N. 24th Ave., Suite 6, which is also the address of Azbil North  
26 America, Inc.

**JURISDICTION AND VENUE**

7. The claims alleged herein arise under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

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 BioVigilant, because BioVigilant engages in continuous and systematic business activities in this district. On information and belief, BioVigilant has also made, sold, used, and/or offered to sell products in this district that are accused of infringing the patent-in-suit.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b).

**PATENT-IN-SUIT**

11. On December 14, 2004, United States Patent No. 6,831,279 (“the ’279 patent”), entitled “Laser Diode-Excited Biological Particle Detection System,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’279 patent is attached as Exhibit A.

12. TSI owns the ’279 patent, having acquired all right, title and interest from the initial assignee, Her Majesty the Queen in right of Canada, as represented by the Minister of National Defence (“Canada”), through an assignment from Canada. TSI’s rights to the ’279 patent acquired from Canada include the rights to sue for past infringement and to all damages for past infringement of the ’279 patent.

13. Before acquiring the ’279 patent TSI licensed the ’279 patent from Canada.

**COMPLIANCE WITH 35 U.S.C. § 287**

14. TSI makes and sells biological particle detection systems that are embodied by one or more claims of the ’279 patent.

15. TSI has complied with 35 U.S.C. § 287(a) by marking its products with the ’279 patent.

1           16. BioVigilant was also given actual notice of the '279 patent by a letter dated  
2 June 6, 2006.

3                   **CLAIM FOR RELIEF FOR PATENT INFRINGEMENT**

4           17. TSI realleges and incorporates by reference paragraphs 1 through 16 as if  
5 fully stated herein.

6           18. BioVigilant has had knowledge of the '279 patent since at least June 2006.

7           19. BioVigilant and Yamatake Corporation (acting on behalf of BioVigilant)  
8 have also sought a license to the '279 patent from Canada and TSI. Yamatake  
9 Corporation specifically sought a license to the '279 patent that would extend not only to  
10 BioVigilant, but also to Yamatake Corporation and Azbil North America, Inc. TSI  
11 declined to grant any license to BioVigilant, Yamatake Corporation, Azbil North  
12 America, Inc., or any other affiliate and/or member of the azbil Group.

13           20. On information and belief, BioVigilant markets and sells biological particle  
14 detection systems, including, for example, the IMD-A series (such as the IMD-A 200-1;  
15 IMD-A 220-4; IMD-A 300; and IMD-A 350). BioVigilant, on information and belief,  
16 markets and sells its biological particle detection systems to customers and potential  
17 customers that include, for example, companies in the pharmaceutical and medical device  
18 industries in the United States. BioVigilant has been marketing and selling its biological  
19 particle detection systems while also having knowledge of the '279 patent. BioVigilant  
20 does not publicly identify its customers; a reasonable opportunity for discovery is  
21 therefore needed in order to identify BioVigilant's customers by name.

22           21. On information and belief, BioVigilant's biological particle detection  
23 systems, including, for example, the IMD-A series (such as the IMD-A 200-1; IMD-A  
24 220-4; IMD-A 300; and IMD-A 350), are covered by at least one claim of the '279 patent.

25           22. Accordingly, on information and belief, BioVigilant has directly infringed  
26 and is directly infringing the '279 patent by making, using, importing into the United  
27 States, offering to sell, and/or selling biological particle detection systems, including, for  
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1 example, the IMD-A series (such as the IMD-A 200-1; IMD-A 220-4; IMD-A 300; and  
2 IMD-A 350), in this district and elsewhere in the United States, in violation of 35 U.S.C.  
3 § 271(a).

4 23. In addition, on information and belief, BioVigilant has actively induced and  
5 is actively inducing others, such as BioVigilant's customers, to directly infringe the '279  
6 patent in this district and elsewhere in the United States, in violation of 35 U.S.C.  
7 § 271(b). For example, on information and belief, BioVigilant and/or its distributors or  
8 representatives have sold or otherwise provided biological particle detection systems—  
9 including, for example, the IMD-A series (such as the IMD-A 200-1; IMD-A 220-4;  
10 IMD-A 300; and IMD-A 350)—to third parties, such as BioVigilant's customers.  
11 BioVigilant's customers, on information and belief, have directly infringed and are  
12 directly infringing the '279 patent by using such biological particle detection systems,  
13 which are embodiments of the '279 patent. BioVigilant, moreover, specifically intends  
14 and encourages its customers to use its biological particle detection systems in violation of  
15 the '279 patent. For example, by marketing and selling its biological particle detection  
16 systems, BioVigilant has encouraged and is encouraging its customers to use its biological  
17 particle detection systems and, thus, to directly infringe the '279 patent. This is also  
18 shown from BioVigilant's website, which, for example, advertises BioVigilant's IMD-A  
19 systems as rapid biological detection systems that allow the user to detect the intrinsic  
20 fluorescence of airborne particles. Furthermore, BioVigilant has encouraged and is  
21 encouraging its customers to use its biological particle detection systems while also  
22 having actual knowledge of the '279 patent, as BioVigilant had knowledge of the '279  
23 patent by at least June 2006.

24 24. BioVigilant, on information and belief, has also contributed to and is  
25 contributing to direct infringement of the '279 patent by third parties, such as  
26 BioVigilant's customers, in this district and elsewhere in the United States, in violation of  
27 35 U.S.C. § 271(c). For example, on information and belief, BioVigilant has contributed  
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1 to and is contributing to infringement of the '279 patent by selling its customers biological  
2 particle detection systems—including, for example, the IMD-A series (such as the IMD-A  
3 200-1; IMD-A 220-4; IMD-A 300; and IMD-A 350)—the use of which by BioVigilant's  
4 customers has directly infringed and is directly infringing the '279 patent. Indeed, on  
5 information and belief, BioVigilant's biological particle detection systems are  
6 embodiments of the invention claimed by the '279 patent and are, therefore, especially  
7 made and adapted for infringing the '279 patent and do not have any substantial and non-  
8 infringing uses.

9 25. On information and belief, BioVigilant's direct and indirect infringement of  
10 the '279 patent has been and will continue to be willful.

11 26. On information and belief, BioVigilant will continue to directly infringe,  
12 actively induce others to infringe, and/or contribute to the infringement of the '279 patent  
13 unless and until BioVigilant is enjoined by this Court.

14 27. As a result, TSI will be damaged and will be irreparably injured unless and  
15 until BioVigilant's infringing activities are enjoined by this Court.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, TSI respectfully requests this Court:

18 A. To enter judgment that BioVigilant has infringed the '279 patent in violation  
19 of 35 U.S.C. § 271;

20 B. To enter judgment that BioVigilant's infringement of the '279 patent is  
21 willful.

22 C. To enter orders enjoining BioVigilant, and its respective officers, agents,  
23 servants, and employees, and attorneys, and all persons in active concert or participation  
24 with any of the foregoing, who receive actual notice by personal service or otherwise of  
25 the orders, from infringing the '279 patent in violation of 35 U.S.C. § 271;

26 D. To award TSI its damages in amounts sufficient to compensate it for  
27 BioVigilant's infringement of the '279 patent, including enhanced damages for willful  
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1 infringement, together with pre-judgment and post-judgment interest and costs, pursuant  
2 to 35 U.S.C. § 284;

3 E. To declare this case to be “exceptional” under 35 U.S.C. § 285 and to award  
4 TSI its attorneys’ fees, expenses, and costs incurred in this action; and

5 F. To award TSI such other and further relief as this Court deems just and  
6 proper.

7 **DEMAND FOR JURY TRIAL**

8 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, TSI respectfully  
9 requests a trial by jury of any and all issues on which a trial by jury is available under  
10 applicable law.

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**Snell & Wilmer**  
LLP

LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000

1 DATED this 1st day of March 2012.

2 SNELL & WILMER L.L.P.

3  
4 By: s/Ahron D. Cohen

5 Andrew F. Halaby (#017251)

6 Ahron D. Cohen (#028602)

7 One Arizona Center

8 400 East Van Buren Street

9 Phoenix, AZ 85004-2202

10 Kenneth A. Liebman (Minn. No. 236731)

11 (admitted *pro hac vice*)

12 ken.liebman@FaegreBD.com

13 David J. F. Gross (Minn. No. 208772)

14 (admitted *pro hac vice*)

15 david.gross@FaegreBD.com

16 Timothy E. Grimsrud (Minn. No. 34283X)

17 (admitted *pro hac vice*)

18 tim.grimsrud@FaegreBD.com

19 **FAEGRE BAKER DANIELS LLP**

20 2200 Wells Fargo Center

21 90 South Seventh Street

22 Minneapolis, Minnesota 55402-3901

23 Telephone: (612) 766-7000

24 Fax: (612) 766-1600

25 Attorneys for Plaintiff

26 TSI, Incorporated

27  
28  
Snell & Wilmer

L.L.P.  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000



**CERTIFICATE OF SERVICE**

I hereby certify that on March 1, 2012, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Brian Allen Comack  
Michael Vincent Solomita  
Amster Rothstein & Ebenstein LLP  
90 Park Avenue, 21<sup>st</sup> Floor  
New York, NY 10016

Sean David Garrison  
Shane Eric Olafson  
W. Brent Rasmussen  
Lewis and Roca LLP  
40 North Central Avenue, Suite 1900  
Phoenix, AZ 85004-4429

/s Ahron D. Cohen

14621999.1

**Snell & Wilmer**

LLP  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000