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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10 ANTICANCER, INC., ) Civil Action No. **'11 CV2756 WQHJMA**  
11 )  
12 Plaintiff, ) **COMPLAINT FOR PATENT**  
13 v. ) **INFRINGEMENT AGAINST LEICA**  
14 LEICA MICROSYSTEMS, INC., and ) **MICROSYSTEMS, INC., and DOES 1-10;**  
DOES 1-10, inclusive, ) **DEMAND FOR JURY**  
15 )  
16 Defendants. )  
\_\_\_\_\_ )

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20 AntiCancer, Inc., by and through its counsel, alleges for its Complaint against Leica  
21 Microsystems, Inc., and Does 1-10, inclusive as follows:

22 JURISDICTION AND VENUE

23 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § § 1331, 1332(a)(1),  
24 1338(a), and 2201.

25 2. Venue is proper in this judicial district under pertinent law, including, *inter alia*, 28  
26 U.S.C. §§ 1391 and 1400.  
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THE PARTIES

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2 3. Plaintiff AntiCancer, Inc. (“AntiCancer”) is a corporation organized and existing under  
3 the laws of the State of California and having as its principal place of business San Diego, California.  
4 AntiCancer has developed patented experimental mouse models and imaging techniques used by  
5 cancer researchers to test new anti-cancer drugs. AntiCancer licenses this (and other) technology to  
6 both large and small research organizations, including several major pharmaceutical companies.  
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8 4. Defendant Leica Microsystems, Inc. (“Leica USA”) is Delaware Corporation having a  
9 principal place of business at 1700 Leider Lane, Buffalo Grove, Illinois, 60089. Leica USA is a  
10 wholly owned subsidiary of Leica Microsystems GmbH (“Leica GmbH”), a company organized and  
11 existing under the laws of Germany, maintaining its principal place of business at Ernst-Leitz Str. 17-  
12 37, 35578 Wetzlar, Hessen, Germany. AntiCancer is informed and believes, and on that basis alleges,  
13 that Leica USA develops and manufactures imaging devices and markets, sells and offers to sell  
14 imaging devices to public and private researchers around the world, including within the United States  
15 and within this judicial district. Leica also has specifically directed its activities with respect to its  
16 products and Anticancer’s inventions into this judicial district by promoting its products to third parties  
17 within this district and by participating in and sponsoring one or more national tradeshow held in this  
18 judicial district, including sponsoring the “Leica Scientific Forum San Diego” regarding “Pushing the  
19 Envelope of Biological Imaging”, in which the key speaker discussed matters directly pertaining to  
20 AntiCancer’s patented methods. Leica USA is also licensed by Mauna Kea Technologies, a French  
21 company, to sell its “CellVizio” imaging device under Leica’s brand name as the “Leica FCM1000.”  
22 Mauna Kea Technologies is the plaintiff and counterdefendant in the related case of *Mauna Kea*  
23 *Technologies v. AntiCancer, Inc.*, Case No. 11cv1407 AJB (JMA), currently pending before this court.  
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25 5. The true names and capacities, whether individual, corporate, associate, representative  
26 or otherwise, of DOES 1 through 10, inclusive, are unknown to plaintiff, who therefore sues them by  
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1 such fictitious names. Plaintiff will seek leave to amend this complaint to show the true names and  
2 capacities of said defendants when they are ascertained. Plaintiff is informed and believes, and  
3 thereupon alleges, that each of the defendants named as a Doe, along with the named defendants, is  
4 responsible in some manner for the occurrences herein alleged, and that plaintiff's injuries herein  
5 alleged were legally or proximately caused by said defendants. Wherever it is alleged that any act or  
6 omission was also done or committed by any specifically named defendant, or by defendants generally,  
7 plaintiff intends thereby to allege, and does allege, that the same act or omission was also done and  
8 committed by each and every defendant named as a Doe, and each named defendant, both separately  
9 and in concert or conspiracy with the named defendants.  
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11 6. At all times mentioned herein, defendants, and each of them, were the agents, servants,  
12 co-conspirators, or employees of one another, and the acts and omissions herein alleged were done or  
13 suffered by them, acting individually and through or by their alleged capacity, within the scope of their  
14 authority. Each of the defendants aided and abetted and rendered substantial assistance in the  
15 accomplishment of the acts complained of herein. In taking the actions, as particularized herein, to aid  
16 and abet and substantially assist in the commission of the misconduct complained of, each defendant  
17 acted with an awareness of his, her or its primary wrongdoing and realized that his, her or its conduct  
18 would substantially assist in the accomplishment of that misconduct and was aware of his, her or its  
19 overall contribution to, and furtherance of the conspiracy, common enterprise, and common course of  
20 conduct. Defendants' acts of aiding and abetting included, inter alia, all of the acts each defendant is  
21 alleged to have committed in furtherance of the conspiracy, common enterprise, and common course of  
22 conduct complained of herein.  
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FIRST CLAIM FOR RELIEF

(Infringement of U.S. Patent No. 6,649,159)

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3 7. AntiCancer realleges and incorporates by reference as though fully set forth preceding  
4 paragraphs 1 through 6.

5 8. United States Patent No. 6,649,159 (the “‘159 Patent”) was issued by the United States  
6 Patent and Trademark Office on November 18, 2003. A true and correct copy of the ‘159 Patent is  
7 attached hereto as Exhibit “1” and incorporated herein by this reference.

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9 9. AntiCancer is the sole owner of all rights, title and interest in and to the ‘159 Patent.

10 10. AntiCancer is informed and believes, and on that basis alleges, that Leica USA has  
11 directly infringed the ‘159 Patent in violation of 35 U.S.C. §271(a) by, inter alia, using the Leica  
12 FCM1000 device to perform one or more of the claimed methods of the ‘159 Patent, within the United  
13 States, during the term of the ‘159 Patent, without AntiCancer’s authorization.

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15 11. Leica USA has also indirectly infringed the ‘159 Patent in violation of 35 U.S.C.  
16 §271(b) by inducing direct infringements of the ‘159 Patent by third parties, including its customers.  
17 In particular, Leica USA has sold or provided its Leica FCM1000 device to customers or other third  
18 parties and has instructed and aided and induced them to perform one or more of the claimed methods  
19 of the ‘159 Patent using the device, within the United States, during the term of the ‘159 Patent,  
20 without AntiCancer’s authorization. AntiCancer is informed and believes, and on that basis alleges  
21 that, Leica USA had actual knowledge of the ‘159 Patent and its claimed inventions, and has known  
22 and intended that its customers would directly infringe the ‘159 Patent by using the Leica FCM1000  
23 device in its intended manner and according to Leica USA’s instructions.

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25 12. Leica USA has also indirectly infringed the ‘159 Patent in violation of 35 U.S.C.  
26 §271(c) by contributing to the direct infringements of the ‘159 Patent by third parties, including its  
27 customers. In particular, Leica USA has imported its Leica FCM1000 device into the United States  
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1 and has sold it to customers for use in practicing the claimed inventions of the '159 Patent, during the  
2 term of the '159 Patent, without AntiCancer's authorization, and, upon information and belief,  
3 knowing the same to be especially made or especially adapted for use in an infringement of such  
4 patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

5 13. By reason of the foregoing, AntiCancer has suffered damages in an amount to be  
6 proven at trial and, in addition, has suffered irreparable loss and injury.

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8 14. The acts of infringement described above have been willful, deliberate and in reckless  
9 disregard of AntiCancer's patent rights.

10 PRAYER FOR RELIEF

11 WHEREFORE, Plaintiff AntiCancer prays for relief as follows:

12 (1) That AntiCancer have judgment against defendants on the claims;

13 (3) That all defendants, and each of them, be adjudged to have willfully infringed the '159  
14 Patent under 35 U.S.C. § 271(a), (b), (c), and (g);

15 (4) That the Court award AntiCancer enhanced damages, and defendants' profits, pursuant  
16 to 35 U.S.C. § 284, for defendants' willful infringement of the '159 patent;

17 (5) That the Court deem this to be an exceptional case under 35 U.S.C., and award  
18 increased damages and attorney's fees pursuant to 35 U.S.C. §§ 284 and 285;

19 (6) That defendants, and each of them, be preliminarily and permanently restrained  
20 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '159 patent;

21 (7) That the Court assess pre-judgment and post-judgment interest and costs of suit  
22 against defendants, and award such interest and costs to AntiCancer; and,

23 (8) That AntiCancer have such other and further relief as this Court may deem just and  
24 proper.

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Respectfully submitted,

ANTICANCER, INC.

DATED: November 23, 2011

By: /s/ Matt Valenti  
MATT VALENTI  
Attorney for Plaintiff AntiCancer, Inc.

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DEMAND FOR TRIAL BY JURY

AntiCancer hereby demands a trial by jury as to all issues triable by jury.

ANTICANCER, INC.

DATED: November 23, 2011

By: /s/ Matt Valenti  
MATT VALENTI  
Attorney for Plaintiff AntiCancer, Inc.