

**UNITED STATES DISTRICT COURT  
IN THE DISTRICT OF MASSACHUSETTS**

ASYMMETRX, INC. and  
PRESIDENT AND FELLOWS OF  
HARVARD COLLEGE,

*Plaintiffs,*

v.

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

*Defendants.*

Civil Action No: \_\_\_\_\_

**COMPLAINT AND JURY DEMAND**

AsymmetRx, Inc. (“AsymmetRx”), by its attorneys Proskauer Rose LLP, and the President and Fellows of Harvard College (“Harvard”), by its attorneys Goodwin Procter LLP, bring this action for patent infringement against Dako Demark A/S and Dako North America, Inc. (collectively “Defendants”).

**THE PARTIES**

1. AsymmetRx is a corporation with its headquarters located at Klaradies Village Center, Suite 235, Seymour, CT 06483.
2. President and Fellows of Harvard College is a non-profit educational institution with headquarters located at 17 Quincy Street, Cambridge, Massachusetts 02138.
3. On information and belief, Dako Demark A/S is a Danish corporation with headquarters at Produktionsvej 42, DK-2600 Glostrup, Denmark. On information and belief,

Dako Demark A/S regularly does and solicits business in Massachusetts and elsewhere in the United States.

4. On information and belief, Dako North America, Inc. is a corporation with headquarters at 6392 Via Real, Carpinteria, CA 93013. On information and belief, Dako North America, Inc. regularly does and solicits business in Massachusetts and elsewhere in the United States. On information and belief, Dako North America, Inc. is a wholly-owned subsidiary of Dako Demark A/S and shares the same management team as Dako Demark A/S. On information and belief, Dako Demark A/S exercises control over the business operations and policy decisions of Dako North America, Inc.

#### **JURISDICTION AND VENUE**

5. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, 1338 and 2201.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) & (c), and 1400.

#### **BACKGROUND FACTS**

8. AsymmetRx is a drug discovery/development and medical device company with antibody-based technologies in the fields of cancer and other diseases. Founded in 2001, AsymmetRx holds an exclusive license to patents covering p63 specific antibodies and the use of p63 antibodies to diagnose prostate and other cancers. AsymmetRx has received 510(k) clearance from the FDA for the use of p63 antibodies in an *in vitro* test for diagnosing prostate cancer.

9. U.S. Patent No. 6,946,256 (“the ‘256 Patent”) and U.S. Patent No. 7,030,227 (“the ‘227 Patent”) are assigned to the President and Fellows of Harvard College.

10. AsymmetRx is the exclusive licensee of the '256 and '227 Patents in the commercial diagnostic field and has the right to prosecute in its own name any infringement of these patents within the diagnostic field.

11. The '256 Patent was duly issued by the United States Patent and Trademark Office, and is valid and enforceable. Attached hereto as Exhibit 1 is copy of the '256 Patent.

12. The '227 Patent was duly issued by the United States Patent and Trademark Office, and is valid and enforceable. Attached hereto as Exhibit 2 is copy of the '227 Patent.

**COUNT I**  
**Infringement of the '256 Patent**

13. The allegations of paragraphs 1 through 12 are incorporated by reference into this Count I as though fully set forth herein.

14. On information and belief, Dako Demark A/S has a limited non-exclusive license from Harvard for the sale of p63 antibodies for research use only.

15. On information and belief, Defendants make, use, offer to sell, sell within the United States, and/or import into the United States, products that infringe, contribute to the infringement of, and/or induce the infringement of one or more claims of the '256 Patent in the diagnostic and/or therapeutic markets, and have done so in a manner that permits enhancement under 35 U.S.C. § 284.

16. AsymmetRx and Harvard have been, and are being, irreparably harmed and have incurred, and will continue to incur, damages as a result of Defendants' infringement of the '256 Patent.

**COUNT II**  
**Infringement of the '227 Patent**

17. The allegations of paragraphs 1 through 16 are incorporated by reference into this Count I as though fully set forth herein.

18. On information and belief, Dako Demark A/S has a limited non-exclusive license from Harvard for the sale of p63 antibodies for research use only.

19. On information and belief, Defendants make, use, offer to sell, sell within the United States, and/or import into the United States, products that infringe, contribute to the infringement of, and/or induce the infringement of one or more claims of the '227 Patent in the diagnostic and/or therapeutic markets, and have done so in a manner that permits enhancement under 35 U.S.C. § 284.

20. AsymmetRx and Harvard have been, and are being, irreparably harmed and have incurred, and will continue to incur, damages as a result of Defendants' infringement of the '227 Patent.

**PRAYER FOR RELIEF**

WHEREFORE, AsymmetRx and Harvard pray for judgment against Defendants as follows:

(a) Declaring that Defendants Dako Demark A/S and Dako North America, Inc. have infringed, and continue to infringe, the '256 and '227 Patents by selling p63 antibodies into the diagnostic market;

(b) Awarding AsymmetRx and Harvard all relief available under the patent laws of the United States, including but not limited to monetary damages, pre- and post- judgment interest, enhanced damages, legal fees, and injunctive relief; and

(c) Granting AsymmetRx and Harvard such other relief as the Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

AsymmetRx and Harvard demand a trial by jury on all issues so triable.

Dated: March 13, 2009

Respectfully Submitted,

/s/ Steven M. Bauer

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