

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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PERKINELMER, INC., and NTD	)	
LABORATORIES, INC.,	)	
	)	
Plaintiff,	)	Civil Action No. [Docket No.]
	)	
v.	)	
	)	
INTEMA LIMITED,	)	<b>DEMAND FOR JURY TRIAL</b>
	)	
Defendant.	)	
	)	

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**COMPLAINT FOR DECLARATORY JUDGMENT**

1. Plaintiffs PerkinElmer, Inc. (“PerkinElmer”) and NTD Laboratories, Inc. (“NTD Labs”) (collectively, “Plaintiffs”) bring this action against Defendant Intema Limited (“Intema” or “Defendant”) for a declaratory judgment that United States Patent No. 6,573,103 (“the ‘103 patent”) is invalid and not infringed by Plaintiffs.

**JURISDICTION AND VENUE**

2. The claims asserted in this Complaint arise under the Patent Laws of the United States, 35 U.S.C. § 100, *et seq.*, and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and are brought for a declaration by this Court that the ‘103 patent is invalid and not infringed by Plaintiffs.

3. This Court has jurisdiction over the claims asserted in this Complaint under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

4. This Court has personal jurisdiction over the Defendant. Defendant has purposefully directed activities related to the instant claim toward this forum, including without limitation its threats to enforce the ‘103 patent within this judicial district, its

negotiation of and attempts to negotiate licenses of the '103 patent within this judicial district, and its licensing of the '103 patent and its collection of royalties related to the sales of products covered by the '103 patent within this judicial district.

5. Venue is proper in this judicial district under 28 U.S.C. § 1391. At all times relevant to this complaint, Plaintiffs have engaged in the activities for which Defendant has accused Plaintiffs of infringement in this judicial district.

### **PARTIES**

6. PerkinElmer is a corporation organized under the laws of the Commonwealth of Massachusetts, with its principal place of business located at 940 Winter Street, Waltham, Massachusetts 02451.

7. NTD Labs is a corporation organized under the laws of the State of New York, with its principal place of business located at 403 Oakwood Road, Huntington Station, New York 11746. NTD Labs is a wholly-owned subsidiary of PerkinElmer.

8. Upon information and belief, Intema is a limited private company organized under the laws of the United Kingdom, with a place of business at Lion House, Red Lion Street, London, England WC1R 4GB.

### **BACKGROUND**

9. The '103 patent, entitled "Antenatal Screening for Down's Syndrome", issued on June 3, 2003. A copy of the '103 patent is attached hereto as Exhibit A.

10. Nicholas J. Wald, the named inventor of the '103 patent, has been in negotiations with NTD Labs concerning the '103 patent since 2001, prior to the issuance of the patent. In 2006, after PerkinElmer acquired NTD Labs, negotiations were recommenced, which thereafter proceeded slowly and ended in August 2008.

11. On or about September 19, 2008, counsel for Intema sent a letter to Robert F. Friel, PerkinElmer's Chief Executive Officer and President (the "September 19 Letter"), accusing PerkinElmer's subsidiary NTD Labs of infringing the '103 patent, and threatening to "vigorously enforce the '103 Patent against PerkinElmer and its NTD Laboratories subsidiary and seek damages for past infringement."

12. On information and belief, Intema owns the '103 patent. The records of the United States Patent and Trademark Office indicate that Nicholas J. Wald assigned the '103 patent to Intema on September 18, 2008. A copy of the recorded assignment is attached hereto as Exhibit B. The September 19 Letter stated that Intema "holds the '103 Patent."

13. The September 19 Letter alleged that the Modified Sequential Screening protocol that NTD Labs marketed for prenatal Down Syndrome screening infringes the '103 patent. The September 19 Letter purported to explain "why it is in PerkinElmer's best interest to enter into an agreement with [Defendant], as other U.S. entities have done" and requested a discussion regarding licensing terms.

14. On or about October 14, 2008, Defendant's representatives traveled to PerkinElmer's office in Waltham, Massachusetts and met with Plaintiffs' representatives concerning potential licensing terms.

15. On information and belief, Intema or its affiliate, representative or predecessor-in-interest negotiated and entered into a license agreement related to the '103 patent which permits Genzyme Corporation ("Genzyme") to market and sell products and/or services covered by such license agreement in Massachusetts and requires Genzyme to remit royalties based on such sales to Intema. On information and belief, Genzyme is a corporation organized under the laws of the Commonwealth of

Massachusetts, with its principal place of business located at 500 Kendall Street, Cambridge, Massachusetts 02142.

16. On information and belief, Intema or its affiliate, representative or predecessor-in-interest negotiated and entered into a license agreement related to the '103 patent which permits Laboratory Corporation of America Holdings ("Lab Corp.") to market and sell products and/or services covered by such license agreement in Massachusetts and requires Lab Corp. to remit royalties based on such sales to Intema. On information and belief, Lab Corp. is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 358 South Main Street, Burlington, North Carolina 27215, and another place of business located at 966 Park Street, Unit B7, Stoughton, Massachusetts 02072.

17. On information and belief, Intema or its affiliate, representative or predecessor-in-interest negotiated and entered into a license agreement related to the '103 patent which permits Quest Diagnostics Incorporated ("Quest") to market and sell products and/or services covered by such license agreement in Massachusetts and requires Quest to remit royalties based on such sales to Intema. On information and belief, Quest is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 3 Giralda Farms, Madison, New Jersey 07940, and another place of business located at 1101 Beacon Street, Brookline, Massachusetts 02446.

18. Defendant has not licensed the '103 patent to Plaintiffs.

19. The actions taken by the Defendant as described in the foregoing paragraphs have created an objectively reasonable apprehension that Intema will bring suit against Plaintiffs for infringement of the '103 patent.

20. An actual controversy exists concerning the validity and non-infringement of the claims of the '103 patent, and the Defendant's actions have placed Plaintiffs in objectively reasonable apprehension of suit.

### **COUNT I**

#### **(Invalidity of the '103 patent)**

21. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

22. One or more of the claims of the '103 patent are invalid under 35 U.S.C. § 101 *et seq.*

23. To resolve the legal and factual questions raised by Plaintiffs and to afford relief from the uncertainty and controversy which Intema's accusations have precipitated, Plaintiffs are entitled to a declaratory judgment that one or more of the claims of the '103 patent are invalid.

### **COUNT II**

#### **(Non-Infringement of the '103 patent)**

24. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

25. Plaintiffs do not infringe any valid and enforceable claim of the '103 patent.

26. To resolve the legal and factual questions raised by Plaintiffs and to afford relief from the uncertainty and controversy which Intema's accusations have precipitated, Plaintiffs are entitled to a declaratory judgment that Plaintiffs do not infringe any valid and enforceable claim of the '103 patent.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request entry of judgment in their favor and against Defendant as follows:

- A. Declaring that each claim of the '103 patent is invalid under 35 U.S.C. § 101 *et seq.*;
- B. Declaring that Plaintiffs have not infringed, and will not infringe, any valid and enforceable claim of the '103 patent;
- C. Enjoining the Defendant and those in privity with the Defendant from asserting the '103 patent against Plaintiffs and their representatives, agents, subsidiaries, and vendors;
- D. Finding that this is an exceptional case under 35 U.S.C. § 285 and awarding Plaintiffs the costs and expenses of this litigation, including reasonable attorneys' fees and disbursements; and
- E. Awarding Plaintiffs such other relief as is just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted,

ROPES & GRAY LLP

Dated: February 5, 2009

By: /s/ Dalila Argaez Wendlandt

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