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9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
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13
14 SEQUENOM, INC.,

15 Plaintiff,

16 v.

17 NATERA, INC. and
DNA DIAGNOSTICS CENTER, INC.,

18 Defendants,

19 and

20 ISIS INNOVATION LIMITED,

21 Nominal Defendant.
22

Case No. '12CV0184 LAB MDD

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

23
24 Plaintiff SEQUENOM, INC. (“Sequenom”) for its complaint against Defendants
25 NATERA, INC. (“Natera”) and DNA DIAGNOSTICS CENTER, INC. (“DDC”), and Nominal
26 Defendant ISIS INNOVATION LIMITED (“Isis”), alleges as follows:
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1 **NATURE OF THE ACTION**

2 1. This is an action under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*,
3 for infringement by Natera and DDC of a patent exclusively licensed by Sequenom from Isis.

4 **THE PARTIES**

5 2. Plaintiff Sequenom is a Delaware corporation with its principal place of business at
6 3595 John Hopkins Court, San Diego, California 92121.

7 3. On information and belief, Defendant Natera is a corporation incorporated under the
8 laws of the state of Delaware with a principal place of business at 2686 Middlefield Road,
9 Redwood City, California 94063.

10 4. On information and belief, Natera offers for sale and/or sells its infringing processes
11 in this Judicial District, among other places.

12 5. On information and belief, Defendant DDC is a corporation incorporated under the
13 laws of the state of Ohio with a principal place of business at One DDC Way, Fairfield, Ohio
14 45014.

15 6. On information and belief, DDC offers for sale and/or sells its infringing processes
16 in this Judicial District, among other places.

17 7. Nominal Defendant Isis is a British company whose registered office is at
18 University Offices, Wellington Square, Oxford OX1 2JD, England. Isis is named as a nominal
19 defendant in this action for purposes of subject matter jurisdiction only and pursuant to the United
20 States Supreme Court’s holding in *Independent Wireless Tel. Co. v. Radio Corp. of Am.*, 269, U.S.
21 459, 468 (1926), that “[i]f the owner of a patent, being within the jurisdiction, refuses or is unable
22 to join an exclusive licensee as coplaintiff, the licensee may make him a party defendant by
23 process, and he will be lined up by the court in the party character which he should assume.”
24 Sequenom requested that Isis join as a party plaintiff in this action, but Isis has thus far not agreed
25 to do so. Although Isis is named as a nominal defendant, Sequenom seeks relief realigning Isis as a
26 plaintiff.

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JURISDICTION AND VENUE

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2 8. This Court has jurisdiction over the subject matter of this action pursuant to
3 28 U.S.C. §§ 1331 and 1338(a).

4 9. This Court has personal jurisdiction over Natera because Natera's principal place of
5 business is in the State of California and it has purposely availed itself of the privilege of
6 conducting activities within this State and District.

7 10. This Court has personal jurisdiction over DDC because DDC conducts business in
8 the State of California and it has purposely availed itself of the privilege of conducting activities
9 within this State and District.

10 11. This Court has personal jurisdiction over Isis because Isis has purposely availed
11 itself of the privilege of conducting activities within this State and District.

12 12. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391(b) & (c) and
13 1400(b).

THE PATENT-IN-SUIT

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15 13. Sequenom is the exclusive licensee of United States Patent No. 6,258,540
16 (hereinafter referred to as "the '540 patent" or "Patent-in-Suit"), duly and legally issued on July 10,
17 2001 to the named assignee Isis, entitled "Non Invasive Prenatal Diagnosis." A true and correct
18 copy of the '540 patent is attached to this Complaint as Exhibit 1.

19 14. The claims of the '540 patent relate to nucleic acid analysis and prenatal diagnosis.

20 15. Sequenom is a pioneer in bringing non-invasive prenatal testing to market.

ACCUSED INFRINGERS

21
22 16. On information and belief, Natera, founded in 2004 and previously known as Gene
23 Security Network, Inc., operates a laboratory in Redwood City, California and offers services
24 including non-invasive prenatal paternity testing to determine paternity by analyzing fragments of
25 fetal DNA in a pregnant mother's blood drawn during pregnancy.

26 17. Natera's website states, among other things, that "Natera now provides non-invasive
27 prenatal paternity testing."
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1 18. On information and belief, Natera’s non-invasive prenatal paternity testing uses the
2 methods claimed in the ‘540 patent.

3 19. On information and belief, Natera has also knowingly encouraged others, including
4 DDC, to use Natera’s non-invasive prenatal paternity testing methods. For example, on
5 information and belief, Natera has knowingly encouraged DDC to perform non-invasive prenatal
6 paternity testing to determine paternity by analyzing fragments of fetal DNA in a pregnant
7 mother’s blood drawn during pregnancy, using methods claimed in the ‘540 patent. For example,
8 Natera’s website states: “If you are a patient seeking non-invasive paternity testing please contact
9 the appropriate partner below. ...For the U.S. and Canada:
10 <http://www.dnacenter.com/paternity/prenatal-testing.html> ...” On information and belief,
11 www.dnacenter.com is DDC’s website.

12 20. On information and belief, DDC offers paternity testing services and has partnered
13 with Natera to offer a non-invasive prenatal paternity test. For example, a DDC press release
14 dated August 16, 2011, states that “DNA Diagnostics Center (DDC) the largest provider of
15 private DNA paternity and other DNA tests in the United States and around the world, announced
16 today the company’s exclusive license in the US for the first non-invasive prenatal paternity test
17 using SNP (single-nucleotide polymorphism) Microarray Technology, which requires only a
18 simple blood draw from the mother and alleged father.” The press release further states that DDC
19 secured “the exclusive license from Gene Security Network (GSN) [*i.e.*, Natera].”

20 21. On information and belief, DDC uses, offers for sale and/or sells non-invasive
21 prenatal paternity testing that uses the methods claimed in the ‘540 patent.

22 COUNT 1

23 **(Infringement of United States Patent No. 6,258,540 by Natera)**

24 22. Sequenom realleges and incorporates herein by reference the allegations stated in
25 paragraphs 1-21 of this Complaint.

26 23. Natera has been and still is directly infringing the ‘540 patent by using, offering for
27 sale, and/or selling in the United States its non-invasive prenatal paternity testing.

1 24. Natera has been and still is indirectly infringing the '540 patent by knowingly
2 encouraging others to use, offer for sale, and/or sell in the United States non-invasive prenatal
3 paternity testing.

4 25. On information and belief, Natera's infringement of the '540 patent has taken place
5 with full knowledge of the '540 patent and has been intentional, deliberate, and willful.

6 26. On information and belief, Natera will continue to infringe the '540 patent unless
7 and until it is enjoined by this Court.

8 **COUNT 2**

9 **(Infringement of United States Patent No. 6,258,540 by DDC)**

10 27. Sequenom realleges and incorporates herein by reference the allegations stated in
11 paragraphs 1-26 of this Complaint.

12 28. DDC has been and still is directly infringing the '540 patent by using, offering for
13 sale, and/or selling in the United States non-invasive prenatal paternity testing.

14 29. On information and belief, DDC's infringement of the '540 patent has taken place
15 with full knowledge of the '540 patent and has been intentional, deliberate, and willful.

16 30. On information and belief, DDC will continue to infringe the '540 patent unless and
17 until it is enjoined by this Court.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Sequenom prays that this Court:

20 A. Enter a judgment that Natera and/or DDC has infringed the Patent-in-Suit;

21 B. Grant a permanent injunction restraining and enjoining Natera and/or DDC, their
22 officers, directors, agents, servants, employees, successors, assigns, parents, subsidiaries, affiliated
23 or related companies, and attorneys from infringing, inducing others to infringe and contributing to
24 the infringement of the Patent-in-Suit;

25 C. Award Sequenom damages in an amount sufficient to compensate Sequenom for
26 Natera's and/or DDC's infringement of the Patent-in-Suit, but not less than a reasonable royalty,
27 including pre- and post-verdict supplemental damages;

28 D. Award prejudgment interest to Sequenom pursuant to 35 U.S.C. § 284;

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E. Award increased damages, pursuant to 35 U.S.C. § 284, in an amount not less than three times the amount of actual damages awarded to Sequenom, by reason of Natera’s and/or DDC’s willful infringement of the Patent-in-Suit;

F. Declare this case exceptional under 35 U.S.C. § 285 and award Sequenom its reasonable attorneys’ fees, expenses, and costs incurred in this action; and

G. Grant such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Sequenom hereby demands a jury trial on all issues appropriately triable by a jury.

Dated: January 24, 2012

KAYE SCHOLER LLP

By: s/ Michael J. Malecek
Michael J. Malecek
Attorneys for Plaintiff Sequenom, Inc.