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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

'09 CV 0351 BEN LSP

ANTICANCER, INC., a California corporation,

Plaintiff,

v.

CAMBRIDGE RESEARCH & INSTRUMENTATION, INC., a Delaware corporation; and DOES 1-20,

Defendants.

Case No.

COMPLAINT FOR DAMAGES AND PRELIMINARY AND PERMANENT INJUNCTIONS FOR INFRINGEMENT OF U.S. PATENTS NOS. 6,251,384, 6,759,038, AND 6,649,159; DEMAND FOR TRIAL BY JURY AND FOR SPEEDY HEARING

## JURISDICTION AND VENUE

1. This action for declaratory judgment and for patent infringement arises under the patent laws of the United States, Title 35 of the United States Code, and under 28 U.S.C. § 2201 and Fed. R. Civ. P. 57.

2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338(a), and 2201.

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3. Venue is proper in this judicial district under pertinent law, including, *inter alia*, 28 U.S.C. §§ 1391(b), (c).

THE PARTIES

4. Plaintiff is a corporation organized and existing under the laws of the State of California and having as its principal place of business San Diego, California.

5. Defendant Cambridge Research & Instrumentation, Inc. (hereinafter "CRI") is a corporation organized and existing under the laws of the State of Delaware and having as its principal places of business various locations, including without limitation Woburn, Massachusetts.

6. The true names and capacities, whether individual, corporate, associate, representative or otherwise, of DOES 1 through 20, inclusive, are unknown to plaintiff, who therefore sues them by such fictitious names. Plaintiff will seek leave to amend this complaint to show the true names and capacities of said defendants when they are ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the defendants named as a Doe, along with the named defendants, is responsible in some manner for the occurrences herein alleged, and that plaintiff's injuries herein alleged were legally or proximately caused by said defendants. Wherever it is alleged that any act or omission was also done or committed by any specifically named defendant, or by defendants generally, plaintiff intends thereby to allege, and does allege, that the same act or omission was also done and committed by each and every defendant named as a Doe, and each named defendant, both separately and in concert or conspiracy with the named defendants.

7. At all times mentioned herein, defendants, and each of them, were the agents, servants, co-conspirators, or employees of one another, and the acts and omissions herein alleged were done or suffered by them, acting individually and through or by their alleged capacity, within the scope of their authority. Each of the defendants aided and abetted and rendered substantial assistance in the accomplishment of the acts complained of herein. In taking the actions, as particularized herein, to aid and abet and substantially assist in the commission of the misconduct complained of, each defendant acted with an awareness of his,

her or its primary wrongdoing and realized that his, her or its conduct would substantially assist in the accomplishment of that misconduct and was aware of his, her or its overall contribution to, and furtherance of the conspiracy, common enterprise, and common course of conduct. Defendants' acts of aiding and abetting included, *inter alia*, all of the acts each defendant is alleged to have committed in furtherance of the conspiracy, common enterprise, and common course of conduct complained of herein.

PATENTS IN SUIT

8. Plaintiff realleges and incorporates by reference as though fully set forth preceding paragraphs 1 through 7.

9. Via years of research and innovation (and large investments of time, capital, and effort by its scientists and researchers), AntiCancer has developed patented techniques which allow researchers to

- track metastasis of tumor cells in live lab animals through the use of fluorescent proteins, including green fluorescent protein ("GFP"), a protein which occurs naturally in a species of jellyfish, *Aequorea victoria* (known as the crystal jelly);
- do whole-body external optical imaging of gene expression in live animals; and
- evaluate candidate protocols or drugs for treating disease using fluorophores, i.e., proteins which self-fluoresce (so that no other factor is needed to cause it to glow).

10. GFP is understood by those skilled in the art to mean a protein which fluoresces green or any other color and includes fluorophores such as RFP and/or DsRed.

11. AntiCancer engineers tumor cells encoded with GFP and other fluorophores, which glow when excited by blue light. Afterward, AntiCancer implants the tumor cells into laboratory animals (such as live mice) via such means as subcutaneous injection and surgical orthotopic implantation. When the cells fluoresce, they glow green (or other colors, depending on the fluorescent protein used), enabling scientists to track their growth and spread in the living animal in real time by fluorescence imaging (or afterward under a microscope). These methods are highly useful to researchers seeking to learn whether a given drug or treatment regimen is slowing, stopping, or having no effect on the tumor cells being looked at. The discoverer of GFP, Osamu Shimomura of Boston University and two

of the scientists who developed its initial applications, Roger Tsien of UCSD and Martin Chalfie of Columbia University, recently won the Nobel Prize for chemistry (awarded in 2008). In announcing the award of the Nobel Prize, the Nobel committee cited AntiCancer's inventions of using GFP to watch cancer cells spread by stating:

> The remarkable brightly glowing green fluorescent protein, GFP, was first observed in the beautiful jellyfish, *Aequorea victoria*, in 1962. Since then, this protein has become one of the most important tools used in contemporary bioscience. With the aid of GFP, researchers have developed ways to watch processes that were previously invisible, such as the development of nerve cells in the brain **or how cancer cells spread**.

(Emphasis added.)

12. '384 patent. Metastasis constitutes a major portion of the life-threatening aspects of cancer. Metastasis is the spread of cancer in the body. It includes the growth of secondary tumors at sites different from the primary tumor. Metastasis can defy surgical removal of the primary tumor and make it impossible to arrest cancer's spread. In order to understand metastasis, a real-time model which permits identification of small numbers of tumor cells against a background of many host cells (so that secondary tumor emboli and micrometastases can be observed over the course of real time) is needed.

13. AntiCancer's methods claimed in the '384 patent (Ex. 1 hereto) provide a real-time model of tumor invasion and metastasis formation. The method enables testing of candidate protocols or drugs in animal models before they are tried in the clinic. The methods of the invention can be applied not only to mouse models of tumor growth and metastasis, but, through the use of retroviral vectors, can in the future be employed to obtain clinical data in human subjects bearing tumors.

14. Key terms in the '384 patent include GFP, i.e. green fluorescent protein. The '384 patent defines GFP as a fluorescent protein of any color. For example, the specification of the '384 patent teaches:

> By suitable modification, the spectrum of light emitted by the GFP can be altered. Thus, although the term "GFP" is used in the present application, the proteins included within this definition are not necessarily green in appearance. Various forms of GFP exhibit colors other than green and these, too, are included within the definition of "GFP" and are useful in the methods and

materials of the invention. In addition, it is noted that green fluorescent proteins falling within the definition of "GFP" herein have been isolated from other organisms, such as the sea pansy, *Renilla reriformis*. Any suitable and convenient form of the GFP gene can be used to modify the tumor cells useful in the models of the invention, and for retroviral transformation of endogenous tumors.

15. The '384 patent claims methods for (1) evaluating candidate protocols or drugs for inhibiting metastasis of primary tumors via methods including administering that protocol or drug to a mammalian subject containing a primary tumor that expresses GFP when the tumor metastasizes, then (2) monitoring the progression of the metastasis *in vivo* by observing the fluorescence at various locations in the animal by fluorescence optical tumor imaging ("FOTI"). Also included are methods for excising fresh organ tissues from the animal and putting those tissues under a fluorescence microscope to view the GFP-expressing cancer cells.

16. The priority date of the '384 patent is March 27, 1998. In the *Cambridge I* action (described further hereinbelow at ¶ 41), the Court denied CRI's motion for summary judgment of invalidity of this patent based on supposed anticipation.

17. '038 patent. The '038 patent (Ex. 2 hereto) relates to the study of tumor progression. Specifically, it concerns model systems for studying tumor metastasis in vertebrates and evaluating candidate drugs for treating the tumors. It claims methods for following metastasis by looking at GFP-expressing tumor cells in vertebrate animal organ tissues. It shares the same specification as the '384 patent.

18. The priority date of the '038 patent is March 27, 1998. In the *Cambridge I* action (described further hereinbelow at ¶ 45-47), the Court denied CRI's motion for summary judgment of invalidity of this patent based on supposed anticipation.

19. '159 patent. The '159 patent (Ex. 3 hereto) relates to the whole-body external optical imaging of gene expression. It claims methods for such imaging (as well as methods for evaluating candidate protocols or drugs for treating disease) using fluorophores linked to the endogenous promoters of genes. These methods offer simple, noninvasive, highly selective and real-time means for recording and analyzing gene expression in animals. The

'159 patent does not limit the methods by which the images produced by fluorescence optical tumor imaging can be monitored or captured. Instead, any suitable methods are encompassed by the claims of the '159 patent. For example, Example 1 to the specification of the '159 patent provides that high resolution images can be captured by computer, or continuously through video output onto videotape. The '159 patent's more limited definition of GFP is in contrast to the definitions set forth in the patent family that includes the '384 and '038 patents (where the term GFP is explicitly defined to include all colors, not just green). However, the claims use the term "fluorophore," which can include any color (not just green). Claim 5 of the '159 patent identifies as a claim limitation that the fluorophore used be selected from a group of fluorescent proteins consisting of GFP, BFP (blue fluorescent protein), and RFP (red fluorescent protein).

20. The priority date of the '159 patent is March 17, 2000. In the *Cambridge I* action (described further hereinbelow at ¶ 41), the Court denied CRI's motion for summary judgment of invalidity of this patent based on CRI's withdrawal of the motion before it could be heard.

21. AntiCancer licenses its patented methods to others – both commercial users (such as pharmaceutical companies) and non-commercial users (such as universities).

22. When a user uses AntiCancer's methods to image GFP-expressing tumor cells in an intact lab animal, it infringes AntiCancer's patents (unless done pursuant to a license with AntiCancer).

DEFENDANTS' WRONGFUL COURSE OF CONDUCT

23. Background. In July 2002, AntiCancer's president, Robert M. Hoffman, Ph.D., received an invitation to speak at a histology conference in Seattle, Washington. Dr. Hoffman accepted the invitation and attended the conference. There he met Richard Levenson, M.D. Both Drs. Hoffman and Levenson were on the conference's speaker's list and gave talks. At the conference, Dr. Levenson told Dr. Hoffman he worked for CRI (where he is currently a Vice President) and he was interested in AntiCancer's work with GFP. Dr. Levenson said CRI and AntiCancer should collaborate.

24. Dr. Levenson told Dr. Hoffman CRI was developing a tuneable filter that could be used to separate spectra (i.e., differentiate between various wavelengths of light). At the time of their meeting in Seattle, Dr. Levenson thought if the natural fluorescence of an organism (called "autofluorescence") could be separated from the signal coming from GFP implanted in that organism, then the GFP signal could be seen more readily. That, apparently, was the idea behind the tuneable filter that CRI was developing. Dr. Levenson then asked Dr. Hoffman if AntiCancer would like to collaborate on that project.

25. Shortly afterward, Dr. Levenson made the first of two visits to AntiCancer's lab in San Diego, where he demonstrated the tuneable filter. At the time of Dr. Levenson's visits to AntiCancer's lab, Dr. Hoffman knew nothing of any efforts by CRI to sell any type of imaging system capable of imaging fluorescent proteins. Nor did Dr. Levenson tell Dr. Hoffman CRI was developing such a system. The only CRI product pertinent to fluorescent imaging of which Dr. Hoffman had been aware of was the tuneable filter. After Dr. Levenson's two visits to its lab, AntiCancer bought a CRI tuneable filter.

26. Dr. Levenson then asked Dr. Hoffman if he could show other people some of the images he'd gotten at AntiCancer (which showed GFP expression in lab animals). Dr. Hoffman agreed. Another time, Dr. Levenson asked Dr. Hoffman to send some of AntiCancer's GFP-expressing mice to Dr. Levenson so Dr. Levenson could show the tuneable filter to others. Again Dr. Hoffman agreed.

27. Marketing of Maestro and Nuance Equipment. After their short collaboration – in which AntiCancer shared its fluorescence *in vivo* imaging data with Dr. Levenson – Dr. Hoffman learned an important piece of news via one of CRI's new marketing brochures. CRI was making an *in vivo* fluorescence imaging system of its own. In essence, the CRI imaging system appeared to be a box in which to place lab animals and a camera fitted with the tuneable filter. CRI called it the Maestro In Vivo Imaging System, which it has developed, marketed and sold to scores of customers as the Maestro 2 (M2), Maestro 1 (M1), and Dynamic Contrast Enhancement Solution, among other product lines (collectively "Maestro"), a name which CRI has trademarked. *See* Ex. 4. CRI manufactures, markets, and

sells the Maestro and a related device (the "Nuance camera"). These are devices which CRI and its customers can and do use to infringe AntiCancer's methods claimed in the '038, '384, and '159 patents, as explained further below.

28. CRI's Disclosures of Infringements on Its Own Website. CRI began marketing the Maestro system aggressively for use with GFP. *See* Exs. 5 ("Maestro was designed to be able to image . . . GFP . . ."), 6 ("Customer Success Stories" include "imaging GFP in deep tissues such as the liver"), 7 (website link to support of customers who wish to "mak[e] discoveries and breakthroughs"), 8 (brochure for "Maestro 2.4 Imaging Software" displaying images of laboratory animals expressing fluorescent proteins), 9 (brochure displaying images of GFP-expressing tumor cells in laboratory animals; "Now you can see smaller, deeper tumors – sooner") . CRI openly advertised the fluorescent imaging capability of its imaging systems (in direct marketing pieces and on its website, *see* Exs. 4-14). Too, it:

- provided (and is still providing) its customers with detailed user manuals which provide the precise filter settings necessary to use the Maestro imaging systems for imaging animals that express fluorescent proteins; and
- included fine print disclaimers on its website and in its marketing pieces warning its customers that "a license from AntiCancer" "may be required for certain applications and/or material." Exs. 4, 8, 9.

29. CRI began publishing on its website material reflecting its practice of the methods claimed in the patents-in-suit, e.g., "Distinguished Photons: The Maestro in-vivo fluorescent imaging system," an article which included a section heading entitled "MSI [multi-spectral imaging] in in-vivo fluorescent imaging" which read in pertinent part: "fluorophores can be generated in transgenic animals or transfected and implanted cells, 10, 11." A true and correct copy of this article accompanies this complaint as Ex. 16. The cited reference 10 was an article authored by AntiCancer's president, Dr. Hoffman. (Hoffman, R., "Green fluorescent protein imaging of tumor growth, metastasis, and angiogenesis in mouse model," *Lancet Oncol* 2002 (the "Hoffman article").) The Hoffman article described exactly the methods claimed in the '384, '038, and '159 (as well as other) patents. The Hoffman article cited 75 other papers. Nineteen of these (nos. 5, 24, 25, 26, 27, 28, 29, 31, 33, 35, 36, 37, 38, 44, 48, 54, 64, 71 and 72) were papers authored by AntiCancer scientists. These

included the seminal Chishima articles of 1997 (describing the bases of the '384 and '038 patents) and seminal Yang articles of 2000 and 2001 (describing the basis of the '159 patent). Other articles cited in the Hoffman article were original articles on the discovery of GFP and articles authored after the priority dates of the '384, '038, and '159 patents. The latter concerned use of AntiCancer's technologies by non-profit institutions who do not exploit AntiCancer's technology commercially. The Hoffman article described methods for whole-body imaging or tumor growth by delivering transduced cells containing fluorophores such as GFP to a mammal (including mice) and observing the presence, absence, or intensity of fluorescence by whole-body external fluorescent imaging; delivery of tumor cells to mice via surgical orthotopic implantation, or other methods of implantation, at the desired site; use of images of metastases in mice by use of GFP-expressing tumor cells in drug-response evaluation; and administration of GFP via viral vector to transfect tumor cells. (All of these methods are claimed in the patents-in-suit.) In the "Distinguishing photons" article, CRI cited the Hoffman paper because CRI was describing its own use of AntiCancer's patented methods as described in that paper.

30. CRI's website also encouraged customers to use Maestro to do GFP-based *in vivo* imaging of tumor cells in live mice by displaying images depicting GFP-labeled tumor cells in live mice taken by others (including Dr. Tsien himself). Ex. 11, § 4 and Fig. 3 (depicting images of mouse with GFP-labeled tumors).

31. CRI's website included references to CRI's own practice of AntiCancer's patented methods. These included a white paper entitled "Distinguished photons: Increased contrast with multispectral in-vivo fluorescent imaging," which included a section headed "Results from nude mouse with three subdermal fluorescently labeled tumors" in Figure 5. A true and correct copy of this white paper accompanies this complaint as Ex. 10. The above-referenced section described the implantation of subdermal tumors expressing GFP and RFP into a mouse, each tumor labeled with a different fluorescent protein, and described and showed images taken from the mouse. This section also describes and shows images taken from the mouse with the implanted tumors expressing GFP (including red fluorescent

protein). This image effectively admitted CRI's own practice of the methods claimed in the '384 and '038 patents (and/or inducement of practice of those methods by third parties).

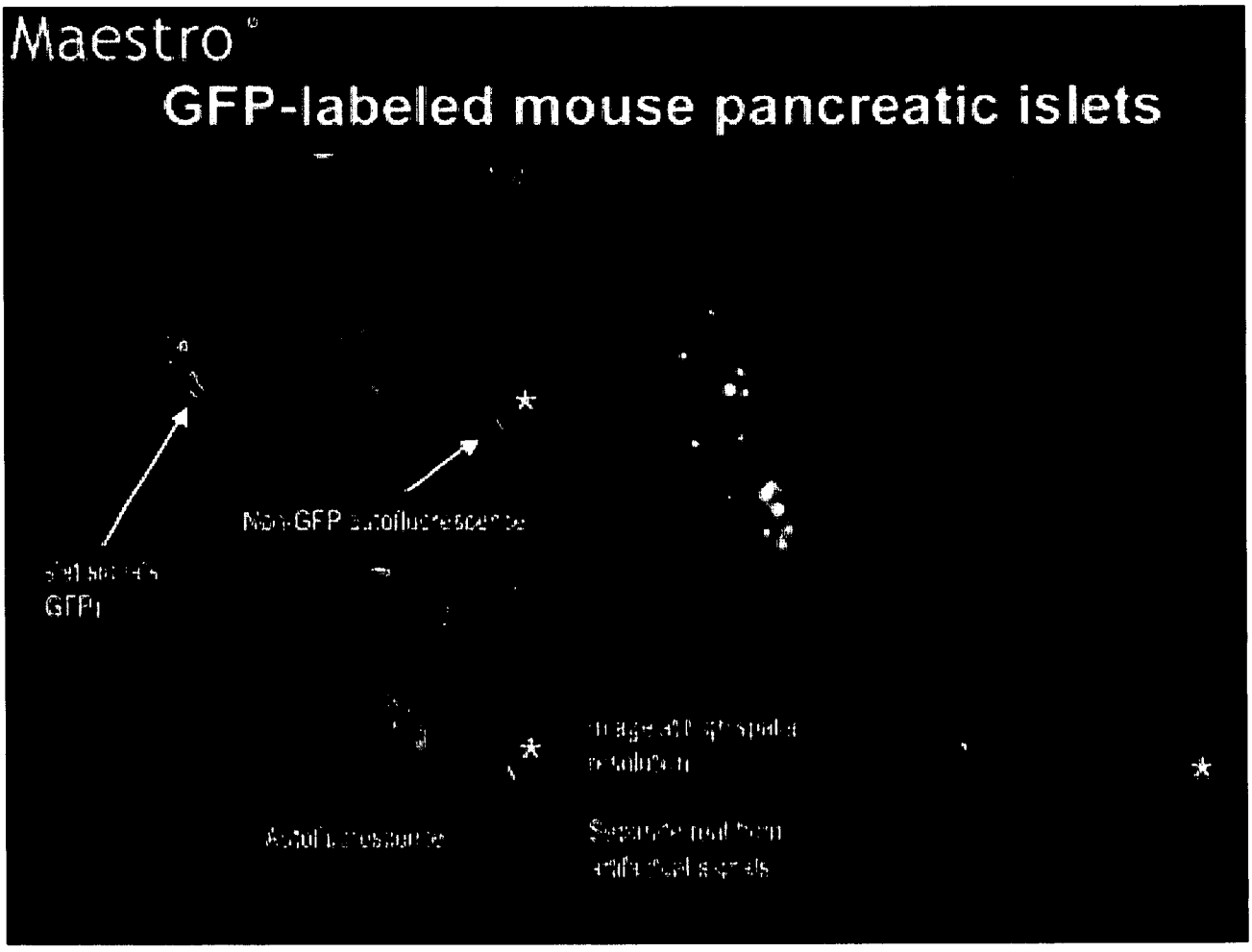
32. CRI's website also included an article entitled "Spectral imaging in Biology and Medicine: Slices of life," which described use of fluorescence-based imaging to image any fluorophore and said such fluorophores can be engineered into either tumors implanted into animals or generated by transgenic animals. A true and correct copy of this material accompanies this complaint as Ex. 13.

33. CRI's website also contained a section entitled "Selected References" (dated as of May 2004) a true and correct copy of which accompanies this complaint as Ex. 18. This section admitted the ability by CRI and/or its customers using the Maestro to "visualize by whole-body imaging the GFP-expressing host vessels vascularizing the RFP-expressing tumor," i.e., methods claimed in the '384, '038, and '159 patents. The same section admitted orthotopic transplantation of human breast cancer cells expressing RFP into transgenic nude mice expressing GFP in all tissues – another method specifically described in the Hoffman article and claimed in the '384, '038 and '159 patents..

34. In 2008 CRI published additional "Selected References" to its website. These included J. Tam, et al, "Improved In Vivo Whole-Animal Detection Limits of Green Fluorescent Protein-Expressing Tumor Lines by Spectral Fluorescence Imaging," *Molecular Imaging*, Vol. 6, No. 4 (July-August 2007) at pp. 269-276 (the "Tam paper") (Ex. 20). The Tam paper described work which took place at the Center for Molecular Imaging Research at Massachusetts General Hospital in the laboratory of Ralph Weissleder. This work was performed using Maestro in order to determine the efficacy of the instrument for detecting the number of subcutaneous GFP-expressing cells in female nude mice via spectral imaging after injecting GFP- and RFP-labeled cells subcutaneously into the mice – methods claimed in the '384 and '038 patents. The authors took care to thank James Mansfield (of CRI) for "helpful discussions." Ex. 20, p. 276. CRI's recent, publicly-announced agreement with VisEn Medical (an affiliate of Dr. Weissleder) to "distribute VisEn's proprietary portfolio of fluorescent imaging agents and labels in North America" illustrates the close commercial

connection between Dr. Weissleder and CRI. CRI announced this distribution agreement on January 21, 2009.

35. CRI also published on its website circa October 12, 2007, an image entitled "GFP-labeled mouse pancreatic islets," a true and correct copy of which appears below:




36. Pancreatic islets are not tumors; but the above image suggests to the reader that pancreatic cancer expressing GFP could be imaged in exactly the same way as are the islets depicted in the image.

37. This image plainly showed CRI's monitoring of GFP in excised fresh organ tissues from various locations in a mouse. The image depicted an excised pancreas from a

mouse subject, proving CRI's practice of methods equivalent to those claimed in the '384 patent.

38. In 2005, CRI published still other materials showing its infringements of the patents-in-suit. *See, e.g.*, Ex. 11 (J. Mansfield et al., "Beyond autofluorescence removal: automated analysis methods for multispectral *in-vivo* imaging") (the "Mansfield paper"). This paper described its data as having been "collected using a Maestro in-vivo imaging system (Fig. 1; CRI, Inc., Woburn, MA)." *Id.*, p. 2, § 2. The Mansfield paper described imaging methods practiced with GFP-expressing tumor cells in "living mice" which are claimed in the patents-in-suit. *Id.*, p. 3, § 4. The same is true of other materials published by CRI, e.g., Ex. 12 (undated white paper entitled "Autofluorescence removal, multiplexing and automated analysis methods for *in-vivo* fluorescence imaging"),

39. In 2006, AntiCancer noticed in CRI's marketing materials some of the images which Dr. Levenson had received on his prior visits to AntiCancer's lab in San Diego. This suggested to CRI's customers they could practice AntiCancer's patents using the CRI Maestro imaging system. AntiCancer, however, has never given CRI permission to use AntiCancer's images or images of its lab animals for any commercial purpose, which includes in any CRI brochures, on CRI's website, in any user manuals CRI might have produced for the customers of its Maestro imaging systems, or in any software training programs associated with the Maestro imaging systems. Further, CRI reproduced AntiCancer's images and data in a CRI-owned patent (U.S. patent no. 7,321,791, issued on January 22, 2008) purporting to claim CRI's invention of certain spectral imaging equipment.

CRI thus used AntiCancer's data (shown in Figures 1 and 4 of the '791 patent) to demonstrate and illustrate its supposed invention without crediting AntiCancer's personnel as inventors – an act of fraud on the U.S. Patent and Trademark Office. AntiCancer never gave CRI permission to do this either.

40. AntiCancer warned CRI of its potential liability for infringement of AntiCancer's patents and suggested CRI buy a license. CRI refused to buy a license or acknowledge any potential liability for infringement.

41. *BioTechniques* Paper. Further proof of CRI's inducing of others' practice of AntiCancer's patented methods followed. In October 2008, P. Mayes, et al., published "Noninvasive vascular imaging in fluorescent tumors using multispectral unmixing" in Volume 45, No. 4 of the *BioTechniques* journal (*BioTechniques* 45:459-464 (October 2008)). Ex. 17. This paper described the practice of techniques for (a) detecting and monitoring of dynamic changes in the tumor vasculature of living animals using "commercially available multispectral imaging technology" and colon carcinoma cells stably expressing the GFP DsRed, subcutaneously injected into the rear flanks of nude mice and (b) imaging of those tumor cells using the "**Maestro in vivo fluorescent imager** . . . (CRi, Inc., Woburn, MA, USA)[.]" (Emphasis added.) The *BioTechniques* paper published color images of "fluorescent tumor[s] taken using the CRi Nuance camera . . ." These images displayed the practice of AntiCancer's methods claimed in the '038, '384, and '159 patents, including without limitation detection and monitoring of tumor fluorescent protein expression via whole-body imaging in mice using the "Maestro small-animal imager . . ." Accompanying

the *BioTechniques* paper was a print advertisement for "Maestro *in vivo* imaging systems," touting these systems as the "most sensitive fluorescence systems available" for the non-invasive monitoring of tumor vasculature in mouse models and displaying images of DsRed-expressing tumor cells and vasculature in live mice. CRI bought and placed the advertisement.

42. The *BioTechniques* paper clearly reflected CRI's giving of instructions to its customers concerning means for infringing the '384 and '038 patents. It would have been impossible for the methods described in the paper to have been done without practicing AntiCancer's methods claimed in those patents, and in turn impossible for that to have occurred without CRI having told those practicing those methods exactly how to do so using the Maestro and Nuance equipment. For example, on page 459, right column, paragraph r, lines 1-4 state: "The manufacturers [CRI] and Nikon recommended filter sets for imaging RFP with the Maestro and Nuance/AZ100 setup, respectively."

43. Amgen. In January 2009, AntiCancer learned for the first time that CRI had sold Maestro equipment to Amgen, Inc., a large pharmaceutical company, and that Amgen scientists were using that equipment (at CRI's explicit direction) to do GFP- and RFP-based imaging of tumor cells in live laboratory animals at Amgen's South San Francisco facility. AntiCancer promptly sought discovery of these facts in the *Cambridge I* action (described below). CRI resisted the discovery.

44. Alnylam Pharmaceuticals. In February 2009, AntiCancer learned for the first time that CRI had sold Maestro equipment to Alnylam Pharmaceuticals, a Cambridge,

Massachusetts-based pharmaceuticals company, and that Alnylam was using Maestro to perform GFP-based imaging of tumor cells in live mice.

*CAMBRIDGE I* AND SUMMARY JUDGMENT OF NON-INFRINGEMENT

45. In January 2007, AntiCancer brought a civil action in this Court alleging infringement of patents by CRI, *AntiCancer, Inc. v. Cambridge Research & Instrumentation, Inc., et al.*, Case No. 07-CV-00097-JLS (RBB) ("*Cambridge I*"). With trifling exceptions not relevant here, CRI resisted all discovery propounded by AntiCancer in *Cambridge I*, including AntiCancer's demand for production of a Maestro imaging station.

46. In *Cambridge I*, AntiCancer served preliminary infringement contentions ("PICs") which were later determined by the Court to be defective and which the Court denied AntiCancer leave to amend (on January 31, 2008). Based on these defects (and not based on the merits of any of AntiCancer's claims for relief), the Court granted summary judgment of non-infringement of the '038, '384, and '159 patents to CRI on February 13, 2008. The Court's grant of summary judgment (and any judgment which may ensue) do not and will not have any *res judicata* or collateral estoppel effect on any claim for relief asserted in this complaint.

47. In *Cambridge I*, CRI never proffered (either formally or informally) any evidence that disproved its infringement of the '384, '038, and/or '159 patents, and never tried to controvert any of AntiCancer's proof of CRI's infringements on CRI's summary judgment motion (which rested entirely on AntiCancer's PICs and not on any proof of non-infringement). This was despite having had over 18 months in which to have done so.

FIRST CLAIM FOR RELIEF

(Infringement of Patent)

(Against All Defendants)

48. Plaintiff realleges and incorporates by reference as though fully set forth preceding paragraphs 1 through 47.

49. United States Patent No. 6,251,384 (the "'384 Patent") issued on June 26, 2001. Its priority date is March 27, 1998. A true and correct copy of the '384 Patent is attached hereto as Exhibit 1 and incorporated herein by this reference.

50. Plaintiff is the sole owner of the '384 Patent.

51. CRI has infringed, and still is infringing, the '384 patent by making, using, selling, offering for sale and/or licensing products and services covered by one or more claims of the '384 Patent without plaintiff's authorization or consent. These products and services include, *inter alia*, CRI's Maestro *In Vivo* Imaging System (a fully-integrated system allowing researchers to use real-time imaging technology, including plaintiff's patented technology, to monitor and record cellular and genetic activity within laboratory animals).

52. CRI has infringed the '384 Patent, and will continue to do so unless enjoined by this Court.

53. CRI is aware of the '384 Patent and that its infringement has been willful.

54. CRI is actively inducing and/or contributing to infringement of the '384 Patent by others, including without limitation Alnylam Pharmaceuticals, Amgen, Inc., Merck & Co., Inc., and others.

55. By reason of the foregoing, plaintiff has suffered damages in an amount to be proven at trial and, in addition, has suffered irreparable loss and injury.

56. The acts of infringement described above are willful, deliberate and in reckless disregard of plaintiff's patent rights.

SECOND CLAIM FOR RELIEF

(Infringement of Patent)

(Against All Defendants)

57. Plaintiff realleges and incorporates by reference as though fully set forth preceding paragraphs 1 through 56.

58. United States Patent No. 6,759,038 (the "'038 Patent") issued on July 6, 2004. Its priority date is March 27, 1998. A true and correct copy of the '038 Patent is attached hereto as Exhibit 2 and incorporated herein by this reference.

59. Plaintiff is the sole owner of the '038 Patent.

60. CRI has infringed, and still is infringing, the '038 patent by making, using, selling, offering for sale and/or licensing products and services covered by one or more claims of the '038 Patent without plaintiff's authorization or consent. These products and services include, *inter alia*, CRI's Maestro *In Vivo* Imaging System (a fully-integrated system allowing researchers to use real-time imaging technology, including plaintiff's patented technology, to monitor and record cellular and genetic activity within laboratory animals).

61. CRI has infringed the '038 Patent, and will continue to do so unless enjoined by this Court.

62. CRI is aware of the '038 Patent and that its infringement has been willful.

63. CRI is actively inducing and/or contributing to infringement of the '038 Patent by others, including without limitation Alnylam Pharmaceuticals, Amgen, Inc., Merck & Co., Inc., and others.

64. By reason of the foregoing, plaintiff has suffered damages in an amount to be proven at trial and, in addition, has suffered irreparable loss and injury.

65. The acts of infringement described above are willful, deliberate and in reckless disregard of plaintiff's patent rights.

THIRD CLAIM FOR RELIEF

(Infringement of Patent)

(Against All Defendants)

66. Plaintiff realleges and incorporates by reference as though fully set forth preceding paragraphs 1 through 65.

67. United States Patent No. 6,649,159 (the "'159 Patent") issued on November 18, 2003. Its priority date is March 17, 2000. A true and correct copy of the '159 Patent is attached hereto as Exhibit 3 and incorporated herein by this reference.

68. Plaintiff is the sole owner of the '159 Patent.

69. CRI has infringed, and still is infringing, the '159 patent by making, using, selling, offering for sale and/or licensing products and services covered by one or more claims of the '159 Patent without plaintiff's authorization or consent. These products and services include, *inter alia*, CRI's Maestro *In Vivo* Imaging System (a fully-integrated system

allowing researchers to use real-time imaging technology, including plaintiff's patented technology, to monitor and record cellular and genetic activity within laboratory animals).

70. CRI has infringed the '159 Patent, and will continue to do so unless enjoined by this Court.

71. CRI is aware of the '159 Patent and that its infringement has been willful.

72. CRI is actively inducing and/or contributing to infringement of the '159 Patent by others, including without limitation Alnylam Pharmaceuticals, Amgen, Inc., Merck & Co., Inc., and others.

73. By reason of the foregoing, plaintiff has suffered damages in an amount to be proven at trial and, in addition, has suffered irreparable loss and injury.

74. The acts of infringement described above are willful, deliberate and in reckless disregard of plaintiff's patent rights.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

A. That all defendants, and each of them, be adjudged to have infringed the '159, '384, and '038 patent(s) under 35 U.S.C. § 271(a), (b), (c) and (g);

B. That all defendants, and each of them, be adjudged to have willfully infringed the '159, '384, and '038 patent(s) under 35 U.S.C. § 271(a), (b), (c) and (g);

C. That defendants, and each of them, as well as their respective officers, agents, servants, employees and attorneys, and those persons in active concert or participation with

them be preliminarily and permanently restrained and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '159, '384, and/or '038 patent(s);

D. That the Court award damages to compensate AntiCancer for the defendants' infringement of the '159, '384, and '038 patent(s), as well as enhanced damages pursuant to 35 U.S.C. § 284;

E. That the Court award AntiCancer its attorney's fees pursuant to 35 U.S.C. § 285;

F. That the Court assess pre-judgment and post-judgment interest and costs of suit against defendants, and award such interest and costs to AntiCancer;

G. That AntiCancer have such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Dated: February 23, 2009

LAWTON LAW FIRM

By: _____

Dan Lawton
Joseph C. Kracht
Attorney for Plaintiff AntiCancer, Inc.

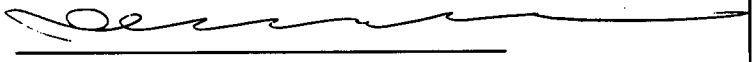
## DEMAND FOR TRIAL BY JURY AND FOR SPEEDY HEARING

Plaintiff hereby demands a trial by jury as to all issues triable by jury, specifically including, but not limited to, the infringement of United States Patent Nos. 6,251,384, 6,649,159, and 6,759,038. Plaintiff also requests a speedy hearing of its claim for declaratory judgment pursuant to Fed. R. Civ. P. 57.

Respectfully submitted,

Dated: February 23, 2009

LAWTON LAW FIRM

By: 

Dan Lawton
Joseph C. Kracht
Attorney for Plaintiff AntiCancer, Inc.