

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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**ILLUMINA, INC.,**

Case No.: 09-cv-665

Plaintiff,

v.

**AFFYMETRIX, INC.,**

Defendant.

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**COMPLAINT FOR PATENT INFRINGEMENT**

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Plaintiff Illumina, Inc., for its complaint against Defendant Affymetrix, Inc., alleges as follows:

**THE PARTIES**

1. Plaintiff Illumina, Inc. (“Illumina”) is a Delaware corporation with its principal place of business at 9865 Towne Centre Drive, San Diego, California 92121.
2. On information and belief, Defendant Affymetrix, Inc. (“Affymetrix”) is a Delaware corporation with its principal place of business at 3420 Central Expressway, Santa Clara, California 95051.

**JURISDICTION**

3. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 et seq. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Affymetrix because Affymetrix conducts substantial business in Wisconsin and this District and is committing infringing acts in Wisconsin and this District.

5. Venue in this District is proper under 28 U.S.C. §§ 1391 and 1400(b) because Affymetrix is a corporation that resides within the District. On information and belief, Affymetrix sells and offers to sell infringing products to customers in this District and induces direct infringements in this District.

### **FACTS GIVING RISE TO THIS ACTION**

6. Paragraphs 1 - 5 are incorporated by reference as if set forth here in full.

7. Illumina brings this action to seek damages and injunctive relief arising out of Affymetrix's infringement of U.S. Patent No. 7,612,020 ("the '020 patent").

8. On information and belief, Affymetrix has made, used, sold, and/or offered for sale at least the following products: the GeneChip® HT RG-230 PM Array Plate, the GeneChip® HT Rat Focus Array Plate, the GeneChip® HT HG-U133+ PM Array Plate, the GeneChip® HT Human Genome U133A/U133B Array Plate Set, the GeneChip® HT MG-430 PM Array Plate, GeneChip® HT Mouse Genome 430A/430B Array Plate Set, the GeneChip® HT Array Plate Scanner, the GeneChip® HT 3' IVT Express Kit, the GeneChip® Array Station, the GeneTitan® Instrument, and the GeneAtlas Instrument.

9. On information and belief, Affymetrix is actively inducing and/or contributing to the making, using, selling, and offering to sell at least the following products: the GeneChip® HT RG-230 PM Array Plate, the GeneChip® HT Rat Focus Array Plate, the GeneChip® HT HG-U133+ PM Array Plate, the GeneChip® HT Human Genome U133A/U133B Array Plate Set, the GeneChip® HT MG-430 PM Array Plate, GeneChip® HT

Mouse Genome 430A/430B Array Plate Set, the GeneChip® HT Array Plate Scanner, the GeneChip® HT 3' IVT Express Kit, the GeneChip® Array Station, the GeneTitan® Instrument, and the GeneAtlas Instrument.

## **COUNT I**

### **Infringement of the '020 Patent**

10. Paragraphs 1 - 9 are incorporated by reference as if set forth here in full.

11. United States Patent No. 7,612,020, entitled "Composite Arrays Utilizing Microspheres With a Hybridization Chamber," issued on November 3, 2009. The inventors named on the '020 patent are John Stuelpnagel, Mark Chee, and Steven Auger. The assignee of the '020 patent is Illumina, Inc. A copy of the '020 patent is attached as Exhibit A hereto.

12. On information and belief, Affymetrix's manufacture, use, sale and/or offer for sale of the GeneChip® HT RG-230 PM Array Plate, the GeneChip® HT Rat Focus Array Plate, the GeneChip® HT HG-U133+ PM Array Plate, the GeneChip® HT Human Genome U133A/U133B Array Plate Set, the GeneChip® HT MG-430 PM Array Plate, and the GeneChip® HT Mouse Genome 430A/430B Array Plate Set constitutes infringement of one or more claims of the '020 patent, either directly, indirectly, literally or under the doctrine of equivalents.

13. Affymetrix's activities violate one or more subsections of 35 U.S.C. § 271.

14. On information and belief, Affymetrix's infringement of the '020 patent has been willful and deliberate.

15. If Affymetrix's infringing activities are not enjoined, Illumina will suffer irreparable harm that cannot be adequately compensated by a monetary award.

16. Illumina has suffered economic harm as a result of Affymetrix's infringing activities in an amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE Plaintiff seeks the following relief from this Court:

A. That this Court adjudge and decree that Affymetrix has, directly and indirectly, infringed one or more claims of the '020 patent and that each of the claims of the '020 patent is valid and enforceable;

B. A permanent injunction enjoining Affymetrix and its affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, and all those acting for Affymetrix and on its behalf, or acting in concert with it directly or indirectly, from importing, making, using, selling, and/or offering to sell the GeneChip® HT RG-230 PM Array Plate, the GeneChip® HT Rat Focus Array Plate, the GeneChip® HT HG-U133+ PM Array Plate, the GeneChip® HT Human Genome U133A/U133B Array Plate Set, the GeneChip® HT MG-430 PM Array Plate, GeneChip® HT Mouse Genome 430A/430B Array Plate Set, the GeneChip® HT Array Plate Scanner, the GeneChip® HT 3' IVT Express Kit, the GeneChip® Array Station, the GeneTitan® Instrument, the GeneAtlas Instrument or any other Affymetrix product that would directly or indirectly infringe any claims of the '020 patent.

C. An award of damages, together with interest, to Illumina in an amount adequate to compensate Illumina for Affymetrix's infringement of the '020 patent, as provided in 35 U.S.C. § 284;

D. An adjudication that Affymetrix has willfully infringed the '020 patent and increasing the award of damages to Illumina up to three times in view of Affymetrix's willful infringement;

E. A declaration that this is an exceptional case under 35 U.S.C. § 285 and that Illumina be awarded its attorneys' fees and costs incurred in prosecuting its claims as provided under 35 U.S.C. § 285 and Fed. R. Civ. P. 54(d); and

F. Such other relief as this Court deems proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues properly tried to a jury.

Dated this 3rd day of November 2009.

*/s/ Kimberly K. Dodd*

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Jeffrey N. Costakos (WBN 1008225)

James G. Morrow (WBN 1009942)

Kimberly K. Dodd (WBN 1044498)

**FOLEY & LARDNER LLP**

777 East Wisconsin Avenue

Milwaukee, WI 53202-5306

(414) 271-2400

Justin E. Gray (WBN 1061486)

**FOLEY & LARDNER LLP**

150 E. Gilman Street

P.O. Box 1497

Madison, WI 53701-1497

(608) 257-5035

*Attorneys for Plaintiff*