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9 Attorneys for Plaintiffs
10 LIFE TECHNOLOGIES CORPORATION and
APPLIED BIOSYSTEMS, LLC
11

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA
14

15 LIFE TECHNOLOGIES CORPORATION and
16 APPLIED BIOSYSTEMS, LLC

CASE NO. **'10CV2392 LAB RBB**

17 Plaintiffs,

**COMPLAINT FOR PATENT
INFRINGEMENT**

18 vs.

19 GENMARK DIAGNOSTICS, INC.,

JURY DEMAND

20 Defendant.
21

**District Judge:
Magistrate Judge:**

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24 Plaintiffs LIFE TECHNOLOGIES CORPORATION (“Life Technologies”) and
25 APPLIED BIOSYSTEMS, LLC (“Applied Biosystems”) (hereafter, collectively “Plaintiffs”),
26 complain against Defendant Genmark Diagnostics, Inc. (“Defendant”) as follows:
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NATURE OF THE ACTION

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2 1. This action arises under the patent laws of United States (35 U.S.C. § 271 et seq.)
3 based on Defendant’s infringement of a patent owned by Applied Biosystems relating generally
4 to nucleic acid generation and detection technology. Plaintiffs seek damages for Defendant’s
5 infringement and a permanent injunction restraining Defendant from further infringement.

JURISDICTION AND VENUE

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7 2. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

8 3. The Court has personal jurisdiction over Defendant because, among other reasons,
9 Defendant has a principal place of business in this district, regularly conducts business in this
10 district, and has committed acts in this district which give rise to this action.

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

THE PARTIES

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14 5. Plaintiff Life Technologies is a Delaware corporation, with its principal place of
15 business at 5791 Van Allen Way, Carlsbad, California 92008.

16 6. Plaintiff Applied Biosystems is a Delaware limited liability company, with its
17 principal place of business at 5791 Van Allen Way, Carlsbad, California 92008. Applied
18 Biosystems is a wholly owned subsidiary of Life Technologies.

19 7. Plaintiffs are informed and believe, and on that basis allege, that Defendant is a
20 Delaware corporation that has its principal place of business in Carlsbad, California.

CLAIM FOR RELIEF

(Patent Infringement)

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23 8. Plaintiffs repeat and reallege the allegations set forth in preceding paragraphs 1
24 through 7, inclusive.

25 9. Applied Biosystems is the owner of all right, title and interest in United States
26 Patent No. 6,514,699 (the “‘699 patent”), entitled “Multiplex Polynucleotide Capture Methods
27 and Compositions.” The ‘699 patent was duly and legally issued to Roger A. O’Neill, Jer-Kang
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1 Chen, Claudia Chiesa and George Fry on February 4, 2003. A copy of the '699 patent is
2 attached hereto as Exhibit A.

3 10. PE Corporation (NY) is named as assignee on the face of the '699 patent.
4 Applied Biosystems, successor to PE Corporation (NY), subsequently acquired ownership of the
5 '699 patent through a series of patent assignments. The assignment agreements have been
6 recorded with the United States Patent and Trademark Office. See Exhibit B.

7 11. Defendant has been infringing, contributing to the infringement of, and/or
8 inducing others to infringe the '699 patent by making, manufacturing, promoting, marketing,
9 advertising, distributing, offering for sale and selling and/or causing to be offered or sold certain
10 products for nucleic acid analysis, including Defendant's eSensor® system, cartridges and
11 reagents, that infringe one or more claims of the '699 patent.

12 12. Plaintiffs are informed and believe, and on that basis allege, that Defendant
13 knowingly and actively encourages and intends its customers to practice one or more claims of
14 the '699 patent and Defendant's customers perform each and every step of the patented methods.
15 For example, Defendant instructs and provides technical support to customers to use certain
16 eSensor® products for multiplex molecular diagnostic tests and thereby practice each and every
17 step of the patented methods.

18 13. Plaintiffs are informed and believe, and on that basis allege, that Defendant's
19 eSensor® products are especially made and especially adapted for use in an infringement of the
20 '699 patent and are not suitable for substantial noninfringing uses. For example, Defendant's
21 eSensor® products are specifically designed and used for the detection of nucleic acids that bind
22 to immobilized capture probes .

23 14. Plaintiffs have been damaged and have suffered irreparable injury due to the
24 Defendant's acts of infringement, and Plaintiffs will continue to suffer irreparable injury unless
25 Defendant's acts are enjoined.

26 15. Plaintiffs have suffered and will continue to suffer substantial damage to their
27 business by reason of Defendant's acts of patent infringement as alleged herein, and Plaintiffs
28 are entitled to recover from Defendant the damages sustained as a result of Defendant's acts.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray as follows:

16. That Defendant be adjudged to have infringed, contributed to the infringement of, and induced infringement of, literally and/or under the doctrine of equivalents, the asserted claims of the '699 patent;

17. That Defendant and its subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all other persons acting in concert or in participation with it, be temporarily and preliminarily enjoined during the pendency of this action, and permanently enjoined thereafter, from infringing the '699 patent, and specifically from directly or indirectly making, using, selling, offering for sale, or importing any products or services embodying the inventions of the '699 patent during the life of the claims of the '699 patent without the express written authority of Plaintiffs;

18. That Defendant be directed to fully compensate Plaintiffs for all damages attributable to Defendant's infringement of the '699 patent in an amount according to proof at trial, but not less than a reasonable royalty;

19. That Defendant be ordered to deliver to Plaintiffs, for destruction at Plaintiffs' option, all products that infringe the '699 patent;

20. That Defendant be required to account for all gains, profits, advantages, and unjust enrichment derived from its violations of the law;

21. That this case be found exceptional under 35 U.S.C. § 285 and Plaintiffs be awarded the costs of suit, and an assessment of interest; and,

22. That Plaintiffs have such other, further, and different relief as the evidence may require and as the Court deems proper under the circumstances.

Dated: November 19, 2010

GORDON & REES LLP

By: /s/ Matthew D. Murphey
Matthew D. Murphey
Attorneys for Plaintiffs
LIFE TECHNOLOGIES
CORPORATION and APPLIED
BIOSYSTEMS, LLC

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JURY DEMAND

Plaintiffs hereby demand a jury trial on all claims, causes of action, issues and defenses properly triable before a jury.

Dated: November 19, 2010

GORDON & REES LLP

By: /s/ Matthew D. Murphey
Matthew D. Murphey
Attorneys for Plaintiffs
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