

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

DIGENE CORPORATION, a Delaware corporation

Plaintiff,

v.

THIRD WAVE TECHNOLOGIES, INC., a Delaware corporation,

Defendant.

Civil Action No. _____

DIGENE CORPORATION'S COMPLAINT FOR PATENT INFRINGEMENT

For its complaint against Defendant, Third Wave Technologies, Inc. ("Third Wave"), Plaintiff, Digene Corporation ("Digene") alleges as follows:

PARTIES

1. Digene is incorporated under the laws of the state of Delaware and has its principal place of business at 1201 Clopper Road, Gaithersburg, Maryland 20878.
2. Third Wave is incorporated under the laws of the state of Delaware and has its principal place of business at 502 South Rosa Road, Madison, Wisconsin 53719.

JURISDICTION AND VENUE

3. This is an action arising under the Patent Laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1338(a), which confers jurisdiction over cases of patent infringement, and 28 U.S.C. § 1331, which confers federal question jurisdiction.
4. This Court has personal jurisdiction over Third Wave because Third Wave has its

principal place of business in Madison, Wisconsin.

5. Venue is proper in this forum pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b), and the applicable law of this Court. Venue is proper in the Western District of Wisconsin because Third Wave has its principal place of business in this venue.

FACTS

6. Digene is the exclusive licensee of United States Patent No. 5,643,715 (“the ‘715 patent”) and possesses all substantial rights to the ‘715 patent, including an irrevocable, worldwide exclusive license from Georgetown University for the term of the ‘715 patent and the right to sue for infringement of the ‘715 patent. The ‘715 patent was issued to Wayne D. Lancaster on July 1, 1997, and is entitled “Human Papillomavirus Type 52 DNA Sequences and Methods for Employing the Same.” All right, title and interest in the ‘715 patent has been assigned to Georgetown University. A copy of the ‘715 patent is attached hereto as Exhibit A.

FIRST CLAIM FOR RELIEF **(Infringement of the ‘715 Patent)**

7. Digene repeats and realleges each and every allegation in paragraphs 1 through 6 as if fully set forth herein.

8. Third Wave has been and still is infringing one or more claims of the ‘715 patent by making, using, offering for sale, selling and/or importing into the United States certain analyte specific reagents (“ASRs”) used in molecular diagnostic testing, and by causing use, offer for sale, and sale of the ASRs and products using such ASRs. Upon information and belief, the infringing ASRs made, used, sold, offered for sale, or imported by Third Wave include at least its Invader® HPV A9 Oligo Mix.

9. Third Wave’s actions constitute infringement, active inducement of infringement, and contributory infringement of the ‘715 patent in violation of 35 U.S.C. § 271.

10. Digene has sustained damages and will continue to sustain damages as a result of the aforementioned acts of infringement.

11. Third Wave's continued infringement of the '715 patent has caused and will continue to cause Digene irreparable harm unless enjoined by the Court.

12. Since at least October 11, 2005, Third Wave has had actual or constructive notice of their infringement of the '715 patent. Since at least that date, Third Wave's infringement of the '715 patent has been willful.

PRAYER FOR RELIEF

WHEREFORE, Digene prays that this Court enter judgment in its favor and against Third Wave and grant the following relief:

- a. A preliminary and permanent injunction preventing further infringement, contributory infringement, and inducement of infringement;
- b. An accounting to determine damages for infringement;
- c. An award of damages for infringement;
- d. An assessment and award of interest, including prejudgment interest, on the damages determined;
- e. A trebling of those damages pursuant to 35 U.S.C. § 284;
- f. A declaration that the '715 patent is a valid and enforceable patent that has been infringed by TWT;
- g. A finding that this is an exceptional case and an award of Digene's costs and attorney fees; and
- h. Such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Digene hereby demands a trial by jury as to all claims and issues properly triable thereby.

Dated: January 11, 2007

Respectfully submitted,

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