

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

FEBIT BIOTECH GMBH,
IM Neuenheimer Feld 519,
69120 Heidelberg, Germany

Plaintiff,

v.

CODON DEVICES, INC.,
One Kendall Square,
Building 300, Third Floor,
Cambridge, MA 02139

Defendant.

Civil Action No.:

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff febit biotech GmbH (hereinafter "febit"), through its undersigned attorneys, as and for its Complaint against Defendant Codon Devices, Inc. (hereinafter "Codon Devices"), alleges as follows:

NATURE OF THE ACTION

1. This is an action arising under the patent laws of the United States (35 U.S.C. §§ 271 et seq.) based upon Defendant Codon Devices' infringement of U.S. Patent No. 6,586,211 B1 entitled "Method for Producing Polymers."

THE PARTIES

2. Plaintiff febit is a German corporation having its principal place of business at IM Neuenheimer Feld 519, 69120 Heidelberg, Germany.

3. Upon information and belief, Defendant Codon Devices, is a Delaware corporation, having its principal place of business at One Kendall Square, Building 300, Third Floor, Cambridge, MA 02139.

JURISDICTION AND VENUE

4. This action for patent infringement arises under the patent laws of the United States, United States Code, Title 35.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendant Codon Devices because Codon Devices is incorporated in Delaware.

7. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400.

THE PATENT-IN-SUIT

8. febit is the owner of the entire right, title and interest in and to U.S. Patent No. 6,586,211 B1 (hereinafter "the '211 patent"), issued July 1, 2003, entitled "Method for Producing Polymers." The named inventors of this patent are Peer F. Stähler, Cord F. Stähler and Manfred Muller. A true and correct copy of the '211 patent is attached to this Complaint as Exhibit A.

9. The independent claims of the '211 patent are:

Claim 1:

Method for synthesizing polymers, wherein said method comprises synthesizing a plurality of oligomeric building blocks by parallel synthesis steps, wherein each oligomeric building block is synthesized on a different area of a common support, detaching the plurality of oligomeric building blocks from the support and bringing the oligomeric building blocks into contact with one another to synthesize the polymer, and wherein said different areas of said common support are at least partially in fluid communication during synthesis.

Claim 25:

Method for synthesizing polymers that are greater than 10,000 bp in length, wherein said method comprises synthesizing a plurality of oligomeric building blocks by parallel synthesis steps, wherein each oligomeric building block is synthesized on a different area of a common support, detaching the plurality of oligomeric building blocks from the support and bringing the oligomeric building blocks into contact with one another to synthesize the polymer, and wherein said different areas of said common support are at least partially in fluid communication during synthesis.

COUNT I

(Infringement of the '211 Patent Pursuant to 35 U.S.C. § 271(g))

10. The allegations of paragraphs 1-9 above are repeated and re-alleged as if set forth fully herein.

11. Upon information and belief, Defendant Codon Devices manufactures and uses a gene synthesis platform called the BioFAB® platform.

12. Upon information and belief, Defendant Codon Devices' BioFAB® platform, and the methods it performs, synthesizes molecular biology devices such as DNA and protein clones, variant libraries and operon and operon variant libraries. More specifically, Codon Devices' BioFAB® platform is used to synthesize oligonucleotides, hybridize oligonucleotides into duplexes and assemble genes from the duplexes. Codon Devices is currently scaling the platform to design and construct molecular biology devices hundreds of kilobases to megabases in length.

13. Upon information and belief, in 2005, Defendant Codon Devices began offering for sale and selling in the United States molecular biology devices made using its BioFAB® platform.

14. Upon information and belief, Defendant Codon Devices continues to offer for sale and sell in the United States molecular biology devices made using its BioFAB® platform.

15. Upon information and belief, Defendant Codon Devices's manufacturing process to synthesize molecular biology devices using the BioFAB[®] platform, if practiced in the United States, infringes literally or under the doctrine of equivalents or will infringe literally or under the doctrine of equivalents one or more claims of the '211 patent pursuant to 35 U.S.C. § 271(g).

16. Upon information and belief, Defendant Codon Devices' offer for sale, sale or use within the United States of its molecular biology devices made using its BioFAB[®] platform infringes literally or under the doctrine of equivalents, one or more claims of the '211 patent pursuant to 35 U.S.C. § 271(g).

17. Upon information and belief, Defendant Codon Devices' infringement of the '211 patent has been knowing and willful.

18. Defendant Codon Devices' infringement of the '211 patent has caused and continues to cause febit to suffer substantial money damages.

19. Defendant Codon Devices' infringement of the '211 patent has caused and continues to cause febit to suffer irreparable harm for which there is no adequate remedy at law.

COUNT II

(Infringement of the '211 Patent Pursuant to 35 U.S.C. § 271(a))

20. The allegations of paragraphs 1-19 above are repeated and re-alleged as if set forth fully herein.

21. Upon information and belief, Defendant Codon Devices' offer for sale, sale or use within the United States of its molecular biology devices made using its BioFAB[®] platform infringes literally or under the doctrine of equivalents, one or more claims of the '211 patent pursuant to 35 U.S.C. § 271(a).

22. On information and belief, Defendant Codon Devices' infringement of the '211 patent has been knowing and willful.

23. Defendant Codon Devices' infringement of the '211 patent has caused and continues to cause febit to suffer substantial money damages.

24. Defendant Codon Devices' infringement of the '211 patent has caused and continues to cause febit to suffer irreparable harm for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, febit prays for a judgment:

- A. Entering judgment that Defendant Codon Devices has infringed the '211 patent;
- B. Entering a preliminary and permanent injunction enjoining Codon Devices and their affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns and all those acting for them or on their behalf, or acting in concert or privity with them, from committing further infringement of the '211 patent;
- C. Awarding febit compensatory damages under 35 U.S.C. § 284;
- D. Awarding febit treble damages for Codon Devices' willful infringement;
- E. Awarding costs and reasonable attorney's fees in favor of febit; and
- F. Awarding febit any further relief that this Court may deem appropriate.

JURY DEMAND

febit demands a jury trial as to all issues that are triable by a jury in this action.

FEBIT BIOTECH GMBH

Date: June 15, 2007

By:



P. Clarkson Collins, Jr. (#739)

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