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From-KRIEG KELLER SLOAN REILLEY ROMAN LLP

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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1 KENNETH E. KELLER (SBN 71450) kkeller@kksrr.com
2 LORI L. BEHLN (SBN 202309) lbehn@kksrr.com
3 KRIEG, KELLER, SLOAN, REILLEY & ROMAN LLP
4 114 Sansome Street, 4th Floor
5 San Francisco, CA 94104
6 Telephone: (415) 249-8330
7 Facsimile: (415) 249-8333

8 Attorneys for Plaintiff
9 STRATAGENE

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 STRATAGENE CALIFORNIA, a California
13 corporation,

14 Plaintiff,

15 v.

16 BIO-RAD LABORATORIES, INC., a
17 Delaware corporations; MJ GENEWORKS, a
18 corporation; and, MJ RESEARCH, INC., a
19 Massachusetts corporation,

20 Defendants.

Case No. **06CV 2553 BTM CAB**

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

BY FAX

21 Plaintiff, Stratagene California, a California corporation (hereinafter "Stratagene" or
22 "Plaintiff") for its complaint against Defendants Bio Rad Laboratories, Inc., MJ GeneWorks and MJ
23 Research, Inc., MJ Research, Inc. (hereinafter where appropriate "Defendants"), allege as follows:

24 **NATURE OF THE ACTION**

25 1. This is an action under the patent laws of the United States, 35 U.S.C. §§ 1 et seq., for
26 infringement by Defendants of patents owned by Stratagene.

27 **THE PARTIES**

28 2. Plaintiff Stratagene California is a corporation organized under the laws of California

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1 and with its principal place of business located at 11011 N. Torrey Pines Rd., La Jolla, California
2 and it's the successor in interest of Stratagene, a California corporation as assignee of the patents in
3 suit as described below.

4 3. On information and belief, Defendant Bio-Rad Laboratories, Inc. ("Bio-Rad") is a
5 corporation organized under the laws of Delaware, with its principal place of business located in
6 Hercules, California, but does business and has committed acts of infringement throughout the State
7 of California.¹

8 4. On information and belief, Defendant MJ GeneWorks, Incorporated. ("MJ
9 GeneWorks") is a corporation organized under the laws of Wisconsin and is or was headquartered in
10 Salt Lake, Wisconsin. On information and belief, Bio-Rad purchased and acquired MJ GeneWorks,
11 including liability for acts of infringement, in or about August, 2004, but prior to that time
12 GeneWorks did business in and has committed acts of infringement throughout the State of
13 California, including within the Southern District of California.

14 5. On information and belief, Defendant MJ Research, Incorporated ("MJ Research") is a
15 corporation organized under the laws of Massachusetts and is headquartered in Waltham,
16 Massachusetts. On information and belief, Research was a subsidiary of GeneWorks at the time of
17 Bio-Rad's purchase of GeneWorks, and as part of the acquisition or purchase BioRad assumed
18 liability for acts of infringement by MJ Research but prior to that time, MJ Research did business in
19 and committed acts of infringement throughout the State of California, including within the Southern
20 District of California.

21 6. Upon information and belief, Bio-Rad, MJ GeneWorks, and MJ Research (collectively
22 appropriate "Defendants") purposely manufactured, shipped, distributed, sold, imported, and/or
23 offered for sale and promoted for sale various products and/or gradient thermal cyclers, including,
24 but not limited to Bio-Rad's DNA Engine™ line of thermal cycler products, throughout the United
25 States, including within the Southern District of California and these activities are continuous and
26 ongoing.

27 _____
28 ¹ Including within the Southern District of California.

JURISDICTION AND VENUE

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2 7. The claims asserted in this Complaint arise under the Patent Laws of the United
3 States, 35 U.S.C. sections 100, et seq.

4 8. Subject matter jurisdiction is proper within this District of California in this Court
5 under 28 U.S.C. §§ 1331 and 1338(a).

6 9. Personal jurisdiction by this Court over the Defendants and each of them is proper
7 under the United States Constitution because Defendants MJ GeneWorks, and MJ Research are
8 foreign corporations, which have purposely availed themselves of the privilege of conducting
9 activities, including doing business, within this State and District and Defendant Bio-Rad is a
10 California corporation which has committed acts of infringement within this Judicial District.

11 10. Venue is proper in this Judicial District under 28 U.S.C. § 1391 (b-d) and 1400(b).

BACKGROUND

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13 11. Stratagene is the owner of the United States Patent No. 6,054,263 (the '263 patent),
14 entitled, "THERMAL CYCLER INCLUDING A TEMPERATURE GRADIENT BLOCK." The
15 '263 patent was duly issued on April 25, 2000, and at all times since its issuance, has been duly and
16 lawfully assigned to Stratagene. A copy of the '263 patent is attached as Exhibit A.

17 12. Stratagene is the owner of the United States Patent No. 5,779,981 (the '981 patent),
18 entitled, "THERMAL CYCLER INCLUDING A TEMPERATURE GRADIENT BLOCK." The
19 '981 patent was duly issued on July 14, 1998, and at all times since its issuance, has been duly and
20 lawfully assigned to Stratagene. A copy of the '981 patent is attached as Exhibit B.

21 13. Stratagene is the owner of the United States Patent No. 5,288,647 (the '647 patent),
22 entitled, "METHOD OF IRRADIATING BIOLOGICAL SPECIMENS." The '647 patent was duly
23 issued on February 22, 1994, and at all times since its issuance, has been duly and lawfully assigned
24 to Stratagene. A copy of the '647 patent is attached as Exhibit C.

25 14. Stratagene is the owner of the United States Patent No. 5,395,591 (the '591 patent),
26 entitled, "APPARATUS OF IRRADIATING BIOLOGICAL SPECIMENS." The '591 patent was
27 duly issued on March 7, 1995, and at all times since its issuance, has been duly and lawfully assigned
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1 to Stratagene. A copy of the '591 patent is attached as Exhibit D. The '263 patent, the '981 patent,
2 the '647 patent, and the '591 patent having been duly issued by the United States Office, are
3 presumed to be valid and enforceable.

4 **COUNT 1: INFRINGEMENT OF THE '263 PATENT**

5 15. Upon information and belief, Defendants have infringed and continue to infringe one
6 or more claims of the '263 patent by making, having made, using, offering for sale, and/or selling
7 gradient thermal cycler products – including but not limited to the iCycler®, DNA Engine®, DNA
8 Engine Dyad®, DNA Engine Dyad Disciple, and DNA Engine Tetrad®, as those products are made,
9 used and sold independently or in combination with any accessories intended for use therewith,
10 including but not limited to Bio-Rad's "Alpha Unit." Defendants' aforementioned activities
11 constitute making, having made, using, selling, importing, and/or offering for sale and/or promoting
12 the use of the patented invention of the '263 patent by or to customers throughout the United States.
13 Defendants will continue to do so unless enjoined by this Court.

14 16. Upon information and belief, Defendants are actively inducing others to infringe,
15 and/or committing acts of contributory infringement of one or more claims of the '263 patent
16 through Defendants' activities related to the making, using, selling, importing, and/or offering for
17 sale and promoting use of, gradient thermal cycler products – including but not limited to the
18 iCycler®, DNA Engine®, DNA Engine Dyad®, DNA Engine Dyad Disciple, and DNA Engine
19 Tetrad®, as those products are made, used or sold independently or in combination with any
20 accessories intended for use therewith, including but not limited to Bio-Rad's "Alpha Unit."
21 Defendants' aforementioned activities constitute using, making, selling, importing, and/or offering
22 for sale and promoting use of the patented invention of the '263 patent by or to customers in the
23 United States, all in violation of 35 U.S.C. § 271.

24 17. Stratagene has provided actual notice to Defendants of its infringement of the '263
25 patent. Despite such notice, Defendants continues to willfully infringe and/or induce or contribute to
26 the infringement of the '263 patent.

27 18. As a proximate result of Defendants' acts of infringement, Stratagene has been
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1 damaged in an amount not yet determined, and has been irreparably injured by these infringing
2 activities, and Stratagene will continue to be damaged by such acts in the future unless Defendants'
3 infringing activities are enjoined by this Court.

4 19. Upon information and belief, Defendants' infringement of the '263 patent has been,
5 and continues to be, willful, and deliberate.

6 Wherefore, Plaintiff prays for relief as set forth herein.

7 **COUNT 2: INFRINGEMENT OF THE '981 PATENT**

8 20. Plaintiff realleges and incorporates by references herein as fully set forth Paragraph 1
9 through 19, as set forth above.

10 21. Upon information and belief, Defendants have infringed and continues to infringe one
11 or more claims of the '981 patent by making, having made, using, offering for sale, and/or selling
12 gradient thermal cycler products – including but not limited to the DNA Engine Dyad[®], DNA
13 Engine Dyad Disciple, and DNA Engine Tetrad[®], as those products are made, used, or sold
14 independently or in combination with any accessories intended for use therewith, including but not
15 limited to Bio-Rad's "Alpha Unit." Defendants' aforementioned activities constitute using, making,
16 selling, importing, and/or offering for sale and promoting use of the patented invention of the '981
17 patent by or to customers throughout the United States. Defendants will continue to do so unless
18 enjoined by this Court.

19 22. Upon information and belief, Defendants are actively inducing others to infringe,
20 and/or committing acts of contributory infringement of one or more claims of the '981 patent
21 through Defendants' activities related to the making, having made, using, selling, importing, and/or
22 offering for sale and promoting use of, gradient thermal cycler products – including but not limited
23 to DNA Engine Dyad[®], DNA Engine Dyad Disciple, and DNA Engine Tetrad[®], and as those
24 products are made, used, and sold independently or in combination with any accessories intended for
25 use therewith, including but not limited to Bio-Rad's "Alpha Unit." Defendants' aforementioned
26 activities constitute making, using, selling, importing, and/or offering for sale and promoting use of
27 the patented invention of the '981 patent by or to customers in the United States, all in violation of
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1 35 U.S.C. § 271.

2 23. Stratagene has provided actual notice to Defendants of its infringement of the '981
3 patent. Despite such notice, Defendants continues to willfully infringe and/or induce or contribute to
4 the infringement of the '981 patent.

5 24. As a consequence of Defendants' acts of infringement, Stratagene has been damaged
6 in an amount not yet determined, and has been irreparably injured by these infringing activities, and
7 Stratagene will continue to be damaged by such acts in the future unless Defendants' infringing
8 activities are enjoined by this Court.

9 25. Upon information and belief, Defendants' infringement of the '981 patent has been,
10 and continues to be, willful, and deliberate.

11 Wherefore, Plaintiff prays for relief as set forth herein.

12 **COUNT 3: INFRINGEMENT OF THE '647 PATENT**

13 26. Plaintiff realleges and incorporates by reference herein as fully set forth Paragraph 1
14 through 25 as set forth above.

15 27. Upon information and belief, Defendants have infringed and continue to infringe one
16 or more claims of the '647 patent by making, having made, using, offering for sale, and/or selling
17 methods and/or apparatus for irradiating biological specimens – including but not limited to the GS
18 Gene Linker UV[®], as those products are made, used, or sold independently or in combination with
19 any accessories intended for use therewith, including but not limited to Bio-Rad's "Replacement
20 Chamber." Defendants' aforementioned activities constitute making, having made, using, selling,
21 importing, and/or offering for sale and promoting use of the patented invention by or to customers
22 throughout the United States. Defendants will continue to do so unless enjoined by this Court.

23 28. Upon information and belief, Defendants are actively inducing others to infringe,
24 and/or committing acts of contributory infringement of one or more claims of the '647 patent
25 through Defendants' activities related to making, having made, using, selling, importing, and/or
26 offering for sale and promoting use of, methods and/or apparatus for irradiating biological specimens
27 – including but not limited to the GS Gene Linker UV[®], as those products are made, used, or sold
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1 independently or in combination with any accessories intended for use therewith, including but not
2 limited to Bio-Rad's "Replacement Chamber." Defendants' aforementioned activities constitute
3 making, having made, using, selling, importing, and/or offering for sale and promoting the use of the
4 patented invention by or to customers in the United States, all in violation of 35 U.S.C. § 271.

5 29. Stratagene has provided actual notice to Defendants of its infringement of the '647
6 patent. Despite such notice, Defendants continues to willfully infringe and/or induce or contribute to
7 the infringement of the '647 patent.

8 30. As a proximate result of Defendants' acts of infringement, Stratagene has been
9 damaged in an amount not yet determined, and has been irreparably injured by these infringing
10 activities, and Stratagene will continue to be damaged by such acts in the future unless Defendants'
11 infringing activities are enjoined by this Court.

12 31. Upon information and belief, Defendants' infringement of the '647 patent has been,
13 and continues to be, willful, and deliberate.

14 Wherefore, Plaintiff prays for relief as set forth herein.

15 **COUNT 4: INFRINGEMENT OF THE '591 PATENT**

16 32. Plaintiff realleges and incorporates by reference herein as fully set forth Paragraphs 1
17 through 31 as set forth above.

18 33. Upon information and belief, Defendants have infringed and continues to infringe one
19 or more claims of the '591 patent by making, having made, using, offering for sale, and/or selling
20 methods and/or apparatus for irradiating biological specimens – including but not limited to the GS
21 Gene Linker UV®, as those products are made, used or sold independently or in combination with
22 any accessories intended for use therewith, including but not limited to Bio-Rad's "Replacement
23 Chamber." Defendants' aforementioned activities constitute the making, having made, using,
24 selling, importing, and/or offering for sale and promoting use of the patented invention by or to
25 customers throughout the United States. Defendants will continue to do so unless enjoined by this
26 Court.

27 34. Upon information and belief, Defendants are actively inducing others to infringe,
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1 and/or committing acts of contributory infringement of one or more claims of the '591 patent
2 through Defendants' activities related to the making, having made, using, selling, importing, and/or
3 offering for sale and promoting use of, methods and/or apparatus for irradiating biological specimens
4 - including but not limited to the GS Gene Linker UV[®], as those products are made, used, or sold
5 independently or in combination with any accessories intended for use therewith, including but not
6 limited to Bio-Rad's "Replacement Chamber." Defendants' aforementioned activities constitute
7 making, having made, using, selling, importing, and/or offering for sale and promoting use of the
8 patented invention by or to customers in the United States, all in violation of 35 U.S.C. § 271.

9 35. Stratagene has provided actual notice to Defendants of its infringement of the '591
10 patent. Despite such notice, Defendants continues to willfully infringe and/or induce or contribute to
11 the infringement of the '981 patent.

12 36. As a consequence of Defendants' acts of infringement, Stratagene has been damaged
13 in an amount not yet determined, and has been irreparably injured by these infringing activities, and
14 Stratagene will continue to be damaged by such acts in the future unless Defendants' infringing
15 activities are enjoined by this Court.

16 37. Upon information and belief, Defendants' infringement of the '591 patent has been,
17 and continues to be, willful, and deliberate.

18 Wherefore, Plaintiff prays for relief as set forth herein.

19 **RELIEF REQUESTED**

20 WHEREFORE, Plaintiff Stratagene requests the Court enter judgment:

21 A. That Defendants be declared to have infringed, induced, and/or contributed to the
22 infringement of claims of the '263, '981, '647, and/or '591 patents.

23 B. That Defendants, their officers, agents, servants, employees, and attorneys, and all
24 those in active concert or participation with them or any of them who receive actual notice of an
25 order, be preliminarily and permanently enjoined from further infringement of the '263, '981, '647,
26 and/or '591 patents.

27 C. That Defendants be ordered to account for and pay to Stratagene all damages caused to
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- 1 Stratagene by reason of Defendants' infringement of the '263, '981, '647, and/or '591 patents.
- 2 D. That appropriate damages be trebled by reason of the deliberate and willful
- 3 infringement of at least the '263, '981, '647, and/or '591 patents pursuant to 35 U.S.C. § 284.
- 4 E. That Stratagene be granted prejudgment and post judgment interest on the damages
- 5 caused to it by reason of Defendants' infringement of the '263, '981, '647, and/or '591 patents.
- 6 F. That this case be declared an exceptional case pursuant to 35 U.S.C. § 285 in view of
- 7 the deliberate and willful nature of the infringement by Defendants and that Stratagene be awarded
- 8 its reasonable attorney fees.
- 9 G. For costs of suit.
- 10 H. For all other relief deemed appropriate by the Court.

12 Dated: November 20, 2006 KRIEG, KELLER, SLOAN, REILLEY & ROMAN LLP

14
 15 By: *Kenn Keller*
 16 KENNETH E. KELLER
 17 Attorneys for Plaintiff
 18 STRATAGENE

19 JURY TRIAL DEMAND

20 Stratagene hereby demands a trial by jury on the above counts and all issues triable to a jury
21 in this matter.

23 Dated: November 20, 2006 KRIEG, KELLER, SLOAN, REILLEY & ROMAN LLP

24
 25 By: *Kenn Keller*
 26 KENNETH E. KELLER
 27 Attorneys for Plaintiff
 28 STRATAGENE
 29

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