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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DNA GENOTEK INC., a Delaware Corporation,

Plaintiff,

v.

SPECTRUM SOLUTIONS L.L.C., a Utah Limited Liability Company; and SPECTRUM DNA, a Utah Limited Liability Company,

Defendants.

Case No. 3:16-cv-01544-JLS-NLS

**DECLARATION OF
JOHN M. COLLINS, PH.D.
IN SUPPORT OF
PLAINTIFF'S REPLY IN SUPPORT
OF MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. Janis L. Sammartino
Crm: 4A
Date: Sept. 29, 2016
Time: 1:30 p.m.

ANCESTRY EX. 1026

1 I, John M. Collins, Ph.D., hereby declare as follows:

2
3 1. I make this declaration in support of DNA Genotek Inc.'s ("DNA
4 Genotek's") Reply in Support of its Motion for Preliminary Injunction. The
5 following declaration is based on my personal knowledge. If called to testify, I
6 could testify competently as to the matters set forth herein.

7 **I. INTRODUCTION AND QUALIFICATIONS**

8 2. I hold a B.S. in mechanical engineering with a minor in economics
9 from Rensselaer Polytechnic Institute. I also hold a Ph.D. and M.S. in Mechanical
10 Engineering from the Massachusetts Institute of Technology, with a concentration
11 on fluid mechanics, and have over 30 years' experience in the design and
12 development of medical products.

13 3. Since 2008, I have held a leadership position at the Consortia for
14 Improving Medicine with Innovation and Technology ("CIMIT"). Founded by
15 Massachusetts General Hospital, Massachusetts Institute of Technology, Brigham
16 and Women's Hospital, and Draper Labs in 1998, CIMIT is a non-profit consortium
17 of Boston's leading teaching hospitals and universities and a growing list of
18 national and international affiliates. CIMIT is directed to stimulating and
19 accelerating translational medical research into patient care in the domain of
20 devices, procedures, and clinical systems engineering. I am CIMIT's Chief
21 Operating Officer.

22 4. Since 2008, I have also held the position of chief technology and
23 innovation officer at Reed Collins, LLC, a company which provides consulting
24 services for academic institutions and businesses in the fields of technology,
25 commercialization, and business development.

26 5. I am a named inventor on over 20 U.S. patents, including 11 patents
27 related to medical devices. I have designed many products, including minimally
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1 invasive surgical access devices, trocars, and a saliva testing device for female
2 fertility monitoring.

3 6. I have been retained as an expert in more than 20 patent cases in my
4 career, including one case involving a fluid collection device for chest drainage. I
5 have testified in deposition approximately 25 times and at trial approximately 10
6 times.

7 7. In 2015, counsel for DNA Genotek contacted me and inquired whether
8 I would help the court to better understand the evidence in the litigation entitled
9 *DNA Genotek Inc. v. Spectrum DNA and Spectrum Solutions L.L.C., and Spectrum*
10 *Packaging, LLC*, Case No. 15-cv-00661-SLR (D. Del.) (“the Delaware Action”).
11 Specifically, I was asked to consider the validity of U.S. Patent No. 8,221,381 (“the
12 ’381 patent”) in the context of DNA Genotek’s Motion for a Preliminary Injunction
13 against the Spectrum entities in the United States District Court for the District of
14 Delaware. After considering the ’381 patent and some prior art references, I agreed
15 to help. I since served as an expert in an *Inter Partes Review* proceedings before
16 the United States Patent and Trademark Office, regarding the ’381 patent. I have
17 now been asked to serve as an expert regarding U.S. Patent No. 9,207,164 (“the
18 ’164 patent) in the context of DNA Genotek’s motion for preliminary injunction in
19 this case.

20 8. I have been asked to provide analysis and expert opinions on whether
21 any of claims 1, 7, 9, 16, 42, 54, and 55 of the ’164 patent is invalid as anticipated
22 under 35 U.S.C. § 102 or invalid as obvious under 35 U.S.C. § 103 in light of
23 specific prior art cited by the Spectrum Defendants and their expert, Dr. Terry
24 Layton, in conjunction with Spectrum’s opposition to DNA Genotek’s motion for a
25 preliminary injunction. I have also been asked to provide analysis and expert
26 opinions on whether any of these claims are invalid for lack of written description.

27 9. For my work as an expert, I am being compensated at the rate of \$400
28 per hour. My compensation is not contingent on the opinions I reach or on the

1 outcome of any legal action, mediation, arbitration, or the terms of any settlement
2 in this case.

3 10. I reserve the right to supplement my opinions to address any
4 information obtained, or positions taken, based on any new information that comes
5 to light throughout this litigation.

6 **II. BASIS FOR OPINIONS**

7 **A. Materials Considered**

8 11. I have reviewed and considered the '164 patent, a true and correct
9 copy of which is attached to this declaration as Exhibit 1, and its prosecution
10 history. I have also reviewed and considered the '381 patent, a true and correct
11 copy of which is attached to this declaration as Exhibit 2.

12 12. I have also reviewed and considered the following materials, which I
13 have been asked to assume for purposes of this declaration are prior art to the '164
14 patent:

- 15 • U.S. Pat. No. 7,645,424 to O'Donovan ("O'Donovan," "the '424
16 patent", or "the O'Donovan '424 patent"), a true and correct copy of
17 which is attached to this declaration as Exhibit 3.
- 18 • WO 98/03265 ("the KCCL '265 application") (in the form of an
19 English translation provided by Spectrum's counsel), a true and correct
20 copy of which is attached to this declaration as Exhibit 4; and
- 21 • WO 03/104251 A2 ("the Birnboim '251 application"), a true and
22 correct copy of which is attached to this declaration as Exhibit 5.

23 13. In addition, I have reviewed the following documents:

- 24 • The October 2, 2015, declaration of Terry N. Layton, Ph.D. in Support
25 of Defendants' Opposition to DNA Genotek's Motion for Preliminary
26 Injunction, true and correct excerpts of which are attached to this
27 declaration as Exhibit 6.

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- The November 19, 2015, declaration of Terry N. Layton, Ph.D. in Support of Defendants’ Surreply in Support of Defendants’ Brief in Opposition to DNA Genotek’s Motion for Preliminary Injunction, true and correct excerpts of which are attached to this declaration as Exhibit 7.
- The prosecution history of the ’381 patent, true and correct excerpts of which are attached to this declaration as Exhibits 8 through 12;
- The transcript of Dr. Layton’s August 26, 2016, deposition, true and correct excerpts of which are attached to this declaration as Exhibit 13;
- The transcript of Dr. Layton’s October 14, 2015, deposition, true and correct excerpts of which are attached to this declaration as Exhibit 14;
- Plaintiff’s deposition exhibit PX57, a true and correct copy of which is attached to this declaration as Exhibit 15;
- Plaintiff’s deposition exhibit PX153, a true and correct copy of which is attached to this declaration as Exhibit 16;
- Plaintiff’s deposition exhibit PX154, a true and correct copy of which is attached to this declaration as Exhibit 17;
- Plaintiff’s deposition exhibit PX155, a true and correct copy of which is attached to this declaration as Exhibit 18;
- A document titled Standard Test Method for Static and Kinetic coefficients of Friction of Plastic Film and Sheeting, a true and correct copy of which is attached to this declaration as Exhibit 19;
- The August 24, 2015, Declaration of Juan C. Lasheras, Ph.D. in support of DNA Genotek’s Motion for Preliminary Injunction, true and correct excerpts of which are attached to this declaration as Exhibit 20;

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