

v.
SPECTRUM DNA, SPECTRUM SOLUTIONS
L.L.C., and SPECTRUM PACKAGING L.L.C.,
Defendant.

)
) **JURY TRIAL DEMANDED**
)
) **PUBLIC VERSION**
)
)

**DEFENDANTS' BRIEF IN OPPOSITION TO
DNA GENOTEK'S MOTION FOR PRELIMINARY INJUNCTION**

OF COUNSEL:

Michael Sacksteder
FENWICK & WEST LLP
555 California Street, 12th Floor
San Francisco, CA 94104
Tel: (415) 875-2300

Melanie Mayer
FENWICK & WEST LLP
1191 Second Avenue
Seattle, WA 94104
Tel: (206) 389-4510

Dated: October 2, 2015
PUBLIC VERSION
Dated: October 9, 2015
1206160/42724

David E. Moore (#3983)
Bindu A. Palapura (#5370)
Stephanie E. O'Byrne (#4446)
POTTER ANDERSON & CORROON LLP
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19801
Tel: (302) 984-6000
dmoore@potteranderson.com
bpalapura@potteranderson.com
sobyryne@potteranderson.com

*Attorneys for Defendants Spectrum DNA,
Spectrum Solutions L.L.C., and Spectrum
Packaging L.L.C.*

ANCESTRY EX. 10

III.	STATEMENT OF ADDITIONAL FACTS	3
A.	Spectrum	3
B.	Relevant Aspects of the '381 Patent	3
C.	Relevant Aspects of the Spectrum Product.....	5
D.	Prior Art to the '381 Patent.....	6
	1. United States Patent No. 7,645,424	6
	2. PCT Publication WO 98/03265	7
IV.	ARGUMENT.....	8
A.	This Court Lacks Jurisdiction to Decide Genotek's Motion.	8
B.	Genotek Is Highly Unlikely to Succeed on the Merits.	9
	1. The Spectrum Product Does Not Infringe the '381 Patent Because It Does Not Include a "Vial Comprising . . . a Piercing Member."	9
	2. The Spectrum Product Does Not Infringe the '381 Patent Because It Does Not Include a Piercing Member with a "First Pointed Corner.".....	14
	3. Claim 1 of the '381 Patent Is Invalid in Light of the Prior Art.....	15
C.	Genotek Has Failed to Demonstrate Irreparable Harm.....	21
	1. Price erosion does not necessarily cause irreparable harm, and even if it did, no evidence supports Genotek's price erosion theories.	22
	2. No evidence supports Genotek's argument that Spectrum is harming its reputation with its current and potential customers.....	24
	3. No evidence supports Genotek's argument that Spectrum is harming its business operations.	26

E.	The Balance of Hardships Favors Spectrum.....	29
F.	The Public Interest Weighs Against an Injunction.	30
V.	CONCLUSION.....	30

96 F. Supp. 2d 1042 (C.D. Cal. 2000)	25
<i>Altana Pharma AG v. Teva Pharms. USA, Inc.</i> , 566 F.3d 999 (Fed. Cir. 2009).....	1, 16
<i>Am. Calcar, Inc. v. Am. Honda Motor Co.</i> , 651 F.3d 1318 (Fed. Cir. 2011).....	15
<i>Apple Inc. v. Samsung Elecs. Co.</i> , 735 F.3d 1352 (Fed. Cir. 2013).....	22, 25, 27
<i>Belden Techs., Inc. v. Superior Essex Commc 'ns. LP</i> , 802 F. Supp. 2d 555 (D. Del. 2011).....	23
<i>Bio-Tech. Gen. Corp. v. Genentech, Inc.</i> , 80 F.3d 1553 (Fed. Cir. 1996).....	26, 27
<i>Celgard, LLC v. LG Chem., Ltd.</i> , No. 2014-1675, 2015 U.S. App. LEXIS 14079 (Fed. Cir. Aug. 12, 2015)	8
<i>Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.</i> , 868 F.2d 1251 (Fed. Cir. 1989).....	12
<i>Demarini Sports, Inc. v. Worth, Inc.</i> , 239 F.3d 1314 (Fed. Cir. 2001).....	12
<i>Douglas Dynamics, LLC v. Buyers Prods. Co.</i> , 717 F.3d 1336 (Fed. Cir. 2013).....	24, 25, 26
<i>eBay Inc. v. MercExchange, L.L.C.</i> , 547 U.S. 388 (2006).....	22
<i>Extrel FTMS, Inc. v. Bruker Instruments, Inc.</i> , No. 91-1216, 1992 U.S. App. LEXIS 1038 (Fed. Cir. Jan. 24, 1992).....	13
<i>Freedman Seating Co. v. Am. Seating Co.</i> , 420 F.3d 1350 (Fed. Cir. 2005).....	13
<i>Gemalto S.A. v. HTC Corp.</i> , 754 F.3d 1364 (Fed. Cir. 2014).....	13

424 F.3d 1356 (Fed. Cir. 2005).....	21
<i>Marquip, Inc. v. Fosber Am., Inc.</i> , 198 F.3d 1363 (Fed. Cir. 1999).....	12
<i>Moore U.S.A., Inc. v. Standard Register Co.</i> , 229 F.3d 1091 (Fed. Cir. 2000).....	12
<i>Neology, Inc. v. Fed. Signal Corp.</i> , C.A. No. 11-672-LPS/MPT, 2012 U.S. Dist. LEXIS 83984 (D. Del. June 18, 2012).....	21-22, 24
<i>Nutrition 21 v. United States</i> , 930 F.2d 867 (Fed. Cir. 1991).....	29
<i>Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.</i> , No. 08-309-LPS, 2014 U.S. Dist. LEXIS 88488 (D. Del. June 30, 2014)	25
<i>Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.</i> , No. C 09-5235 MMC, 2015 U.S. Dist. LEXIS 17492 (N.D. Cal. Feb. 12, 2015).....	25
<i>Quest Integrity USA, LLC v. Clean Harbors Indus. Servs., Inc.</i> , C.A. No. 14-1482-SLR, 2015 U.S. Dist. LEXIS 76696 (D. Del. June 12, 2015).....	23
<i>Reebok Int'l, Ltd v. J. Baker, Inc.</i> , 32 F.3d 1552 (Fed. Cir. 1994).....	30
<i>Rhine v. Casio, Inc.</i> , 183 F.3d 1342 (Fed. Cir. 1999).....	11
<i>Riverbed Tech., Inc. v. Silver Peak Sys., Inc.</i> , C.A. No. 11-484-RGA, 2014 U.S. Dist. LEXIS 127651 (D. Del. Sept. 12, 2014).....	27, 28
<i>Sage Prods. Inc. v. Devon Indus., Inc.</i> , 126 F.3d 1420 (Fed. Cir. 1997).....	1, 11-12
<i>Sanofi-Synthelabo v. Apotex, Inc.</i> , 470 F.3d 1368 (Fed. Cir. 2006).....	27

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.