

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**ADVANCED TECHNOLOGY  
MATERIALS, INC.,  
ATMI PACKAGING, INC.,  
and  
LEVTECH, INC.,**

Plaintiffs,

v.

**MILLIPORE CORPORATION,  
MERCK KGaA,  
CONCORD INVESTMENTS  
CORPORATION,  
EMD MILLIPORE CORPORATION,  
EMD MILLIPORE, INC.,  
and  
THERMO FISHER SCIENTIFIC, INC.**

Defendants.

Civil Action No.:

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiffs Advanced Technology Materials, Inc., ATMI Packaging, Inc. and LevTech, Inc. (together “Plaintiffs”) bring this action against defendants Millipore Corporation, Merck KGaA, Concord Investments Corporation, EMD Millipore Corporation, EMD Millipore, Inc., and Thermo Fisher Scientific, Inc. for patent infringement. By this Complaint, Plaintiffs seek, *inter alia*, monetary damages and injunctive relief and allege as follows:

**PARTIES**

1. Plaintiff Advanced Technology Materials, Inc. (hereafter “ATMI”) is a Delaware corporation with a principal place of business at 7 Commerce Drive, Danbury, Connecticut.

2. Plaintiff ATMI Packaging, Inc. (hereafter “ATMI Packaging”), a wholly-owned subsidiary of ATMI, is a Minnesota corporation with a principal place of business at 10851 South Louisiana Avenue, South Bloomington, Minnesota.

3. Plaintiff LevTech, Inc. (hereafter “LevTech”), a wholly-owned subsidiary of ATMI, is a Delaware corporation with a principal place of business at 7 Commerce Drive, Danbury, Connecticut.

4. Upon information and belief, defendant Merck KGaA (hereafter “Merck”) is a German corporation with a principal place of business at Frankfurter Str. 250, 64293 Darmstadt, Germany.

5. Upon information and belief, Concord Investments Corporation (“Concord Investments”), a wholly-owned subsidiary of defendant Merck, is a Massachusetts corporation with a principal place of business at One Technology Place, Rockland, Massachusetts.

6. Upon information and belief, defendant Millipore Corporation (hereafter “Millipore Corporation”), a wholly-owned subsidiary of defendant Concord Investments, is a Massachusetts corporation with a principal place of business at 290 Concord Road, Billerica, Massachusetts.

7. Upon information and belief, EMD Millipore Corporation (“EMD Corp.”) is a division of defendant Merck with a principal place of business at 290 Concord Road, Billerica, Massachusetts.

8. Upon information and belief, EMD Millipore, Inc. (“EMD Inc.”) is a division of defendant Merck with a principal place of business at 290 Concord Road, Billerica, Massachusetts.

9. Upon information and belief, defendant Thermo Fisher Scientific, Inc. (hereafter “ThermoFisher”) is a Delaware corporation with a principal place of business at 81 Wyman Street, Waltham, Massachusetts.

### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction over this action for patent infringement pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338(a).

11. This Court has personal jurisdiction over Merck because it is a German corporation with one or more places of business in Massachusetts and, upon information and belief, makes, uses, sells and/or offers to sell infringing products in Massachusetts.

12. This Court has personal jurisdiction over Concord Investments because it is a Massachusetts corporation with a principal place of business in Massachusetts and, upon information and belief, makes, uses, sells and/or offers to sell infringing products in Massachusetts.

13. This Court has personal jurisdiction over Millipore because it is a Massachusetts corporation with a principal place of business in Massachusetts and, upon information and belief, makes, uses, sells and/or offers to sell infringing products in Massachusetts.

14. This Court has personal jurisdiction over EMD Corp. because it has a principal place of business in Massachusetts and, upon information and belief, makes, uses, sells and/or offers to sell infringing products in Massachusetts.

15. This Court has personal jurisdiction over EMD Inc. because it has a principal place of business in Massachusetts and, upon information and belief, makes, uses, sells and/or offers to sell infringing products in Massachusetts.

16. This Court has personal jurisdiction over ThermoFisher because it has a principal place of business in Massachusetts and, upon information and belief, makes, uses, sells and/or offers to sell infringing products in Massachusetts.

17. Venue is proper under 28 U.S.C. § 1391(b) (c) and (d) and 28 U.S.C. § 1400(b).

### **ATMI'S BUSINESS, PRODUCTS AND PATENTS**

18. ATMI is a global leader in providing process materials and process technology for the semiconductor, display and life science industries.

19. ATMI, through innovation of its own and through the innovations of its wholly-owned subsidiaries, ATMI Packaging and LevTech, is a technology leader in the field of single-use mixing systems, single-use bioprocess systems and consumables for the pharmaceutical and biopharmaceutical industries. ATMI's innovative, single-use mixers and bioreactors drive bioprocess efficiency and deliver value for biopharmaceutical companies in the United States and around the world.

20. LevTech is the owner of a portfolio of United States and foreign patents relating to single-use mixing and bioprocess systems, including U.S. Patent No. 7,695,186, U.S. Patent No. 7,481,572, U.S. Patent No. 7,086,778, U.S. Patent No. 7,434,983, U.S. Patent No. 7,267,479, U.S. Patent No. 7,469,884 and U.S. Patent No. 7,384,027 (hereafter "the Asserted Patents").

21. ATMI, through its wholly-owned subsidiaries, ATMI Packaging and LevTech, manufactures and sells single-use mixing and bioprocess systems covered by one or more claims of the Asserted Patents in the United States and elsewhere in the world.

### **MILLIPORE'S SINGLE-USE MIXING SYSTEM**

22. Upon information and belief, the Mobius Single-use Mixing System (hereafter "Mobius") is a single-use mixing system that defendants Merck, Concord Investments, Millipore

Corporation, EMD Corp. and/or EMD, Inc. manufacture, use, sell and/or offer for sale in Massachusetts and elsewhere in the United States.

**THERMOFISHER'S SINGLE-USE MIXING SYSTEMS AND SINGLE-USE BIOPROCESS SYSTEM**

23. Upon information and belief, Thermo Fisher's Thermo Scientific Hyclone Mixtainer System is a single-use mixing system that Thermo Fisher manufactures, uses, sells and/or offers for sale in Massachusetts and elsewhere in the United States.

24. Upon information and belief, Thermo Fisher's Thermo Scientific Hyclone Single-Use Mixer (S.U.M.) is a single-use mixing system that Thermo Fisher manufactures, uses, sells and/or offers for sale in Massachusetts and elsewhere in the United States.

25. Upon information and belief, Thermo Fisher's Thermo Scientific Hyclone Single-Use Bioreactor (S.U.B.) is a single-use bioprocess system that Thermo Fisher manufactures, uses, sells and/or offers for sale in Massachusetts and elsewhere in the United States.

**COUNT I  
(INFRINGEMENT OF U.S. PATENT NO. 7,695,186)**

26. Plaintiffs re-state and incorporate paragraphs 1-25 of this Complaint as if fully set forth herein.

27. LevTech is the owner of and has full right, title, and interest in and to U.S. Patent No. 7,695,186 (the "186" patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

28. In violation of one or more sections of 35 U.S.C. § 271, defendants Merck, Concord Investments, Millipore Corporation, EMD Corp. and/or EMD, Inc. (collectively "Millipore") have infringed, and continue to infringe the '186 patent by making, using, selling,

and/or offering to sell the Mobius Single-use Mixing System in Massachusetts and elsewhere in the United States.

29. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the '186 patent by making, using, selling, and/or offering to sell its Thermo Scientific Hyclone Mixtainer System in Massachusetts and elsewhere in the United States.

30. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the '186 patent by making, using, selling, and/or offering to sell its Thermo Scientific Hyclone Single-Use Mixer (S.U.M.) in Massachusetts and elsewhere in the United States.

31. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the '186 patent by making, using, selling, and/or offering to sell its Thermo Scientific Hyclone Single-Use Bioreactor (S.U.B.) in Massachusetts and elsewhere in the United States.

32. Plaintiffs have complied with the statutory requirement of placing a notice of the '186 patent on all applicable single-use mixing and/or single-use bioprocess systems they manufacture and sell.

33. Millipore's infringement of the '186 patent is causing Plaintiffs reparable and irreparable harm.

34. Millipore's infringement will continue to injure Plaintiffs and cause Plaintiffs to suffer financial damage in an amount to be proven at trial.

35. Thermo Fisher's infringement of the '186 patent is causing Plaintiffs reparable and irreparable harm.

36. Thermo Fisher's infringement will continue to injure Plaintiffs and cause Plaintiffs to suffer financial damage in an amount to be proven at trial.

**COUNT II**  
**(INFRINGEMENT OF U.S. PATENT NO. 7,481,572)**

37. Plaintiffs re-state and incorporate paragraphs 1-36 of this Complaint as if fully set forth herein.

38. LevTech is the owner of and has full right, title, and interest in and to U.S. Patent No. 7,481,572 (the "'572" patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

39. In violation of one or more sections of 35 U.S.C. § 271, Millipore has infringed, and continues to infringe the '572 patent by making, using, selling, and/or offering to sell its Mobius Single-use Mixing System in Massachusetts and elsewhere in the United States.

40. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the '572 patent by making, using, selling, and/or offering to sell its Thermo Scientific Hyclone Mixtainer System in Massachusetts and elsewhere in the United States.

41. Plaintiffs have complied with the statutory requirement of placing a notice of the '572 patent on all applicable single-use mixing and/or single-use bioprocess systems they manufacture and sell.

42. Millipore's infringement of the '572 patent is causing Plaintiffs reparable and irreparable harm.

43. Millipore's infringement will continue to injure Plaintiffs and cause Plaintiffs to suffer financial damage in an amount to be proven at trial.

44. Thermo Fisher's infringement of the '572 patent is causing Plaintiffs reparable and irreparable harm.

45. Thermo Fisher's infringement will continue to injure Plaintiffs and cause Plaintiffs to suffer financial damage in an amount to be proven at trial.

**COUNT III  
(INFRINGEMENT OF U.S. PATENT NO. 7,086,778)**

46. Plaintiffs re-state and incorporate paragraphs 1-45 of this Complaint as if fully set forth herein.

47. LevTech is the owner of and has full right, title, and interest in and to U.S. Patent No. 7,086,778 (the "'778" patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

48. In violation of one or more sections of 35 U.S.C. § 271, Millipore has infringed, and continues to infringe the '778 patent by making, using, selling, and/or offering to sell its Mobius Single-use Mixing System in Massachusetts and elsewhere in the United States.

49. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the '778 patent by making, using, selling, and/or offering to sell its Thermo Scientific Hyclone Mixtainer System in Massachusetts and elsewhere in the United States.

50. Plaintiffs have complied with the statutory requirement of placing a notice of the '778 patent on all applicable single-use mixing and/or single-use bioprocess systems they manufacture and sell.

51. Upon information and belief, Thermo Fisher has had notice of the '778 patent, including the claims therein, and has deliberately and willfully continued to make, use, sell,



and/or offer to sell infringing single-use mixing and single-use bioprocess systems despite this knowledge.

52. Millipore's infringement of the '778 patent is causing Plaintiffs reparable and irreparable harm.

53. Millipore's infringement will continue to injure Plaintiffs and cause Plaintiffs to suffer financial damage in an amount to be proven at trial.

54. Thermo Fisher's infringement of the '778 patent is causing Plaintiffs reparable and irreparable harm.

55. Thermo Fisher's infringement will continue to injure Plaintiffs and cause Plaintiffs to suffer financial damage in an amount to be proven at trial.

**COUNT IV  
(INFRINGEMENT OF U.S. PATENT NO. 7,434,983)**

56. Plaintiffs re-state and incorporate paragraphs 1-55 of this Complaint as if fully set forth herein.

57. LevTech is the owner of and has full right, title, and interest in and to U.S. Patent No. 7,434,983 (the "'983" patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

58. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the '983 patent by making, using, selling, and/or offering to sell its Thermo Scientific Hyclone Single-Use Mixer (S.U.M.) in Massachusetts and elsewhere in the United States.

59. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the '983 patent by making, using, selling, and/or offering to

sell its Thermo Scientific Hyclone Single-Use Bioreactor (S.U.B.) in Massachusetts and elsewhere in the United States.

60. Plaintiffs have complied with the statutory requirement of placing a notice of the '983 patent on all applicable single-use mixing and/or single-use bioprocess systems they manufacture and sell.

61. Thermo Fisher's infringement of the '983 patent is causing Plaintiffs reparable and irreparable harm.

62. Thermo Fisher's infringement will continue to injure Plaintiffs and cause Plaintiffs to suffer financial damage in an amount to be proven at trial.

**COUNT V  
(INFRINGEMENT OF U.S. PATENT NO. 7,267,479)**

63. Plaintiffs re-state and incorporate paragraphs 1-62 of this Complaint as if fully set forth herein.

64. LevTech is the owner of and has full right, title, and interest in and to U.S. Patent No. 7,267,479 (the "'479" patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

65. In violation of one or more sections of 35 U.S.C. § 271, Millipore has infringed, and continues to infringe the '479 patent by making, using, selling, and/or offering to sell its Mobius Single-use Mixing System in Massachusetts and elsewhere in the United States.

66. Plaintiffs have complied with the statutory requirement of placing a notice of the '479 patent on all applicable single-use mixing and/or single-use bioprocess systems they manufacture and sell.

67. Millipore's infringement of the '479 patent is causing Plaintiffs reparable and irreparable harm.

68. Millipore's infringement will continue to injure Plaintiffs and cause Plaintiffs to suffer financial damage in an amount to be proven at trial.

**COUNT VI  
(INFRINGEMENT OF U.S. PATENT NO. 7,469,884)**

69. Plaintiffs re-state and incorporate paragraphs 1-68 of this Complaint as if fully set forth herein.

70. LevTech is the owner of and has full right, title, and interest in and to U.S. Patent No. 7,469,884 (the "'884" patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

71. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the '884 patent by making, using, selling, and/or offering to sell its Thermo Scientific Hyclone Single-Use Bioreactor (S.U.B.) in Massachusetts and elsewhere in the United States.

72. Plaintiffs have complied with the statutory requirement of placing a notice of the '884 patent on all applicable single-use bioprocess systems it manufactures and sells.

73. Thermo Fisher's infringement of the '884 patent is causing Plaintiffs reparable and irreparable harm.

74. Thermo Fisher's infringement will continue to injure Plaintiffs and cause Plaintiffs to suffer financial damage in an amount to be proven at trial.

**COUNT VII  
(INFRINGEMENT OF U.S. PATENT NO. 7,384,027)**

75. Plaintiffs re-state and incorporate paragraphs 1-74 of this Complaint as if fully set forth herein.

76. LevTech is the owner of and has full right, title, and interest in and to U.S. Patent No. 7,384,027 (the “‘027” patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

77. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the ‘027 patent by making, using, selling, and/or offering to sell its Thermo Scientific Hyclone Single-Use Bioreactor (S.U.B.) in Massachusetts and elsewhere in the United States.

78. Plaintiffs have complied with the statutory requirement of placing a notice of the ‘027 patent on all applicable single-use bioprocess systems they manufacture and sell.

79. Thermo Fisher’s infringement of the ‘884 patent is causing Plaintiffs reparable and irreparable harm.

80. Thermo Fisher’s infringement will continue to injure Plaintiffs and cause Plaintiffs to suffer financial damage in an amount to be proven at trial.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request this Court to grant the following relief, and any other relief the Court may deem proper:

A. Enter judgment that Millipore infringes U.S. Patent No. 7,695,186, U.S. Patent No. 7,481,572, U.S. Patent No. 7,086,778 and U.S. Patent No. 7,267,479 in violation of 35 U.S.C. §271 *et seq.*

B. Enter judgment that Thermo Fisher infringes U.S. Patent No. 7,695,186, U.S. Patent No. 7,481,572, U.S. Patent No. 7,086,778, U.S. Patent No. 7,434,983 and U.S. Patent No. 7,469,884 and U.S. Patent No. 7,384,027 in violation of 35 U.S.C. §271 *et seq.*

C. Temporarily, preliminarily and permanently enjoin Millipore, its officers, agents, employees and representatives, and all those controlled by or acting in concert or privity with them, from infringing U.S. Patent No. 7,695,186, U.S. Patent No. 7,481,572, U.S. Patent No. 7,086,778 and U.S. Patent No. 7,267,479.

D. Temporarily, preliminarily and permanently enjoin Thermo Fisher, its officers, agents, employees and representatives, and all those controlled by or acting in concert or privity with them, from infringing U.S. Patent No. 7,695,186, U.S. Patent No. 7,481,572, U.S. Patent No. 7,086,778, U.S. Patent No. 7,434,983 and U.S. Patent No. 7,469,884 and U.S. Patent No. 7,384,027.

E. Award Plaintiffs monetary damages for Millipore's infringement of U.S. Patent No. 7,695,186, U.S. Patent No. 7,481,572, U.S. Patent No. 7,086,778 and U.S. Patent No. 7,267,479.

F. Award Plaintiffs monetary damages for Thermo Fisher's infringement of U.S. Patent No. 7,695,186, U.S. Patent No. 7,481,572, U.S. Patent No. 7,086,778, U.S. Patent No. 7,434,983 and U.S. Patent No. 7,469,884 and U.S. Patent No. 7,384,027.

G. Award Plaintiffs treble damages and its attorneys' fees for Thermo Fisher's willful infringement of U.S. Patent No. 7,086,778.

H. Award Plaintiffs all other relief deemed just and proper by the Court.

**JURY DEMAND**

Plaintiffs demand trial by jury for all issues so triable.

ADVANCED TECHNOLOGY MATERIALS,  
INC., ATMI PACKAGING, INC. and  
LEVTECH, INC.

Date: July 26, 2010

By: /s/ Paul J. Hayes  
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