

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

DIAGNOSTIC DEVICES, INC., and	)	
PRODIGY DIABETES CARE, LLC,	)	<b>CASE NO.: 3:12-cv-00296</b>
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
TAIDOC TECHNOLOGY CORPORATION,	)	
	)	
Defendant.	)	

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**COMPLAINT**  
**PARTIES, JURISDICTION, AND VENUE**

1. Diagnostic Devices, Inc. is a corporation organized under the laws of North Carolina, with its principal place of business in Charlotte, Mecklenburg County, North Carolina (“DDI”).

2. Prodigy Diabetes Care, LLC is a limited liability company organized under the laws of North Carolina, with its principal place of business in Charlotte, Mecklenburg County, North Carolina (“Prodigy”). Collectively, DDI and Prodigy are referred to as the “Plaintiffs” herein.

3. TaiDoc Technology Corporation is a manufacturer of medical products, and was organized and exists under the laws of the Republic of China, with its principal place of business in San-Chung, Taipei County, Taiwan (“TaiDoc”).

4. This Court has jurisdiction over the parties pursuant to 28 U.S.C. § 1332 because the Defendant is diverse in citizenship with all of the Plaintiffs, and the amount in controversy exceeds \$75,000.00.

5. This Court has jurisdiction over claims in this matter as they arise under Title 35 of the United States Code governing patents, for which jurisdiction is granted in 28 U.S.C. § 1331, 1338.

6. This Court has jurisdiction over claims of the parties that do not independently warrant subject matter jurisdiction of this Court pursuant to the authority granted in 28 U.S.C. § 1367.

7. This Court can enter declaratory relief sought in this Complaint because an actual case and controversy exists between the parties within the scope of this Court's jurisdiction pursuant to 28 U.S.C. §§2201 and 2202. An actual case and controversy exists because, among other things: (1) TaiDoc sent a Cease-and-Desist Letter related to TaiDoc patents U.S. Patent Nos. 7,514,040 and 7,316,766 and the alleged infringement thereof to the Plaintiffs on or about May 1, 2012; and (2) TaiDoc filed suit on May 4, 2012 for patent infringement against Plaintiffs in the Eastern District of Pennsylvania (Case 2:12-cv-02457-TJS).

8. Defendant has agreed in writing to jurisdiction of this Court over Defendant related to the matters in dispute herein.

9. Venue in this Court is appropriate as all parties conducted business in Charlotte, North Carolina. Defendant has agreed in writing to venue in this Court related to matters in dispute herein.

### **FACTS RELEVANT TO COMPLAINT**

10. For a period of time between 2005 and the fourth calendar quarter of 2008, TaiDoc manufactured products for DDI, which DDI sold throughout the world.

11. During the fourth calendar quarter of 2008, DDI ceased buying products from TaiDoc, and, instead, began to distribute products made by another manufacturer.

12. A dispute arose between DDI and TaiDoc, and DDI filed a lawsuit in the Federal District Court for the Western District of North Carolina, captioned Diagnostic Devices, Inc. v TaiDoc Technology Corporation, later consolidated with another action as 3:08-CV-00149-MOC-DCK (the "Dismissed WDNC Lawsuit").

13. Ryder, Lu, Mazzeo & Konieczny, LLC ("Ryder Lu"), among other law firms, represented TaiDoc in the Dismissed WDNC Lawsuit.

14. TaiDoc amended its counterclaims in the Dismissed WDNC Lawsuit on July 28, 2011 (the "Amended Counterclaims"), and added Prodigy Diabetes Care, LLC as a

counterclaim defendant, among other new defendants. A true and accurate copy of the Amended Counterclaims is attached as Exhibit “A”, and incorporated herein. Among the counterclaim allegations were the following:

- a. In paragraph 29 of the Amended Counterclaims, TaiDoc, through its attorneys Ryder Lu, alleged that “In or about October 2008, TaiDoc became aware that Plaintiff was marketing a blood glucose monitoring system under the PRODIGY AUTOCODE device name that was manufactured by a third party.”
- b. In paragraph 34 of the Amended Counterclaims, TaiDoc, through its attorneys Ryder Lu, alleged that “TaiDoc learned that DDI was selling, or advertising, certain blood glucose meters and test strips supplied by third-party manufacturers.... These products include the ‘Prodigy Autocode’....”
- c. In paragraphs 36 and 106 of the Amended Counterclaims, TaiDoc, through its attorneys Ryder Lu, alleged that “DDI was advertising and selling non-TaiDoc manufactured test strips for use in DDI’s TaiDoc-manufactured meters causing confusion....”
- d. In paragraph 43 of the Amended Counterclaims, TaiDoc, through its attorneys Ryder Lu, alleged that “To date, DDI continues to offer for sale, or advertise, competing products, including the ‘Prodigy AutoCode’....”
- e. In paragraph 56 of the Amended Counterclaims, TaiDoc, through its attorneys Ryder Lu, alleged that “DDI’s statement in its February 6, 2009 press release that it owns all of the intellectual property, *including the patents*, for the Prodigy Autocode, Prodigy Voice meters and Prodigy test strips is not only false....” (emphasis added).
- f. In paragraph 63 of the Amended Counterclaims, TaiDoc, through its attorneys Ryder Lu, alleged that “DDI breached its duty by preventing and frustrating TaiDoc from receiving the benefits of the Agreement by ... (2) improperly obtaining, using ... intellectual property....”
- g. In paragraph 94 of the Amended Counterclaims, TaiDoc, through its attorneys Ryder Lu, alleged that “TaiDoc has spent a considerable amount of time, effort and money developing proprietary information, processes, designs,

formulas,...including...ink, enzymes and electrical resistance used in its test strips for use in its meters, the internal circuit design, the test control solution and the test strips dot-print machine....”

- h. In paragraph 113 of the Amended Counterclaims, TaiDoc, through its attorneys Ryder Lu, alleged that “DDI received and retained a benefit by acquiring and using TaiDoc’s ... intellectual property....”
- i. In paragraphs 115 and 116 of the Amended Counterclaims, TaiDoc, through its attorneys Ryder Lu, alleged that DDI and Prodigy “received and retained a benefit by acquiring TaiDoc’s ... intellectual property to manufacture test strips for use in TaiDoc and non-TaiDoc meters.”
- j. In its prayer for relief in the Amended Counterclaims, TaiDoc, through its attorneys Ryder Lu, asked the Court:
  - i. In subparagraph (o), to order DDI and Prodigy to “disseminate ... ***an acknowledgement that TaiDoc owns the patents for the Prodigy Autocode, Prodigy Voice meters and Prodigy test strips;***” (emphasis added)
  - ii. In subparagraph (p), to enjoin DDI and Prodigy from ... “a. Selling any blood glucose testing meters or strips ... having any one or more of the following characteristics: ... ii. Strips having the same test area, test volume, reagent chemistry, shape, electrical resistance, working lead, pin to pin dimensions, plastic, plastic treatment, inks, three-layer construction, and adhesive; or iii. Strips having essentially the same test area, test volume, reagent chemistry, shape, electrical resistance, working lead, pin to pin dimensions, plastic, plastic treatment, inks, three-layer construction, and adhesive; or iv. Meters that can test the strips previously sold by TaiDoc to DDI; and b. Selling any blood glucose testing meters using the same voice as that used on TaiDoc manufactured meters previously sold to DDI.”

15. The Dismissed WDNC Lawsuit went to trial beginning on March 12, 2012, and continued through March 23, 2012.

16. The Parties entered into a universal Settlement Agreement and Release, dated March 30, 2012, after which, the Parties entered into and filed a joint Stipulation of Dismissal, with prejudice, of the Dismissed WDNC Lawsuit. A true copy of the universal Settlement Agreement and Release is attached as Exhibit “B”, and is incorporated herein.

17. Kao H. Lu, an attorney at Ryder Lu, personally appeared before this Court in the Dismissed WDNC Lawsuit.

18. On March 30, 2012, Mr. Lu forwarded to Prodigy and DDI an execution counterpart of the universal Settlement Agreement and Release, signed by the Chief Executive Officer of TaiDoc. A true and accurate copy of the email and attachment sent by Mr. Lu at Ryder Lu is attached as Exhibit “C”, and incorporated herein.

19. The Settlement Agreement and Release contains the following language at paragraph 4:

**Mutual Releases.** *Each party*, defined in this Agreement as including that Party’s predecessors, successors, directors, officers, managers, members, and their respective heirs, executors and designees, hereby *releases, remises, quitclaims, and forever discharges the other Parties* (including that party’s predecessors, successors, directors, officers, managers, members, and their attorneys and experts retained in this Action for acts within the scope of their retention), and their respective heirs, executors and designees, *from any and all claims whatsoever brought in, or that could have been brought in, the Action, whether in law or in equity, whether known or unknown*, except solely for claims to enforcement of the terms of this Agreement. (emphasis added)

20. On March 30, 2012, this Court entered an Order by which “all claims brought in this action by or between DDI, TaiDoc...and Prodigy are dismissed with prejudice.” A true and accurate copy of that Order is attached as Exhibit “D”, and incorporated herein.

21. TaiDoc is the purported assignee of U.S. Patent Nos. 7,514,040 (“the ‘040 patent”) and 7,316,766 (“the 766 patent”) (collectively, “the TaiDoc patents”). The ‘040 patent is titled “Intelligent biosensing meter” and was issued on April 9, 2007. A true and accurate copy of the ‘040 patent is attached as Exhibit “E”, and incorporated herein. The ‘766 patent is

titled “Electrochemical biosensor strip” and was issued on January 8, 2008. A true and accurate copy of the ‘766 patent is attached as Exhibit “F”, and incorporated herein.

22. On Wednesday, May 2, 2012, Prodigy and DDI received letters from TaiDoc, through its attorney, Mr. Lu of Ryder Lu, entitled “The possible licensing opportunity of TaiDoc’s U.S. Patent Nos. 7,514,040 & 7,316,766” (the “May 1 Letters”).

23. In the May 1 Letters, TaiDoc and Mr. Lu asserted that products “made and sold” by Prodigy and DDI “might infringe the ‘040 Patent and the ‘766 Patent.”

24. Further, in the May 1 Letters, TaiDoc and Mr. Lu asserted that “TaiDoc will not hesitate to enforce its right to the full extent to protect its rights.”

25. Further, in the May 1 Letters, TaiDoc and Mr. Lu demanded that “Prodigy [and DDI] shall immediately cease any further unauthorized production and/or sale of these infringed [sic] products...We also request that Prodigy identify its manufacturer(s) and/or supplier(s) of these unauthorized products and provide a full accounting of past sales of these products on which damages may be assessed. ... please provide us ...

- a. your suppliers of the infringing product
- b. the total number of unauthorized goods in your inventory;
- c. the total number of unauthorized goods that you have sold to date; and
- d. the net avenues [sic] from your sale of unauthorized goods and adequate documentation supporting your calculation thereof. ...

We look forward to receiving your responses within 10 days.”

26. Prodigy and DDI did not respond to the May 1 Letters prior to May 4, 2012, and have not responded as of the date of filing this Complaint.

27. On May 4, 2012, TaiDoc filed a Complaint in the Federal Court for the Eastern District of Pennsylvania, titled TaiDoc Technology Corporation v. Diagnostic Devices, Inc., *et al*, 2:12-cv-02457-TJS (the “Philadelphia Lawsuit”). A true and accurate copy of the Philadelphia Lawsuit is attached as Exhibit “G”, and incorporated herein.

28. The Philadelphia Lawsuit has not been served on the defendants named therein as of the date of filing this Complaint.

29. On May 9, 2012, Plaintiffs filed a Request for Reexamination under 37 CFR §1.510 with the United States Patent and Trademark Office for U.S. Patent No. 7,514,040 (Reexam Serial No. 90/012,291) and U.S. Patent No. 7,316,766 (Reexam Serial No. 90/012,290).

**FIRST CLAIM FOR RELIEF**  
**(Breach of Settlement Agreement)**

30. Plaintiffs reallege and incorporate by reference paragraphs 1 through 29, inclusive, as if fully set forth in this paragraph.

31. Prodigy, DDI and TaiDoc entered into a contract, the Settlement Agreement and Release, on March 30, 2012.

32. Per the terms of the Settlement Agreement, TaiDoc released, remised, quitclaimed, and forever discharged DDI and Prodigy *“from any and all claims whatsoever brought in, or that could have been brought in, the Action, whether in law or in equity, whether known or unknown,* except solely for claims for enforcement of the terms of this Agreement.”

33. As stated in paragraph 14 herein, the factual basis for the claims asserted in the Philadelphia Lawsuit, that DDI and Prodigy infringed on certain patent rights of TaiDoc, were brought in the Dismissed WDNC Lawsuit, as TaiDoc alleged repeatedly, and specifically, that DDI and Prodigy had acquired, obtained, misused, and otherwise misappropriated its “intellectual property,” **“including the patents”**.

34. As stated in paragraph 14.j. herein, TaiDoc expressly asked for relief regarding its patents in its request that the Court order Prodigy and DDI to disseminate ***“an acknowledgement that TaiDoc owns the patents for the Prodigy Autocode, Prodigy Voice meters and Prodigy test strips.”***

35. Further, TaiDoc repeatedly and specifically made claims that DDI and Prodigy were manufacturing meters and test strips under the names “Prodigy Autocode” and “Prodigy Voice” since 2008, which was known to TaiDoc since the fourth calendar quarter of 2008.

36. Even if TaiDoc did not bring the same claims in the Dismissed WDNC Lawsuit, it could have brought those claims at any time, and certainly in the “Defendant’s Second Amended Answer, Affirmative Defenses and Counterclaims” that it filed as recently as July of 2011, and served in September of 2011.

37. Any and all “claims whatsoever” alleged by TaiDoc as patent infringement by DDI or Prodigy, whether “brought” or that “could have been brought,” were released, remised, quitclaimed, and forever discharged by TaiDoc in the Settlement Agreement and Release.

38. Mr. Lu was well aware of the terms of the Settlement Agreement and Release when he filed, on behalf of TaiDoc, the Philadelphia Lawsuit.

39. TaiDoc’s filing of the Philadelphia Lawsuit is a knowing, intentional and malicious breach of the Settlement Agreement and Release, and of the Order of Dismissal entered by this Court.

40. Plaintiffs have been damaged by TaiDoc’s breach of the Settlement Agreement and Release in an amount that shall be proven at trial.

### **SECOND CLAIM FOR RELIEF**

#### **(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,514,040)**

41. Plaintiffs reallege and incorporate by reference paragraphs 1 through 40, inclusive, as if fully set forth in this paragraph.

42. Plaintiffs do not make, use, offer for sale, sell, import, or export, and have never made, used, offered to sell, sold, imported, or exported, a method, device, or apparatus that infringes, either directly, contributorily, or by inducement, any valid and enforceable claim of the ‘040 patent, either literally or under the doctrine of equivalents.

43. There is an actual controversy, within the meaning of 28 U.S.C. §§2201 and 2202, between Plaintiffs and TaiDoc concerning the non-infringement of the ‘040 patent.

44. Plaintiffs are entitled to a declaratory judgment that they do not infringe, either directly, contributorily, or by inducement, any valid and enforceable claim of the ‘040 patent, either literally or under the doctrine of equivalents.

### **THIRD CLAIM FOR RELIEF**

#### **(Declaratory Judgment of Invalidity of U.S. Patent No. 7,514,040)**

45. Plaintiffs reallege and incorporate by reference paragraphs 1 through 44, inclusive, as if fully set forth in this paragraph.



46. An actual controversy exists between Plaintiffs and TaiDoc with respect to the validity of the '040 patent.

47. Each claim of the '040 patent fails to meet one or more of the statutory requirements and/or conditions for patentability under the patent laws of the United States, including but not limited to 35 U.S.C. §§101-103 and 112.

48. Each claim of the '040 patent is invalid because it is anticipated by the pertinent prior art under 35 U.S.C. §102, and/or would have been obvious to one of ordinary skill in the art in light of the pertinent prior art at the time of the claimed invention under 35 U.S.C. §103.

49. The claims of the '040 patent are also invalid for lack of enablement, insufficient written description, indefiniteness and/or failure to disclose the best mode of the invention as required by 35 U.S.C. §112. The claims of the '040 patent are vague and indefinite and incorporate limitations that are neither disclosed, described, explained, nor enabled by the specification of the '040 patent.

50. Plaintiffs are entitled to a declaratory judgment that all claims of the '040 patent are invalid.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Declaratory Judgment of Unenforceability of U.S. Patent No. 7,514,040)**

51. Plaintiffs reallege and incorporate by reference paragraphs 1 through 50, inclusive, as if fully set forth in this paragraph.

52. An actual controversy exists between Plaintiffs and TaiDoc with respect to the enforceability of the '040 patent.

53. The '040 patent was also filed in Taiwan on October 1, 2004 by TaiDoc as Patent/Publication Number M262189. The '040 patent does not claim priority to Patent/Publication Number M262189 but has a substantially identical specification.

54. Prior art cited in the prosecution of Patent/Publication Number M262189 material to patentability of the '040 patent was not cited in the '040 patent before the United States Patent and Trademark Office ("USPTO") with intent to deceive the USPTO.

55. Upon information and belief, a request for invalidation was filed in Patent/Publication Number M262189 in Taiwan and is currently pending.

56. Upon information and belief, a method, device, or apparatus that is described by the '040 patent was in public use or on sale in the United States, more than one year prior to the date of the application for patent in the United States.

57. Plaintiffs are entitled to a declaratory judgment that all claims of the '040 patent are unenforceable for inequitable conduct, public use, and/or sale.

#### **FIFTH CLAIM FOR RELIEF**

##### **(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,316,766)**

58. Plaintiffs reallege and incorporate by reference paragraphs 1 through 57, inclusive, as if fully set forth in this paragraph.

59. Plaintiffs do not make, use, offer for sale, sell, import, or export, and have never made, used, offered to sell, sold, imported, or exported, a method, device, or apparatus that infringes, either directly, contributorily, or by inducement, any valid and enforceable claim of the '766 patent, either literally or under the doctrine of equivalents.

60. There is an actual controversy, within the meaning of 28 U.S.C. §§2201 and 2202, between Plaintiffs and TaiDoc concerning the non-infringement of the '766 patent.

61. Plaintiffs are entitled to a declaratory judgment that they do not infringe, either directly, contributorily, or by inducement, any valid and enforceable claim of the '766 patent, either literally or under the doctrine of equivalents.

#### **SIXTH CLAIM FOR RELIEF**

##### **(Declaratory Judgment of Invalidity of U.S. Patent No. 7,316,766)**

62. Plaintiffs reallege and incorporate by reference paragraphs 1 through 61, inclusive, as if fully set forth in this paragraph.

63. An actual controversy exists between Plaintiffs and TaiDoc with respect to the validity of the '766 patent.

64. Each claim of the '766 patent fails to meet one or more of the statutory requirements and/or conditions for patentability under the patent laws of the United States, including but not limited to 35 U.S.C. §§101-103 and 112.

65. Each claim of the '766 patent is invalid because it is anticipated by the pertinent prior art under 35 U.S.C. §102, and/or would have been obvious to one of ordinary skill in the art in light of the pertinent prior art at the time of the claimed invention under 35 U.S.C. §103.

66. The claims of the '766 patent are also invalid for lack of enablement, insufficient written description, indefiniteness and/or failure to disclose the best mode of the invention as required by 35 U.S.C. §112. The claims of the '766 patent are vague and indefinite and incorporate limitations that are neither disclosed, described, explained, nor enabled by the specification of the '766 patent.

67. Plaintiffs are entitled to a declaratory judgment that all claims of the '766 patent are invalid.

#### **SEVENTH CLAIM FOR RELIEF**

##### **(Declaratory Judgment of Unenforceability of U.S. Patent No. 7,316,766)**

68. Plaintiffs reallege and incorporate by reference paragraphs 1 through 67, inclusive, as if fully set forth in this paragraph.

69. An actual controversy exists between Plaintiffs and TaiDoc with respect to the enforceability of the '766 patent.

70. The '766 patent was also filed in Taiwan on July 30, 2004 by TaiDoc as Patent/Publication Number M262706. The '766 patent does not claim priority to Patent/Publication Number M262706 but has a substantially identical specification.

71. Prior art cited in the prosecution of Patent/Publication Number M262706 material to patentability of the '766 patent was not cited in the '766 patent before the USPTO with intent to deceive the USPTO.

72. Upon information and belief, a request for invalidation was filed in Patent/Publication Number M262706 in Taiwan and Patent/Publication Number M262706 was found invalid and revoked on or about November 18, 2009.

73. Upon information and belief, a method, device, or apparatus that is described by the '766 patent was in public use or on sale in the United States, more than one year prior to the date of the application for patent in the United States.

74. Plaintiffs are entitled to a declaratory judgment that all claims of the ‘766 patent are unenforceable for inequitable conduct, public use, and/or sale.

### **EIGHTH CLAIM FOR RELIEF**

#### **(Abuse of Process)**

75. Plaintiffs reallege and incorporate by reference paragraphs 1 through 74, inclusive, as if fully set forth in this paragraph.

76. On March 30, 2012, only 31 days before it issued a Cease-and-Desist Letter, and 33 days before it filed the Philadelphia Lawsuit, TaiDoc entered into a mutual release with Plaintiffs settling and releasing “...any and all claims whatsoever brought in, or that could have been brought in, the Action, whether in law or in equity, whether known or unknown...” See Exhibit “B”.

77. This Court entered an Order of dismissal by which “all claims brought in this action by or between DDI, TaiDoc...and Prodigy are dismissed with prejudice.” See Exhibit “D”.

78. Subsequent to executing the universal Settlement Agreement and Release, on or about May 1, 2012, TaiDoc sent to the Plaintiffs a Cease-and-Desist Letter related to the TaiDoc patents.

79. TaiDoc filed the Philadelphia Lawsuit on May 4, 2012 alleging claims that arose as early as 2008.

80. The language of the universal Settlement Agreement and Release and the Order of dismissal clearly indicate that TaiDoc and its counsel Ryder Lu have no basis in law or fact to issue the Cease and Desist Letter or to file the newly filed Philadelphia Lawsuit.

81. No reasonable person could interpret the Settlement Agreement and Release or the Dismissal Order to allow TaiDoc to bring any claim against DDI or Prodigy for the infringement of patents or any other matter related to the Prodigy AutoCode, Prodigy Voice, and the related test strips.

82. TaiDoc intentionally, knowingly, and maliciously misused or misapplied process after executing the universal Settlement Agreement and Release on March 30 by filing the Philadelphia Lawsuit on May 4.

83. Plaintiffs were and are being harmed by the Cease-and-Desist Letter and the newly filed Philadelphia Lawsuit.

84. TaiDoc's conduct was and is a substantial factor in causing harm to Plaintiffs.

#### **NINTH CLAIM FOR RELIEF**

##### **(Unfair and Deceptive Trade Practices in Violation of N.C. Gen. Stat. §75-1.1)**

85. Plaintiffs reallege and incorporate by reference paragraphs 1 through 84, inclusive, as if fully set forth in this paragraph.

86. TaiDoc's conduct in filing a lawsuit against Plaintiffs on May 4, 2012, despite signing the universal Settlement Agreement and Release on March 30, 2012, is an unfair or deceptive act or practice.

87. TaiDoc's conduct in filing the Philadelphia Lawsuit against Plaintiffs on May 4, 2012, despite the issuance of the Order of dismissal by this Court on March 30, 2012, is an unfair or deceptive act or practice.

88. TaiDoc's conduct was in commerce and affected commerce in North Carolina. TaiDoc's conduct involved a business activity, and substantially and adversely affected Plaintiff's business activity.

89. A reasonably prudent person could have reasonably foreseen that the conduct engaged in by TaiDoc in North Carolina would probably produce the injuries sustained by Plaintiffs.

90. Upon information and belief, TaiDoc intentionally set out to cause injuries to Plaintiffs in North Carolina. TaiDoc acted willfully and wantonly with respect to the conduct perpetrated against Plaintiffs.

91. TaiDoc's willful violations of N. C. GEN. STAT. §75-1.1 damaged Plaintiffs in an amount greater than \$75,000 (seventy five thousand dollars). Such damages consist of lost profits, loss in the value of Plaintiffs' businesses as a growing concern, and loss in the goodwill and favorable reputation associated with Plaintiffs' names in the industry, in addition to other damages not yet known, all of which should be added herein and proven at trial of this matter.

## **TENTH CLAIM FOR RELIEF**

### **(Libel per se)**

92. Plaintiffs reallege and incorporate by reference paragraphs 1 through 91, inclusive, as if fully set forth in this paragraph.

93. On or about May 9, 2012, TaiDoc sent a Cease and Desist Letter to OKB threatening OKB, and attempting to induce OKB, to not manufacture products for Plaintiffs.

94. The Cease and Desist Letter to OKB, and the Philadelphia Lawsuit are without justification due to the universal Settlement Agreement and Release, non-infringement of the TaiDoc patents by Plaintiffs, invalidity of the TaiDoc patents, and/or unenforceability of the TaiDoc patents.

95. TaiDoc accused Plaintiffs of infringing the TaiDoc patents in the written Cease and Desist Letter published to OKB, and in the Philadelphia Lawsuit that has been published through the federal court docket system.

96. The Cease and Desist Letter to OKB and the Philadelphia Lawsuit contain false and libelous statements that impeach the Plaintiffs in their trade, business, or profession.

97. Plaintiffs incurred damage due to TaiDoc's libelous statements.

WHEREFORE, Plaintiffs respectfully pray that this Court:

- a. Enjoin Defendant TaiDoc from proceeding with the action filed in the Eastern District of Pennsylvania, titled TaiDoc Technology Corporation v Diagnostic Devices, Inc., *et al*, 2:12-cv-02457-TJS;
- b. Enter a Declaratory Judgment that Plaintiffs do not infringe, either directly, contributorily, or by inducement, any valid and enforceable claim of the 7,514,040 and 7,316,766 patents, either literally or under the doctrine of equivalents; and
- c. Enter a Declaratory Judgment that the 7,514,040 and 7,316,766 patents are invalid;
- d. Enter a Declaratory Judgment that the 7,514,040 and 7,316,766 patents are unenforceable for inequitable conduct, public use, and/or sale;
- e. Grant the Plaintiffs compensatory damages, treble damages, and punitive damages, in an amount in excess of \$75,000 to be proven at trial;

- f. Declare this case exceptional and tax Defendant with Plaintiffs' reasonable attorneys fees pursuant to 35 U.S.C. §285 and/or N.C. Gen. Stat. §75-16;
- g. Tax the Defendant with the cost of this action; and
- h. Grant such other further relief in law or equity to which Plaintiffs may be justly entitled.

Jury Demand

- i. Plaintiffs demand a trial by jury.

Dated: May 10, 2012

**CLEMENTS BERNARD PLLC**

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