

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

BIO-RAD LABORATORIES, INC.

Plaintiff,

v.

10X GENOMICS, INC.,

Defendant,

and

PRESIDENT AND FELLOWS OF HARVARD  
COLLEGE

Nominal Defendant.

C.A. No. \_\_\_\_\_

**DEMAND FOR JURY TRIAL**

**COMPLAINT**

Bio-Rad Laboratories, Inc. (“Bio-Rad”) hereby alleges for its Complaint (“Complaint”) against Defendant 10X Genomics, Inc. (“10X”) and nominal Defendant President and Fellows of Harvard College (“Harvard University”), on personal knowledge as to their own actions and on information and belief as to the actions of others, as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement arising under the United States Patent Act 35 U.S.C. §§1 *et seq.*, including 35 U.S.C. § 271.
2. Bio-Rad brings this action to halt 10X’s infringement of its rights under the Patent Laws of the United States 35 U.S.C. §1, *et. seq.*, which arise under U.S. Patent No. 8,871,444 (“the ’444 patent”), which is attached hereto as Exhibit 1.

### **THE PARTIES**

3. Plaintiff Bio-Rad is a Delaware corporation having a principal place of business at 1000 Alfred Nobel Drive, Hercules, CA 94547.

4. 10X is a company organized and existing under the laws of Delaware, with its principal place of business at 7068 Koll Center Parkway, Suite 401, Pleasanton, CA, 94566.

5. Harvard University is a research university incorporated as a Massachusetts not-for-profit institution, with its principal place of business at 1563 Massachusetts Ave., Cambridge, Massachusetts 02138. Harvard University is a patent owner and licensor for the '444 patent. Harvard University is named as a nominal defendant in this action for purposes of subject matter jurisdiction only and pursuant to the United States Supreme Court's holding in *Independent Wireless Tel. Co. v. Radio Corp. of Am.*, 269, U.S. 459, 468 (1926), that "[i]f the owner of a patent, being within the jurisdiction, refuses or is unable to join an exclusive licensee as coplaintiff, the licensee may make him a party defendant by process, and he will be lined up by the court in the party character which he should assume." Bio-Rad requested that Harvard University join as a party in this action, but Harvard University has thus far not agreed to do so. Although Harvard University is named as a nominal defendant, Bio-Rad seeks relief realigning Harvard University as a plaintiff.

### **JURISDICTION AND VENUE**

6. This action for patent infringement arises under the patent laws of the United States, Title 35 of the United States Code.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over defendant 10X. 10X has substantial contacts with the forum as a consequence of conducting business in Delaware, and has purposefully availed itself of the benefits and protections of Delaware state law by incorporating under Delaware law.

9. This Court has personal jurisdiction over nominal defendant Harvard University. Harvard University has substantial contacts with the forum as a consequence of conducting business and activities in Delaware.

10. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c), and 1400(b) because Bio-Rad and 10X are both Delaware corporations and Delaware is a convenient forum for resolution of the parties' disputes set forth herein.

### **BACKGROUND**

11. Bio-Rad is a leader in the field of life science research and clinical diagnostics, and today many of Bio-Rad's products and tools used in the biotechnology industry are recognized as the gold standard.

12. A centerpiece of many of Bio-Rad's products is its Droplet Digital™ technology. This technology involves partitioning biological samples by placing them in individual microdroplets that are formed based on emulsion chemistry. Using this technology, researchers can create a large numbers of partitions, each one for carrying out a reaction, with a minimum amount of sample handling and a minimum amount of sample volume. A variety of different reactions may be carried out inside the droplets, including polymerase chain reaction ("PCR"), and various reactions to prepare samples for next generation sequencing ("NGS").

13. Bio-Rad began offering its Droplet Digital™ PCR ("ddPCR™") Systems brands in 2011 following its \$162 million acquisition of QuantaLife, Inc. ("QuantaLife") and its digital

droplet PCR technology. The work at QuantaLife, and subsequently at Bio-Rad, led to a large number of patents being granted throughout the world concerning droplet-based emulsion systems and methods.

14. Bio-Rad's droplet digital technology was a breakthrough that greatly advanced the capabilities of PCR and NGS. Just one year after the launch of Bio-Rad's first generation product, the number of papers citing Bio-Rad's droplet digital method using PCR nearly quintupled. Indeed, more than 250 peer-reviewed papers have been published in the fields of cancer, liquid biopsy, virology, and other diseases that cited to BioRad's technology.

15. Bio-Rad's ddSEQ™ Single-Cell Isolator uses Droplet Digital™ technology to encapsulate single cells and barcodes into subnanoliter droplets, where cell lysis and barcoding of cellular messenger RNA occur. Libraries are generated representing the messenger RNAs from single cells that can be sequenced for Single Cell Analysis.

16. Bio-Rad has spent years and hundreds of millions of dollars researching, acquiring and developing its Droplet technology and portfolio that is the foundation for many droplet-based applications such as ddPCR™ and NGS and Single Cell Analysis.

17. For instance, in addition to its \$162 million acquisition of QuantaLife, Bio-Rad completed an \$87 million acquisition of RainDance Technologies, Inc. ("RainDance"), and all of its intellectual property.

18. As another example, Bio-Rad is the exclusive licensee of droplet intellectual property from world-renowned institutions, such as Harvard University and Lawrence Livermore National Laboratory. Likewise, by virtue of its acquisition of RainDance, Bio-Rad acquired an exclusive licensee to foundational droplet technology developed at the University of Chicago.

19. Starting in 2012, several Bio-Rad employees left to found 10X Technologies, Inc., which later became Defendant 10X. This company, like Bio-Rad, focused on developing systems and methods for generating droplet-based emulsions.

20. In 2015, 10X launched a droplet-based emulsion system called GemCode that used the claimed microchips and chemistry for forming droplets that can be used in, among other things, Next Generation Sequencing and Single Cell Analysis. Approximately one year later, 10X launched an updated version of its droplet-based emulsion system called Chromium. These platforms compete against Bio-Rad's Droplet Digital™ technology.

21. In February 2015, RainDance filed a lawsuit in this district accusing 10X's GemCode and Chromium platforms of infringing several patents developed at the University of Chicago. Following its acquisition of RainDance, Bio-Rad substituted itself as the lead Plaintiff in this litigation. In November 2018, Bio-Rad obtained a jury verdict of willful infringement against 10X Genomics, and in August 2019 Bio-Rad obtained a permanent injunction.

22. Following the jury verdict, 10X announced a new line of products, which it recently began selling under the tradename "Next GEM." The Next GEM platform consists of an instrument known as the Chromium Controller along with reagent kits for carrying out various genetic analyses, including at least 10X's Chromium Single Cell Gene Expression Solution, Chromium Single Cell Immune Profiling Solution, and Chromium Single Cell ATAC Solution. *See generally* Exs. 2-3.

23. The Next GEM platform is at the heart of a \$362 million IPO that 10X will launch imminently. As 10X stated in its prospectus, "[w]e currently expect that, by the end of the third quarter of 2019, all Chromium instruments that we sell will operate exclusively with our Next

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