

5. Peter Hansen is an individual who resides at 282 South County Road, Drury, Massachusetts.

6. Petra Krauledat is an individual who resides at 282 South County Road, Drury, Massachusetts.

JURISDICTION AND VENUE

7. Jurisdiction is appropriate pursuant to 28 U.S.C. § 1338 which concerns patent infringement.

8. Venue is appropriate under 28 U.S.C. § 1331.

ALLEGATIONS

9. PointCare is the assignee of patent 7,611,849 which pertains to enhanced cellular assay. A true and accurate copy of the document evidencing the assignment is attached as Exhibit A.

10. Enhanced cellular assay concerns addressing certain human cells which have been marked for detection as “receptors.” Receptor cells indicate that the individual is subject to various conditions such as AIDS, lung cancer or other diseases.

11. The use of enhanced cellular assay leads to very early detection of the relevant ailments. Such early detection increases dramatically the potential to cure the diseases.

12. The essence of the patent is that it addresses the binding of gold to human receptor cells to facilitate their detection and quantification.

13. To do so the process causes the receptor cell and gold to have attributes which cause them to bind. The situation involves where the cell and gold obtain opposite “charges.” As a result, the opposite charges cause the gold and the cell to attract.

14. When the binding occurs the gold attaches to a marker on the cell which evidences a particular ailment of the patient.

15. This is a critical concept because such binding could not be obtained through prior technology.

Scope of Patent

16. The patent addresses its use as to the detection of all diseases.

17. The “abstract” set forth in the patent acknowledges the foregoing and reads:

This invention relates to the field of biological assays where cells can be classified and enumerated using flow cytometry optical instrumentation. The invention combines information from multi-angle, light scatter from the cell itself and multi-angle light scatter from small, optically resonant particles that are selectively bound to surface molecules on the cell to carry out classification and enumeration. This light scatter method enables an instrumentation system that is simply to use, inexpensive to build, and mechanically robust; making it suitable for use in remote clinical environments.

18. The patent also applies to use as to all diseases. The patent makes this point clear where it states:

Antibodies immunospecific for cell surface receptor are useful for identifying cells or tissues in accordance with the methods of the present invention. The identification and quantification of specific cells and tissues are useful in numerous diagnostic prognostic methods for identifying or monitoring equally numerous disease and disorders, including those related immunology, oncology, cardiology and neurology.

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The examples herein are given for the purpose of illustrating various embodiments of the invention and are not meant to limit the present invention in any fashion. All documents mentioned herein are incorporated by reference in their entirety.

One skilled in the art will readily appreciate that the present invention is well adapted to carry out the objects and obtain the ends and advantages

mentioned, as well as those inherent therein. It will be apparent to those skilled in the art that various modifications and variations can be made in practicing the present invention without departing from the spirit or scope of the invention. Changes therein and other uses will occur to those skilled in the art which are encompassed within the spirit of the invention as defined by the scope of the claims.

19. In fact, the use of the cellular assay process had originally focused on its use to detect receptor cells indicating that an individual suffered from a form of cancer.

20. Thus far, the patent process also has been used to assess risks as to HIV and AIDS.

21. The patent's use, however, is far reaching in that it can be used to provide information as to numerous diseases.

How the Process Reveals Results.

22. To conduct the process a phlebotomist first must draw a vial of blood from the patient.

23. The phlebotomist then places the vial in the device which is approximately one foot in height and in which the process occurs.

24. In the device is the gold which will bind as to the designated marker on the cell.

25. The device is then activated to initiate and complete the process.

26. The process involves binding gold to the receptor cells containing the markers as to the designated disease, such as cancer.

27. The sample then is run through a counter. It reports the number of cells per milligram as to the cells containing the specified marker.

28. Those levels then are addressed to determine if an individual possesses a level which would indicate that he or she possesses the relevant disease or whether the certain levels relate to increased potential as to severity.

29. Following the test patients are enrolled in treatment programs to address the disease.

30. The patented cellular assay permits extremely early detection of such diseases. As a result, survivability as to serious diseases is increased significantly through early treatment.

Defendants Infringement.

31. The defendants currently are preparing to market the technology.

32. Defendants infringement is evidenced by articles published demonstrating the behavior of each defendant as to infringement.

33. The potential cellular assay process had been designed to address cancer.

34. To address cancer the correct level of action is surfactant needs to be used to address the “marker” for the cancer cell.

35. In 2014, a published article discussed PointCare, through Peter Hansen and Petra Krauledat, Brigham and Women’s Hospital, and the MIT Koch Cancer Institute as to detecting and binding of cancer-associated molecules to be used through PointCare’s patented cellular assay process.

36. In 2014, Peter Hansen and Petra Krauledat had been employed by PointCare.

37. In 2017, a website of PNP Research Corporation (“PNP”), which had been founded by Peter Hansen and Petra Krauledat, indicated that PNP and Massachusetts

General Hospital, Brigham and Women's Hospital and MIT Koch Cancer Institute had been conducting research to locate markers as to cancer cells which could be addressed using PointCare's patented cellular assay process.

38. Accordingly, Peter Hansen, Petra Krauledat and the other defendants simply are doing the same work using the patent which belongs to PointCare. The process is identical as to each disease.

39. Defendants have used and are using the patented process as to developing the receptor cells and markers.

40. In addition, Defendants have obtained government funding through grants using Patent 7,611,849.

41. Such a use is prohibited because PointCare is the assignee of the patent.

The Market for the Patent's Use Is Vast.

42. The market into which the patent will be sold is vast.

43. The patent is unique and no real competitor exists.

44. Mr. Hansen and Mrs. Krauledat tried to purchase the patent from PointCare in the past.

45. They, however, never did so.

46. The patent and the right to its use belong only to PointCare.

Count I
(Infringement)

47. PointCare incorporates the allegations of paragraphs 1 through 46 as if fully set forth herein.

48. Patent 7,611,849 is valid and enforceable.

49. Defendants have infringed and continue to infringe on the patent under 35 U.S.C. § 271(a), either liberally or under the Doctrine of Equivalents, by using the patent.

50. Defendants have knowledge and notice of the 7,611,849 patent, as well as their own infringement of the 7,611,849 patent.

51. PointCare also has informed Defendants as to their infringement.

52. PointCare has been and continues to be damaged by Defendants' use of the patent.

53. Defendants use of the patent continues to be willful.

54. Defendants use also renders this case exceptional within the meaning of 35 U.S.C. § 285.

Count II
(Chapter 93A)

55. PointCare incorporates the allegations of paragraphs 1 through 54 as if fully set forth herein.

56. Defendants are engaged in trade and commerce.

57. Defendants have engaged in unfair and deceptive acts as to PointCare in connection use of the patent.

58. Defendants' actions have been willful.

59. As a result, PointCare has suffered significant damage.

60. PointCare is entitled to treble damages and payment of its attorney's fees as a result of Defendants' violations of Chapter 93A.

Count III
(Conversion)

61. PointCare incorporates the allegations of paragraphs 1 through 60 as if fully set forth herein.

62. Defendants have misappropriated the use of the patent.

63. Such conduct constitutes conversion.

64. As a result, PointCare has been damaged in an amount to be determined at trial.

Count IV
(Breach of Contract)

65. PointCare incorporates the allegations of paragraphs 1 through 64 as if fully set forth herein.

66. Peter Hansen and Petra Krauledat assigned the patent to PointCare.

67. Peter Hansen and Petra Krauledat and the other defendants now are using the patent and its design.

68. Such use is a breach of contract.

69. PointCare has been damaged as a result of the breach.

Count V
(Declaratory Judgment)

70. PointCare incorporates the allegations of paragraphs 1 through 69 as if fully set forth herein.

71. PointCare is the only party which has the ability to use the enhanced cellular assay technology as to the patent.

72. Defendants are acting in violation of the assignment by using the protected technology.

73. Accordingly, PointCare requests that the court declare that it is the only party which may use the patent and that Defendants have no such right to do so.

74. PointCare also asks the court to rule that PointCare has the right to sue for infringement and misuse.

Count VI
(Interference with Contract)

75. PointCare incorporates the allegations of paragraphs 1 through 74 as if fully set forth herein.

76. Defendant have interfered with the contract as to assignment of use of the patent.

77. As a result, PointCare has been damaged in an amount to be determined at trial.

Count VII
(Accounting)

78. PointCare incorporates the allegations of paragraphs 1 through 77 as if fully set forth herein.

79. PointCare requests an accounting as to all profits earned by Defendants through its use of the patent.

Count VIII
(Injunction)

80. PointCare incorporates the allegations of paragraphs 1 through 79 as if fully set forth herein.

81. Defendants are engaging in infringement which will cause irreparable harm to PointCare.

82. Damages will not address all of the harm inflicted.

83. Accordingly, PointCare requests that Defendants be enjoined from infringing Patent 7,611,849.

WHEREFORE, PointCare prays that the Court:

1. Enter judgment in favor of PointCare and against the Defendants on Count I in an amount to be determined at trial;

2. Enter judgment in favor of PointCare and against the Defendants on Count II in an amount to be determined at trial;

3. Enter judgment in favor of PointCare and against the Defendants on Count III in an amount to be determined at trial;

4. Enter judgment in favor of PointCare and against the Defendants on Count IV in an amount to be determined at trial;

5. Enter judgment in favor of PointCare and against the Defendants on Count V in an amount to be determined at trial;

6. Enter judgment in favor of PointCare and against the Defendants on Count VI in an amount to be determined at trial;

7. Enter judgment in favor of PointCare and against the Defendants on Count VII in an amount to be determined at trial;

8. Enter judgment in favor of PointCare and against the Defendants on Count VIII and render an injunction ceasing Defendants' use of the patent;

9. Award PointCare interest and costs, which include attorneys' fees; and

10. Award such other and further relief as the court deems appropriate.

POINTCARE DEMANDS A TRIAL BY JURY ON ALL CLAIMS SO
TRIABLE.

POINTCARE TECHNOLOGIES, INC.,

By its attorney,

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