

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SD ACQUISITION, INC.,)	Case No. _____
)	
Plaintiff,)	
)	
v.)	COMPLAINT
)	
ELEMENTAL SCIENTIFIC, INC.,)	DEMAND FOR JURY TRIAL
)	
Defendant.)	

COMES NOW SD Acquisition, Inc. (“Plaintiff”), and, for its Complaint against Elemental Scientific, Inc. (“Defendant”), alleges as follows:

The Parties

1. Plaintiff is a corporation organized and existing under the laws of Nebraska and has a principal place of business at 14306 Industrial Road, Omaha, Nebraska 68144.
2. Upon information and belief, Defendant is a Nebraska corporation having a principal place of business at 1500 North 24th Street, Omaha, Nebraska 68110.

Jurisdiction and Venue

3. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq., and the Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
4. Venue in this District is proper pursuant to 28 U.S.C. § 1400(b).

Allegations of Patent Infringement

5. Plaintiff is the owner of the entire right, title, and interest to U.S. Patent No. 5,792,663 (“the '663 patent”), which was issued by the United States Patent and Trademark Office on August 11, 1998, and which remains in full force and effect. A true and correct copy of the '663 patent is attached hereto as Exhibit 1.

6. Defendant uses, makes, offers to sell, and sells a hydride generation system for inductively-coupled plasma analysis of trace elements, which it markets under the name “hydrideICP System.”

7. Plaintiff has informed Defendant that its use, manufacture, offer to sell, and sale of the “hydrideICP System” in the United States infringes the '663 patent, but Defendant has continued to use, manufacture, offer for sale, and sell the “hydrideICP System” in the United States.

8. By its use, manufacture, offer to sell, and sale of the “hydrideICP System” in the United States, Defendant is directly infringing and actively inducing infringement of the '663 patent in contravention of 35 U.S.C. §§ 271(a) and (b), and by its offer to sell and sale of the “hydrideICP System” in the United States to others for use in practicing the processes patented in the '663 patent, Defendant is contributorily infringing the '663 patent in contravention of 35 U.S.C. § 271(c).

9. Defendant will continue to infringe the '663 patent, and Plaintiff will suffer irreparable harms as a result, unless Defendant's infringement is enjoined by the Court.

10. Defendant's infringement of the '663 patent has been and continues to be willful.

11. Plaintiff has suffered and continues to suffer damages as a result of the infringement of the '663 patent by Defendant.

Prayer for Relief

WHEREFORE, Plaintiff prays that the Court enter judgment as follows:

- a. declaring that the '663 patent has been and continues to be infringed by Defendant;
- b. preliminarily and permanently enjoining Defendant, its officers, agents, and employees, and those persons in active concert or participation with any of them, and their successors and assigns, from infringing the '663 patent, including but not limited to using, manufacturing, offering to sell, or selling the “hydrideICP System” or any other product encompassed by the '663 patent;
- c. awarding Plaintiff damages sufficient to compensate it for the infringement of the '663

patent by Defendant;

d. awarding Plaintiff treble damages pursuant to 35 U.S.C. § 284 as a result of Defendant's willful infringement of the '663 patent;

e. declaring this case exceptional and awarding Plaintiff its costs and attorney fees pursuant to 35 U.S.C. § 285; and

f. awarding Plaintiff such other relief as the Court deems just and proper.

Dated this 26th day of January, 2011

SD ACQUISITION, INC., Plaintiff
By its attorney,

s/ Matt Catlett
Matt Catlett (#21699)
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JURY DEMAND

Plaintiff demands a trial by jury on all issues triable by jury.

s/ Matt Catlett
Matt Catlett

REQUEST FOR PLACE OF TRIAL

Plaintiff requests Omaha, Nebraska as the place of trial.

s/ Matt Catlett
Matt Catlett