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14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA  
16 SOUTHERN DIVISION-SANTA ANA

17  
18 GLAUKOS CORPORATION, a  
19 Delaware Corporation,

20 Plaintiff,

21 v.

22 IVANTIS, INC., a Delaware  
23 corporation,

24 Defendant.

Civil Action No. 8:18-cv-00620-JVS  
(JDEx)

**DEFENDANT AND  
COUNTERCLAIMANT IVANTIS,  
INC.'S ANSWER, DEFENSES, AND  
COUNTERCLAIMS**

**JURY TRIAL DEMANDED**

Hon. Judge James V. Selna

1 Defendant Ivantis, Inc. (“Defendant” or “Ivantis”) answers Plaintiff Glaukos  
2 Corporation’s (“Plaintiff” or “Glaukos”) Complaint for Patent Infringement, dated  
3 April 14, 2018 (Dkt. No. 1) as follows:

4 **NATURE OF THE ACTION**

5 1. Ivantis admits that this Court has jurisdiction under 28 U.S.C. §§ 1331  
6 and 1338(a). Ivantis otherwise denies the allegations set forth in Paragraph 1 of the  
7 Complaint.

8 2. Ivantis denies the allegations set forth in Paragraph 2 of the Complaint.

9 3. Ivantis admits that in 2017 it announced that it had plans to  
10 commercially launch the Hydrus in 2018. Ivantis otherwise denies the allegations set  
11 forth in Paragraph 3 of the Complaint.

12 4. Ivantis denies the allegations set forth in Paragraph 4 of the Complaint.

13 **THE PARTIES**

14 5. Ivantis is without knowledge or information sufficient to form a belief as  
15 to the truth of the allegations set forth in Paragraph 5 of the Complaint, and on that  
16 basis denies them.

17 6. Ivantis admits the allegations set forth in Paragraph 6 of the Complaint.

18 7. Ivantis admits that this Court has jurisdiction under 28 U.S.C. §§ 1331  
19 and 1338(a). Unless expressly admitted, Ivantis denies the allegations set forth in  
20 Paragraph 7 of the Complaint.

21 8. For purposes of this case only, Ivantis admits that this Court has personal  
22 jurisdiction over Ivantis. Ivantis otherwise denies the allegations set forth in  
23 Paragraph 8 of the Complaint.

24 9. For purposes of this case only, Ivantis admits that venue is proper in this  
25 District. Unless expressly admitted, Ivantis denies the allegations set forth in  
26 Paragraph 9 of the Complaint.

27 **GLAUKOS AND ITS PRODUCTS**

28 10. Ivantis is without knowledge or information sufficient to form a belief as

1 to the truth of the allegations set forth in Paragraph 10 of the Complaint, and on that  
2 basis denies them.

3 11. Ivantis admits that glaucoma is a leading cause of blindness worldwide,  
4 and that glaucoma may be caused by reduced drainage of aqueous humor from the  
5 eye. Ivantis admits that glaucoma may be associated with an increase in intraocular  
6 pressure that may cause damage to the eye's optic nerve, resulting in vision loss or  
7 blindness. Ivantis admits that prescription eye drops have been used to treat  
8 glaucoma, as well as surgical procedures. Ivantis admits that laser treatments and  
9 surgical procedures have also been used to treat glaucoma. Unless expressly  
10 admitted, Ivantis denies the allegations set forth in Paragraph 11 of the Complaint.

11 12. Ivantis denies the allegations set forth in Paragraph 12 of the Complaint.

12 13. Ivantis admits that the iStent may be inserted through a corneal incision  
13 during cataract surgery, and that its stated purpose is to allow fluid to drain through  
14 the iStent from the anterior chamber of the eye into Schlemm's canal. Ivantis is  
15 without knowledge or information sufficient to form a belief as to the remaining  
16 allegations set forth in Paragraph 13 of the Complaint, and on that basis denies them.

17 14. Ivantis denies the allegations set forth in Paragraph 14 of the Complaint.

18 15. Ivantis is without knowledge or information sufficient to form a belief as  
19 to the truth of the allegations set forth in Paragraph 15 of the Complaint, and on that  
20 basis denies them.

21 16. Ivantis is without knowledge or information sufficient to form a belief as  
22 to the truth of the allegations set forth in Paragraph 16 of the Complaint, and on that  
23 basis denies them.

## 24 **IVANTIS**

25 17. Ivantis admits that it was founded in 2007. Unless expressly admitted,  
26 Ivantis denies the allegations set forth in Paragraph 17 of the Complaint.

27 18. Ivantis denies the allegations set forth in Paragraph 18 of the Complaint.

28 19. Ivantis admits that, in 2017, its CEO stated that the MIGS market was

1 about \$164 million, and used the phrase “thanks in large part to the great effort by  
2 Glaukos in building this category to date.” Unless expressly admitted, Ivantis denies  
3 the allegations set forth in Paragraph 19 of the Complaint.

4 20. Ivantis admits that U.S. Patent No. 6,626,858 (“the ’858 patent”) states  
5 on its face that it was issued on September 30, 2003. Ivantis admits that U.S. Patent  
6 No. 9,827,143 (“the ’143 patent”) and the ’858 patent (collectively, the “Lynch  
7 Patents”) purport to share a common parent application. Unless expressly admitted,  
8 Ivantis denies the allegations set forth in Paragraph 20 of the Complaint.

9 21. Ivantis admits that, on their faces, the Lynch patents identify Mary  
10 Lynch and Reay Brown as inventors. Unless expressly admitted, Ivantis denies the  
11 allegations set forth in Paragraph 21 of the Complaint.

12 22. Ivantis denies the allegations set forth in Paragraph 22 of the Complaint.

13 23. Ivantis denies the allegations set forth in Paragraph 23 of the Complaint.

14 24. Ivantis denies the allegations set forth in Paragraph 24 of the Complaint.

15 25. Ivantis admits that, in 2017, it issued a press release stating that it had  
16 raised \$25 million and that “[t]he funds will . . . will support US commercialization of  
17 the Hydrus Microstent upon its anticipated 2018 US Food and Drug Administration  
18 (FDA) Approval.” Unless expressly admitted, Ivantis denies the allegations set forth  
19 in Paragraph 25 of the Complaint.

## 20 **OVERVIEW OF THE HYDRUS PRODUCT**

21 26. Ivantis denies the allegations set forth in Paragraph 26 of the Complaint.

22 27. Ivantis denies the allegations set forth in Paragraph 27 of the Complaint.

23 28. Ivantis denies the allegations set forth in Paragraph 28 of the Complaint.

24 29. Ivantis admits that its CEO has stated that the proximal end of the  
25 Hydrus “resides in the anterior chamber, where aqueous humor enters the body of the  
26 device.” Ivantis admits that its website states “[t]he tiny Hydrus ‘scaffold’ is  
27 designed to be inserted into the primary fluid canal (called Schlemm’s canal) of the  
28 eye.” Unless expressly admitted, Ivantis denies the allegations set forth in Paragraph

1 29 of the Complaint.

2 30. Ivantis denies the allegations set forth in Paragraph 30 of the Complaint.

3 31. Ivantis admits that the image in Paragraph 31 of the Complaint depicts  
4 the Hydrus. Unless expressly admitted, Ivantis denies the allegations set forth in  
5 Paragraph 31 of the Complaint.

6 32. Ivantis denies the allegations set forth in Paragraph 32 of the Complaint.

7 **CLAIM ONE FOR INFRINGEMENT OF U.S. PATENT NO. 6,626,858**

8 33. Ivantis repeats, alleges, and incorporates by reference as if fully set forth  
9 herein each and every response to Paragraphs 1 to 33 above.

10 34. Ivantis admits that a document purporting to be a copy of the '858 patent  
11 entitled "Shunt Device and Method for Treating Glaucoma" is attached to the  
12 Complaint as Exhibit A. Ivantis further admits that the '858 patent states on its face  
13 that it was issued on September 30, 2003. Unless expressly admitted, Ivantis denies  
14 the allegations set forth in Paragraph 34 of the Complaint.

15 35. Ivantis is without knowledge or information sufficient to form a belief as  
16 to the truth of the allegations set forth in Paragraph 35 of the Complaint, and on that  
17 basis denies them.

18 36. Ivantis denies the allegations set forth in Paragraph 36 of the Complaint.

19 37. Ivantis denies the allegations set forth in Paragraph 37 of the Complaint.

20 38. Ivantis denies the allegations set forth in Paragraph 38 of the Complaint.

21 39. Ivantis denies the allegations set forth in Paragraph 39 of the Complaint.

22 40. Ivantis denies the allegations set forth in Paragraph 40 of the Complaint.

23 **CLAIM TWO FOR INFRINGEMENT OF U.S. PATENT NO. 9,827,143**

24 41. Ivantis repeats, alleges, and incorporates by reference as if fully set forth  
25 herein each and every response to Paragraphs 1 to 40 above.

26 42. Ivantis admits that a document purporting to be a copy of the '143 patent  
27 entitled "Shunt Device and Method for Treating Ocular Disorders" is attached to the  
28 Complaint as Exhibit B. Ivantis further admits that the '143 patent states on its face

1 that it was issued on November 28, 2017. Unless expressly admitted, Ivantis denies  
2 the allegations set forth in Paragraph 42 of the Complaint.

3 43. Ivantis is without knowledge or information sufficient to form a belief as  
4 to the truth of the allegations set forth in Paragraph 43 of the Complaint, and on that  
5 basis denies them.

6 44. Ivantis denies the allegations set forth in Paragraph 44 of the Complaint.

7 45. Ivantis denies the allegations set forth in Paragraph 45 of the Complaint.

8 46. Ivantis denies the allegations set forth in Paragraph 46 of the Complaint.

9 47. Ivantis denies the allegations set forth in Paragraph 47 of the Complaint.

10 48. Ivantis denies the allegations set forth in Paragraph 48 of the Complaint.

11 **DENIAL OF PLAINTIFF'S PRAYER FOR RELIEF**

12 Ivantis respectfully requests that the Court deny Glaukos's prayer for relief as  
13 stated in the Complaint.

14 **DEFENDANT'S DEFENSES**

15 Further answering the Complaint, Ivantis asserts the following defenses  
16 without any admission as to the burden of proof. Ivantis reserves the right to amend  
17 this answer with additional defenses as further information is obtained.

18 **FIRST DEFENSE**

19 **(Failure to State a Claim Upon Which Relief Can Be Granted)**

20 1. Glaukos's Complaint fails to state a claim upon which relief can be  
21 granted.

22 **SECOND DEFENSE**

23 **(Noninfringement)**

24 2. Ivantis has not infringed and does not infringe, directly or indirectly, any  
25 valid and/or enforceable claim of the Lynch Patents, either literally or under the  
26 doctrine of equivalents.

1 **THIRD DEFENSE**

2 **(Invalidity)**

3 3. The Lynch Patents are invalid for failing to comply with one or more  
4 provisions of the Patent Laws, Title 35 U.S.C., including without limitation one or  
5 more of 35 U.S.C. §§ 101, 102, 103, and 112.

6 **FOURTH DEFENSE**

7 **(Double Patenting)**

8 4. Glaukos's claims are barred by the judicially-created doctrine of double  
9 patenting.

10 **FIFTH DEFENSE**

11 **(Waiver and Estoppel)**

12 5. Glaukos's claims are barred by the doctrines of waiver and/or estoppel.

13 **SIXTH DEFENSE**

14 **(Prosecution History Estoppel / Prosecution Disclaimer)**

15 6. Glaukos's claims are barred by the doctrines of prosecution history  
16 estoppel and/or prosecution disclaimer.

17 **SEVENTH DEFENSE**

18 **(Unclean Hands)**

19 7. Glaukos's claims are barred by the doctrine of unclean hands.

20 **EIGHTH DEFENSE**

21 **(Limitation on Damages)**

22 8. Glaukos's claims for damages, if any, are statutorily limited by 35  
23 U.S.C. §§ 286 and/or 287.

24 **NINTH DEFENSE**

25 **(Limitation on Costs)**

26 9. To the extent that any claim of any Lynch Patent is invalid, Glaukos is  
27 barred by 35 U.S.C. § 288 from recovering costs associated with this action.  
28

1 **COUNTERCLAIMS**

2 Pursuant to Fed. R. Civ. P. 13, Ivantis hereby counterclaims against Glaukos  
3 and alleges as follows:

4 **NATURE OF COUNTERCLAIMS**

5 1. These counterclaims arise from Glaukos’s infringement of one or more  
6 Ivantis patents via the manufacture, use, sale, offer to sell, and/or importation, of  
7 certain products including but not limited to the Glaukos iStent *inject*<sup>®</sup> Trabecular  
8 Micro Bypass System (“iStent *inject*”).

9 **THE PARTIES**

10 2. Ivantis is a corporation organized and existing under the laws of the  
11 State of Delaware and having a principal place of business at 38 Discovery, Suite  
12 150, Irvine, California.

13 3. In its Complaint, Glaukos alleges that it is a corporation organized and  
14 existing under the laws of the State of Delaware and having a principal place of  
15 business at 229 Avenida Fabricante, San Clemente, California.

16 **JURISDICTION AND VENUE**

17 4. These counterclaims arise under the Patent Laws of the United States,  
18 Title 35 of the United States Code.

19 5. This Court has subject matter jurisdiction over the counterclaims  
20 asserted herein pursuant to 28 U.S.C. §§ 1331 and 1338(a).

21 6. This Court has personal jurisdiction over Glaukos. On information and  
22 belief, Glaukos is a resident of this judicial district, regularly transacts business  
23 within this district, and regularly avails itself of the benefits of this district. On  
24 information and belief, Glaukos also manufactures, sells, and distributes products in  
25 this district, including the iStent *inject*.

26 7. Venue is proper in this district under 28 U.S.C. §§ 1391(a) and (c), and  
27 1400(b).



**THE IVANTIS PATENTS**

1  
2           8.       Ivantis is the assignee of U.S. Patent No. 8,540,659 (“the ’659 patent”),  
3 U.S. Patent No. 9,603,741 (“the ’741 patent”), and U.S. Patent No. 9,833,357 (“the  
4 ’357 patent”) (collectively “the Berlin patents”). Ivantis is the owner of all  
5 substantial rights in the Berlin patents, including the right to exclude others and to  
6 enforce, sue, and recover damages for past and future infringements.

7           9.       The ’659 patent, entitled “Delivery System and Method of Use for the  
8 Eye,” is a valid, enforceable patent that was duly issued by the USPTO on September  
9 24, 2013 in full compliance with Title 35 of the United States Code. A true and  
10 correct copy of the ’659 patent is attached hereto as Exhibit 1.

11           10.       The ’741 patent, entitled “Delivery System and Method of Use for the  
12 Eye,” is a valid, enforceable patent that was duly issued by the USPTO on March 28,  
13 2017 in full compliance with Title 35 of the United States Code. A true and correct  
14 copy of the ’741 patent is attached hereto as Exhibit 2.

15           11.       The ’357 patent, entitled “Delivery System and Method of Use for the  
16 Eye,” is a valid, enforceable patent that was duly issued by the USPTO on December  
17 5, 2017 in full compliance with Title 35 of the United States Code. A true and  
18 correct copy of the ’357 patent is attached hereto as Exhibit 3.

19           12.       The ’357 patent is a continuation of the ’741 patent, which is a  
20 continuation of the ’659 patent. Each of the Berlin patents claims priority to U.S.  
21 provisional patent application No. 60/205,846, filed on May 19, 2000.

22           13.       The Berlin patents describe, *inter alia*, an intraocular implant device and  
23 a technique for controlling the geometry of Schlemm’s canal and optionally the  
24 trabecular meshwork. The implant device may be embodied in a stent having a  
25 tubular body. A distal end of the device may engage the inner wall of Schlemm’s  
26 canal, while a proximal end of the device may be positioned at the trabecular  
27 meshwork. The device serves to ensure the outflow of fluid from an anterior  
28 chamber of the eye, into Schlemm’s canal.

1           14. The claims of the Berlin patents are generally directed to intraocular  
2 implants, a system comprising an intraocular implant, and treatment methods  
3 involving the use of an intraocular implant. Claim 13 of the '357 patent is provided  
4 below as an example.

5           13. An intraocular implant for placement in a patient's eye  
6 to conduct fluid from the eye to treat glaucoma, the eye  
7 having a trabecular meshwork, an anterior chamber and  
8 a Schlemm's canal, the Schlemm's canal comprising an  
9 outer wall and an inner wall, the implant configured to  
10 be positioned such that the implant extends through the  
11 trabecular meshwork of the eye, the implant comprising:

12           a proximal portion comprising a proximal opening  
13 configured to reside in the anterior chamber of an eye;

14           a distal portion comprising a distal opening configured to  
15 reside in the Schlemm's canal of the eye;

16           a middle portion comprising a substantially straight  
17 passageway extending from the proximal opening to the  
18 distal opening, the middle portion dimensioned to extend  
19 across the inner wall of the Schlemm's canal and the  
20 trabecular meshwork, the distal portion comprising a  
21 contact surface to contact an inner wall of the  
22 Schlemm's canal, the distal portion sized and shaped to  
23 substantially inhibit contact with collector channels on  
24 the outer wall of the Schlemm's canal when the contact  
25 surface of the distal portion engages the inner wall of the  
26 Schlemm's canal and self-retains the implant with  
27 engagement of the inner wall of the Schlemm's canal;  
28 and

          wherein the substantially straight passageway is configured  
to conduct fluid from the opening on the proximal  
portion of the implant to the opening on the distal  
portion of the implant, such that fluid flows from the  
anterior chamber to the Schlemm's canal through the  
implant.

1 **GLAUKOS'S INFRINGING PRODUCTS**

2 15. On information and belief, Glaukos makes, uses, offers to sell, sells,  
3 and/or imports intraocular implant products including but not limited to the iStent  
4 *inject* in the United States.

5 16. During Glaukos's second quarter 2018 financial results conference call  
6 on August 2, 2018, Glaukos's President & CEO stated that "Over the course of 2018,  
7 we've been scaling, manufacturing and building necessary launch inventories,  
8 finalizing marketing campaigns and readying the U.S. sales organization in  
9 anticipation of iStent inject U.S. commercialization."

10 [https://finance.yahoo.com/news/edited-transcript-gkos-earnings-conference-](https://finance.yahoo.com/news/edited-transcript-gkos-earnings-conference-052511988.html)  
11 [052511988.html](https://finance.yahoo.com/news/edited-transcript-gkos-earnings-conference-052511988.html). Referring to U.S. commercialization of the iStent *inject*, he further  
12 stated that "We will begin our full commercial launch activities later this month,  
13 following the completion of our final sales force training activities that are currently  
14 underway." *Id.*

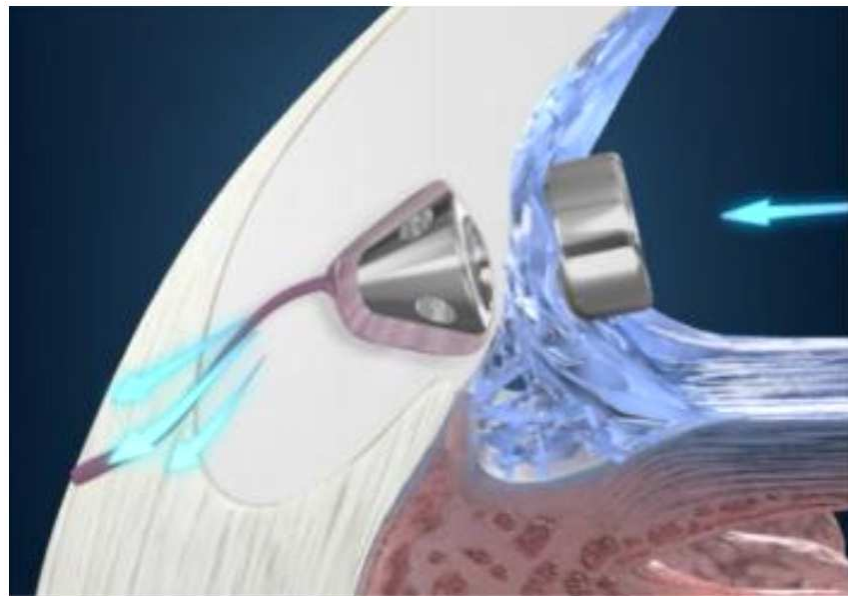
15 17. In describing the iStent *inject*, Glaukos's website states that "[t]o help  
16 control the increased pressure in your eye associated with glaucoma, iStent *inject*  
17 creates a bypass between the front part of your eye [anterior chamber] and its natural  
18 drainage pathway [Schlemm's canal] to increase the flow of fluid."

19 [https://www.glaukos.com/enca/istent-inject-procedure/how-istent-inject-works/.](https://www.glaukos.com/enca/istent-inject-procedure/how-istent-inject-works/)

20 18. Illustrations of the iStent *inject* (reproduced below) indicate that it  
21 includes a proximal opening configured to reside in the anterior chamber, a distal  
22 opening configured to reside in Schlemm's canal, and a substantially straight  
23 passageway extending from the proximal opening to the distal opening, across the  
24 inner wall of Schlemm's canal and the trabecular meshwork. The illustrations further  
25 indicate that a distal portion of the iStent *inject* includes a contact surface to contact  
26 an inner wall of Schlemm's canal, and to self-retain the iStent *inject* at the inner wall  
27 of Schlemm's canal.  
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9 Illustration depicting two iStent *inject* stents  
10 (<https://www.glaukos.com/enca/istent-inject-procedure/innovative-design/>)



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20  
21 Illustration depicting the iStent *inject* implanted in an eye  
22 (<https://www.slideshare.net/glaukos/investor-day-deck-master-revised-09282017>)

23  
24 19. According to Glaukos's website, the iStent *inject* system is comprised of  
25 two preloaded stents in a single use, sterile inserter. During implantation, the inserter  
26 guides the implants into position through the trabecular meshwork.

27 <https://www.glaukos.com/enca/healthcare-professionals/istent-inject/>.

1                    **COUNT 1: INFRINGEMENT OF U.S. PATENT NO. 8,540,659**

2                    20.    Ivantis repeats, alleges, and incorporates by reference as if fully set forth  
3 herein each and every statement made in Paragraphs 1 to 19 of its counterclaims.

4                    21.    Glaukos has directly infringed, and continues to directly infringe, at least  
5 claims 1 and 15 of the '659 patent in violation of 35 U.S.C. § 271(a) by, for example  
6 and without limitation, making, using, offering to sell, selling, and/or importing in  
7 and into the United States certain products, including the iStent *inject*.

8                    22.    Glaukos has actively induced others to infringe at least claims 1 and 15  
9 of the '659 patent in violation of 35 U.S.C. § 271(b) by instructing others to use  
10 certain products, including the iStent *inject*. Glaukos's active inducement includes,  
11 for example and without limitation, marketing, selling, and offering to sell the iStent  
12 *inject*, providing instructions on how to use the iStent *inject*, and promoting the use of  
13 the iStent *inject* by end users. On information and belief, Glaukos has induced such  
14 infringement with the intent that one or more of claims of the '659 patent be  
15 infringed.

16                    23.    Glaukos has contributed to infringement by others of at least claim 1 of  
17 the '659 patent in violation of 35 U.S.C. § 271(c) by offering to sell, selling, and/or  
18 importing in and into the United States certain products, including the iStent *inject*,  
19 which is an apparatus for use in practicing the invention of at least claim 1 of the '659  
20 patent. Glaukos has offered to sell, sold, and/or imported the iStent *inject* knowing  
21 the same to be especially made or especially adapted for use in an infringement of at  
22 least claim 1 of the '659 patent, and that the iStent *inject* is not a staple article or  
23 commodity of commerce suitable for substantial noninfringing use.

24                    24.    Glaukos has had actual knowledge of the '659 patent at least since  
25 August 2, 2018 and, in any event, not later than the filing of these counterclaims.  
26 Despite having notice, Glaukos continues to infringe at least claims 1 and 15 of the  
27 '659 patent. Glaukos's infringement is objectively reckless, knowing, deliberate, and  
28 willful.

1           25.    Ivantis has been damaged as a result of Glaukos's infringing conduct and  
2 is entitled to recover damages that adequately compensate it for Glaukos's  
3 infringement of the '659 patent, which by law cannot be less than a reasonable  
4 royalty, together with interests and costs as fixed by this Court under 35 U.S.C.  
5 § 284.

6                   **COUNT 2: INFRINGEMENT OF U.S. PATENT NO. 9,603,741**

7           26.    Ivantis repeats, alleges, and incorporates by reference as if fully set forth  
8 herein each and every statement made in Paragraphs 1 to 25 of its counterclaims.

9           27.    Glaukos has directly infringed, and continues to directly infringe, at least  
10 claims 1, 14, 29, and 33 of the '741 patent in violation of 35 U.S.C. § 271(a) by, for  
11 example and without limitation, making, using, offering to sell, selling, and/or  
12 importing in and into the United States certain products, including the iStent *inject*.

13           28.    Glaukos has actively induced others to infringe at least claims 1, 14, 29,  
14 and 33 of the '741 patent in violation of 35 U.S.C. § 271(b) by instructing others to  
15 use certain products, including the iStent *inject*. Glaukos's active inducement  
16 includes, for example and without limitation, marketing, selling, and offering to sell  
17 the iStent *inject*, providing instructions on how to use the iStent *inject*, and promoting  
18 the use of the iStent *inject* by end users. On information and belief, Glaukos has  
19 induced such infringement with the intent that one or more of claims of the '741  
20 patent be infringed.

21           29.    Glaukos has contributed to infringement by others of at least claims 1,  
22 29, and 33 of the '741 patent in violation of 35 U.S.C. § 271(c) by offering to sell,  
23 selling, and/or importing in and into the United States certain products, including the  
24 iStent *inject*, which is an apparatus for use in practicing the invention of at least  
25 claims 1 and 33 of the '741 patent, and which constitutes a material part of the  
26 invention of at least claim 29 of the '741 patent. Glaukos has offered to sell, sold,  
27 and/or imported the iStent *inject* knowing the same to be especially made or  
28 especially adapted for use in an infringement of at least claims 1, 29, and 33 of the

1 '741 patent, and that the iStent *inject* is not a staple article or commodity of  
2 commerce suitable for substantial noninfringing use.

3 30. Glaukos has had actual knowledge of the '741 patent at least since  
4 August 2, 2018 and, in any event, not later than the filing of these counterclaims.  
5 Despite having notice, Glaukos continues to infringe at least claims 1, 14, 29, and 33  
6 of the '741 patent. Glaukos's infringement is objectively reckless, knowing,  
7 deliberate, and willful.

8 31. Ivantis has been damaged as a result of Glaukos's infringing conduct and  
9 is entitled to recover damages that adequately compensate it for Glaukos's  
10 infringement of the '741 patent, which by law cannot be less than a reasonable  
11 royalty, together with interests and costs as fixed by this Court under 35 U.S.C.  
12 § 284.

13 **COUNT 3: INFRINGEMENT OF U.S. PATENT NO. 9,833,357**

14 32. Ivantis repeats, alleges, and incorporates by reference as if fully set forth  
15 herein each and every statement made in Paragraphs 1 to 31 of its counterclaims.

16 33. Glaukos has directly infringed, and continues to directly infringe, at least  
17 claims 1 and 13 of the '357 patent in violation of 35 U.S.C. § 271(a) by, for example  
18 and without limitation, making, using, offering to sell, selling, and/or importing in  
19 and into the United States certain products, including the iStent *inject*.

20 34. Glaukos has actively induced others to infringe at least claims 1 and 13  
21 of the '357 patent in violation of 35 U.S.C. § 271(b) by instructing others to use  
22 certain products, including the iStent *inject*. Glaukos's active inducement includes,  
23 for example and without limitation, marketing, selling, and offering to sell the iStent  
24 *inject*, providing instructions on how to use the iStent *inject*, and promoting the use of  
25 the iStent *inject* by end users. On information and belief, Glaukos has induced such  
26 infringement with the intent that one or more of claims of the '357 patent be  
27 infringed.

28 35. Glaukos has contributed to infringement by others of at least claim 1 of

1 the '357 patent in violation of 35 U.S.C. § 271(c) by offering to sell, selling, and/or  
2 importing in and into the United States certain products, including the iStent *inject*,  
3 which is an apparatus for use in practicing the invention of at least claim 1 of the '357  
4 patent. Glaukos has offered to sell, sold, and/or imported the iStent *inject* knowing  
5 the same to be especially made or especially adapted for use in an infringement of at  
6 least claim 1 of the '357 patent, and that the iStent *inject* is not a staple article or  
7 commodity of commerce suitable for substantial noninfringing use.

8 36. Glaukos has had actual knowledge of the '357 patent at least since  
9 August 2, 2018 and, in any event, not later than the filing of these counterclaims.  
10 Despite having notice, Glaukos continues to infringe at least claims 1 and 13 of the  
11 '357 patent. Glaukos's infringement is objectively reckless, knowing, deliberate, and  
12 willful.

13 37. Ivantis has been damaged as a result of Glaukos's infringing conduct and  
14 is entitled to recover damages that adequately compensate it for Glaukos's  
15 infringement of the '357 patent, which by law cannot be less than a reasonable  
16 royalty, together with interests and costs as fixed by this Court under 35 U.S.C.  
17 § 284.

### 18 **DEFENDANT'S DEMAND FOR A JURY TRIAL**

19 Ivantis requests a trial by jury, under Rule 38 of the Federal Rules of Civil  
20 Procedure, for all issues triable by right of a jury.

### 21 **DEFENDANT'S PRAYER FOR RELIEF**

22 WHEREFORE, Ivantis respectfully requests the following relief:

23 A. That the Court enter a judgment in favor of Ivantis, and against Glaukos,  
24 on each of Glaukos's claims, dismissing each claim with prejudice;

25 B. That Glaukos takes nothing by its Complaint against Ivantis;

26 C. That the Court enter a judgment in favor of Ivantis, and against Glaukos,  
27 that Glaukos has infringed, induced infringement, and contributed to infringement of  
28 the '659 patent;



1 D. That the Court enter a judgment in favor of Ivantis, and against Glaukos,  
2 that Glaukos has willfully infringed one or more claims of the '659 patent;

3 E. That the Court enter a judgment in favor of Ivantis, and against Glaukos,  
4 that Glaukos has infringed, induced infringement, and contributed to infringement of  
5 the '741 patent;

6 F. That the Court enter a judgment in favor of Ivantis, and against Glaukos,  
7 that Glaukos has willfully infringed one or more claims of the '741 patent;

8 G. That the Court enter a judgment in favor of Ivantis, and against Glaukos,  
9 that Glaukos has infringed, induced infringement, and contributed to infringement of  
10 the '357 patent;

11 H. That the Court enter a judgment in favor of Ivantis, and against Glaukos,  
12 that Glaukos has willfully infringed one or more claims of the '357 patent;

13 I. That the Court enter a judgment in favor of Ivantis, and against Glaukos,  
14 that Glaukos and its officers, employees, agents, attorneys, affiliates, successors,  
15 assigns, and others acting in privity or concert with it be preliminarily and  
16 permanently enjoined from making, using, offering to sell, and selling, or inducing or  
17 contributing to others to make, use, offer to sell, or sell any product that infringes any  
18 of the '659, '741, or '357 patents, including without limitation the iStent *inject*, and  
19 from importing the same into the United States;

20 J. That the Court enter a judgment awarding Ivantis damages resulting  
21 from Glaukos's infringement in an amount no less than a reasonable royalty, and that  
22 such amount be multiplied based on Glaukos's willful infringement;

23 K. That the Court enter a judgment declaring this an exceptional case under  
24 35 U.S.C. § 285, and awarding Ivantis its attorneys' fees in this case;

25 L. That the Court enter a judgment in favor of Ivantis, and against Glaukos,  
26 that interest, costs, and expenses be awarded to Ivantis;

27 M. That the Court grant Ivantis any other relief that the Court may deem just  
28 and proper.

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Dated: August 16, 2018

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