

1 Leonard A. Rifkind, State Bar No. 133971  
 Email: lrifkind@mlplaw.com  
 2 Houman Chitsaz, State Bar No. 219469  
 Email: hchitsaz@mlplaw.com  
 3 **LAW OFFICES OF LEONARD A. RIFKIND**  
 790 Mission Avenue  
 4 San Rafael, California 94901  
 Telephone: (415) 485-2200  
 5 Facsimile: (415) 453-7605]

6 Steven A. Nielsen, State Bar No. 133864  
 Email: Steve@NielsenPatents.com  
 7 **ALLMAN & NIELSEN, P.C.**  
 8 100 Larkspur Landing Circle, Suite 212  
 Larkspur, California 94939  
 9 Telephone: (415) 461-2700  
 Facsimile: (415) 461-2726

10 Attorneys for Defendant and Cross-Complainant  
 11 MOLECULAR DIAGNOSTICS, INC.

12  
 13 **UNITED STATES DISTRICT COURT**  
 14 **NORTHERN DISTRICT OF CALIFORNIA**  
 15 **SAN FRANCISCO DIVISION**

17 DIAMICS, INC, a California corporation,  
 18 Plaintiff,

19  
 20 v.

21  
 22 MOLECULAR DIAGNOSTICS, INC., a  
 Delaware corporation,  
 23 Defendant,

24  
 25 MOLECULAR DIAGNOSTICS, INC., a  
 Delaware corporation,  
 26 Cross-Complainant,  
 27

) Case No. C05 02549 SI  
 ) **PATENT**

) **CROSS-COMPLAINT FOR**  
 ) **INJUNCTIVE RELIEF AND DAMAGES:**

) **1<sup>ST</sup> CAUSE OF ACTION:** For  
 ) Misappropriation Of Trade Secrets  
 ) (Civil Code section 3426.1(b))

) **2<sup>ND</sup> CAUSE OF ACTION:** For Unfair  
 ) Business Practices (Bus. & Prof. §§17200, *et*  
 ) *seq*)

) **3<sup>RD</sup> CAUSE OF ACTION:** For Constructive  
 ) Trust

) **4<sup>TH</sup> CAUSE OF ACTION:** For Conversion  
 )  
 )

1 v.

2 )  
3 DIAMICS, INC., a California corporation; ) **5<sup>TH</sup> CAUSE OF ACTION:** For Infringement  
4 DIAMICS, LLC, a California limited liability ) of the '164 Patent (35 U.S.C. § 271)  
5 company and DOES 1 through 160, inclusive, ) **6<sup>TH</sup> CAUSE OF ACTION:** For Infringement  
6 Cross-Defendant ) of the '576 Patent (35 U.S.C. § 271)  
7 ) **7<sup>TH</sup> CAUSE OF ACTION:** For Infringement  
8 ) of the '513 Patent (35 U.S.C. § 271)  
9 ) **8<sup>TH</sup> CAUSE OF ACTION:** For Infringement  
10 ) of Copyright (17 U.S.C. § 501 )

---

11 Cross-Complainant complains of Cross-Defendants, and each of them, and for causes of  
12 action alleged as follows:

13 **PARTIES**

14 1. Cross-Complainant MOLECULAR DIAGNOSTICS, INC. (hereafter either  
15 "MDI" or "Company") is, and at all times mentioned in this Complaint was, a publicly traded  
16 corporation organized and existing under the laws of the State of Delaware, with its principal  
17 place of business located in Chicago, Illinois. MDI is a biomolecular diagnostics company  
18 engaged in the design, development and commercialization of cost-effective screening systems  
19 to assist in the early detection of cancer. MDI is currently focused on the design and  
20 development of a fully-automated, objective analysis and diagnostic system for cervical cancer  
21 screening.

22 2. MDI is informed and believes and on that basis alleges Cross-Defendant  
23 DIAMICS, INC., a corporation, is organized and existing under the laws of the State of  
24 California, and whose principal office is located in the County of Marin, State of California.

25 3. MDI is informed and believes and on that basis alleges that Cross-Defendant  
26 DIAMICS, LLC, a limited liability company, is organized and existing under the laws of the  
27 State of California, and whose principal office is located in the County of Marin.

28 4. MDI does not know the true names and capacities of Cross-Defendants Does 1  
through 160, inclusive, and therefore sues them by those fictitious names. MDI is informed and

1 believes, and on that basis alleges, that each of the Cross-Defendants named as a Doe was in  
2 some manner responsible for the injury and damage suffered by MDI as alleged in this  
3 Complaint. MDI is informed and believes, and on that basis alleges, that each of the Cross-  
4 Defendants were the agents and employees of their co-Cross-Defendants, and each of them, and  
5 in doing the things alleged in this Complaint were acting within the scope of that agency or  
6 employment, and were acting with the consent, permission, and authorization of each and every  
7 other Cross-Defendant.

8  
9 **JURISDICTION**

10 5. This is a civil action for, *inter alia*, patent infringement, injunctive relief, and  
11 damages arising under the United States Patent Act, 35 U.S.C. § 1, et seq. Jurisdiction is  
12 conferred upon this court pursuant to 28 U.S.C. § 1331 and 1338(a). Jurisdiction of this court is  
13 also founded on 28 U.S.C. § 1332, in that it is a civil action between citizens of different states in  
14 which the amount in controversy exceeds \$75,000.00, exclusive of costs and interest. This  
15 action includes, *inter alia*, claims for infringement of copyright, conferring jurisdiction under 28  
16 U.S.C. § 1331 and 1338(a).

17  
18 **VENUE**

19 6. Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1391(a)(2).

20  
21 **INTRADISTRICT ASSIGNMENT**

22 7. Intradistrict Assignment properly lies with this court because a substantial part of  
23 the events giving rise to the claim occurred in Marin County, California.

24 \\\

25 \\\

26 \\\

27 **GENERAL ALLEGATIONS**



1 Misappropriation of Trade Secrets

2 (California Civil Code section 3426.1(b))

3 Against All Cross-Defendants and DOES 1 to 20

4  
5 10. Cross-Complainant incorporates by reference each and every allegation set forth  
6 in Paragraphs 1 to 9, inclusive.

7 11. MDI's Assets were developed at great expense and effort over the past  
8 approximately seven years. All persons working for MDI, who have ever been given permission  
9 to access to MDI's Assets, were made explicitly aware of its proprietary and confidential nature.

10 12. MDI's Assets are unavailable to the public or to others in biomolecular industry,  
11 and would be of great value to MDI's competitors such as Cross-Defendants. MDI's assets have  
12 been the subject of reasonable efforts to maintain their confidentiality, including restricting  
13 access to those employees of MDI who must use them in performing their jobs.

14 13. DIAMICS' employees, Peter Gombrich and Warren Maltzman were formerly  
15 employees of MDI. As such, they were entrusted with access to and protection of MDI's Assets.

16 14. In connection with their employment agreements with MDI, Gobrigh and  
17 Maltzman acknowledged in writing their duty to protect MDI's assets as confidential, and to  
18 relinquish all rights or access to MDI's assets and inventions if they left their employment at  
19 MDI. A true and correct copy of Gombrich's employment agreement is attached hereto as  
20 Exhibit "A" and is incorporated herein by reference. A true and correct copy of Maltzman's  
21 employment agreement is attached hereto as Exhibit "B" and is incorporated herein by reference.

22 15. DIAMICS' alleged main product is known as the Cervical Analysis System  
23 ("CAS"), which appears to be almost identical to MDI's Cocktail CVX™ and/or other MDI  
24 Assets which are derived through the use and/or knowledge of MDI trade secrets. MDI is  
25 informed and believes and on that basis alleges DIAMICS has directly, or indirectly through the  
26 acts of Gombrich or Maltzman, misappropriated MDI's trade secrets or confidential information  
27 as defined in California Civil Code section 3426.1, subdivision (b). As a proximate and legal  
28

1 result of DIAMICS' acts of misappropriation and threatened and actual use of MDI's Assets and  
2 trade secrets, DIAMICS will be and has been unjustly enriched.

3 16. As an additional proximate and legal result of DIAMICS' acts of  
4 misappropriation, MDI has sustained, and unless this court intervenes to restrain DIAMICS'  
5 conduct, MDI will continue to sustain, great and irreparable injury in that MDI will lose: (i) the  
6 confidential nature of the MDI Assets and MDI's trade secrets; (ii) MDI's competitive advantage  
7 from years of research and development; (iii) the reasonable investment backed expectations of  
8 its shareholders; and (iv) the ability to attract new investor capital critical to MDI's ongoing  
9 operations. MDI has no adequate remedy at law for these injuries, and unless DIAMICS and its  
10 employees, agents and representatives are restrained from using MDI's Assets in the future, MDI  
11 will be compelled to continue to bring lawsuits to protect its interests. Therefore, MDI seeks  
12 injunctive relief enjoining and restraining DIAMICS from disclosing, using or applying in any  
13 way MDI's Assets.

14 17. MDI is informed and believes and on that basis alleges that DIAMICS committed  
15 their acts of misappropriation willfully and maliciously in that MDI intended by its conduct to  
16 drive MDI out of business. DIAMICS' conduct justifies an award to MDI to recover exemplary  
17 damages under California Civil Code section 3426.3, and attorney fees under California Civil  
18 Code section 3426.4.

19 18. Wherefore, Cross-Complainant prays for relief and damages as hereinafter stated.  
20

21 **SECOND CAUSE OF ACTION**

22 Unfair Business Practices

23 (Bus. & Prof. §§17200, *et seq.*)

24 Against All Cross-Defendants and Does 21 to 40  
25

26 19. MDI incorporates by reference each and every allegation set forth in Paragraphs 1  
27 to 18 inclusive.  
28

1           20.     As a result of Gombrich's and Maltzman's prior employment status with MDI,  
2 and while in a position of responsibility, trust, and confidence, Gombrich and Maltzman became  
3 intimately familiar with the whole of MDI's business operations, and were granted access to and  
4 gained knowledge of numerous trade secrets and confidential and proprietary information that  
5 are the Assets of MDI.

6           21.     MDI is informed and believes and on that basis alleges Cross-Defendants  
7 DIAMICS have directly, or indirectly through the acts of Gombrich or Maltzman,  
8 misappropriated MDI's trade secrets or confidential information.

9           22.     MDI is further informed and believes and alleges that in the course of competing  
10 with MDI, DIAMICS have used and continue to use MDI's trade secrets and confidential and  
11 proprietary Assets.

12           23.     DIAMICS' conduct has given it a substantial competitive advantage to which it is  
13 not entitled. DIAMICS' wrongful use of MDI's Assets has manifested itself, by way of  
14 illustration only, and without limitation, as follows: new shareholder investment, critical to the  
15 continuation of MDI's business operations, has effectively ceased since DIAMICS' public  
16 announcement that it is starting a competing company that is essentially debt free and has the  
17 former CEO and Vice President of MDI at its helm.

18           24.     DIAMICS has wrongfully misappropriated, or has attempted to wrongfully  
19 misappropriate, MDI's trade secrets, the confidential and proprietary MDI Assets, and MDI's  
20 reputation, and goodwill. Such actions are likely to mislead the public and constitute unfair  
21 competition in violation of Business and Professions Code sections 17200 *et seq.* Cross-  
22 Defendants' actions also constitute a violation of the Uniform Trade Secrets Act, Civil Code  
23 sections 3426 *et seq.*, and therefore constitute unlawful business practices within the meaning of  
24 Business and Professions Code sections 17200 *et seq.*

25           25.     Cross-Complainant seeks injunctive relief and damages and other relief as  
26 hereinafter stated.

27 \\\

28 \\\

1 **THIRD CAUSE OF ACTION**

2 **CONSTRUCTIVE TRUST**

3 Against All Cross-Defendants, and DOES 41 to 60

4  
5 26. MDI incorporates by reference each and every allegation set forth in Paragraphs 1  
6 to 25.

7 27. MDI's Assets are comprised of products and the development of procedures as  
8 describe with more specificity in paragraph 9 of this complaint and referred to as MDI's Assets.

9 28. MDI's Assets are the sole proprietary property of MDI and the persons or entities  
10 which have a valid contractual right to use or license portions of MDI's Assets.

11 29. DIAMICS has misappropriated MDI's Assets without consent. DIAMICS  
12 continues to use MDI's Assets without consent or payment to MDI, constituting unjust  
13 enrichment.

14 30. As a proximate and direct result of these DIAMICS' misappropriation of MDI's  
15 assets, MDI seeks imposition of a constructive trust against DIAMICS and in favor of MDI as  
16 beneficiary.

17 31. As a further proximate and direct result of DIAMICS' conversion of MDI's  
18 Assets, MDI seeks appointment of a receiver to hold and safeguard MDI's Assets during the  
19 pendency of this action.

20 32. Cross-Complainant seeks injunctive relief and damages and other relief as  
21 hereinafter stated

22  
23 \\\

24 \\\

25 \\\

26 \\\

27 \\\



1 **FOURTH CAUSE OF ACTION**

2 **CONVERSION**

3 Against All Cross-Defendants, and DOES 61 to 80

4  
5 33. MDI incorporates by reference each and every allegation set forth in Paragraphs 1  
6 to 32.

7 34. At all times mentioned herein, MDI was in possession or had the right to  
8 immediate possession or was the owner with right to possession of certain personal property  
9 consisting of its Assets.

10 35. At all times herein, MDI's Assets as set forth in paragraph 9 of this complaint had  
11 a reasonable fair market value of not less than \$50,000,000.00 to persons with knowledge in the  
12 field of biomolecular diagnostics.

13 36. Within the past year, DIAMICS, through the acts of Gombrich and Maltzman,  
14 obtained MDI's Assets and converted them to DIAMICS' own use.

15 37. DIAMICS' conversion of MDI's Assets proximately and directly caused damage  
16 to MDI in that DIAMICS has gained an unfair competitive advantage. As a direct and proximate  
17 result of DIAMICS' conversion, MDI has suffered pecuniary loss in the sum according to proof  
18 at trial, but not less than \$50,000,000.00.

19 38. DIAMICS' actions in converting MDI's Assets to its own use was motivated by  
20 DIAMICS' fraudulent, oppressive and malicious actions to take MDI's proprietary trade secrets,  
21 and convert the same to their own use without compensation and with an intent to put MDI out  
22 of business. Therefore, MDI is entitled under California Civil Code section 3294, subdivision  
23 (a) to punitive damages in an amount sufficient to punish DIAMICS and deter similar conduct in  
24 the future.

25 39. Cross-Complainant seeks injunctive relief and damages and other relief as  
26 hereinafter stated.

1 **FIFTH CAUSE OF ACTION**

2 (Infringement of the '164 Patent)

3 (35 U.S.C. § 271)

4 Against All Cross-Defendants, and DOES 81 to 100

5  
6 40. MDI incorporates by reference each and every allegation set forth in Paragraphs 1  
7 to 39.

8 41. On November 5, 2002, the United States Patent and Trademark Office duly and  
9 legally issued U.S. Patent No. 6,475,164 (“the ‘164 Patent”) entitled *Physician’s collector*.

10 42. MDI is the owner, by valid assignment, of all right, title and interest in the ‘164  
11 Patent. A copy of the ‘164 Patent is attached to the Compliant as Exhibit “C”.

12 43. Upon information and belief, DIAMICS has developed a product or series of  
13 products known as the Cervical Analysis System (“CAS”). Upon information and belief,  
14 DIAMICS has been, and currently is, directly and indirectly infringing the ‘164 Patent by , *inter*  
15 *alia*, by making, using, marketing, selling, reselling, offering for sale CAS and other products.

16 44. Upon information and belief, DIAMICS has had actual and constructive  
17 knowledge of the ‘164 Patent since November 2002.

18 45. Upon information and belief, DIAMICS has and is willfully infringing the ‘164  
19 Patent, and will continue unless enjoined by this court.

20 46. Pursuant to 35 U.S.C. § 283, MDI is entitled to a permanent injunction against  
21 further infringement. As a direct and proximate consequence of DIAMICS’ infringement of the  
22 ‘164 Patent, MDI has suffered and will continue to suffer irreparable injury and damages in an  
23 amount not yet determined for which MDI is entitled to relief.

24 47. Pursuant to 35 U.S.C. § 284, MDI is entitled to damages for infringement and  
25 treble damages.

26 48. Cross-Complainant seeks injunctive relief and damages and other relief as  
27 hereinafter stated.

1 **SIXTH CAUSE OF ACTION**

2 (Infringement of the '576 Patent)

3 (35 U.S.C. § 271)

4 Against All Cross-Defendants, and DOES 101 to 120

5  
6 49. MDI incorporates by reference each and every allegation set forth in Paragraphs 1  
7 to 48.

8 50. On December 16, 2003 the United States Patent and Trademark Office duly and  
9 legally issued U.S. Patent No. 6,663,576 ("the '576 Patent") entitled *Cervical screening system*.

10 51. MDI is the owner, by valid assignment, of all right, title and interest in the '576  
11 Patent. A copy of the '576 Patent is attached to the Compliant as Exhibit "D".

12 52. Upon information and belief, DIAMICS has developed a product or series of  
13 products known as the Cervical Analysis System ("CAS"). Upon information and belief,  
14 DIAMICS has been, and currently is, directly and indirectly infringing the '576 Patent by , inter  
15 alia, by making, using, marketing, selling, reselling, offering for sale CAS and other products.

16 53. Upon information and belief, DIAMICS has had actual and constructive  
17 knowledge of the '576 Patent since December 2003.

18 54. Upon information and belief, DIAMICS has and is willfully infringing the '576  
19 Patent, and will continue unless enjoined by this court.

20 55. Pursuant to 35 U.S.C. § 283, MDI is entitled to a permanent injunction against  
21 further infringement. As a direct and proximate consequence of DIAMICS' infringement of the  
22 '576 Patent, MDI has suffered and will continue to suffer irreparable injury and damages in an  
23 amount not yet determined for which MDI is entitled to relief.

24 56. Pursuant to 35 U.S.C. § 284, MDI is entitled to damages for infringement and  
25 treble damages.

26 57. Cross-Complainant seeks injunctive relief and damages and other relief as  
27 hereinafter stated.

1 **SEVENTH CAUSE OF ACTION**

2 (Infringement of the ‘513 Patent)

3 (35 U.S.C. § 271)

4 Against All Cross-Defendants, and DOES 121 to 140

5  
6 58. MDI incorporates by reference each and every allegation set forth in Paragraphs 1  
7 to 59.

8 59. On March 5, 2002 the United States Patent and Trademark Office duly and  
9 legally issued U.S. Patent No. 6,352,513 (“the ‘513 Patent”) entitled *Personal cervical cell*  
10 *collector*.

11 60. MDI is the owner, by valid assignment, of all right, title and interest in the ‘513  
12 Patent. A copy of the ‘513 Patent is attached to the Compliant as Exhibit “E”.

13 61. Upon information and belief, DIAMICS has developed a product or series of  
14 products known as the Cervical Analysis System (“CAS”). Upon information and belief,  
15 DIAMICS has been, and currently is, directly and indirectly infringing the ‘513 Patent by, *inter*  
16 *alia*, by making, using, marketing, selling, reselling, offering for sale CAS and other products.

17 62. Upon information and belief, DIAMICS has had actual and constructive  
18 knowledge of the ‘513 Patent since March 2002.

19 63. Upon information and belief, DIAMICS has and is willfully infringing the ‘513  
20 Patent, and will continue unless enjoined by this court.

21 64. Pursuant to 35 U.S.C. § 283, MDI is entitled to a permanent injunction against  
22 further infringement. As a direct and proximate consequence of DIAMICS infringement of the  
23 ‘513 Patent, MDI has suffered and will continue to suffer irreparable injury and damages in an  
24 amount not yet determined for which MDI is entitled to relief.

25 65. Pursuant to 35 U.S.C. § 284, MDI is entitled to damages for infringement and  
26 treble damages.

27 66. Cross-Complainant seeks injunctive relief and damages and other relief as  
28 hereinafter stated.

1 **EIGHTH CAUSE OF ACTION**

2 (Infringement of Copyright)

3 (17 U.S.C. § 501 and common law )

4 Against All Cross-Defendants, and DOES 141 to 160

5  
6 67. MDI incorporates by reference each and every allegation set forth in Paragraphs 1  
7 to 66.

8 68. MDI is the owner of *Mechanism Overview* a copyrighted work. The first page of  
9 Mechanism Overview is attached herein as Exhibit “F”. MDI is the owner of the copyright.

10 69. Upon information and belief, Cross-Defendants have proliferated and used MDI’s  
11 copyrighted works without the authority to do so. Accordingly, because Cross-Defendants have  
12 violated the exclusive rights of MDI, Cross-Defendants have committed infringement of MDI’s  
13 copyright under 17 U.S.C. 501.

14 70. MDI seeks an injunction, damages, attorney fees, and statutory damages provided  
15 for in the Copyright Act and other damages and remedies pursuant to the common law of  
16 California and/or Illinois.

17  
18  
19 WHEREFORE, Cross-Complainant demands judgment against all Cross-Defendants and each of  
20 them for:

21  
22 **ON THE FIRST CAUSE OF ACTION:**

23 1. As against all Cross-Defendants, their agents, employees, and all persons in concert or  
24 participation with them, orders temporarily, preliminarily, and permanently:

25 (a) Enjoining and restraining them from disclosing, using or applying in any way  
26 any of MDI’s Assets.

1 (b) Ordering them to return or turn over to MDI all copies of information or  
2 materials from MDI's assets, together with all other property of MDI in their possession  
3 or under their control that contains or refers to MDI's Assets; and

4 (c) Enjoining and restraining them from altering, destroying, or otherwise  
5 disposing of any records or physical evidence relating to (i) MDI's Assets, (ii) the actions of  
6 Cross-Defendants as alleged above, or (iii) MDI.

7 2. Compensatory damages for lost profits in a sum according to proof for so long as the  
8 misappropriation continues, together with interest as permitted by law.

9 3. Ordering an accounting of any profits improperly made by Cross-Defendants, and  
10 imposing a constructive trust on the profits in favor of Cross-Complainant.

11 4. Exemplary damages as the court may determine, but in no event less than double the  
12 amount of actual damages.

13 5. Costs of this action and reasonable attorney fees as authorized by California Civil  
14 Code section 3426.4.

15  
16 **ON THE SECOND CAUSE OF ACTION:**

17 1. A decree that the above acts of Cross-Defendants were, and are, unfair acts of  
18 competition in violation of Business and Professions Code section 17200 *et seq*;

19 2. Temporary and permanent orders enjoining Cross-Defendants from:

20 (a) destroying or disposing of any documents memorializing any part of Cross-  
21 Complainant's trade secrets or confidential or proprietary Assets;

22 (b) disclosing or using Cross-Complainant's trade secrets or confidential and  
23 proprietary Assets and requiring Cross-Defendants to return to Cross-Complainant all documents  
24 memorializing any part of Cross-Complainant's trade secrets or confidential or proprietary  
25 information;

26 (c) continuing to act in a manner that violates Gombrich's and Maltzman's  
27 fiduciary and implied duties to MDI; and  
28

1 (d) unfairly competing with MDI, misappropriating MDI's Assets, trade secrets,  
2 and confidential and proprietary information, and wrongfully interfering with MDI's continuing  
3 and prospective economic relations with third parties;

4 3. Pursuant to Business and Professions Code section 17203 and pursuant to the equitable  
5 powers of the court, restitution to MDI from all Cross-Defendants of all funds acquired by means  
6 of any practice determined to constitute unfair competition;

7 4. Appointment of a receiver; and

8 5. An award of reasonable attorney fees as authorized by Civil Code section 3426.4;

9  
10 **ON THE THIRD AND FOURTH CAUSES OF ACTION:**

11 1. Damages for the value of MDI's IP at the time of the conversion in the amount of  
12 \$30,000,000;

13 2. Prejudgment interest at the legal rate on the value of the converted property pursuant to  
14 Civil Code section 3336;

15 3. Damages for the time and money properly expended in pursuit of the converted  
16 property in an amount according to proof at trial; and

17 4. Punitive and exemplary damages in a sum according to proof.

18  
19 **ON THE FIFTH, SIXTH, AND SEVENTH CAUSES OF ACTION**

20 (Infringement of MDI Patents)

21 1. That Cross-Defendants be held to have infringed upon the '164, '576, and '513 patents.

22 2. That Cross-Defendants, their subsidiaries, affiliates, parents, successors, assigns, officers,  
23 agents, servants, employees, attorneys, and all persons acting in concert or in participation with  
24 them, or any of them, be temporarily and preliminarily enjoined during the litigation of this  
25 action, and permanently enjoined thereafter from infringing, contributing to the infringement of,  
26 and inducing infringement of the '164, '576, and '513 patents, and specifically from directly or  
27 indirectly making, using, selling, or offering for sale, any products or services embodying the  
28

1 inventions of the '164, '576, or '513 patents during the life of the claims of the patents, without  
2 the express written authority of MDI.

3 3. That Cross-Defendants be directed to fully compensate MDI for all damages attributable  
4 to Cross-Defendants' infringement of the '164, '576, and '513 patents in an amount according to  
5 proof at trial.

6 4. That this case be deemed exceptional.

7 5. That all damages awarded be trebled.

8 6. That Cross-Defendants be ordered to deliver to MDI, for destruction at MDI's option, all  
9 products that infringe the '164, '576, or '513 patents.

10 7. That Cross-Defendants be required to account for all gains, profits, advantages, and  
11 unjust enrichment derived from its violations of law.

12 8. That MDI be awarded reasonable attorney's fees.

13 9. That MDI be awarded the costs of suit, and an assessment of interest.

14 10. That MDI have such other, further, and different relief as the court deems proper under  
15 the circumstances.

16  
17 **ON THE EIGHTH CAUSE OF ACTION**

18 (Infringement of Copyright)

19 1. For judgment against Cross-Defendants for MDI's damages.

20 2. For an injunction enjoining the Cross-Defendants from distributing or posting on the  
21 Internet, or anywhere else, MDI's copyrighted information.

22 3. For statutory damages provided for in the Copyright Act.

23 4. For damages provided by common law.

24  
25 **ON ALL CAUSES OF ACTION:**

26 1. Costs of suit; and,

27 2. Such other and further relief as the court may deem proper.  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: December 2, 2005

LAW OFFICES OF LEONARD A. RIFKIND

By: /S/ Leonard A. Rifkind  
Leonard A. Rifkind, Esq.  
Attorney for Defendant and Cross-Complainant  
MOLECULAR DIAGNOSTICS, INC.

**DEMAND FOR JURY TRIAL**

Cross-Complainant hereby demands a trial by jury of all issues triable by a jury.

Dated: December 2, 2005 LAW OFFICES OF LEONARD A. RIFKIND

By: /S/ Leonard A. Rifkind  
Leonard A. Rifkind, Esq.  
Attorney for Defendant and Cross-Complainant  
MOLECULAR DIAGNOSTICS, INC.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28