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11 *Attorneys for Plaintiff Invitae Corporation*

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14

15 INVITAE CORPORATION,

16 Plaintiff,

17 v.

18 OPTRAHEALTH, INC.,

19 Defendant.  
20

Case No. 3:22-cv-00784

**COMPLAINT FOR DECLARATORY  
JUDGMENT OF  
NONINFRINGEMENT**

**JURY TRIAL DEMANDED**

21 Plaintiff Invitae Corporation (“Invitae” or “Plaintiff”) brings this action for declaratory  
22 judgment of noninfringement against Defendant OptraHealth, Inc. (“OptraHealth” or  
23 “Defendant”) and alleges as follows:

24 **NATURE OF THE ACTION**

25 1. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and  
26 2202, and the United States Patent Act, 35 U.S.C. § 1 *et seq.* Invitae brings this action for a  
27 declaration that it does not infringe any claim of U.S. Patent No. 10,754,882 (“the ’882 Patent” or  
28 “the Asserted Patent”) (attached hereto as Exhibit A).

**THE PARTIES**

2. Invitae is a leading medical genetics company whose mission is to bring comprehensive genetic information into mainstream medicine to improve healthcare. Invitae is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1400 16th Street, San Francisco, CA 94103.

3. On information and belief, OptraHealth is a corporation organized under the laws of the State of California with a place of business at 1798 Technology Drive, Suite 258, San Jose, CA 95110. On information and belief, OptraHealth is the owner of the '882 Patent.

**JURISDICTION AND VENUE**

4. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because this is a civil action arising under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

5. This Court has personal jurisdiction over OptraHealth because OptraHealth is incorporated in California and has its principal place of business in this District at 1798 Technology Drive, Suite 258, San Jose, CA 95110. OptraHealth has purposefully availed itself of the benefits and protections of California state law by incorporating under California law and establishing a physical presence in California. OptraHealth, directly and through agents, regularly does, solicits, and transacts business in this District and elsewhere within the State of California.

6. This Court also has jurisdiction over OptraHealth because OptraHealth has availed itself of this forum, including, but not limited to, initiating in this jurisdiction the civil action *OptraHealth, Inc. v. BotsCrew, Inc.*, Civ. No. 3:20-8906-EJD (N.D. Cal. 2020).

7. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (c) because OptraHealth is a California corporation, and has a regular and established place of business in this District, and because this District is a convenient forum for resolution of the parties' disputes set forth herein in that both parties conduct business in this District. OptraHealth resides in this District, and has identified 1798 Technology Drive, Suite 258, San Jose, CA 95110 as its principal place of business. Venue is also proper because a substantial part of the events giving

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1 rise to the claims at issue occurred in this District. Both parties reside in this District. As detailed  
2 further below, OptraHealth sent numerous cease and desist demand letters to Invitae's  
3 headquarters in this District.

#### 4 **INTRA-DISTRICT ASSIGNMENT AND RELATED ACTIONS**

5 8. Pursuant to Civil Local Rules 3-5(b) and 3-2(c), because this action is an  
6 intellectual property action, it is properly assigned to any of the divisions of this District and is  
7 subject to assignment on a district-wide basis.

8 9. Pursuant to Local Patent Rule 2-1(a)(1), this action is related to *OptraHealth, Inc.*  
9 *v. BotsCrew, Inc.*, Civ. No. 3:20-8906-EJD (N.D. Cal. 2020), in which OptraHealth was also the  
10 party asserting infringement of precisely the same patent at issue here.

#### 11 **FACTUAL BACKGROUND**

12 10. Invitae is a leading medical genetics company in the business of delivering genetic  
13 testing services that support a lifetime of patient care — from inherited disease diagnosis, to  
14 family planning, to proactive health screening to personalized diagnosis, treatment and  
15 monitoring of cancer. Invitae's tests are delivered via a unique, rapidly expanding platform that  
16 serves patients, healthcare providers, biopharma companies, and other partners, thereby capturing  
17 the broad potential of genetics and helping to expand its use across the healthcare continuum.

18 11. Invitae also applies proprietary design, process automation, robotics, and  
19 bioinformatics software solutions to achieve efficiencies in sample processing and complex  
20 variant interpretation, allowing medical interpretation at scale. The result is a new and simplified  
21 process for obtaining and using affordable, high-quality genetic information to inform critical  
22 healthcare decisions. That access and scale also enable genomic information to speed the  
23 discovery and development of new personalized medical therapies — all while making clinical  
24 genetic testing available to billions of people. By pioneering new ways of sharing, understanding,  
25 and applying genetic information, Invitae is transforming the field of genetics from a series of  
26 one-time, one-dimensional queries to a lifelong clinical dialogue with our genes using complex  
27 analyses and information management to improve medical decisions and optimize health  
28 interventions.

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1           12.     One of Invitae’s successful products is its Genetic Information Assistant or Gia<sup>®</sup>  
2 (“Gia”). The Gia software is a HIPAA-compliant clinical chatbot that facilitates virtual  
3 conversations with patients, including intake of family history and automatic delivery of results.  
4 Gia is designed by genetic experts and is used by more than 100,000 patients and their doctors.  
5 Gia was developed in collaboration with genetic counselors to ensure information is offered in a  
6 medically responsible way. Gia can guide patients regarding consent, personalized risk  
7 assessment, insurance benefits, pre/post-test education and understanding their test results, all  
8 through an intuitive online conversation. Among other things, Gia walks patients through their  
9 genetic test results and can also schedule patients for a call with an Invitae genetic counselor. Gia  
10 has an exceedingly high (>90%) satisfaction rate with patients and is used by some of the top  
11 academic health systems in the U.S.

12           13.     On November 17, 2020, OptraHealth sued BotsCrew, Inc. in this District, alleging  
13 infringement of the ’882 Patent. BotsCrew moved to dismiss OptraHealth’s complaint on the  
14 ground that, *inter alia*, the ’882 Patent is directed to unpatentable subject matter. The motion was  
15 fully briefed on May 24, 2021. The Court scheduled a hearing on the motion for August 26, 2021  
16 and later continued it to November 4, 2021. On August 25, 2021, while the motion to dismiss  
17 remained pending, the Court granted the parties’ joint motion to dismiss OptraHealth’s claims  
18 with prejudice.

19                           **EXISTENCE OF AN ACTUAL CONTROVERSY**

20           14.     There is an actual controversy within the jurisdiction of this Court under 28 U.S.C.  
21 §§ 2201 and 2202.

22           15.     On August 30, 2021, OptraHealth, through counsel, sent a letter to Invitae’s San  
23 Francisco office, alleging that Gia infringes the ’882 Patent.

24           16.     OptraHealth’s letter contends that “the functionality provided in GIA . . . infringes  
25 on the claims granted to OptraHEALTH in Patent ‘882” and specifically identifies claim 1 of the  
26 ’882 Patent as being infringed.

27           17.     OptraHealth’s letter demands that Invitae immediately cease and desist  
28 infringement of the ’882 Patent and states: “In the event you fail to meet this demand, we may

1 advise OptraHEALTH of all available legal remedies, including seeking the [sic] monetary  
2 damages, injunctive relief, and an order that you pay court costs and attorney’s fees. Your  
3 liability and exposure under such legal action could be considerable.” The letter further states:  
4 “our client is willing to license OptraHEALTH’s technology through a non-exclusive, non-  
5 transferable license.” Apparently not confident of its allegations, OptraHealth further stated: “**If**  
6 **you decline a license, we request all documentation including technical specifications and**  
7 **design documentation for the Gia product to evaluate the merits of any legal claims you**  
8 **may assert.**” (emphasis original).

9 18. In a letter dated September 30, 2021, Invitae thoroughly refuted OptraHealth’s  
10 baseless allegation. Invitae identified several reasons why Gia does not infringe any claim of the  
11 ’882 Patent. For example, Invitae explained: “Each claim of the ’882 patent requires performing  
12 steps (F) and (G) of claim 1, which require a ‘knowledge-graphing system’ that includes two  
13 types of ‘knowledge graphs’:  
14 ‘(F) compiling a corresponding knowledge corpus for the specific health report through a  
15 knowledge-graphing system, wherein the corresponding knowledge corpus includes *a query-*  
16 *related knowledge graph and a report-related knowledge graph;*  
17 (G) extracting a list of query-related information from the corresponding knowledge corpus of the  
18 specific health report by *comparing and associating the query-related knowledge graph with the*  
19 *report-related knowledge graph* through the knowledge-graphing system.” (emphasis original).

20 19. Invitae explained that Gia does not compare and associate any graphs, much less  
21 the “query-related knowledge graph” and the “report-related knowledge graph” required in these  
22 two steps of the method recited in each claim of the ’882 Patent.

23 20. In a letter dated October 14, 2021, OptraHealth persisted in its baseless allegation  
24 of infringement and again threatened legal action, stating it would “not hesitate to seek court  
25 intervention declaring that Invitae has willfully infringed OptraHealth’s patent.”

26 21. After further correspondence, including threats to at least one Invitae customer,  
27 OptraHealth warned Invitae, in a letter dated November 10, 2021, that it was providing “a last  
28 opportunity to resolve the issues.” And, in a letter dated February 2, 2022, OptraHealth asserted

1 that “we may have no choice but to seek court intervention. Enclosed please find a proposed  
2 Complaint to be filed with the District Court for the Western District of Texas. The complaint  
3 provides the basis for the allegations of the ‘882 patent by Invitae.” (A copy of OptraHealth’s  
4 draft complaint is attached hereto as Exhibit B.) OptraHealth’s counsel threatened that if “we do  
5 not hear from you by February 10, 2022, the client will pursue all available remedies, including  
6 filing suit for patent infringement.”

7 22. Faced with these ongoing, persistent, and baseless threats of lawsuits against  
8 Invitae and its customers for patent infringement — and for a product developed prior to the  
9 filing of OptraHealth’s patent application — Invitae has no choice but to invoke the judicial  
10 process to resolve this dispute. OptraHealth’s continued threats present a needless distraction and  
11 interference from Invitae’s mission to bring comprehensive genetic information into mainstream  
12 medical practice to improve the quality of healthcare for billions of people.

13 23. The foregoing correspondence demonstrates that an immediate, substantial, and  
14 justiciable controversy exists between Invitae and OptraHealth regarding Invitae’s alleged  
15 infringement of the ‘882 Patent. Accordingly, there is an immediate and existing case or  
16 controversy, and declaratory judgment jurisdiction exists over the subject matter set forth in this  
17 complaint.

18 **COUNT I**

19 **Declaratory Judgment of Noninfringement of U.S. Patent No. 10,754,882**

20 24. The foregoing paragraphs are incorporated herein by reference.

21 25. The manufacture, use, sale, offer for sale, and/or importation of the accused  
22 product does not infringe, directly or indirectly, any valid claim of the ‘882 Patent.

23 26. The Accused Product does not infringe claims requiring a method of retrieving  
24 information from a health report through a machine assisted interrogation process comprising the  
25 steps of: (A) providing a personal assistance device, wherein the personal assistance device is  
26 communicably coupled with a reporting system; (B) providing a reporting system, wherein the  
27 reporting system comprises a plurality of health reports and a query-interrogation system; (C)  
28 receiving a health report-related query through the personal assistance device, wherein the health

1 report-related query corresponds to a specific health report from the plurality of health reports;  
 2 (D) forwarding the health report-related query to the reporting system through the personal  
 3 assistance device; (E) selecting the specific health report from the plurality of health reports  
 4 through the query-interrogation system; (F) compiling a corresponding knowledge corpus for the  
 5 specific health report through a knowledge-graphing system, wherein the corresponding  
 6 knowledge corpus includes a query-related knowledge graph and a report-related knowledge  
 7 graph; (G) extracting a list of query-related information from the corresponding knowledge  
 8 corpus of the specific health report by comparing and associating the query-related knowledge  
 9 graph with the report-related knowledge graph through the knowledge-graphing system; (H)  
 10 forwarding the list of query-related information from the reporting system to the personal  
 11 assistance device; (I) converting the list of query-related information to an output content file  
 12 through the query-interrogation system; and (J) outputting the output content file through the  
 13 personal assistance device.

14 27. An actual and justiciable controversy exists between Invitae and OptraHealth as to  
 15 whether the '882 Patent is infringed, and this controversy is likely to continue. A judicial  
 16 declaration is necessary and appropriate so that Invitae may ascertain its rights with respect to the  
 17 '882 Patent.

#### **PRAYER FOR RELIEF**

18 WHEREFORE, Invitae respectfully requests that judgment be entered in its favor and  
 19 prays that the Court grant the following relief:

20 (a) A judgment declaring that Invitae has not infringed and is not infringing, either  
 21 directly or indirectly, any claims of the Asserted Patent and declaring that the manufacture, use,  
 22 sale, offer for sale, and/or importation of the Accused Product does not infringe, directly or  
 23 indirectly, any claims of the Asserted Patent;

24 (b) A judgment that Defendant OptraHealth and each of its officers, directors, agents,  
 25 counsel, servants, employees, and all persons in active concert or participation with any of them,  
 26 be restrained and enjoined from (i) alleging, representing, or otherwise stating that Invitae or the  
 27 manufacture, importation, use, offer for sale, or sale of the Accused Product infringes the  
 28

1 Asserted Patent, and (ii) instituting or initiating any action or proceeding alleging infringement of  
2 the Asserted Patent against Invitae or customers, manufacturers, users, importers or sellers of the  
3 Accused Product;

4 (c) A judgment declaring that Invitae is the prevailing party and that this is an  
5 exceptional case under 35 U.S.C. § 285 and awarding Invitae its reasonable attorneys’ fees,  
6 expenses, and costs in connection with this case;

7 (d) A judgment awarding Invitae its costs and reasonable expenses to the fullest extent  
8 permitted by law; and

9 (e) A judgment awarding Invitae any other remedy or relief as the Court may deem  
10 just and proper.

11 **JURY DEMAND**

12 Invitae demands a trial by jury on all issues so triable.

13  
14  
15 Dated: February 7, 2022

Respectfully submitted,

16  
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