IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AGILENT TECHNOLOGIES, INC.,	)	
	)	
Plaintiff,	)	
	)	C.A. No. _____
v.	)	
	)	**DEMAND FOR JURY TRIAL**
AXION BIOSYSTEMS, INC.,	)	
	)	
Defendant.	)	

COMPLAINT

Plaintiff, Agilent Technologies, Inc. ("Agilent"), for its Complaint against defendant, Axion BioSystems, Inc. ("Axion"), requests a trial by jury and alleges as follows:

1. This is an action for patent infringement. Agilent alleges that Axion infringes U.S. Patent No. 11,906,508 ("the '508 Patent"), entitled "Label-Free Monitoring of Excitation-Contraction Coupling and Excitable Cells Using Impedance Based Systems with Millisecond Time Resolution" (Exhibit A). The '508 Patent is directed to the inventions of researchers Xiaobo Wang, Yama A. Abassi, Biao Xi, Wen Fu Zhang, and Xiao Xu, each of whom is listed as a named inventor.

2. Agilent alleges that Axion: (1) directly infringes one or more claims of the '508 Patent by making, using, selling, or offering for sale in the United States, exporting, or importing into the United States impedance-based cell analysis products including the Maestro Edge, Maestro Pro, Maestro Z, Maestro ZHT, and/or Maestro TrayZ ("Maestro Platforms"), CytoView-Z 96-well and/or 384-well plate ("CytoView-Z Plates"), and AxIS Z software; (2) induces at least its customers to infringe one or more claims of the '508 Patent by its acts, including its instructions in combination with manufacture, sale, offer for sale, and/or importation of at least the Maestro Platforms, CytoView-Z Plates, and AxIS Z software; and (3) contributes to infringement of one

more claims of the Asserted Patents by its manufacture, sale, offer for sale, and/or importation of at least the Maestro Platforms, CytoView-Z Plates, and AxIS Z software. Agilent seeks damages and other relief for Axion's infringement of the '508 Patent.

3. ACEA Biosciences, Inc. ("ACEA"), where the named inventors on the '508 patent were employed at the time of the inventions claimed in the '508 Patent, invested substantial effort to invent methods, systems and apparatuses for monitoring impedance of cells distributed in wells of a multi-well plate to improve researchers' ability to analyze cell behavior, such as cancer cell death in response to cytotoxic immune cells and/or therapies, in real-time. Agilent acquired ACEA in 2018 and, since that time, has continued to invest substantial resources in developing this technology. Over the years, around 4,500 papers have cited Agilent's impedance technology, with 690 references cited in 2021 alone. The '508 Patent is just one of Agilent's patents in this innovative area. Axion infringes one or more claims of the '508 Patent by making, using, selling, and offering for sale in the United States, exporting and importing into the United States such systems and apparatuses and induces and contributes to infringement of one or more claims of the '508 Patent by at least Axion's customers.

THE PARTIES

4. Agilent is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 5301 Stevens Creek Boulevard, Santa Clara, California 95051.

5. Agilent is a world-leading supplier in life sciences, diagnostics and applied chemical markets. Agilent advances quality of life with a broad range of high-quality solutions to customers in 110 countries. For example, Agilent provides laboratories with instruments, services, consumables, applications, and expertise, enabling customers to achieve their research, production, therapeutic, and discovery goals. Agilent instruments, software, and sample

preparation solutions help scientists at top-tier universities conduct faster, more accurate research to learn more about cancer, cardiovascular diseases, diabetes, Alzheimer's, Parkinson's, autism, and other ailments. Agilent solutions further help pathology laboratories deliver fast, accurate information to the physicians, hospitals, and medical centers they serve. Agilent solutions also provide precise answers for every segment of the pharmaceutical industry, from disease research and drug discovery to drug development, manufacturing, and quality control.

6. Agilent is the owner by assignment of the '508 Patent and holds all rights necessary to bring this action.

7. On information and belief, Axion is a corporation organized under the laws of the State of Delaware with a principal place of business at 1819 Peachtree Road Northeast, Suite 350, Atlanta, Georgia, 30309-1855. Axion has committed and continues to commit acts of infringement throughout the United States, including, on information and belief, in the District of Delaware, including but not limited to by the offers for sale and sales of products in this judicial district and by taking active steps to induce the infringement by its customers in this district.

8. Axion resides in the District of Delaware at least because it is incorporated in Delaware.

JURISDICTION AND VENUE

9. This is an action arising under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq*. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

10. This Court has personal jurisdiction over Axion due, *inter alia*, to its incorporation in Delaware, and its continuous presence in, and systematic contact with, Delaware. Axion is further subject to this Court's jurisdiction, upon information and belief, at least because of Axion's substantial business in Delaware, including at least part of its past infringing activities, regularly

doing or soliciting business in Delaware, and engaging in persistent conduct and/or deriving substantial revenue from goods and services provided in Delaware. Upon information and belief, Axion, directly and/or through intermediaries, has committed and continues to commit acts of infringement in Delaware by, among other things, making, using, selling, or offering for sale in the United States, or importing into the United States systems or apparatuses that infringe one or more claims of the '508 Patent.

11. Venue is proper in Delaware pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b), at least because Axion is incorporated in the State of Delaware and, upon information and belief, has committed acts of infringement in Delaware.

FACTUAL ALLEGATIONS

Technology Underlying Patent Infringement Claim

12. Bioelectronics is an interdisciplinary field that involves the integration of biomaterials with electronic devices. Bioelectronics can be used to analyze cells and assay biological molecules and cells. In one application, cells can be cultured on a system or apparatus comprising microelectrodes, and cell-electrode impedance can be measured to monitor cellular changes over time.

13. Bioelectronics provide benefits in several types of scientific studies, including but not limited to studies of immune-mediated cell activation and/or cytotoxicity, anticancer drug screening and discovery, and excitable cells, such as cardiomyocytes, in response to drugs and/or other environmental manipulation.

14. ACEA sought and obtained patent protection, including via the '508 Patent, for its inventions in the field of bioelectronics.

The ’508 Patent

15. The United States Patent and Trademark Office (“USPTO”) duly and legally issued the ’508 Patent, after a full and fair examination, on February 20, 2024.

16. The ’508 Patent claims systems and apparatuses that provide for high-throughput monitoring of cell-substrate impedance. Claim 16 of the ’508 Patent is directed to a system for continuously monitoring cells in real time, label free, with impedance-based analysis, including a plurality of analog-to-digital (A2D) signal converters; a multi-well plate wherein each well comprises an electrode array connected to the plurality of A2D signal converters; an impedance analyzer that measures cell-substrate impedances; and a software program that analyzes the cell-substrate impedances. Exhibit A at Claim 16.

17. Claim 16 of the ’508 Patent is directed to a system for real time, label free impedance-based analysis, the requirements of which are reproduced below:

> A system for continuously monitoring cells in real time, label free, with impedance-based analysis, the system comprising:
>
> a) a plurality of analog-to-digital (A2D) signal converters electrically arranged in parallel to one another;
>
> b) a well plate comprising a plurality of wells on a nonconductive substrate, wherein each well of the plurality of wells comprises one electrode array of a plurality of electrode arrays disposed on the nonconductive substrate that is connected to the plurality of A2D signal converters;
>
> c) an impedance analyzer connected to or including the plurality of A2D signal converters, wherein the impedance analyzer measures, via digitally converted signals from the A2D signal converters, a first plurality of cell-substrate impedances at a first time and a second plurality of cell-substrate impedances at a second time, the first plurality of cell-substrate impedances and the second plurality of cell-substrate impedances being measured between a first electrode structure and a second electrode structure in each electrode array and across a cell sample attached within each well of the plurality of wells; and
>
> d) a software program that analyzes the first plurality of cell-substrate impedances from the first time and the second plurality of cell-substrate impedances from the second time to produce a plurality of time period analyses of the plurality of cell samples, wherein individual time period analyses of the

plurality of time period analyses are associated with individual wells of the plurality of wells.

Axion's Infringing Technology

18. Beginning at least as early as 2019, Axion began making, using, selling, marketing, and instructing customers to use systems and apparatuses including the Maestro Platforms, Cytoview-Z Plates, and AxIS Z software. Upon issuance of the '508 Patent, Axion's manufacture, use, sale, offer for sale, and importation of such instrumentalities began infringing the '508 Patent. Upon obtaining knowledge of the '508 Patent, which occurred at least as early as the filing and service of this complaint, Axion's manufacture, use, sale, offer for sale, and/or importation, as well as instructions to customers to combine and use such instrumentalities constituted infringement of the '508 Patent.

19. For example, Axion's Maestro Z and ZHT platforms "offer[] continuous, label-free, impedance-based monitoring of [] cells." Exhibit B (Maestro Z Brochure) at 2; Exhibit C (Maestro ZHT Brochure) at 2. Per Axion, the Maestro Z platform works as follows:

a. "Axion's 384-well and 96-well CytoView-Z plates have a recording electrode embedded in the culture surface of each well (1)."

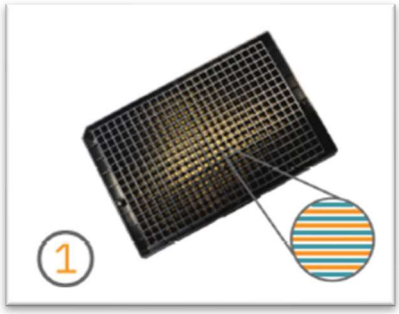
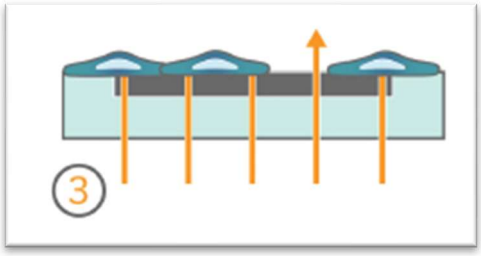


Exhibit C at 2.

b. "The Maestro Z platform uses impedance measurements (ohms, Ω) to quantify the presence of cells on the electrode (2)."

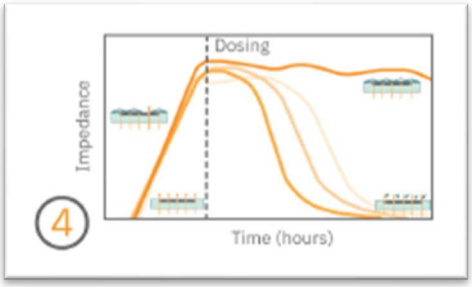
Id.

c. "Impedance measures how much electrical signal (orange arrows) is blocked by the electrode-cell interface (3)."



Id.

d. "When the electrode is uncovered, electrical signal easily passes and the impedance is low. When cells cover the electrode, less electrical signal passes and impedance is high. When cells die or detach, the impedance decreases back toward baseline (4)."



Id.

20. Axion's AxIS Z software provides for "[a]naly[zing] changes in cell proliferation, morphology, and viability in the CytoView-Z plate label-free and in real time." *Id.*

21. Axion touts the Maestro Z and ZHT systems as "the world's most advanced electrode-based real-time cell analysis system," referring to high-throughput plates, continuous cell monitoring, and powerful data analysis. *Id.* at 5; Exhibit B at 5.

Axion's Knowledge of the '508 Patent

22. Upon information and belief, Axion has had specific knowledge of the application for the '508 Patent as early as April 27, 2023, the publication date of the application from which the '508 Patent issued, and knowledge of the '508 Patent as early as the '508 Patent's February 20, 2024 issue date but, in no case later than the date that this complaint was received by Axion.

23. Axion and Agilent are direct competitors for the sale of real-time high throughput impedance analysis systems. *See, e.g.*, Exhibit D (website printout of https://www.axionbiosystems.com/resources/news/axion-biosystems-bioelectronic-assays-aid-development-cancer-immunotherapies) (last visited February 15, 2024) (news release in 2021 on Axion's website acknowledging the introduction of the Maestro allows Axion to join the "other players in the real-time, live-cell assay space like Sartorius ***and Agilent,***") (emphasis added); Exhibit E (available at https://www.axionbiosystems.com/sites/default/files/2019_callaghan_et_al_modeling_cardiac_complexity.pdf) (last visited February 15, 2024) (third party 2019 article comparing Axion's Maestro system to ACEA Biosciences' (now Agilent's) competing product, the xCELLigence); Exhibit F (available at https://www.axionbiosystems.com/sites/default/files/titmarsh_microfluidics_2014.pdf) (last visited February 15, 2024) (third party 2014 article identifying commercially developed impedance-sensing systems, including Axion and ACEA (later acquired by Agilent)). Upon information and belief, Axion was aware of ACEA's technologies far earlier, as Axion undertook to launch its offerings to compete in the limited market in which Axion and ACEA (now Agilent)

competed and continue to compete for sales of products. Thus, upon information and belief, Axion was familiar with Agilent's materials explaining the use and operation of the competing xCELLigence platform.

24. Moreover, on February 23, 2023, Agilent brought suit against Axion for patent infringement of three patents claiming methods for impedance-based analysis, U.S. Patent Nos. 7,192,752, 7,468,255, and 8,026,080, in *Agilent Technologies, Inc. v. Axion BioSystems, Inc*., C.A. No. 1:23-cv-00198-CJB (D. Del.) ("198 Case").

25. The '508 Patent and the patents asserted in the '198 Case are owned by Agilent and overlap in inventorship with the '508 Patent. Additionally, the claims of the '508 Patent and the patents asserted in the '198 Case are embodied by Agilent's xCELLigence line of products and are infringed by Axion's Maestro platform. Given the overlapping ownership, inventorship, and technology, upon information and belief, Axion was on notice of the '508 Patent as early as February 20, 2024 but, in no case later than the date that this complaint was received by Axion.

26. Thus, on information and belief, Axion had knowledge of the '508 Patent and that the '508 Patent claims are embodied by Agilent's xCELLigence platform, as early as February 20, 2024. This is evidenced by at least: (a) direct competition between Axion's Maestro Platforms and Agilent's xCELLigence; and (b) the ongoing action (the '198 Case) brought by Agilent concerning Axion's infringement of methods for impedance-based analysis using the same instrumentalities that are accused of infringing the '508 Patent in the present complaint. In the alternative, in view of the foregoing allegations, upon information and belief, Axion was, at the very least, willfully blind to the existence and Axion's infringement of the '508 Patent at least as of February 20, 2024.

27. As a result of Axion's knowledge of the '508 Patent, Axion knew that its making, using, selling, or offering for sale in the United States, exporting or importing into the United

States and, additionally, provision of instructions to customers and prospective customers to use its impedance-monitoring systems infringed one or more claims of the '508 Patent, including at least Claim 16 of the '508 Patent, or Axion was willfully blind to such infringement.

FIRST COUNT

(INFRINGEMENT OF U.S. PATENT NO. 11,906,508)

28. Agilent incorporates by reference the allegations set forth in the foregoing paragraphs of this Complaint as though fully set forth herein.

29. Axion has directly infringed and continues to infringe one or more claims, including at least Claim 16, of the '508 Patent, in the United States by making, using, selling, or offering for sale in the United States, exporting, or importing into the United States systems and apparatuses for impedance-based cell analysis using at least the Maestro Platforms, CytoView-Z Plates, and AxIS Z software ("the '508 Patent Accused Instrumentalities") in violation of 35 U.S.C. § 271(a).

30. As a non-limiting example, "[a] system for continuously monitoring cells in real time, label free, with impedance-based analysis" is met at least by Axion's Maestro Z in combination with the Cytoview-Z Plate and AxIS Z software Impedance Module (upon information and belief, included with the Maestro Z). Exhibit B at 2 (Maestro Z Brochure) ("Axion BioSystems' Maestro Z platform offers continuous, label-free, impedance-based monitoring of your cells.").

31. "[A] plurality of analog-to-digital (A2D) signal converters electrically arranged in parallel to one another" is met at least, for example, by Axion's Maestro Z and CytoView-Z Plates. Based upon publicly available information concerning the design and operation of the Axion's Maestro Z, CytoView-Z Plates, and/or AxIS Z software, upon information and belief, at least Axion's Maestro Z and or/ CytoView-Z Plates comprise(s) a plurality of A2D converters electrically arranged in parallel to one another to convert analog signals to digital signals given the

design of the CytoView-Z plates and purported ability of the Maestro Z, CytoView-Z Plates, and/or AxIS Z software to monitor impedance from each individual well (*see infra* Paragraph 40).

32. "[A] well plate comprising a plurality of wells" is met at least, for example, by Axion's CytoView-Z Plates. Axion's CytoView-Z Plates, depicted below, comprise a well plate comprising a plurality of wells.

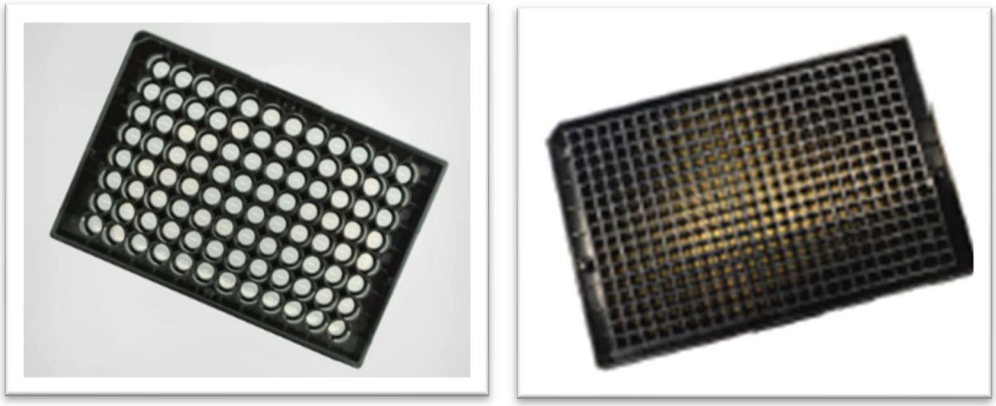


Exhibit G (website printout of https://www.axionbiosystems.com/products/consumables/cytoview-z-plate) (last visited February 15, 2024); Exhibit C at 2.

33. The wells "on a nonconductive substrate" is met at least, for example, by Axion's CytoView-Z Plates. Axion's CytoView-Z Plates comprise a surface material of PET (polyester), a nonconductive substrate. Exhibit H (CytoView-Z Plate Datasheet).

34. "[E]ach well of the plurality of wells comprises one electrode array of a plurality of electrode arrays" is met at least, for example, by Axion's CytoView-Z Plates. As depicted below, each well of the plurality of wells of the CytoView-Z Plates comprise one electrode array of a plurality of electrode arrays:

Id.

CytoView-Z 96	Z96-IMP-96B	96	1 Gold		Transparent	Black
CytoView-Z 384	Z384-IMP-384B	384	1 Gold		Transparent	Black

***Schematic of well illustrating the recording electrode (blue) and the ground (orange).**

Exhibit G ("CytoView-Z plates have a recording electrode embedded in the culture surface of each well" and noting that the figure is a "[s]chematic of [a] well illustrating the recording electrode (blue) and the ground (orange)").

35. A plurality of electrode arrays that are "disposed on the nonconductive substrate" is met at least, for example, by Axion's CytoView-Z Plates. The plurality of electrode arrays of the CytoView-Z Plates are disposed on a PET nonconductive substrate. *See* Exhibit H (CytoView-Z Plate Datasheet) (indicating that "[e]ach well contains 1 interdigitated electrode" and the "surface material" is "PET").

36. A plurality of electrode arrays that are "connected to the plurality of A2D signal converters" is met at least, for example, by Axion's CytoView-Z Plates. On information and belief, given the design of the CytoView-Z Plates and purported ability to monitor impedance from each

individual well (*see infra* Paragraph 40), the plurality of electrode arrays is connected to the plurality of A2D signal converters.

37. "[A]n impedance analyzer . . . [that] measures . . . a first plurality of cell-substrate impedances at a first time and a second plurality of cell-substrate impedances at a second time, the first plurality of cell-substrate impedances and the second plurality of cell-substrate impedances being measured between a first electrode structure and a second electrode structure in each electrode array and across a cell sample attached within each well of the plurality of wells" is met at least, for example, by Axion's Maestro Z. For example, Axion's Application Note "Quantifying Dynamic Cellular Profiles of Human Cancer Cell lines using the Maestro Z Impedance Assay" explains the Maestro Z's use of "impedance measurements (ohms, Ω) to quantify the presence of cells on the electrode. To measure impedance, small electrical signals are delivered to the electrodes . . . . Cell attachment, spreading, and cell-cell connections block these electrical signals and are detected as an increase in impedance." Exhibit I at 2. Accordingly, impedance is measured at each well of a multi-well plate by quantifying the presence of cells on the electrodes in each well. In operation, impedance is measured across at least 2 wells of a multi-well plate over at least a first time and a second time. For example, Figure 4 of this Application Note depicts the impedance measurements of HeLa, A549, and Calu-3 cells in wells of the CytoView-Z 96 well plate over a 40-hour time period:

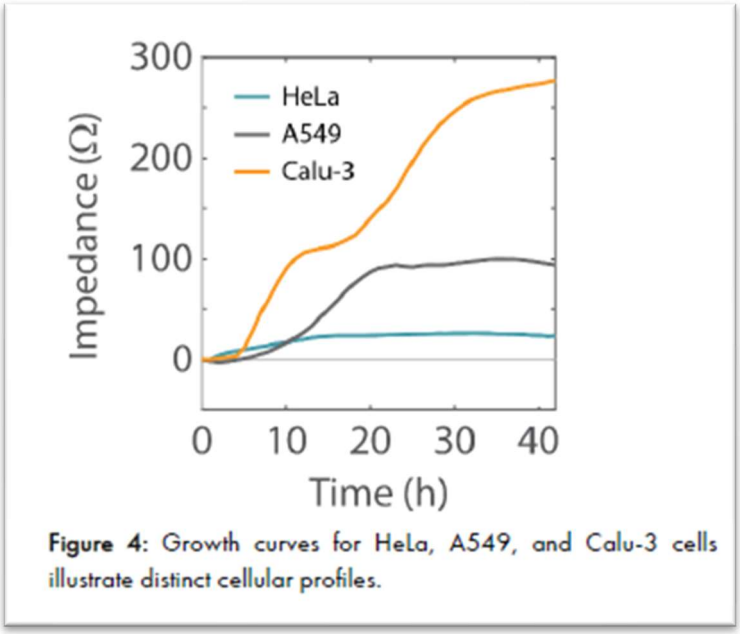


Figure 4: Growth curves for HeLa, A549, and Calu-3 cells illustrate distinct cellular profiles.

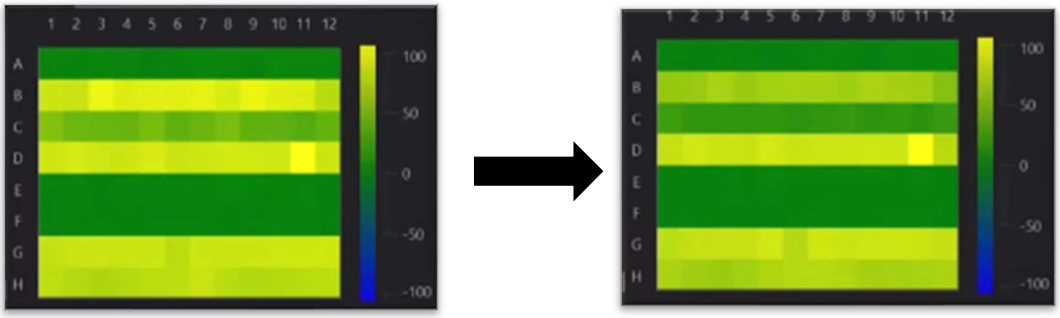
Id. at 3.

38. "[A]n impedance analyzer connected to or including the plurality of A2D signal converters, wherein the impedance analyzer measures via digitally converted signals from the A2D signal converters" is met at least, for example, by Axion's Maestro Z. On information and belief, the Maestro Z is connected to or includes the plurality of A2D signal converters, and the Maestro Z measurement of cell-substrate impedances is achieved via digitally converted signals from the A2D converters.

39. "[A] software program that analyzes . . . cell-substrate impedances" is met at least, for example, by Axion's AxIS Z software. The Maestro Z platform comprises a software program AxIS Z that analyzes cell-substrate impedances. Exhibit B at 2.

See also Exhibit J (website printout of https://www.axionbiosystems.com/products/software/impedance-module) (last visited February 15, 2024) ("The Impedance Module with AxIS Z makes impedance-based assays easy. Take control of experimental settings, view real-time cellular profiles, extract straightforward endpoints, or perform in-depth analysis of cytolysis or barrier function with ease.").

40. "[A] software program that analyzes the first plurality of cell-substrate impedances from the first time and the second plurality of cell-substrate impedances from the second time to produce a plurality of time period analyses of the plurality of cell samples, wherein individual time period analyses of the plurality of time period analyses are associated with individual wells of the plurality of wells" is met at least, for example, by Axion's AxIS Z software. As illustrated in Axion's YouTube video "How to get started with Maestro Z cell analysis system," the AxIS Z software analyzes the first plurality of cell-substrate impedances from the first time and the second plurality of cell-substrate impedances from the second time to produce a plurality of time period analyses of the plurality of cell samples, wherein individual time period analyses of the plurality of time period analyses are associated with individual wells of the plurality of wells. *See* https://www.youtube.com/watch?v=Hz1HAZnfhbs&t=125s (last viewed August 25, 2023). Axion's AxIS Z software analyzes cell-substrate impedance in each well of Axion's CytoView-Z Plate over the time course of an experiment, as illustrated in the YouTube video, which touts the AxIS Z software's ability to depict the impedance measurements at each well of a CytoView-Z 96-well plate at any given time during the experiment:



Id. The images above depict the impedance measured in each well of the 96-well CytoView-Z plate at a first time point (left) and a second time point (right), illustrating that the analysis is associated with individual wells of the plurality of wells.

41. By making, using, selling, or offering for sale in the United States, or importing into the United States the system described above, Axion has injured Agilent and is liable to Agilent for directly infringing one or more claims of the '508 Patent, including without limitation Claim 16, pursuant to 35 U.S.C. § 271(a).

42. Upon information and belief, since the time it learned of the '508 Patent, Axion has induced and continues to induce infringement of one or more claims of the '508 Patent, including at least Claim 16, as a result of, among other activities, making, selling, or offering for sale in the United States, or importing into the United States the above-described system and instructing, encouraging, recommending, and/or directing others, including customers, end-users, and installers on the use of '508 Patent Accused Instrumentalities and, further, by taking active steps to cause infringement of at least Claim 16 of the '508 Patent in violation of 35 U.S.C. § 271(b). Such steps include, but are not limited to, encouraging or advising third parties to use the Accused Instrumentalities in an infringing manner; providing or distributing guidelines, directions, and instructions to third parties for installation, assembly, or use of the '508 Patent Accused Instrumentalities in a manner that directly infringes the '508 Patent; and advertising, promoting,

and marketing the use of the '508 Patent Accused Instrumentalities in an infringing manner. The materials and documents provided to third parties that show how Axion intends, instructs, directs and/or requires third parties to use the '508 Patent Accused Instrumentalities in a manner that infringes. *See, e.g.*, Exhibit B at 2 ("Culture your cells in an Axion multiwell CytoView-Z plate. . . . Analyze changes in cell proliferation, morphology, and viability in the CytoView-Z plate label-free and in real time with AxIS Z software."); Exhibit C at 2 (same as for Maestro ZHT); Exhibit K (Application Note entitled "Monitoring Migration of Breast Cancer Cells using Maestro Z Real-Time Impedance Assay"); *see also* Exhibit L (Culture Protocol entitled "Impedance – Non-Adherent Cell Lines"). Axion specifically intended for its customers to infringe the '508 Patent. As described in ¶¶ 22–27, upon information and belief, Axion knew of the '508 Patent as of February 20, 2024, but in no event later than upon receipt of this complaint, and knew that the use of the '508 Patent Accused Instrumentalities infringed the '508 Patent or was willfully blind to the infringement. The materials cited above illustrate that Axion instructs its customers to use the products in an infringing manner by providing detailed instructions to customers of how to culture cells in CytoView-Z Plates and record impedance measurements, including a listing of required consumables and equipment from Axion.

43. Axion has contributed and continues to contribute to the infringement of one or more claims of the '508 Patent, including at least Claim 16, in violation of 35 U.S.C. § 271(c), by third parties, including their customers, end-users, and installers, by manufacturing, selling, or offering for sale in the United States, or importing into the United States the above-described system and apparatus and, further, because at least the '508 Patent Accused Instrumentalities are a material part of the claimed invention, are especially made or adapted for infringement, and are not a staple article or commodity of commerce suitable for substantial noninfringing use. These

third parties, including Axion's customers, end-users, and installers, directly infringe the '508 Patent by using the '508 Patent Accused Instrumentalities, for example, by using the claimed system and apparatus. For example, a third-party customer directly infringes the asserted claims by using the '508 Patent Accused Instrumentalities.

44. Axion has had actual knowledge of or was willfully blind to its infringement of the '508 Patent at least as early as February 20, 2024, and in no event later than the date it received this Complaint. Despite this knowledge of the '508 Patent, Axion has continued to engage in activities to: (1) encourage and assist its customers in the use of infringing Axion technology; and (2) manufacture, offer for sale, sell, and/or import Axion's infringing Maestro Platforms, CytoView-Z Plates, and AxIS Z software. Thus, on information and belief, Axion (1) had actual knowledge of the '508 Patent; (2) knowingly induced its customers to infringe one or more claims of the '508 Patent, including at least Claim 16 or was willfully blind to such infringement; (3) knowingly contributed to the infringement of one or more claims of the '508 Patent, including at least Claim 16; and (4) had specific intent to induce and contribute to the patent infringement.

45. On information and belief, by using the Axion-supplied instrumentalities identified above, as encouraged, recommended and assisted by Axion, Axion has induced its customers to directly infringe and continue to directly infringe one or more claims of the '508 Patent, including at least Claim 16, by use of the claimed system and apparatus. *See, e.g.*, Exhibit M at 23–24 (Y Chen et al., "A Versatile Polypharmacology Platform Promotes Cryoprotection and Viability of Human Pluripotent and Differentiated Cells," Nat Methods. 2021 May; 18(5): 528–541, doi:10.1038/s41592-021-01126-2).

46. Thus, Axion indirectly infringes one or more claims of the '508 Patent, including at least Claim 16, within the United States by inducing infringement under 35 U.S.C. § 271(b).

For example, since learning of the '508 Patent and by failing to cease offering the '508 Patent Accused Instrumentalities for sale, Axion has knowingly and intentionally taken active steps to instruct, encourage, recommend, and/or direct others, including customers, end-users, and installers of the '508 Patent Accused Instrumentalities to directly infringe one or more claims of the '508 Patent. Such steps include, but are not limited to, encouraging or advising third parties to use the '508 Patent Accused Instrumentalities in an infringing manner; providing or distributing guidelines, directions, and instructions to third parties for installation, assembly, or use of the '508 Patent Accused Instrumentalities in a manner that directly infringes the '508 Patent; and advertising, promoting, and marketing the use of the '508 Patent Accused Instrumentalities in an infringing manner. *See, e.g.*, Exhibit B at 2 ("Culture your cells in an Axion multiwell CytoView-Z plate. . . . Analyze changes in cell proliferation, morphology, and viability in the CytoView-Z plate label-free and in real time with AxIS Z software."); Exhibit C at 2 (same as for Maestro ZHT); Exhibit K (Application Note entitled "Monitoring Migration of Breast Cancer Cells using Maestro Z Real-Time Impedance Assay"); *see also* Exhibit L (Culture Protocol entitled "Impedance – Non-Adherent Cell Lines"). Additionally, Axion indirectly infringes one or more claims of the '508 Patent, including at least Claim 16, within the United States, by contributing to infringement under 35 U.S.C. § 271(c) by the manufacture, offer for sale, sale, and/or importation of at least CytoView-Z Plates and Maestro Platforms with knowledge that they are infringing one or more claims of the '508 Patent.

47. On information and belief, Axion infringes at least Claim 16 of the '508 Patent, literally or under the doctrine of equivalents, under 35 U.S.C. § 271(f)(1) by supplying or causing to be supplied in or from the United States a combination of two or more components of the '508 Patent Accused Instrumentalities, including without limitation components for providing a system

for continuously monitoring cells in real time, label free, with impedance-based analysis such as a Maestro Platform, CytoView-Z Plate, and AxIS Z software, so as to, on information and belief, intentionally and with knowledge of or willful blindness to the infringement, actively induce the combination of such components outside of the United States in a manner that would infringe the '508 Patent if such combination occurred within the United States.

48. On information and belief, Axion infringes at least Claim 16 of the '508 Patent, literally or under the doctrine of equivalents, under 35 U.S.C. § 271(f)(2) by supplying or causing to be supplied in or from the United States at least one component of the '508 Patent Accused Instrumentalities that is especially made or adapted for use in the invention and not a staple article or commodity of commerce suitable for non-infringing use, including without limitation a component for providing a system for continuously monitoring cells in real time, label free, with impedance-based analysis such as a Maestro Platform, CytoView-Z Plate, and/or AxIS Z software, intending that such component will be so combined outside of the United States in a manner that would infringe the '508 Patent if such combination occurred within the United States.

49. Axion's infringement of the '508 Patent has been and continues to be deliberate and willful because, upon information and belief, Axion knew of the '508 Patent as of February 20, 2024 (, but, in any event, no later than once it received the present complaint, Axion knew that its actions would infringe the '508 Patent, and Axion knew that instructing its customers to use the Maestro Platforms would result in infringement of the '508 Patent. Therefore, this is an exceptional case warranting an award of enhanced damages and attorneys' fees and costs pursuant to 35 U.S.C. §§ 284–285.

50. On information and belief, Axion will continue to infringe the '508 Patent unless enjoined by this Court.

51. As a result of Axion's infringement of the '508 Patent, Agilent has suffered monetary damages, and seeks recovery, in an amount to be proven at trial, adequate to compensate for Axion's infringement, but, in no event, less than a reasonable royalty with interest and costs. Axion's infringement of Agilent's rights under the '508 Patent also has damaged and will continue to damage Agilent, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Agilent prays for judgment and seeks relief against Axion as follows:

A. for judgment that Axion has infringed and continues to infringe one or more claims of the '508 Patent, directly, and indirectly by both inducement of infringement and contributory infringement;

B. for a preliminary and permanent injunction against Axion, enjoining Axion from direct infringement, inducement of infringement, and contributory infringement of the '508 Patent;

C. for judgment awarding Agilent damages adequate to compensate it for Axion's infringement of the '508 Patent, including all pre-judgment and post-judgment interest;

D. for judgment that Axion has willfully infringed and continues to willfully infringe one or more claims of the '508 Patent;

E. for judgment awarding enhanced damages pursuant to 35 U.S.C. § 284;

F. in the absence of a permanent injunction, for judgment imposing a mandatory future royalty payable on each and every act of infringement by Axion in the future that infringes the '508 Patent and on all future acts that are not colorably different from acts that infringe;

G. for judgment awarding attorneys' fees pursuant to 35 U.S.C. § 285 or otherwise permitted by law;

H. for judgment awarding costs of suit; and

I. for judgment awarding Agilent such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Agilent hereby demands a trial by jury of this action.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Brian P. Egan

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