

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
Case No.: 1:13-CV-13**

ALT BIOSCIENCE, LLC d/b/a PDX  
BIOTECH,

Plaintiff,

v.

KACEY MED-VET, INC. d/b/a KACEY INC.  
and KACEY DIAGNOSTICS, RICHARD  
CARSILLO, SCI-TEK, LLC and JAMES  
SUTOR

Defendants.

**COMPLAINT**

Plaintiff ALT BioScience, LLC d/b/a PDx BioTech (“PDx”), for its Complaint against Defendants, Kacey Med-Vet, Inc. d/b/a Kacey Inc. and Kacey Diagnostics, Richard Carsillo, Sci-Tek, LLC and James Sutor (collectively, “Defendants”), alleges as follows:

**NATURE OF THE ACTION**

1. PDx is the owner by assignment of U.S. Patent No. 8,337,774 (“the ‘774 patent”). The ‘774 patent generally covers compositions for detecting the presence of potentially pathogenic microorganisms, by detection of volatile sulfur compounds and polyamines.
2. On information and belief, Defendants have been and currently are infringing, contributing to and actively inducing infringement of the ‘774 patent in this judicial district and elsewhere in the United States by the manufacture, use, sale and/or offer for sale in the United States of diagnostic products for testing of periodontal disease in dogs and cats, that fall within the scope of the claimed subject matter of the ‘774 patent. By virtue of Defendants’ infringement, PDx is entitled to damages and injunctive relief.

## **THE PARTIES**

3. Plaintiff ALT BioScience, LLC d/b/a PDx BioTech (“PDx”) is a limited liability company organized under the laws of the State of Kentucky, with its principal place of business at 315 South Broadway, Suite 100, Lexington, Kentucky 40508. PDx is in the business of developing, manufacturing, selling and distributing, in this District and throughout the U.S., diagnostic products for oral healthcare in humans and pets, including “OraStrip” brand diagnostic products for the oral detection and monitoring of periodontal disease in dogs.

4. On information and belief, Defendant Kacey Med-Vet, Inc. d/b/a Kacey Inc. and Kacey Diagnostics (“Kacey”) is a corporation organized under the laws of the State of Florida, with a principal place of business at 2588 Bearwallow Mountain Road, Hendersonville, North Carolina 28792. Kacey is in the business of developing, manufacturing, selling and distributing medical diagnostic products for veterinary use, including the “Oral-Stx” and/or “Veti-Dental Stx” brand diagnostic products or similar products for oral detection of periodontal disease in dogs and cats.

5. On information and belief, Defendant Richard Carsillo (“Carsillo”) is domiciled in North Carolina and resides at 2588 Bearwallow Mountain Road, Hendersonville, North Carolina 28792. Carsillo is the President and Chief Executive Officer of Kacey Med-Vet, Inc.

6. On information and belief, Kacey is owned and controlled by Carsillo, and is the instrumentality of Carsillo, rendering Carsillo personally liable for Kacey’s debts, obligations and liabilities. Carsillo has total authority and has exercised total control over the finances, policies and business practices of Kacey.

7. On information and belief, Defendant Sci-Tek, LLC (“Sci-Tek”) is a limited liability company organized under the laws of the State of Indiana, with its principal place of business at 8889 Hague Road, Indianapolis, Indiana 46256. Sci-Tek is in the business of

developing, manufacturing, selling and distributing medical diagnostic products for veterinary use, including engaging in a joint venture with Defendants Kacey and Carsillo to develop, manufacture, sell and distribute the “Oral-Stx” and/or “Veti-Dental Stx” brand diagnostic products or similar products.

8. On information and belief, Defendant James Sutor (“Sutor”) is domiciled in Indiana and resides at 287 Meander Way, Greenwood, Indiana 46142. Sutor is the owner and sole member of Sci-Tek, LLC.

9. On information and belief, Sci-Tek is owned and controlled by Sutor, and is the instrumentality of Sutor, rendering Sutor personally liable for Sci-Tek’s debts, obligations and liabilities. Sutor has total authority and has exercised total control over the finances, policies and business practices of Sci-Tek.

### **JURIDICTION AND VENUE**

10. This is an action for patent infringement arising under The Patent Laws of the United States, Title 35, United States Code §§ 1 et seq. This Court has subject matter jurisdiction pursuant to 35 U.S.C. §§ 271 and 281, and 28 U.S.C. §§ 1331 and 1338(a).

11. This Court has personal jurisdiction over Defendants by virtue of, among other things, the fact that Defendants Kacey and Carsillo reside in the State of North Carolina and this District. Furthermore, Defendants have done and transacted, and continue to do and transact business in the State of North Carolina and this District, and have sufficient minimum contacts with the State of North Carolina so as to foreseeably submit themselves to the jurisdiction and process of this Court. In addition, all or a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this District, including Defendants’ manufacture, use, sale and offer for sale of infringing products in this District.

12. Venue is proper in this District by virtue of 28 U.S.C. §§ 1391(b) and (c), and

1400 as to the Defendants in view of their actions set forth in the preceding paragraph.

### **PATENT INFRINGEMENT**

13. Plaintiff PDx is the owner of U.S. Patent No. 8,337,774 entitled “Compositions For Simultaneous Detection Of Volatile Sulfur Compounds And Polyamines”. The ‘774 patent was duly and legally issued by the United States Patent and Trademark Office on December 25, 2012, and is presumed valid pursuant to 35 U.S.C. § 282. The claims of the ‘774 patent are generally directed to a chromogenic assay for the presence of volatile sulfur compounds, which are an indicator of pathogenic organisms, including periodontal disease. A true copy of the ‘774 patent is attached to this Complaint as Exhibit A and is incorporated herein by reference.

14. On information and belief, Defendants have infringed and continue to infringe the ‘774 patent by the manufacture, use, sale and offer for sale in the United States and this District, of medical diagnostic products that fall within the scope of the claimed subject matter of the ‘774 patent, including the “Oral-Stx” and/or “Veti-Dental Stx” brand diagnostic products or similar products for oral detection of periodontal disease in dogs and cats.

15. Defendants’ infringement has damaged PDx.

16. On information and belief, unless preliminarily and permanently enjoined by this Court, Defendants will continue their acts of infringement, to PDx’s substantial and irreparable harm.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff PDx respectfully requests the following relief:

A. That this Court enter a judgment in favor of PDx, finding that Defendants have infringed one or more claims of the ‘774 patent;

B. That this Court preliminarily and permanently enjoin Defendants, their officers, directors, agents, servants, employees, successors, assigns, and all those controlled by or in

active concert or participation with Defendants from infringing the claims of the '774 patent;

C. That this Court order an accounting of Defendants' infringement and order Defendants to pay PDx damages in an amount adequate to compensate PDx for Defendants' acts of infringement, including, but not limited to, PDx's lost profits resulting from Defendants' sales of infringing products, but in no event less than a reasonable royalty; and

D. That the Court order such other and further relief as the Court deems just and equitable.

### **JURY DEMAND**

PDx hereby demands that this cause of action be tried by jury.

Dated: January 17, 2013

/s/ William L. Richard, Jr.  
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