

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SUPER RESOLUTION TECHNOLOGIES LLC,	§	
	§	
<i>Plaintiff,</i>	§	
	§	Civil Action No. 3:14-cv-82
v.	§	
	§	JURY TRIAL DEMANDED
NIKON CORPORATION & NIKON INSTRUMENTS, INC.,	§	
	§	
<i>Defendants.</i>	§	
	§	

**PLAINTIFF SUPER RESOLUTION TECHNOLOGIES LLC’S
COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Super Resolution Technologies LLC (“Super Resolution Technologies”) files this Complaint against Defendants Nikon Corporation and Nikon Instruments, Inc. (collectively, “Nikon”) for patent infringement under 35 U.S.C. § 271 and in support thereof would respectfully show the Court the following:

THE PARTIES

1. Plaintiff Super Resolution Technologies is a Texas limited liability company and maintains its principal place of business at 2400 Dallas Parkway, Suite 200, Plano, Texas 75093.
2. Defendant Nikon Corporation is a Japanese corporation with headquarters at 6-3, Nishiohi 1-chrome, Shingagawa-ku, Tokyo 140-8601.
3. Defendant Nikon Instruments Inc. is a Delaware corporation and maintains its principal place of business at 1300 Walt Whitman Road, Melville, New York 11747-3064.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the

United States, Title 35, United States Code. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. § 1338.

5. Venue is proper in the Northern District of Texas under 28 U.S.C. §§ 1391 and 1400(b).

6. This Court has personal jurisdiction over Nikon. Nikon has conducted and does conduct business in the State of Texas. Nikon, directly or through subsidiaries or intermediaries (including distributors, retailers, and others) ships, distributes, offers for sale, sells, and advertises its products and/or services in the United States, the State of Texas, and the Northern District of Texas. As described below, Nikon has sold products specifically designed to be used in an infringing manner to its customers in the State of Texas, including in this District. Nikon has committed acts of patent infringement within the State of Texas and more specifically, within the Northern District of Texas.

ASSERTED PATENTS

7. On February 7, 2012, United States Patent No. 8,110,405 (“the ’405 patent”) entitled “Fluorescent Nanoscopy Method” duly and legally issued with Andrey Alexeevich Klimov, Dmitry Andreevich Klimov, Evgeniy Andreevich Klimov, and Tatiana Vitalyevna Klimova as the named inventors. Super Resolution Technologies owns all rights, title, and interest in the ’405 patent, including all rights to recover damages for infringement of the ’405 patent. A copy of the ’405 patent is attached as Exhibit A.

8. On December 18, 2012, United States Patent No. 8,334,143 (“the ’143 patent”) entitled “Fluorescent Nanoscopy Method” duly and legally issued with Andrey Alexeevich Klimov, Dmitry Andreevich Klimov, Evgeniy Andreevich Klimov, and Tatiana Vitalyevna Klimova as the named inventors. Super Resolution Technologies owns all rights, title, and

interest in the '143 patent, including all rights to recover damages for infringement of the '143 patent. A copy of the '143 patent is attached as Exhibit B.

COUNT I
INFRINGEMENT OF THE '405 PATENT BY NIKON

9. Super Resolution Technologies incorporates by reference paragraphs 1–8 above as if set forth fully herein. As described below, Nikon has infringed and/or continues to infringe the '405 patent.

10. Nikon sells, offers to sell, and uses a super-resolution microscope system referred to N-STORM. Nikon's brochures describe the imaging process (referred to herein as "STORM imaging") used with N-STORM as follows:

N-STORM uses stochastic activation of relatively small numbers of fluorophore molecules at very low-intensity light. This low-level stochastic "activation" of discrete molecules enables high precision lateral Gaussian fitting of each molecule. Repeating this process, N-STORM detects localization of each fluorophore, and reconstructs super resolution images by combining this information.

N-STORM brochure at 1 (attached as Exhibit C). Nikon's own use of N-STORM to perform STORM imaging directly infringes at least claim 1 of the '405 patent.

11. Nikon has demonstrated STORM imaging with N-STORM for customers and/or potential customers. For example, Nikon demonstrated STORM imaging with N-STORM on February 7, 2012 to researchers at the Purdue Bioscience Imaging Facility. Nikon also demonstrated STORM imaging with N-STORM to attendees at the American Society for Cell Biology's 2012 meeting in San Francisco. Nikon also demonstrated STORM imaging with N-STORM to researchers at the University of Chicago Light Microscopy Core in March 2012. In addition, Nikon demonstrated STORM imaging with N-STORM to researchers at the University of Colorado Denver School of Medicine in May 2013. Nikon also demonstrated STORM imaging with N-STORM to researchers at Duke University in July–August 2013. Nikon's use

of N-STORM to perform STORM imaging, including at least in the above-described demonstrations, directly infringes at least claim 1 of the '405 patent, in accordance with 35 U.S.C. § 271(a).

12. In October 2009, Nikon received notice of the published application number for United States Patent Application No. 11/920,661, which issued as United States Patent No. 7,803,634 (“the '634 patent”). Specifically, Stephen T. Ross, Senior Manager Bioscience Product & Technology at Nikon Instruments Inc. engaged in a series of emails with Harry Kelly and Dmitry Klimov during the fall of 2009, in which he was provided the published application number for the '634 patent and provided a link to it. The '405 patent issued from an application that was a continuation of the application that issued as the '634 patent and therefore contains the same disclosure. Nikon therefore either had notice of the '405 patent or was willfully blind to it.

13. Nikon sells N-STORM to customers and instructs customers on how to use N-STORM to perform STORM imaging. Nikon's N-STORM manual instructs customers on how to use N-STORM to perform STORM imaging. *See* Nikon Super-Resolution Microscope N-STORM Simple Operation Manual, *available at* http://nic.ucsf.edu/dokuwiki/lib/exe/fetch.php?media=m605_e1_n-storm_simple_operation_security_.pdf (excerpts attached as Exhibit D) at 11–23. Nikon sold an N-STORM to Texas Tech University Health Science Center, which is located within the Northern District of Texas. On information and belief, Nikon has instructed and/or made available or provided the N-STORM manual to researchers at the Texas Tech University Health Science Center who have used and/or currently use N-STORM to perform STORM imaging.

14. As another example, Nikon sold an N-STORM to the University of Texas Health Science Center San Antonio, which is located in the State of Texas. On information and belief,

Nikon has instructed and/or made available or provided the N-STORM manual to researchers at the University of Texas Health Science Center who have used and/or currently use N-STORM to perform STORM imaging.

15. Nikon has sold and/or is selling N-STORM to other customers throughout the United States and has instructed and/or is instructing its customers to use N-STORM to perform STORM imaging. Nikon therefore indirectly infringes by inducing infringement by others, such as N-STORM end-user customers, in accordance with 35 U.S.C. § 271(b), because Nikon has actively induced and/or is inducing its customers to directly infringe the '405 patent.

16. Nikon also indirectly infringes the '405 patent by contributing to infringement by others, such as N-STORM end-user customers, in accordance with 35 U.S.C. § 271(c), because Nikon offers to sell or sells within the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patent process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use. Specifically, as described above, Nikon sells or offers to sell N-STORM, which is especially made for STORM imaging—a process that infringes at least method claim 1 of the '405 patent. The N-STORM is not a staple article or commodity of commerce suitable for substantial non-infringing use.

17. Based on Nikon's prior notice of the '405 patent and/or its willful blindness to the '405 patent, Nikon's infringement of the '405 patent has been willful.

COUNT II
INFRINGEMENT OF THE '143 PATENT BY NIKON

18. Super Resolution Technologies incorporates by reference paragraphs 1–17 above as if set forth fully herein. As described below, Nikon has infringed and/or continues to infringe the '143 patent.

19. The '143 patent is a continuation of the application that issued as the '405 patent, which is a continuation of the patent that issued as the '634 patent. As described above, Nikon had notice of the published application of the '634 patent. Nikon therefore either had notice of the '143 patent or was willfully blind to it.

20. Nikon has directly infringed and/or is infringing at least claim 1 of the '143 patent by having performed or performing three-dimensional (“3D”) STORM imaging on the N-STORM.

21. 3D STORM imaging is STORM imaging that collects information on the positions in the z-axis in addition to the information from the x-axis and y-axis positions. *See* Ex. D at 1. Nikon instructs its customers to use the N-STORM to perform 3D STORM imaging in a manner which directly infringes at least claim 1 of the '143 patent. *See* Ex. D, N-STORM Simple Operation Manual, at 11–23. As described above, Nikon has made available or makes available and/or provides or has provided the N-STORM Simple Operation Manual to N-STORM end-users.

22. Nikon has sold and/or is selling N-STORM to customers throughout the United States and has instructed and/or is instructing its customers to use N-STORM to perform 3D STORM imaging. Nikon therefore indirectly infringes by inducing infringement by others, such as N-STORM end-user customers, in accordance with 35 U.S.C. § 271(b), because Nikon has actively induced and/or is inducing its customers to directly infringe the '143 patent.

23. Based on Nikon's prior notice of the '143 patent and/or its willful blindness to the '143 patent, Nikon's infringement of the '143 patent has been willful.

DEMAND FOR JURY TRIAL

Super Resolution Technologies demands a jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Super Resolution Technologies prays for the following relief:

1. A judgment that Nikon has directly infringed the '405 patent, induced infringement of the '405 patent, and/or contributorily induced the '405 patent;

2. A judgment that Nikon has directly infringed the '143 patent and/or induced infringement of the '143 patent;

3. A preliminary and permanent injunction preventing Nikon and its respective officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from directly infringing, inducing the infringement of, or contributorily infringing the '405 patent;

4. A preliminary and permanent injunction preventing Nikon and its respective officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from directly infringing or inducing the infringement of the '143 patent;

5. A judgment that Nikon's infringement of the '405 and '143 patents has been willful;

6. A ruling that this case be found exceptional under 35 U.S.C. § 285, and a judgment awarding Super Resolution Technologies its attorney's fees in prosecuting this action;

7. A judgment and order requiring Nikon to pay Super Resolution Technologies'

damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until the entry of final judgment, with an accounting, as needed, and treble damages for willful infringement as provided for by 35 U.S.C. § 284;

8. A judgment and order requiring Nikon to pay Super Resolution Technologies the costs of this action (including all disbursements);

9. A judgment and order requiring Nikon to pay Super Resolution Technologies pre-judgment and postjudgment interest on the damages awarded;

10. A judgment and order requiring that, in the event a permanent injunction preventing future acts of infringement is not granted, that Super Resolution Technologies be awarded a compulsory ongoing licensing fee; and

11. Such other and further relief as the Court may deem just and proper.

DATED: January 10, 2014

Respectfully submitted,

/s/ David K. Wooten

Danny L. Williams
Texas Bar No. 21518050
David K. Wooten
Texas Bar No. 24033477
WILLIAMS MORGAN, P.C.
10333 Richmond, Suite 1100
Houston, Texas 77042
Telephone: (713) 934-7000
Facsimile: (713) 934-7011
danny@wmalaw.com
dwooten@wmalaw.com

Attorneys for Super Resolution Technologies LLC