

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ENZO LIFE SCIENCES, INC.

Plaintiff,

v.

**ABBOTT LABORATORIES; and
ABBOTT MOLECULAR INC.**

Defendants.

Civil Action No. 12-cv-274-LPS

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

Plaintiff Enzo Life Sciences, Inc. (“Enzo”), for its Second Amended Complaint against Defendants Abbott Laboratories (“Abbott Labs”) and Abbott Molecular Inc. (“Abbott Molecular”) (collectively “Abbott”), hereby alleges as follows:

PARTIES

1. Plaintiff Enzo is a New York corporation with its principal place of business at 10 Executive Boulevard, Farmingdale, NY 11735.
2. Defendant Abbott Labs is an Illinois corporation with its principal place of business at 100 Abbott Park Road, Abbott Park, Illinois 60064.
3. Defendant Abbott Molecular is a Delaware corporation with its principal place of business at 1300 E. Touhy Avenue, Des Plaines, IL 60018. Abbott Molecular is a wholly owned subsidiary of Abbott Labs.

NATURE OF THE ACTION

4. This is a civil action for infringement of United States Patent Nos. 6,992,180 (“the ’180 Patent”), 7,064,197 (“the ’197 Patent”), and 8,097,405 (“the ’405 Patent”) (collectively, “the Patents-In-Suit”) under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Abbott because, among other things, Abbott has committed, aided, abetted, contributed to, and/or participated in the commission of patent infringement in this judicial district and elsewhere that led to foreseeable harm and injury to Enzo. Moreover, Abbott Molecular is a Delaware corporation which, having availed itself of Delaware's corporate laws, is subject to personal jurisdiction in Delaware.

7. This Court also has personal jurisdiction over Abbott because, among other things, Abbott has established minimum contacts within the forum such that the exercise of jurisdiction over Abbott will not offend traditional notions of fair play and substantial justice. Moreover, Abbott has placed products that practice the claimed inventions of the Patents-In-Suit into the stream of commerce with the reasonable expectation and/or knowledge that purchasers and users of such products were located within this District. Abbott has sold, advertised, marketed, and distributed products in this District that practice the claimed inventions of the Patents-In-Suit.

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

The Patents-In-Suit

9. United States Patent No. 6,992,180, entitled "Oligo- Or Polynucleotides Comprising Phosphate-Moiety Labeled Nucleotides," was duly and legally issued by the United States Patent and Trademark Office on January 31, 2006. A copy of the '180 Patent is attached hereto as Exhibit A.

10. Enzo is the assignee of the '180 Patent and has the right to sue and recover damages for any current or past infringement of the '180 Patent.

11. United States Patent No. 7,064,197, entitled "System, Array and Non-Porous Solid Support Comprising Fixed or Immobilized Nucleic Acids," was duly and legally issued by

the United States Patent and Trademark Office on June 20, 2006. A copy of the '197 Patent is attached hereto as Exhibit B.

12. Enzo is the assignee of the '197 Patent and has the right to sue and recover damages for any current or past infringement of the '197 Patent.

13. United States Patent No. 8,097,405, entitled "Nucleic Acid Sequencing Processes Using Non-Radioactive Detectable Modified or Labeled Nucleotide Analogs, and Other Processes for Nucleic Acid Detection and Chromosomal Characterization Using Such Non-Radioactive Detectable Modified or Labeled Nucleotides or Nucleotide Analogs," was duly and legally issued by the United States Patent and Trademark Office on January 17, 2012. A copy of the '405 Patent is attached hereto as Exhibit C.

14. Enzo is the assignee of the '405 Patent and has the right to sue and recover damages for any current or past infringement of the '405 Patent.

COUNT I

Infringement Of The '180 Patent

15. Paragraphs 1 through 14 are incorporated by reference as if fully stated herein.

16. Abbott, either alone or in conjunction with others, has infringed and continues to infringe, one or more claims of the '180 Patent under 35 U.S.C. § 271, either literally and/or under the doctrine of equivalents, by making, using, offering to sell, selling and/or importing into the United States certain nucleic acid probe products, including without limitation products involving TaqMan[®] probes, for example and without limitation, RealTime HBV assays, and any products as detailed in Enzo's Initial Disclosures of Accused Products and Asserted Patents and supplements thereto (collectively, "Nucleic Acid Probe Products").

17. Abbott has had knowledge of and notice of the '180 Patent and its infringement since at least March 2006, through negotiations for a Cross-License Agreement between Enzo and Abbott concerning and expressly naming the '180 patent.

18. Abbott has induced infringement, and continues to induce infringement, of one or more claims of the '180 Patent under 35 U.S.C. § 271(b). Abbott actively, knowingly, and

intentionally induced, and continues to actively, knowingly, and intentionally induce, infringement of the '180 Patent by selling or otherwise supplying Nucleic Acid Probe Products; with the knowledge and intent that third parties will use, sell, offer for sale, and/or import, the Nucleic Acid Probe Products supplied by Abbott to infringe the '180 Patent; and with the knowledge and intent to encourage and facilitate the infringement through the dissemination of the Nucleic Acid Probe Products and/or the creation and dissemination of promotional and marketing materials, supporting materials, instructions, product manuals, and/or technical information related to the Nucleic Acid Probe Products.

19. Enzo has been and continues to be damaged by Abbott's infringement of the '180 Patent.

20. Abbott's infringement of the '180 Patent was, and continues to be, willful.

21. Abbott's conduct in infringing the '180 Patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

COUNT II

Infringement Of The '197 Patent

22. Paragraphs 1 through 21 are incorporated by reference as if fully stated herein.

23. Abbott, either alone or in conjunction with others, has infringed and continues to infringe, one or more claims of the '197 Patent under 35 U.S.C. § 271, either literally and/or under the doctrine of equivalents, by making, using, offering to sell, selling and/or importing into the United States certain nucleic acid array products, including without limitation products involving Bead Array technology, for example and without limitation xTAG[®] RVP, and xTAG[®] RVP *FAST*, and any products as detailed in Enzo's Initial Disclosures of Accused Products and Asserted Patents and supplements thereto (collectively, "Nucleic Acid Array Products").

24. Abbott has had knowledge of and notice of the '197 Patent and its infringement since before April 26, 2007, through negotiations for a Cross-License Agreement between Enzo and Abbott concerning and expressly naming the '197 patent.

25. Abbott has induced infringement, and continues to induce infringement, of one or more claims of the '197 Patent under 35 U.S.C. § 271(b). Abbott actively, knowingly, and intentionally induced, and continues to actively, knowingly, and intentionally induce, infringement of the '197 Patent by selling or otherwise supplying Nucleic Acid Array Products; with the knowledge and intent that third parties will use, sell, offer for sale, and/or import, the Nucleic Acid Array Products supplied by Abbott to infringe the '197 Patent; and with the knowledge and intent to encourage and facilitate the infringement through the dissemination of the Nucleic Acid Array Products and/or the creation and dissemination of promotional and marketing materials, supporting materials, instructions, product manuals, and/or technical information related to the Nucleic Acid Array Products.

26. Enzo has been and continues to be damaged by Abbott's infringement of the '197 Patent.

27. Abbott's infringement of the '197 Patent was, and continues to be, willful.

28. Abbott's conduct in infringing the '197 Patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

COUNT III

Infringement Of The '405 Patent

29. Paragraphs 1 through 28 are incorporated by reference as if fully stated herein.

30. Abbott, either alone or in conjunction with others, has infringed and continues to infringe, one or more claims of the '405 Patent under 35 U.S.C. § 271, either literally and/or under the doctrine of equivalents, by making, using, offering to sell, selling and/or importing into the United States certain DNA fluorescent in situ hybridization (FISH) probes, including without limitation products involving AneuVysion Multicolor DNA Probes; UroVysion Bladder Cancer Probes; CEP 8 SpectrumOrange Direct Label Fluorescent DNA Probes; CEP 8 SpectrumOrange Direct Label Fluorescent DNA Probes; CEP 8 SpectrumOrange Direct Labeled Fluorescent DNA Probes; CEP X SpectrumOrange/Y SpectrumGreen DNA Probes; Vysis CLL FISH Probes; Vysis EGR1 FISH Probes; CEP Probes; Vysis ALK Break Apart FISH Probe; Vysis LSI

FISH Probes; FISH Microdeletion Probes; ToTelVysion Probes; TelVysion Probes; PathVysion Her-2 DNA Probes (collectively “FISH Probe Products”).

31. Abbott has had knowledge of and notice of the '405 Patent and its infringement since at least January 2, 2013, through Enzo's Answer and Counterclaims to Intervening-Defendant's Luminex Counterclaims in *Enzo Life Sciences, Inc. v. Abbott Labs.*, Civ. A. No. 12-cv-274-LPS (D. Del.) (D.I. 45) concerning the '405 patent. Abbott had further knowledge of and notice of the '405 Patent and its infringement since at least January 18, 2013, through communications between Enzo's counsel and Abbott's counsel in the above-referenced matter.

32. Abbott has induced infringement, and continues to induce infringement, of one or more claims of the '405 Patent under 35 U.S.C. § 271(b). Abbott actively, knowingly, and intentionally induced, and continues to actively, knowingly, and intentionally induce, infringement of the '405 Patent by selling or otherwise supplying FISH Probe Products, with the knowledge and intent that third parties will use, sell, offer for sale, and/or import, the FISH Probe Products supplied by Abbott to infringe the '405 Patent; and with the knowledge and intent to encourage and facilitate the infringement through the dissemination of the FISH Probe Products and/or the creation and dissemination of promotional and marketing materials, supporting materials, instructions, product manuals, and/or technical information related to the FISH Probe Products.

33. Enzo has been and continues to be damaged by Abbott's infringement of the '405 Patent.

34. Abbott's conduct in infringing the '405 Patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Enzo respectfully requests that this Court enter judgment against Abbott as follows:

A. That Abbott has infringed the Patents-In-Suit;

B. That Abbott's infringement of the '180 Patent and '197 Patent has been willful;

C. That Enzo be awarded damages adequate to compensate it for Abbott's past infringement and any continuing or future infringement up until the date such judgment is entered, including interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary to adequately compensate Enzo for Abbott's infringement, an accounting, and that such damages be trebled based on Abbott's willful infringement;

D. That this case be declared an exceptional case within the meaning of 35 U.S.C. § 285;

E. A preliminary and permanent injunction preventing Abbott, and those in active concert or participation with Abbott, from directly and/or indirectly infringing the Patents-In-Suit;

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

G. That Enzo be awarded such other and further relief at law or equity as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Enzo hereby demands a trial by jury on all claims and issues so triable.

Dated: May 6, 2013

Respectfully submitted,

/s/ Brian E. Farnan
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