

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

LIFE TECHNOLOGIES CORPORATION, and

APPLIED BIOSYSTEMS, LLC,

Plaintiffs,

v.

BIOSEARCH TECHNOLOGIES, INC.,

BIO-SYNTHESIS, INC.,

EUROFINS MWG OPERON INC., and

THE MIDLAND CERTIFIED REAGENT
COMPANY, INC.

Defendants.

CIVIL ACTION NO. 2:09-cv-00283

DEMAND FOR JURY TRIAL

**FIRST AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF
FOR PATENT INFRINGEMENT**

Plaintiffs Life Technologies Corporation (“Life Technologies”) and Applied Biosystems, LLC (“AB”) file this First Amended Complaint for Damages and Injunctive Relief for Patent Infringement against the following defendants: (1) Biosearch Technologies, Inc. (“Biosearch”), (2) Bio-Synthesis, Inc. (“BSI”), (3) Eurofins MWG Operon Inc. (“Eurofins”) and (4) The Midland Certified Reagent Company, Inc. (“MCRC”), collectively, the “Defendants.”

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 100, *et seq.* This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

2. Personal jurisdiction exists generally over each of the Defendants because each has sufficient minimum contacts with the forum as a result of business conducted within the State of Texas and within the Eastern District of Texas. Personal jurisdiction also exists specifically over each of the Defendants because each, directly or through subsidiaries or intermediaries, makes, uses, offers for sale, sells, imports, advertises, makes available and/or markets products or services within the State of Texas, and more particularly, within the Eastern District of Texas, that infringe the patents-in-suit, as described more particularly below.

3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c) and 1400(b). Plaintiffs believe and based thereon, allege, that each of the Defendants reside in this judicial district within the meaning of 28 U.S.C. § 1391(c), and further, that each of the Defendants has committed, contributed to, and/or induced acts of patent infringement in this judicial district and provides goods or services and does business in this judicial district.

PARTIES

A. Life Technologies Corporation

4. Life Technologies is a Delaware corporation, with a principal place of business at 5791 Van Allen Way, Carlsbad, California 92008.

B. Applied Biosystems, LLC

5. AB is a Delaware limited liability corporation, with a principal place of business at 850 Lincoln Centre Drive, Foster City, California 94404.

6. AB is a wholly-owned subsidiary of Life Technologies.

7. AB is the assignee of U.S. Patent No. 5,538,848 (“the ’848 Patent”), entitled “Method for Detecting Nucleic Acid Amplification Using Self-Quenching Fluorescence Probe.”

8. AB is the assignee of U.S. Patent No. 5,723,591 (“the ’591 Patent”), entitled “Self-Quenching Fluorescence Probe.”

9. AB is the assignee of U.S. Patent No. 5,876,930 (“the ’930 Patent”), entitled “Hybridization Assay Using Self-Quenching Fluorescence Probe.”

10. AB is the assignee of U.S. Patent No. 6,030,787 (“the ’787 Patent”), entitled “Hybridization Assay Using Self-Quenching Fluorescence Probe.”

11. AB is the assignee of U.S. Patent No. 6,258,569 (“the ’569 Patent”), entitled “Hybridization Assay Using Self-Quenching Fluorescence Probe.”

C. Biosearch Technologies, Inc.

12. Upon information and belief, Biosearch is a California corporation, with its principal place of business at 81 Digital Drive, Novato, California 94949-5754. Biosearch may be served with process by serving its registered agent, Ron Cook, 7 Meadow Lane, Novato, California 94947.

13. Upon information and belief, Biosearch manufactures, offers for sale and sells modified oligonucleotides for biotechnology research purposes, such as in quantitative polymerase chain reaction (“qPCR”) assays.

14. Upon information and belief, Biosearch manufactures, offers for sale and sells dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide typically 20 to 30 bases long. The dual-labeled probe hybridizes

to its complementary sequence, and fluorescence is released during the 5' exonuclease activity of Taq polymerase.

15. Upon information and belief, Biosearch obtains revenue, at least in part, from fees charged for the manufacture and sale of dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide.

D. Bio-Synthesis, Inc.

16. Upon information and belief, BSI is a Texas corporation, with its principal place of business at 612 East Main St., Lewisville, Texas 75057. BSI may be served with process by serving its registered agent, Miguel Castro, 612 East Main St., Lewisville, Texas 75057.

17. Upon information and belief, BSI manufactures, offers for sale and sells modified oligonucleotides for biotechnology research purposes, such as in qPCR analysis systems.

18. Upon information and belief, BSI manufactures, offers for sale and sells dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide typically 15 to 25 bases long. The dual-labeled probe hybridizes to its complementary sequence, and fluorescence is released during the 5' exonuclease activity of Taq polymerase.

19. Upon information and belief, BSI obtains revenue, at least in part, from fees charged for the manufacture and sale of dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide.

E. Eurofins MWG Operon Inc.

20. Upon information and belief, Eurofins is a Delaware corporation, with its principal place of business at 2211 Seminole Drive, Huntsville, Alabama 35805. Eurofins may be served with process by serving its registered agent, Delaware Corporate Services, Inc., 222

Delaware Avenue, 10th Floor, P.O. Box 2306, New Castle County, Wilmington, Delaware 19899.

21. Upon information and belief, Eurofins manufactures, offers for sale and sells modified oligonucleotides for biotechnology research purposes, such as in qPCR systems.

22. Upon information and belief, Eurofins manufactures, offers for sale and sells dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide typically 15 to 40 bases long. The dual-labeled probe hybridizes to its complementary sequence, and fluorescence is released during the 5' exonuclease activity of Taq polymerase.

23. Upon information and belief, Eurofins obtains revenue, at least in part, from fees charged for the manufacture and sale of dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide.

F. The Midland Certified Reagent Company, Inc.

24. Upon information and belief, MCRC is a Texas corporation, with its principal place of business at 3112 West Cuthbert Avenue #A, Midland, Texas 79701. MCRC may be served with process by serving its registered agent, Richard Case, 3112 West Cuthbert Avenue #A, Midland, Texas 79701.

25. Upon information and belief, MCRC manufactures, offers for sale and sells modified oligonucleotides for biotechnology research purposes, such as in qPCR assays.

26. Upon information and belief, MCRC manufactures, offers for sale and sells dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide. The dual-labeled probes may be custom-ordered to be a desired number of nucleotides in length. The fluorescence is released from these dual-labeled probes

during the 5' exonuclease activity of Taq polymerase, which cleaves the fluorescent dye upon a probe's hybridization to its complementary sequence.

27. Upon information and belief, MCRC obtains revenue, at least in part, from fees charged for the manufacture and sale of dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide.

FIRST CLAIM FOR RELIEF

INFRINGEMENT OF UNITED STATES PATENT NO. 5,538,848

28. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 27.

29. The '848 Patent issued on July 23, 1996. A true and correct copy of the '848 Patent is attached hereto as Exhibit A.

30. Upon information and belief, Biosearch has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '848 Patent, and Biosearch is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '848 Patent. For example, Biosearch makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used to monitor qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '848 Patent in this district and elsewhere in the United States.

31. Upon information and belief, BSI has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '848 Patent, and BSI is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '848 Patent. For example, BSI makes, uses, imports, sells

and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used to monitor qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '848 Patent in this district and elsewhere in the United States.

32. Upon information and belief, Eurofins has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '848 Patent, and Eurofins is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '848 Patent. For example, Eurofins makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used to monitor qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '848 Patent in this district and elsewhere in the United States.

33. Upon information and belief, MCRC has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '848 Patent, and MCRC is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '848 Patent. For example, MCRC makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used in qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '848 Patent in this district and elsewhere in the United States.

34. On information and belief, Biosearch's infringement, contributory infringement, and/or induced infringement of one or more claims of the '848 Patent has been and continues to be willful.

35. Plaintiffs have suffered damages as a result of Defendants' infringement and will continue to suffer damages as a result of Defendants' continued infringement.

36. Defendants have caused and will, until enjoined, continue to cause irreparable injury to Plaintiffs for which there is no adequate remedy at law.

SECOND CLAIM FOR RELIEF

INFRINGEMENT OF UNITED STATES PATENT NO. 5,723,591

37. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 36.

38. The '591 Patent issued on March 3, 1998. A true and correct copy of the '591 Patent is attached hereto as Exhibit B.

39. Upon information and belief, Biosearch has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '591 Patent, and Biosearch is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '591 Patent. For example, Biosearch makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used to monitor qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '591 Patent in this district and elsewhere in the United States.

40. Upon information and belief, BSI has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '591 Patent, and BSI is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '591 Patent. For example, BSI makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter

covalently linked to the 3' or 5' ends of an oligonucleotide that are used to monitor qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '591 Patent in this district and elsewhere in the United States.

41. Upon information and belief, Eurofins has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '591 Patent, and Eurofins is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '591 Patent. For example, Eurofins makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used to monitor qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '591 Patent in this district and elsewhere in the United States.

42. Upon information and belief, MCRC has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '591 Patent, and MCRC is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '591 Patent. For example, MCRC makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used in qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '591 Patent in this district and elsewhere in the United States.

43. On information and belief, Biosearch's infringement of one or more claims of the '848 Patent has been and continues to be willful.

44. Plaintiffs have suffered damages as a result of Defendants' infringement and will continue to suffer damages as a result of Defendants' continued infringement.

45. Defendants have caused and will, until enjoined, continue to cause irreparable injury to Plaintiffs for which there is no adequate remedy at law.

THIRD CLAIM FOR RELIEF

INFRINGEMENT OF UNITED STATES PATENT NO. 5,876,930

46. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 45.

47. The '930 Patent issued on March 2, 1999. A true and correct copy of the '930 Patent is attached hereto as Exhibit C.

48. Upon information and belief, Biosearch has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '930 Patent, and Biosearch is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '930 Patent. For example, Biosearch makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used to monitor qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '930 Patent in this district and elsewhere in the United States.

49. Upon information and belief, BSI has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '930 Patent, and BSI is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '930 Patent. For example, BSI makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used to monitor qPCR

amplification that infringe or that are used in ways that infringe one or more claims of the '930 Patent in this district and elsewhere in the United States.

50. Upon information and belief, Eurofins has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '930 Patent, and Eurofins is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '930 Patent. For example, Eurofins makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used to monitor qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '930 Patent in this district and elsewhere in the United States.

51. Upon information and belief, MCRC has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '930 Patent, and MCRC is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '930 Patent. For example, MCRC makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used in qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '930 Patent in this district and elsewhere in the United States.

52. On information and belief, Biosearch's infringement, contributory infringement, and/or induced infringement of one or more claims of the '930 Patent has been and continues to be willful.

53. Plaintiffs have suffered damages as a result of Defendants' infringement and will continue to suffer damages as a result of Defendants' continued infringement.

54. Defendants have caused and will, until enjoined, continue to cause irreparable injury to Plaintiffs for which there is no adequate remedy at law.

FOURTH CLAIM FOR RELIEF

INFRINGEMENT OF UNITED STATES PATENT NO. 6,030,787

55. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 54.

56. The '787 Patent issued on February 29, 2000. A true and correct copy of the '787 Patent is attached hereto as Exhibit D.

57. Upon information and belief, Biosearch has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '787 Patent, and Biosearch is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '787 Patent. For example, Biosearch makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used to monitor qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '787 Patent in this district and elsewhere in the United States.

58. Upon information and belief, BSI has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '787 Patent, and BSI is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '787 Patent. For example, BSI makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used to monitor qPCR

amplification that infringe or that are used in ways that infringe one or more claims of the '787 Patent in this district and elsewhere in the United States.

59. Upon information and belief, Eurofins has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '787 Patent, and Eurofins is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '787 Patent. For example, Eurofins makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used to monitor qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '787 Patent in this district and elsewhere in the United States.

60. Upon information and belief, MCRC has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '787 Patent, and MCRC is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '787 Patent. For example, MCRC makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used in qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '787 Patent in this district and elsewhere in the United States.

61. On information and belief, Biosearch's infringement, contributory infringement, and/or induced infringement of one or more claims of the '787 Patent has been and continues to be willful.

62. Plaintiffs have suffered damages as a result of Defendants' infringement and will continue to suffer damages as a result of Defendants' continued infringement.

63. Defendants have caused and will, until enjoined, continue to cause irreparable injury to Plaintiffs for which there is no adequate remedy at law.

FIFTH CLAIM FOR RELIEF

INFRINGEMENT OF UNITED STATES PATENT NO. 6,258,569

64. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 63.

65. The '569 Patent issued on July 10, 2001. A true and correct copy of the '569 Patent is attached hereto as Exhibit E.

66. Upon information and belief, Biosearch has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '569 Patent, and Biosearch is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '569 Patent. For example, Biosearch makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used to monitor qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '569 Patent in this district and elsewhere in the United States.

67. Upon information and belief, BSI has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '569 Patent, and BSI is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '569 Patent. For example, BSI makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used to monitor qPCR

amplification that infringe or that are used in ways that infringe one or more claims of the '569 Patent in this district and elsewhere in the United States.

68. Upon information and belief, Eurofins has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '569 Patent, and Eurofins is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '569 Patent. For example, Eurofins makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used to monitor qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '569 Patent in this district and elsewhere in the United States.

69. Upon information and belief, MCRC has directly and/or indirectly infringed, contributorily infringed, and/or actively induced infringement one or more claims of the '569 Patent, and MCRC is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '569 Patent. For example, MCRC makes, uses, imports, sells and/or offers for sale dual-labeled probes incorporating a quencher and fluorophore reporter covalently linked to the 3' or 5' ends of an oligonucleotide that are used in qPCR amplification that infringe or that are used in ways that infringe one or more claims of the '569 Patent in this district and elsewhere in the United States.

70. On information and belief, Biosearch's infringement, contributory infringement, and/or induced infringement of one or more claims of the '569 Patent has been and continues to be willful.

71. Plaintiffs have suffered damages as a result of Defendants' infringement and will continue to suffer damages as a result of Defendants' continued infringement.

72. Defendants have caused and will, until enjoined, continue to cause irreparable injury to Plaintiffs for which there is no adequate remedy at law.

DEMAND FOR JURY TRIAL

73. Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs demand a jury trial on all issues triable of right by a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

- a. that each Defendant has infringed the '848 Patent, the '591 Patent, the '930 Patent, the '787 Patent, and the '569 Patent;
- b. that an injunction be issued against further infringement of the '848 Patent, the '591 Patent, the '930 Patent, the '787 Patent, and the '569 Patent by each Defendant and its officers, agents, servants, employees, attorneys and all persons in active concert or participation with them;
- c. that each Defendant account and pay actual damages, but no less than a reasonable royalty, to Plaintiffs to compensate them for each Defendant's infringement of the '848 Patent, the '591 Patent, the '930 Patent, the '787 Patent, and the '569 Patent as provided by 35 U.S.C. § 284;
- d. that each Defendant pay interest and costs to Plaintiffs as provided for by 35 U.S.C. § 284;
- e. that the Court determine that Biosearch willfully infringed one or more claims of the '848 Patent, the '591 Patent, the '930 Patent, the '787 Patent, and the '569 Patent and enhance damages up to treble as provided by 35 U.S.C. § 284;

f. that this is an exceptional case and award Plaintiffs their reasonable attorneys' fees pursuant to 28 U.S.C § 285; and

g. that Plaintiffs be granted such other and further relief as the Court deems just and equitable.

Date: November 5, 2009

Respectfully submitted,

/s/ David K. Wooten

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