

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

**ENZO LIFE SCIENCES, INC.**

**Plaintiff,**

**v.**

**BECTON, DICKINSON AND  
COMPANY; BECTON DICKINSON  
DIAGNOSTICS INC.; and  
GENEOHM SCIENCES, INC.**

**Defendants.**

**Civil Action No. 12-cv-275-LPS**

**JURY TRIAL DEMANDED**

**AMENDED COMPLAINT**

Plaintiff Enzo Life Sciences, Inc. (“Enzo”), for its Amended Complaint against Defendants Becton, Dickinson and Company (“Becton”), Becton Dickinson Diagnostics Inc. (“BD Diagnostics”), and GeneOhm Sciences, Inc. (“GeneOhm”) (collectively “Becton Dickinson”), 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 Becton is a New Jersey corporation with its principal place of business at 1 Becton Drive, Franklin Lakes, NJ 07417.
3. Defendant BD Diagnostics is a Delaware corporation with its principal place of business at 11085 North Torrey Pines Road, Suite 210, La Jolla, CA 92037.
4. Defendant GeneOhm is a Delaware corporation with its principal place of business at 1 Becton Drive, Franklin Lakes, NJ 07417.

**NATURE OF THE ACTION**

5. This is a civil action for infringement of United States Patent Nos. 6,992,180 (“the ’180 Patent”) and 7,064,197 (“the ’197 Patent”) under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

**JURISDICTION AND VENUE**

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

7. This Court has personal jurisdiction over Becton Dickinson because, among other things, Becton Dickinson 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, BD Diagnostics and GeneOhm are Delaware corporations which, having availed themselves of Delaware’s corporate laws, are subject to personal jurisdiction in Delaware.

8. This Court also has personal jurisdiction over Becton Dickinson because, among other things, Becton Dickinson has established minimum contacts within the forum such that the exercise of jurisdiction over Becton Dickinson will not offend traditional notions of fair play and substantial justice. Moreover, Becton Dickinson 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. Becton Dickinson has sold, advertised, marketed, and distributed products in this District that practice the claimed inventions of the Patents-In-Suit.

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

**THE PATENTS-IN-SUIT**

10. 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.

11. 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.

12. 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.

13. 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.

### **COUNT I**

#### **Infringement Of The '180 Patent**

14. Paragraphs 1 through 13 are incorporated by reference as if fully stated herein.

15. Becton Dickinson, 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 molecular beacon probes and Scorpions<sup>®</sup> probes, for example and without limitation, BD GeneOhm<sup>™</sup> StaphSR assays, BD GeneOhm<sup>™</sup> MRSA assays, BD GeneOhm<sup>™</sup> Cdiff assays, BD GeneOhm<sup>™</sup> Strep B assays, and BD MAX<sup>™</sup> GBS assays (collectively "Nucleic Acid Probe Products").

16. Becton Dickinson has had knowledge of and notice of the '180 Patent and its infringement since at least March 14, 2012, through a letter sent by Enzo to Becton Dickinson concerning the '180 Patent and its infringement.

17. Becton Dickinson, either alone or in conjunction with others, has induced infringement, and continues to induce infringement, of one or more claims of the '180 Patent under 35 U.S.C. § 271(b). At all relevant times, Becton Dickinson actively, knowingly, and intentionally induced others, including without limitation its customers, to use, make, sell, offer

for sale, and/or import the Nucleic Acid Probe Products, in a way that Becton Dickinson knew or should have known infringes one or more claims of the '180 Patent.

18. Enzo has been and continues to be damaged by Becton Dickinson's infringement of the '180 Patent.

19. Becton Dickinson's infringement of the '180 Patent was, and continues to be, willful.

20. Becton Dickinson'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**

21. Paragraphs 1 through 20 are incorporated by reference as if fully stated herein.

22. Becton Dickinson, 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 probe products, including without limitation Affirm™ VPIII Microbial Identification tests.

23. Enzo has been and continues to be damaged by Becton Dickinson's infringement of the '197 Patent.

24. Becton Dickinson's conduct in infringing the '197 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 Becton Dickinson as follows:

- A. That Becton Dickinson has infringed the Patents-In-Suit;
- B. That Becton Dickinson's infringement of the '180 Patent has been willful;
- C. That Enzo be awarded damages adequate to compensate it for Becton Dickinson'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 Becton Dickinson's infringement, an accounting;

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 Becton Dickinson, and those in active concert or participation with Becton Dickinson, 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.

Respectfully submitted,

Dated: July 16, 2012

FARNAN LLP

/s/ Brian E. Farnan

Brian E. Farnan (Bar No. 4089)  
Michael J. Farnan (Bar No. 5165)  
919 North Market Street  
12<sup>th</sup> Floor  
Wilmington, DE 19801  
(302) 777-0336  
(302) 777-0301  
bfarnan@farnanlaw.com

John M. Desmarais (admitted *pro hac vice*)  
Michael P. Stadnick (admitted *pro hac vice*)  
Xiao Li (admitted *pro hac vice*)  
Joseph C. Akalski (admitted *pro hac vice*)  
Lauren M. Nowierski (admitted *pro hac vice*)

DESMARAIS LLP  
230 Park Avenue  
New York, NY 10169  
(212) 351-3400 (Tel)  
(212) 351-3401 (Fax)  
jdesmarais@desmaraisllp.com  
mstadnick@desmaraisllp.com  
xli@desmaraisllp.com  
jakalski@desmaraisllp.com  
lnowierski@desmaraisllp.com

*Counsel for Plaintiff*