

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

ENZO LIFE SCIENCES, INC.

Plaintiff,

v.

AFFYMETRIX, INC.

Defendant.

Civil Action No. 12-cv-433-LPS

JURY TRIAL DEMANDED

AMENDED COMPLAINT

Plaintiff Enzo Life Sciences, Inc. ("Enzo"), for its Amended Complaint against Defendant Affymetrix, Inc. ("Affymetrix") 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 Affymetrix is a Delaware corporation with its principal place of business at 3420 Central Expressway, Santa Clara, CA 95051.

NATURE OF THE ACTION

3. This is a civil action for infringement of United States Patent No. 7,064,197 ("the '197 Patent") under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
5. This Court has personal jurisdiction over Affymetrix because, among other things, Affymetrix 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, Affymetrix is a Delaware corporation which, having availed itself of Delaware's corporate laws, is subject to personal jurisdiction in Delaware.

6. This Court also has personal jurisdiction over Affymetrix because, among other things, Affymetrix has established minimum contacts within the forum such that the exercise of jurisdiction over Affymetrix will not offend traditional notions of fair play and substantial justice. Moreover, Affymetrix has placed products that practice the claimed inventions of the '197 Patent into the stream of commerce with the reasonable expectation and/or knowledge that purchasers and users of such products were located within this District. Affymetrix has sold, advertised, marketed, and distributed products in this District that practice the claimed inventions of the '197 Patent.

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

The Patent-In-Suit

8. 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 A.

9. 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 '197 Patent

10. Paragraphs 1 through 9 are incorporated by reference as if fully stated herein.

11. Affymetrix, 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 (collectively "Nucleic Acid Array Products"), including without limitation:

- a. products based upon GeneChip technology, for example, and without limitation, Affymetrix Gene Profiling Array cGMP U133 P2, Affymetrix Genome-Wide Human SNP Array 6.0, Affymetrix Genome-Wide Human SNP Array 5.0, GeneChip Human Mapping 500k Array Set, GeneChip Human Mapping 250K Array Set, GeneChip Mapping 100k Set, GeneChip Human Mapping 50k Array Xba 240, GeneChip Human Mapping 50k Array Hind 240, GeneChip Human Mapping 10k Array Xba 142 2.0, GeneChip Human Mitochondrial Resequencing Array 2.0, DMET Plus Array, Affymetrix Mouse Diversity Genotyping Array, GeneChip Rice 44k Genotyping Array, CytoScan HD Array Kit, GeneChip SARS Resequencing Array, GeneChip Universal Tag Arrays (all configurations), GeneChip Arabidopsis ATH1 Genome Array, GeneChip Arabidopsis SNP Genotyping and Tiling Array, GeneChip Arabidopsis Tiling 1.0R Array, GeneChip Bovine Genome Array, GeneChip Bovine Mapping 10K/25K SNP Array, GeneChip C. elegans Genome Array, GeneChip C. elegans Tiling 1.0R Array, GeneChip Canine Genome 2.0 Array, GeneChip Chicken Genome Array, GeneChip Chromosome 21/22 2.0R Array, GeneChip Citrus Genome Array, GeneChip Cotton Genome Array, GeneChip Drosophila Genome 2.0 Array, GeneChip Drosophila Genome Array, GeneChip Drosophila Tiling 1.0R Array, GeneChip Drosophila Tiling 2.0R Array, GeneChip E.Coli Antisense Genome Array, GeneChip E.Coli Genome 2.0 Array, GeneChip Human Exon 1.0 ST Array, GeneChip Human Gene 2.0 ST Array, GeneChip Human Gene 1.0 ST Array, GeneChip Human Genome Focus Array, GeneChip Human Genome U133A 2.0 Array, GeneChip Human Genome U133 Plus 2.0 Array, GeneChip Human Promoter 1.0R Array, GeneChip Human Tiling 1.0R Array Set, GeneChip Human Tiling 2.0R Array Set, GeneChip Maize Genome Array, GeneChip Medicago Genome Array, GeneChip miRNA 3.0 Array, GeneChip

miRNA 2.0 Array, GeneChip miRNA Array, GeneChip Mouse Exon 1.0 ST Array, GeneChip Mouse Gene 2.0 ST Array, GeneChip Mouse Gene 1.0 ST Array, GeneChip Mouse Genome 430 2.0 Array, GeneChip Mouse Genome 430A 2.0 Array, GeneChip Mouse Promoter 1.0R Array, GeneChip Mouse Tiling 1.1R Array Set, GeneChip Mouse Tiling 2.0R Array Set, MyGeneChip Custom Arrays, GeneChip *P. aeruginosa* Genome Array, GeneChip *Plasmodium/Anopheles* Genome Array, GeneChip Rat Genome 230 2.0 Array, GeneChip Rat Gene 2.0 ST Array, GeneChip Rat Gene 1.0 ST Array, GeneChip Rhesus Macaque Genome Array, GeneChip Rice Genome Array, GeneChip *S. aureus* Genome Array, GeneChip *S. cerevisiae* Tiling 1.0R Array, GeneChip *S. pombe* Tiling 1.0FR Array, GeneChip Soybean Genome Array, GeneChip Sugar Cane Genome Array, GeneChip Test3 Array, GeneChip Tomato Genome Array, GeneChip Wheat Genome Array, GeneChip *Xenopus laevis* Genome 2.0 Array, GeneChip *Xenopus laevis* Genome Array, GeneChip *Xenopus tropicalis* Genome Array, GeneChip Yeast Genome 2.0 Array, GeneChip Yeast Genome S98 Array, GeneChip Zebrafish Genome Array, GeneChip PrimeView Human Gene Expression Array, GeneChip Rat Exon 1.0 ST Array, GeneChip Rat ToxFX 1.0 Array, GeneChip Rat Toxicology U34 Array, GeneChip Barley Genome Array, Rat Genome U34 Set, Rat Expression Array 230 Set, Murine Genome Array U74v2 Set, Pepper SNP Genotyping Array, Poplar Genome Array, Porcine Genome Array, Human Genome U133A Array, Human Genome U133B Array, Human Genome U219 Array (all configurations), Human Genome U95 Array (all versions), Mouse Expression Array 430A, Mouse Expression Array 430B, CHO Gene 2.0 ST Array, Custom Canine SNP Array version 2;

- b. products based upon Array Plate technology, for example, and without limitation, GeneChip HT HG-U133+ PM Array Plate (all configurations),

GeneChip HT Human Genome U133 Array Plate (all configurations), GeneChip HT MG-430 PM Array Plate (all configurations), GeneChip HT RG-230 PM Array Plate (all configurations), Human Gene 2.1 ST Array Plate and Trays (all configurations), Human Gene 1.1 ST Array Plate and Trays (all configurations), Mouse Gene 2.1 ST Array Plate and Trays (all configurations), Mouse Gene 1.1 ST Array Plate and Trays (all configurations), CHO Gene 2.1 ST Array Plate and Trays;

- c. products based upon Axiom Genotyping Solution technology, for example, and without limitation, Axiom Genome-Wide CEU 1 Array Plate, Axiom Genome-Wide Bovine BOS-1 Array Plate, Axiom Genome-Wide EUR 1 Array Plate, Axiom Genome-Wide EAS 1 Array Plate, Axiom Genome-Wide AFR 1 Array Plate, Axiom Genome-Wide LAT 1 Array Plate, Axiom Genome-Wide Chicken Array Kit, Axiom Exome Array Plate, Axiom Exome Plus Array Plate, Axiom myDesign TG Array (all formats), Axiom myDesign GW Array Plate (all formats), Axiom Genome-Wide ASI 1 Array Plate, Axiom Genome-Wide CHB 1 Array Plate, Axiom Genome-Wide CHB 2 96-Array Plate Box, Axiom Genome-Wide CHB 1 & CHB 2 Array Set Bundle, Axiom Genome-Wide PanAFR Genotyping Bundle, Axiom Genome-Wide Human Origins 1 Array;
- d. GeneAtlas Array Strip products including without limitation, Affymetrix Human Genome U133 Array Strip, Human Genome U133+ PM Array Strip, Human Gene 2.1 ST Array Strip, Human Gene 1.1 ST Array Strip, Affymetrix Rat Gene 1.1 ST Array Strip, Affymetrix Rat Gene 2.1 ST Array Strip, Mouse Gene 1.1 ST Array Strip, Affymetrix MG-430 PM Array Strip, Affymetrix RG-230 PM Array Strip, Human Genome U219 Array Strip, CHO Gene 2.1 ST Array Strip;

- e. Model and applied research organisms Gene 1.0 ST Arrays, Model and applied research organisms Gene 1.1 ST Array Plates, and Model and applied research organisms Gene 1.1 ST Array Strips, including without limitation, Arabidopsis Gene 1.1 ST Array Strip, Bovine Gene 1.1 ST Array Strip, Canine Gene 1.1 ST Array Strip, Chicken Gene 1.1 ST Array Strip, Cynomolgus Gene 1.1 ST Arrays Strip, Cynomolgus-Rhesus Gene 1.1 ST Array Strip, Equine Gene 1.1 ST Array Strip, Feline Gene 1.1 ST Array Strip, Marmoset Gene 1.1 ST Array Strip, Medicago Gene 1.1 ST Array Strip, Ovine Gene 1.1 ST Array Strip, Porcine Gene 1.1 ST Array Strip, Rhesus Gene 1.1 ST Array Strip, Rice (US) Gene 1.1 ST Array Strip, Rice (Jp) Gene 1.1 ST Array Strip, Rice (Cn) Gene 1.1 ST Array Strip, Soybean Gene 1.1 ST Array Strip, Zebra Finch Gene 1.1 ST Array Strip, Zebrafish Gene 1.1 ST Array Strip; and
- f. QuantiGene products, including without limitation, QuantiGene 2.0 Single Plex Assay, QuantiGene 2.0 miRNA Assay, QuantiGene Plex 2.0 Assay, and QuantiGene Plex DNA Assay.

12. On information and belief, at all relevant times, Affymetrix had knowledge of the inventions claimed in the '197 Patent, as evidenced at least by communications between Affymetrix and Enzo relating to an exclusive distributorship agreement relating to GeneChip[®] products; and by the citation of the '197 Patent during prosecution of one or more of Affymetrix's own patents.

13. Affymetrix has had knowledge of and notice of the '197 Patent since at least April 19, 2012, through a letter sent by Enzo to Affymetrix concerning the '197 Patent and its infringement.

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

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

16. Affymetrix's infringement of the '197 Patent was, and continues to be, willful.

17. Affymetrix'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 Affymetrix as follows:

- A. That Affymetrix has infringed the '197 Patent;
- B. That Affymetrix's infringement of the '197 Patent has been willful;
- C. That Enzo be awarded damages adequate to compensate it for Affymetrix'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 Affymetrix's infringement, an accounting, and that such damages be trebled;
- 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 Affymetrix, and those in active concert or participation with Affymetrix, from directly infringing the '197 Patent;

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: October 31, 2012

Respectfully submitted,

Farnan LLP

/s/ Brian E. Farnan

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