

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

ENZO LIFE SCIENCES, INC.

Plaintiff,

v.

GEN-PROBE INCORPORATED,

Defendant.

Civil Action No. 1:12-CV-104-LPS

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

Plaintiff Enzo Life Sciences, Inc. (“Enzo”), for its Second Amended Complaint against Defendant Gen-Probe Incorporated (“Gen-Probe”) 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 Gen-Probe is a Delaware corporation with its principal place of business at 10210 Genetic Center Drive, San Diego, California 92121.

NATURE OF THE ACTION

3. This is a civil action for infringement of United States Patent No. 6,992,180 (“the ‘180 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 Gen-Probe because, among other things, Gen-Probe 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, Gen-Probe 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 Gen-Probe because, among other things, Gen-Probe has established minimum contacts within the forum such that the exercise of jurisdiction over Gen-Probe will not offend traditional notions of fair play and substantial justice. Moreover, Gen-Probe has placed products that practice the claimed inventions of the '180 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. Gen-Probe has sold, advertised, marketed, and distributed products in this District that practice the claimed inventions of the '180 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. 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.

9. 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.

COUNT I

Infringement Of The '180 Patent

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

11. Gen-Probe, 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:

- a. products involving the hybridization protection assay ("HPA"), for example, and without limitation, APTIMA® Combo 2 assays, APTIMA® CT assays,

APTIMA® GC assays, APTIMA® Trichomonas vaginalis assays, APTIMA® HPV assays, APTIMA® HIV-1 assays, APTIMA® HCV assays, Amplified™ Mycobacterium Tuberculosis tests, PROGENSA® PCA3 assays, AccuProbe® Mycobacterium Avium Culture Identification tests, AccuProbe® Mycobacterium Avium Complex Culture Identification tests, AccuProbe® Mycobacterium Intracellulare Culture Identification kits, AccuProbe® Mycobacterium Gordoniae Culture Identification tests, AccuProbe® Mycobacterium Kansaii Culture Identification tests, AccuProbe® Mycobacterium Tuberculosis Complex Culture Identification tests, AccuProbe® Group B Streptococcus Culture Identification tests, AccuProbe® Neisseria Gonorrhoeae Culture Identification tests, AccuProbe® Streptococcus Pneumoniae Culture Identification tests, AccuProbe® Listeria Monocytogenes Culture Identification tests, AccuProbe® Staphylococcus Aureus Culture Identification tests, AccuProbe® Blastomyces Dermatitidis Culture Identification tests, AccuProbe® Coccidioides Immitis Culture Identification tests, AccuProbe® Histoplasma Capsulatum Culture Identification tests, Mycoplasma Tissue Culture NI Rapid Detection systems;

- b. products involving Taqman reagent chemistry, for example, and without limitation, Prodesse® ProAdeno™+ assay kits, Prodesse® ProFast™+ assay kits, Prodesse® ProGastro CD™+ detection kits, Prodesse® ProFlu™+ detection kits, Prodesse® Pro hMPV™+ assay kits, Prodesse® ProParaflu™+ assay kits; and
- c. any products as detailed in Enzo's December 5, 2012 Initial Disclosures of Accused Products and Asserted Patents.

12. Gen-Probe has had knowledge of and notice of the '180 Patent and its infringement since at least early 2006, through a meeting between Enzo's CEO Elazar Rabbani

and Gen-Probe's CEO Henry Nordhoff in New York concerning the '180 Patent and its infringement.

13. Gen-Probe, 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, Gen-Probe 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 Gen-Probe knew or should have known infringes one or more claims of the '180 Patent.

14. Enzo has been and continues to be damaged by Gen-Probe's infringement of the '180 Patent.

15. Gen-Probe's infringement of the '180 Patent was, and continues to be, willful.

16. Gen-Probe's conduct in infringing the '180 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 Gen-Probe as follows:

- A. That Gen-Probe has infringed the '180 Patent;
- B. That Gen-Probe's infringement of the '180 Patent has been willful;
- C. That Enzo be awarded damages adequate to compensate it for Gen-Probe'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 Gen-Probe'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 Gen-Probe, and those in active concert or participation with Gen-Probe, from directly and/or indirectly infringing the '180 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: March 7, 2013

Respectfully submitted,

/s/ Brian E. Farnan
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