

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

ENZO LIFE SCIENCES, INC.,)	
)	
Plaintiff,)	
)	C.A. No. 12-274-LPS
v.)	
)	JURY TRIAL DEMANDED
ABBOTT LABORATORIES, and)	
ABBOTT MOLECULAR INC.,)	
)	
Defendants.)	

ANSWER, DEFENSES, AND COUNTERCLAIMS

Defendants Abbott Laboratories and Abbott Molecular Inc. (collectively “Abbott”) answer the Complaint for Patent Infringement (“the Complaint”) of Plaintiff Enzo Life Sciences Inc. (“Enzo” or “Plaintiff”) as follows. The numbered Paragraphs below correspond to the numbered Paragraphs in the Complaint:

PARTIES

1. Admitted, based on information and belief.
2. Admitted.
3. Admitted.

NATURE OF THE ACTION

4. This Paragraph contains legal conclusions to which no response is required. To the extent that a response is deemed required, Abbott admits that Enzo’s Complaint is purportedly for the alleged 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.* Abbott denies all other allegations of Paragraph 4.

JURISDICTION AND VENUE

5. This Paragraph contains legal conclusions to which no response is required. To the extent that a response is deemed required, Abbott admits this Court has subject matter jurisdiction over this action. Abbott denies all remaining allegations in Paragraph 5.

6. This Paragraph contains legal conclusions to which no response is required. To the extent that a response is deemed required, Abbott does not contest personal jurisdiction in this Court for purposes of this action only. Abbott denies all remaining allegations in Paragraph 6.

7. This Paragraph contains legal conclusions to which no response is required. To the extent that a response is deemed required, Abbott will not contest personal jurisdiction in this Court for purposes of this action only. Abbott denies all remaining allegations in Paragraph 7.

8. This Paragraph contains legal conclusions to which no response is required. To the extent that a response is deemed required, Abbott does not currently contest that venue in this Court is proper for purposes of this action only.

The Patent-In-Suit

9. This Paragraph contains legal conclusions to which no response is required. To the extent that a response is deemed required, Abbott admits the '180 Patent is entitled "Oligo-Or Polynucleotides Comprising Phosphate-Moiety Labeled Nucleotides," the issue date is January 31, 2006, and that an uncertified copy of the '180 Patent was attached as Exhibit A to Plaintiff's Complaint. Abbott denies that the '180 Patent was duly or legally issued, and further denies any remaining allegations in Paragraph 9.

10. Abbott lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10, and therefore, denies the same.

COUNT 1

Infringement of the '180 Patent

11. Abbott repeats and reasserts its responses to Paragraphs 1-10 as if fully set for herein.

12. Denied.

13. Denied.

14. Denied.

DEFENSES

15. Abbott denies that Enzo is entitled to any relief against Abbott.

16. Upon information and belief, Abbott asserts defenses to the Complaint in the following paragraphs. By asserting such defenses, Abbott does not concede that it has the burden of proving the matters asserted.

First Defense

17. Abbott has not infringed and is not infringing, directly, contributorily, or by inducement, any valid and enforceable claim of the '180 Patent either literally or under the doctrine of equivalents. Abbott is not liable in any respect for any alleged infringement of the '180 Patent by anyone else.

Second Defense

18. Each of the claims of the '180 Patent is invalid or unenforceable for failing to comply with one or more of the requirements for patentability pursuant to one or more provisions specified in 35 U.S.C. §§ 101, 102, 103, and 112.

Third Defense

19. The '180 Patent is unenforceable due to the inequitable conduct of the inventors of the '180 Patent and/or Enzo employees and/or other representatives substantively involved in the preparation or prosecution of the application that issued as the '180 Patent and/or their attorneys and/or agents (collectively "Enzo and its agents"). Abbott incorporates by reference as fully stated herein Paragraphs 37-76, 85-88 of its Counterclaims below.

Fourth Defense

20. Plaintiff's Complaint fails to state a claim upon which relief may be granted.

Fifth Defense

21. Each of the claims of the '180 Patent are invalid and void pursuant to the doctrine of obviousness-type double patenting.

Sixth Defense

22. Enzo's allegations of infringement of the '180 Patent are barred because the '180 Patent is unenforceable due to prosecution laches.

Seventh Defense

23. Enzo's claims are barred, in whole or in part, by the equitable doctrine of waiver, acquiescence, estoppel, including, without limitation, prosecution history estoppel, unclean hands, or laches.

Eighth Defense

24. Enzo's claims are barred, in whole or in part, by the doctrine of patent misuse.

Ninth Defense

25. All or part of Enzo's claims are barred by the statute of limitations.

Tenth Defense

26. Enzo's infringement claims and prayer for relief are limited by 35 U.S.C. § 287.

Eleventh Defense

27. Enzo's prayers for injunctive relief are barred in light of the availability of an adequate remedy at law, to the extent any remedy is justified. Enzo will not suffer any irreparable harm or injury if no injunction is issued.

Twelfth Defense

28. Abbott has not engaged in any conduct that would entitle Enzo to an award of enhanced damages.

Thirteenth Defense

29. Abbott has not engaged in any conduct that would make this an exceptional case or that would entitle Enzo to an award of its reasonable attorneys' fees.

Fourteenth Defense

30. Enzo's damages claims are contractually barred, in part or in whole, with respect to any alleged infringement occurring prior to January 1, 2008.

Reservation of All Defenses

31. Abbott reserves the right to offer any other and additional defenses that are now or may become available or appear during, or as a result of, discovery proceedings in this action.

COUNTERCLAIMS

Defendants and Counterclaimants Abbott Laboratories and Abbott Molecular Inc. (collectively "Abbott") assert the following counterclaims against Plaintiff and Counterclaim-Defendant Enzo Life Sciences Inc. ("Enzo"):

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