

**AMENDED COMPLAINT**

Plaintiff Enzo Life Sciences, Inc. (“Enzo”), for its Amended Complaint against Defendants Abbott Laboratories (“Abbott Labs”) and Abbott Molecular Inc. (“Abbott Molecular”) (collectively “Abbott”), 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 Abbott Labs is an Illinois corporation with its principal place of business at 100 Abbott Park Road, Abbott Park, Illinois 60064.
3. Defendant Abbott Molecular is a Delaware corporation with its principal place of business at 1300 E. Touhy Avenue, Des Plaines, IL 60018. Abbott Molecular is a wholly owned subsidiary of Abbott Labs.

**NATURE OF THE ACTION**

4. 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”) (collectively, “the Patents-In-Suit”) under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

Abbott 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, Abbott Molecular is a Delaware corporation which, having availed itself of Delaware's corporate laws, is subject to personal jurisdiction in Delaware.

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

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

#### **The Patents-In-Suit**

9. 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.

10. 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.

11. 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

**Infringement of the '180 Patent**

13. Paragraphs 1 through 12 are incorporated by reference as if fully stated herein.

14. Abbott, 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 TaqMan<sup>®</sup> probes, for example and without limitation, RealTime HBV assays (collectively "Nucleic Acid Probe Products").

15. Abbott 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 Abbott concerning the '180 patent and its infringement.

16. Abbott has induced infringement, and continues to induce infringement, of one or more claims of the '180 Patent under 35 U.S.C. § 271(b). Abbott actively, knowingly, and intentionally induced, and continues to actively, knowingly, and intentionally induce, infringement of the '180 Patent by selling or otherwise supplying Nucleic Acid Probe Products; with the knowledge and intent that third parties will use, sell, offer for sale, and/or import, the Nucleic Acid Probe Products supplied by Abbott to infringe the '180 Patent; and with the knowledge and intent to encourage and facilitate the infringement through the dissemination of the Nucleic Acid Probe Products and/or the creation and dissemination of promotional and marketing materials, supporting materials, instructions, product manuals, and/or technical information related to the Nucleic Acid Probe Products

**COUNT II**

**Infringement of the '197 Patent**

20. Paragraphs 1 through 19 are incorporated by reference as if fully stated herein.

21. Abbott, 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, including without limitation products involving Bead Array technology, for example and without limitation xTAG<sup>®</sup> RVP, and xTAG<sup>®</sup> RVP *FAST*.

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

23. Abbott'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 Abbott as follows:

- A. That Abbott has infringed the Patents-In-Suit;
- B. That Abbott's infringement of the '180 Patent has been willful;
- C. That Enzo be awarded damages adequate to compensate it for Abbott's past infringement and any continuing or future infringement up until the date such judgment is

E. A preliminary and permanent injunction preventing Abbott, and those in active concert or participation with Abbott, 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.

Dated: August 30, 2012

Respectfully submitted,

FARNAN LLP

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