

EXHIBIT 1

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

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ENZO LIFE SCIENCES, INC.,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 12-274-LPS
	:	NO. 12-275-LPS
vs.	:	NO. 12-276-LPS
	:	NO. 12-104-LPS
ABBOTT LABORATORIES, INC.,	:	NO. 12-105-LPS
and ABBOTT MOLECULAR, INC.,	:	NO. 12-106-LPS
	:	NO. 12-433-LPS
Defendants.	:	NO. 12-434-LPS
	:	NO. 12-435-LPS
vs.	:	NO. 12-505-LPS
	:	
	:	
LUMINEX CORPORATION,	:	
	:	
Intervening	:	
Defendant	:	
	:	

- - -

Wilmington, Delaware
Thursday, December 18, 2014
3:00 o'clock, p.m.
***Telephone conference

- - -

BEFORE: HONORABLE LEONARD P. STARK, Chief Judge

- - -

Valerie J. Gunning
Official Court Reporter

1 APPEARANCES:

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 BY: TERRY KEARNEY, ESQ.
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 6 Siemens Healthcare Diagnostics Inc. in
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 22 Counsel for Intervenor-Defendant and
 23 Counterclaim-Plaintiff Luminex Corporation
 in Civil Action No. 12-274-LPS

1 PROCEEDINGS

2
 3 (REPORTER'S NOTE: The following telephone
 4 conference was held in chambers, beginning at 3:00 p.m.)
 5
 6 THE COURT: Good afternoon, everybody. This is
 7 Judge Stark. Who is there, please?
 8 MR. FARNAN: Good afternoon, your Honor. Brian
 9 Farnan on behalf of the plaintiff, and with me is Michael
 10 Stadnick, Jordan Malz from Desmarais in New York City.
 11 THE COURT: All right.
 12 MR. COTTRELL: Your Honor, it's Fred Cottrell in
 13 Wilmington, Delaware, at Richards Layton. It's my phone-in.
 14 All the defendants are on and Delaware counsel and their
 15 co-counsel, so I will let each Delaware counsel introduce
 16 everyone.
 17 I will start for Roche in 12-106, and 12-275,
 18 and my co-counsel from Wilmer Hale, Bob Gunther and Omar
 19 Khan.
 20 THE COURT: Okay.
 21 MS. JACOBS: Your Honor, for Life Technologies,
 22 who filed one of the motions to strike today, this is Karen
 23 Jacobs from Morris Nichols. and I have on the line with me

1 MS. PASCALE: Good afternoon, your Honor. This
2 is Karen Pascale from Young Conaway for Gen-Probe in the
3 12-104 and Hologic in the 12-276, and presenting argument
4 today for Gen-Probe and Hologic.

5 THE COURT: Okay.

6 MR. MOORE: And, your Honor, David Moore from
7 Potter Anderson on behalf of Abbott, and with me on the line
8 is Maureen Rurka from Winston & Strawn. They're also
9 listening in.

10 THE COURT: Okay.

11 MS. KRAFT: Your Honor, this is Denise Kraft on
12 behalf of Luminex. On the line with me is Stan Panikowski.

13 We are also in a similar position of not having
14 participated in the motion, but being on the line as
15 listening to the proceeding. Thank you.

16 THE COURT: Okay.

17 MR. FAHENSTOCK: It's Derek Fahenstock from
18 Morris Nichols on behalf of Agilent, also on behalf of
19 Affymetrix, and with me are Sean Boyle and Nicole Buck from
20 Kaye Scholer in Silicon Valley.

21 I am also here for Siemens, and with me is
22 George Kanabe from Orrick, and neither Agilent, Affymetrix
23 nor Siemens has moved so that the record is clear.

24 THE COURT: Okay. Thank you. Anybody else?

25 Okay. I have my court reporter he with me, and

1 MR. KEARNEY: O Enzo served the contentions at
2 issue on September 30th. At that point, the case was almost
3 three years old. Pleadings were long closed. Parties'
4 claim construction disputes were under consideration by your
5 Honor. There were two weeks left of fact discovery.

6 At that point, and based on Enzo's prior
7 contentions, specific groups of Life's products were at
8 issue. Life's TaqMan DNA probe, and beads called the Oligo
9 dT beads that are made by Life's subsidiary in Norway, some
10 OEM microarrays and glass slides and chip kits that are used
11 with Life's DNA sequencing platforms. Those platforms are
12 called the Ion Torrent and the Solid Sequencing Systems. In
13 fact, Enzo and Life had agreed that Enzo's case would be
14 limited to individual representatives of those products.

15 A couple days later, Enzo decided to accuse
16 three new groups of products of infringing the '197 patent.
17 The first group includes over a dozen new and different
18 beads made by Dynal. The second and third groups are
19 sequencing beads, which are disposable products used with
20 the Ion Torrent and solid sequencing platforms.

21 Significantly, your Honor, Enzo does not,
22 because it cannot argue that these new products are
23 functionally similar to or infringe for the same reason as
24 any earlier accused product. Instead, Enzo argues that
25 these new products are merely additional model names or

1 for the record as a formal matter, I believe we're here on
2 just six of the cases. They're related cases. They all
3 involve the same plaintiff, Enzo Life Sciences, Inc. versus
4 Gen-Probe, Incorporated, Civil Action No. 12-104-LPS. We
5 also have versus Hologic, Inc., 120-276-LPS, versus Life
6 Technologies Corporation, 12-105-LPS, versus Roche Molecular
7 Systems, Inc., et al, 12-106-LPS, and versus Becton
8 Dickinson & Company, et al, 12-275-LPS.

9 And we're here, as has been alluded to, to
10 discuss the motions to strike that had been filed by a
11 number of the defendants.

12 It sounds as if perhaps each of the moving
13 defendants may wish to be heard separately. If that's the
14 case, I will ask you to make your comments as un-redundant,
15 I guess, for lack of a better word as possible. But in any
16 event, let me turn it over first to defendants and see how
17 you wish to start.

18 MR. KEARNEY: Your Honor, this is Terry Kearney
19 from Latham on behalf of Life Technologies, the party who
20 filed the three motions that are before your Honor.

21 We filed the first. We've communicated with our
22 co-counsel and have decided that Life's motion would go
23 first. so I will be as brief as possible. not more than

1 versions of long accused product lines. We dealt with that
2 in our paper and I'm happy to rest on that unless you have
3 questions about it. But it's just not so. These are
4 brand-new, different products. But Enzo didn't just add new
5 products. Its new contentions are peppered with
6 placeholders for new theories of inducement and doctrine of
7 equivalents.

8 For context, Enzo has not pleaded indirect,
9 either inducement or contributory infringement of the '197
10 patent. And while Enzo included conclusory and circular
11 footnotes about inducement in some of its earlier
12 infringement charts, those scattered footnotes do not
13 provide any substantive information about Enzo's theory of
14 inducement. Enzo's new charts attempt to fill those voids
15 with additional cursory boilerplate.

16 With respect to inducement, Enzo has simply
17 block copied its earlier conclusory footnotes into all of
18 its infringement charts.

19 With respect to the DOE allegation, doctrine of
20 equivalents allegation, Enzo has added to all its charts
21 boilerplate statements asserting little more than the
22 differences between the parties' proposed claim
23 constructions are insubstantial.

1 With respect to the new Dynal beads, Life has already
 2 interrupted the operation of its Norwegian subsidiary to
 3 collect, produce and translate documents.
 4 Enzo has already deposed Dynal employees.
 5 Licensed Dynal should not be required to provide additional
 6 expensive discovery for a dozen new products dragged into
 7 the case at the end of discovery. Enzo's additions of the
 8 new sequencing beads is also highly prejudicial. Having
 9 focused Life's attention on chip kits and glass slides for
 10 the last ten months, Enzo presumably now intends to have its
 11 experts opine on the beads or some other undescribed
 12 combination of beads and chips.
 13 If these new products are added to the case,
 14 Enzo must, with respect, your Honor, provide detailed claim
 15 charts explaining its new contentions. Those new claims
 16 will give rise to additional discovery requests and possibly
 17 new claim construction disputes. The case will be set back
 18 to exactly where we were in the spring.
 19 Enzo's attempt to preserve its supposed theories
 20 of inducement and DOE is also not harmless. Its boilerplate
 21 placeholders are completely without substance. There is no
 22 explanation of how Life induced the infringement of the
 23 asserted claims. Enzo does not even identify who or what
 24 directly infringe. These placeholders are going to be
 25 fertile ground for mischief during expert discovery. Enzo

1 Is it correct that you're not seeking to strike
 2 every bit of what's in there?
 3 MR. KEARNEY: That's absolutely correct, your
 4 Honor. So Life is only complaining about the new products
 5 that are indisputably dissimilar and cannot be said to
 6 infringe for the same reason as the earlier products. That
 7 does not mean that we need a supplemental contention for the
 8 new products that are functionally similar. Right?
 9 Those new products can be added in an expert report or the
 10 pretrial order stage when the parties are truing up and
 11 adjusting their damages claims. So, in other words, if
 12 there are products that infringe for the same way, let us
 13 know and we'll add those to the list of the pretrial order.
 14 There's no reason to have a supplemental infringement
 15 contention relating to those.
 16 THE COURT: So based on what you've seen in the
 17 plaintiff's letter, if I were to say your motion is granted,
 18 are you comfortable that you know what products are in the
 19 case and what are not in the case or is there still a
 20 further dispute there?
 21 MR. KEARNEY: I believe that it is clear.
 22 THE COURT: Okay. And if, alternatively, I were
 23 to deny your motion and allow these new products as you
 24 characterize them to be in the case, give me a sense from
 25 Life's perspective what that would do to the schedule that I

1 cannot credibly argue that these new products and theories
 2 can be added to the case without delay and expense.
 3 So what's Enzo's justification? According to
 4 Enzo, it could not accuse the new product until it deposed
 5 Life's witnesses, but Enzo fails to point out anything
 6 that it learned at those depositions that it didn't already
 7 know or couldn't have learned from the products themselves
 8 or detailed technical information about those products,
 9 which was publicly available in 2012, when Enzo first filed
 10 suit.
 11 And Enzo provides no justification at all for
 12 its new boilerplate placeholders for inducement in the DOE.
 13 Enzo's inability to justify its delay supports the Court's
 14 conclusion that Enzo proceeded on timing in conflict with
 15 the Court's scheduling order for fact discovery.
 16 Life appreciates that whichever way your Honor
 17 rules, the result will prejudice one of the two parties, but
 18 this situation is Enzo's making, not Life's, and it's Enzo,
 19 not Life, that should bear the consequences of Enzo's
 20 strategic choices.
 21 THE COURT: All right. Mr. Kearney, so one
 22 thing you may have seen in all of the plaintiff's responses,
 23 they suggest that the defendants are not actually seeking to

1 have in place now.
 2 MR. KEARNEY: Well, the schedule that you have
 3 in place right now, your Honor, is, I believe we're waiting
 4 on the claim construction order and several events follow
 5 from that. Sixty days out, there's expert, opening expert
 6 reports. I think there's also on the same day a reduction
 7 of claim terms at issue or prior art references relied on
 8 by defendants and expert discovery proceeds from that point
 9 on.
 10 From Life's perspective, what we would need if
 11 these new products come into the case, we would need
 12 immediately an explanation from, a truly detailed
 13 explanation from Enzo as to what their claims are.
 14 These are new products that are not covered by
 15 the previous charts. We would also need an articulation of
 16 what their theory of induced infringement is. It's never
 17 articulated directly what infringes the claims, so we really
 18 have no idea what that is all about.
 19 Following that -- I presume they're going to
 20 need some time for that. Following that, we would need some
 21 time to propound follow up interrogatories. We would want
 22 to collect documents from Dynal. We may need to recall some
 23 of Enzo's witnesses. And, in fact, we may need to put in

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