

Case IPR2016-00820  
U.S. Patent No. 7,064,197

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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HOLOGIC, INC., and BECTON, DICKINSON AND COMPANY,  
Petitioner

v.

ENZO LIFE SCIENCES, INC.,  
Patent Owner

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Case IPR2016-00820

U.S. Patent No. 7,064,197  
TITLE: SYSTEM, ARRAY AND NON-POROUS SOLID SUPPORT  
COMPRISING FIXED OR IMMOBILIZED NUCLEIC ACIDS  
Issue Date: June 20, 2006

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**ENZO'S NOTICE OF APPEAL**

Mail Stop Patent Board  
Patent Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

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U.S. Patent No. 7,064,197

Pursuant to 35 U.S.C. §§ 141, 142, and 319, and in accordance with 37 C.F.R. §§ 90.2-90.3, Patent Owner Enzo Life Sciences (“Enzo”) appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision of the Patent Trial and Appeal Board (“Board”) entered on September 28, 2017 in Case IPR2016-00820 (Paper 52) (“Final Written Decision”), and from all underlying findings, determinations, rulings, opinions, orders, and decisions regarding that *inter partes* review of U.S. Patent No. 7,064,197 (“the ’197 patent”). This Notice of Appeal is timely filed within 63 days of the Final Written Decision.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Enzo states that the issues on appeal may include, but are not limited to: the Board’s determination that Claims 1, 6, 8, 9, 12–16, 27, 32–34, 41, 61–63, 69, 70, 72–74, 79, 100, 191, 193, 194, 212, 213, 219, 222, 225–227, 230, 233, and 236 of the ’197 patent are unpatentable as anticipated by Fish; the Board’s determination that Claims 31, 64, 68, 101, 192, and 195 of the ’197 patent are unpatentable as obvious over Fish; the Board’s determination that Claims 38, 78, and 218 of the ’197 patent are unpatentable as obvious over Fish and Gilham; the Board’s determination that Claims 1, 6, 8, 9, 12–15, 27, 31, 32, 34, 61–63, 68–70, 72, 74, 79, 100, 191–193, 194, 213, 219, 226, 227, and 236 of the ’197 patent are unpatentable as anticipated by VPK; whether VPK is prior art to the ’197 patent; the Board’s determination that Claims 33, 41, 73, 212, 225, and 233 of the ’197 patent are unpatentable as obvious over VPK and

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Metzgar; the Board's determination that Claims 16, 38, 64, 78, 101, 195, 218, 222, and 230 of the '197 patent are unpatentable as obvious over VPK, Noyes, and Ramachandran; the Board's construction of Claims 1, 6, 8, 9, 12–16, 27, 31–34, 38, 41, 61–64, 68–70, 72–74, 78, 79, 100, 101, 191–195, 212, 213, 218, 219, 222, 225–227, 230, 233, and 236 of the '197 patent, including its construction of the claim terms “hybridizable form,” “via amine(s), hydroxyl(s), or epoxide(s),” and “nucleic acid of interest;” the Board's consideration of the expert testimony, prior art, and other evidence in the record; the Board's factual findings, conclusions of law, or other determinations supporting or related to those issues, as well as all other issues decided adversely to Enzo in any orders, decisions, rulings, and opinions; whether *inter partes* review is unconstitutional because it permits an executive agency to exercise the judicial power of the United States in violation of Article III of the Constitution; whether *inter partes* review is unconstitutional because Enzo has the right to a trial by jury on the validity of the '197 patent under the Seventh Amendment; and whether *inter partes* review is unconstitutional as applied to the '197 patent because the enactment of the *inter partes* review statutes retroactively impaired Enzo's vested rights in the '197 patent, which rights vested when the '197 patent issued in 2006.

This Notice of Appeal is being e-filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit, along with payment of the required

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docketing fees. In addition, a copy of this Notice of Appeal is being filed simultaneously with the Patent Trial and Appeal Board and with the Director of the United States Patent and Trademark Office.

Dated: November 29, 2017

Respectfully submitted,

/kkm/

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*Lead Counsel for Patent Owner  
Enzo Life Sciences, Inc.*

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**CERTIFICATE OF FILING**

The undersigned certifies that on November 29, 2017, in addition to filing the foregoing electronically through PTAB E2E, a copy of this Notice of Appeal was deposited with Priority Mail Express on November 29, 2017 for filing with the Director of the United States Patent and Trademark Office, at the following address:

Office of the Solicitor  
United States Patent and Trademark Office  
Mail Stop 8  
Post Office Box 1450  
Alexandria, Virginia 22313-1450

The undersigned also certifies that on November 29, 2017, a copy of this Notice of Appeal was filed electronically through the United States Court of Appeals for the Federal Circuit's CM/ECF system.

Dated: November 29, 2017

Respectfully submitted,

/kkm/

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