

Case IPR2016-00822
U.S. Patent No. 7,064,197

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

ENZO LIFE SCIENCES, INC.,
Patent Owner

Case IPR2016-00822

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

ENZO'S OPPOSITION TO PETITIONER'S
MOTION TO EXCLUDE EVIDENCE

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I. INTRODUCTION

Petitioner's motion to exclude Exhibits 2135, 2137-2141 ("the RTP Exhibits") and certain paragraphs of Exhibit 2143 (Declaration of Barry Weiner) and of Exhibit 2142 (Declaration of Gregory Buck) should be denied because the challenged evidence is admissible under the Federal Rules of Evidence ("FRE").

The RTP Exhibits include laboratory notebooks and other business records documenting the scientific activities that resulted in the inventions of the '197 patent. Each RTP Exhibit is authenticated by (i) Mr. Weiner's testimony, (ii) multiple indicia of authenticity, and (iii) its qualification as an ancient document. Each RTP Exhibit is admissible under at least two hearsay exceptions: (i) as a business record; and (ii) as an ancient document. Petitioner's arguments to the contrary mischaracterize Enzo's policies and misapply the FRE.

Mr. Weiner's declaration includes testimony regarding certain of Enzo's research and development activities ("R&D activities") in 1982 and corroborates the authenticity of the RTP Exhibits that reflect those activities. Petitioner argues that Mr. Weiner's declaration testimony should be excluded because it is not based on personal knowledge and constitutes inadmissible hearsay. But, Petitioner flatly ignores Mr. Weiner's unrefuted deposition testimony that his declaration testimony is based solely on personal knowledge he gained at Enzo during 1982.

Petitioner's request to exclude portions of the declaration of Enzo's

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