

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 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 October 2, 2017 in Case IPR2016-00822 (Paper 48) (“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 17, 19, 25, 105, 106, 114, 116, 119, 128, 129, 150, 152, 178, 180, 186, and 187 of the ’197 patent are unpatentable as anticipated by Fish; the Board’s determination that Claims 130, 131, 151, and 154 of the ’197 patent are unpatentable as obvious over Fish; the Board’s determination that Claims 120 and 189 of the ’197 patent are unpatentable as obvious over Fish, Metzgar, and Sato; the Board’s determination that Claims 113 and 185 of the ’197 patent are unpatentable as obvious over Fish and Gilham; whether VPK is prior art to the ’197 patent; the Board’s determination that Claims 17, 19, 25, 105, 106, 114, 119, 120, 128, 129, 131, 150–152, 178, 180, 186, and 189 of the ’197 patent are unpatentable as obvious over VPK and Metzgar; the Board’s determination that Claims 16, 38, 64,

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78, 101, 195, 218, 222, and 230 of the '197 patent are unpatentable as obvious over VPK, Noyes, Metzgar, and Ramachandran; the Board's construction of Claims 113, 116, 130, 154, 185, and 187 of the '197 patent, including its construction of the claim terms "hybridizable form," "array," 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 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.

Case IPR2016-00822
U.S. Patent No. 7,064,197
Dated: November 29, 2017

Respectfully submitted,

/kkm/

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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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