Page 1

UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE PATENT TRIAL AND APPEAL BOARD HOLOGIC, INC., Petitioner, vs. vs. ENZO LIFE SCIENCES, INC., Patent Owner. CONFIDENTIAL - ATTORNEYS' EYES ONLY

> VIDEO DEPOSITION OF NORMAN NELSON, PH.D. WEDNESDAY, DECEMBER 21, 2016 SAN DIEGO, CALIFORNIA

REPORTED BY: LISA MOSKOWITZ CA-CSR 10816, RPR, CRR, CLR Job No. 17750

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1	Video deposition of NORMAN NELSON, PH.D.,	1 2	INDEX Examination By: Page		
2	taken before Lisa Moskowitz, a Certified Shorthand	3	BY MR. STADNICK 8		
3	Reporter for the State of California, Registered	4 5			
4	Professional Reporter, Certified Realtime Reporter,	6	EXHIBITS		
5	Certified LiveNote Reporter, NCRA Realtime Systems	7	Petitioner's Page		
6 7	Administrator, commencing at 9:09 a.m. on Wednesday,	8 9	1001U.S. Patent Number 7,064,197141002Declaration of Dr. Norman Nelson in 181		
	December 21, 2016, in the offices of Hologic, Inc., et 10210 Capatia Captar Drive, San Diago, California	1.0	the 820 IPR		
8 9	at 10210 Genetic Center Drive, San Diego, California.	10	1002 Declaration of Dr. Norman Nelson in 200		
10		11	the 822 IPR		
11		12	1006 Article Titled "A Sensitive Solid 50 Phase Microradioimmunoassay for		
12		13	Anti-Double Stranded DNA Antibodies		
13		14	1007 Article Titled "Nucleic Acid 215 Hybridization Using DNA Covalently		
14		15	Coupled to Cellulose"		
15		16	1008 Article Titled "In Situ 160 Hybridization of DNA Sequences in		
16		17	Human Metaphase Chromosomes		
17		18	Visualized by an Indirect Fluorescent Immunocytochemical		
18		10	Procedure		
19		19	1009 U.S. Patent Number 3,572,892 205		
20		20	1009 U.S. Fatent Number 5,572,892 205		
21		0.1	1019 Article Entitled "Immobilized 187		
22		21 22	Polynucleotides and Nucleic Acids" 1021 Article Entitled "Manufacturing DNA 139		
23		0.2	Microarrays of High Spot Homogeneity		
24		23 24	and Reduced Background Signal		
25		25			
	Page 3				Page 5
1 2	APPEARANCES	1	EXHIBITS (Cont'd)		
3	For the Petitioner:	2	Petitioner's Page		
4	FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP	5	1028 Article Titled "Effects of 215 Mobilization on the Kinetics of		
5	Attorneys at Law BY: M. PAUL BARKER, ESQ.	4	Enzyme-Catalyzed Reactions. I.		
6	Stanford Research Park		Glucose Oxidase in a Recirculation		
7	3300 Hillview Avenue Palo Alto, California 94304-1203	5	Reactor System	220	
8	(650) 849-6620 paul.barker@finnegan.com	6	2019 U.S. Patent Application Number 2016/0017392	238	
9	FINNEGAN, HENDERSON, FARABOW, GARRETT &	7	2010/001/5/2		
10	DUNNER, LLP Attorneys at Law		2119 U.S. Patent Application Number	238	
11	BY: APPITA BHATTACHARYYA, ESQ. Two Seaport Lane, Sixth Floor	8	2016/0017392		
	Boston, Massachusetts 02210-2001	9 10			
12	(617) 646-1675 arpita.bhattacharyya@finnegan.com	11			
13 14	For the Patent Owner:	12			
14	DESMARAIS, LLP	13			
16	Attorneys at Law BY: MICHAEL P. STADNICK, ESQ.	14			
17	BY: KERRI-ANN LIMBEEK, ESQ. 230 Park Avenue	15 16			
	New York, New York 10169	17			
18	(212) 351-3422 mstadnick@desmaraisllp.com	18			
19 20	klimbeek@desmaraisllp.com	19			
	Also Present:	20 21			
21	MARINA HERNANDEZ, Videographer	22			
22 23	CHUCK CAPPELLARI, ESQ.	23			
23 24 25		24			
		25			

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	Page 6		Page 8
1	SAN DIEGO, CALIFORNIA, WEDNESDAY, DECEMBER 21, 2016	1	EXAMINATION
2	9:09 A.M.	2	BY MR. STADNICK:
3		3	Q Okay. Good morning, Dr. Nelson.
4	THE VIDEOGRAPHER: Good morning.	4	A Good morning.
5	This is tape number 1 of the videotaped	5	Q Can we begin by having you state
б	deposition of Dr. Norman Nelson in the	6	your full name for us?
7	matter of Hologic, Incorporated versus Enzo	7	A Norman C. Nelson.
8	Life Sciences, Incorporated, in the United	8	Q Where do you live?
9	States Patent and Trademark Office, Case	9	A San Diego, California.
10	Number IPR2016-00820. This deposition is	10	Q What do you do for a living?
11	being held at 10210 Genetic Center Drive,	11	A I'm a consultant in biotechnology.
12	San Diego, California on December 21, 2016,	12	Q You understand that you're here
13	at 9:09 a.m.	13	today to provide sworn testimony in some patent
14	My name is Marina Hernandez from the	14	office proceedings involving a patent owned by
15	firm of TransPerfect Legal Solutions, and I	15	my client Enzo; correct?
16	am the legal video specialist. The court	16	A Yes.
17	reporter is Lisa Moskowitz in association	17	Q You understand there are two
18	with TransPerfect Legal Solutions.	18	separate patent office proceedings currently?
19	Will counsel please introduce	19	A Yes.
20	themselves.	20	Q One is, we just mentioned a few
21	MR. STADNICK: Michael Stadnick from	21	moments ago, is IPR2016-820, which we'll call
22	the Desmarais law firm, representing Enzo,	22	the 820 IPR, if that's okay with you?
23	and with me here today is Kerri-Ann	23	A Yes.
24	Limbeek.	24	Q And the other one is IPR2016-822,
25	MR. BARKER: Paul Barker from	25	which we'll call the 822 IPR. Is that fair?
	Page 7		Page 9
1	Finnegan, representing Hologic. I'm here	1	A Yes.
2	with Arpita Bhattacharyya, who's also from	2	Q I'm going to mark a number of the
3	Finnegan, and Chuck Cappellari, in-house at	3	exhibits here today, and in most cases, the
4	Hologic.	4	exhibits will bear the same number in both of
5	THE VIDEOGRAPHER: Thank you. Will	5	those IPR proceedings. If there's any reason to
6	the court reporter please swear in the	6	deviate from that process, I'll let you know,
7	witness.	7	but otherwise, you can assume that the exhibit
8		8	I'm giving you is an exhibit in both
9	NORMAN NELSON, PH.D.,	9	proceedings. Fair?
10	called as a witness,	10	A Yes.
11	was examined and testified as follows:	11	Q You understand that the two IPR
12		12	proceedings we're here in connection with today,
13	THE REPORTER: And Counsel, just to	13	the 820 and the 822, involve one of Enzo's
14	let you know, I can already tell I need	14	United States patents which is number 7,064,197
15	everybody way louder than when you	15	or the '197 patent; correct?
16	introduced yourselves. Thank you.	16	A Yes.
17	MR. STADNICK: Before we begin, I	17	Q You've been hired by Hologic to
18	just want to note for the record I believe	18	offer certain opinions concerning the validity
19	the IPR caption you read in was just for	19	of the '197 patent. True?
20	the 820-case, but we're here today jointly	20	A I'm not sure I'm offering validity
21	in both IPR2016-00820 and IPR2016-00822.	21	of the patent in regards to if that's a legal
22	Agreed?	determination. I'm here as an expert witness in	
23	MR. BARKER: That's correct.	23	the field.
	///	24	Q You've been hired by Hologic to
25	///	25	offer opinions as to whether certain pieces of

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,	Page 10		Page 12
1	prior art anticipate or are obvious in Enzo's	1	related to patent infringement litigation?
2	'197 patent; correct?	2	A I believe they were in regards to
3	A Correct.	3	patents. I don't recall if it was an
4	Q In connection with your work for	4	infringement case.
5	Hologic on these IPR matters, you submitted two	5	Q Did any of your testimony in either
б	declarations in support of petitions for	6	of your two prior depositions while you were
7	institutions of IPR proceedings; correct?	7	employed at Gen-Probe relate in any way to the
8	A Correct.	8	technology that's at issue in your analysis for
9	Q I think you submitted both of those	9	the purposes of these IPR proceedings?
10	petitions back in March of 2016.	10	A I don't recall precisely, but I
11	Does that sound right?	11	don't believe so.
12	A That is correct. Whether it was	12	Q So you do understand that you're
13	March or they were submitted early April, I'm	13	testifying under oath here today; correct?
14	not sure, but that is the correct time frame.	14	A Yes.
15	Q Let's just say first half of 2016.	15	Q You understand that your testimony
16	You submitted your declarations in connection	16	here today is under oath in the same way it
17	with these IPR proceedings in the first half of	17	would be if you were testifying in a court
18	this year; right?	18	proceeding. Fair?
19	A Correct.	19	A Yes.
20	Q Since that time, has anything come	20	Q There's a court reporter here who's
21	to your attention that's contained in either of	21	going to be making a written transcript of our
22	those declarations that you want to change or	22	questions and answers.
23	you've come to realize is incorrect.	23	Do you understand that?
24	A No.	24	A Yes.
25	Q Have you ever had your deposition	25	Q There's a videographer here who's
	Page 11		Page 13
1	taken before?	1	taking a video of the proceedings.
2	A Yes.	2	You're aware of that; correct?
3	Q How many times?	3	A Yes.
4	A Twice before.	4	Q Is there any reason you can think of
5	Q Without getting into the details of	5	why you're unable today to provide full and
6	the matters, could you give me some indication	6	accurate testimony in response to my questions?
7	of what your role was in each of those prior	7	A No.
8	depositions?	8	Q I have a bit of a cold; so if I'm
9	A I believe it's called just a fact	9	too quiet and you can't hear one of my questions
10	witness where I was giving testimony to the	10	or for any other reason you think that one of my
11	facts in regards to the scientific nature of	11	questions doesn't make sense or you're not sure
12	those two cases.	12	you understand what I'm asking you, I'd
13	Q How long ago were those two	13	appreciate it if you'd let me know; so we can
14	depositions?	14	have a clear record. Does that sound fair?
15 16	A I don't recall exactly, but	15 16	
16 17	somewhere between 10 and 15 years ago. Although	17	A Yes. Q And finally, to have a clear record,
18	I do not recall exactly. Q Is it fair to say that your prior	18	Q And finally, to have a clear record, it's important that you and I make a concerted
$18 \\ 19$	Q Is it fair to say that your prior deposition testimony as a fact witness related	19	effort to try to not talk over each other. I
20	to your employment at Gen-Probe?	20	know I've violated that rule already at least
20	A To the best of my recollection, that	21	once here today, but if we can try to do that,
22	is correct.	22	it will be easier for the court reporter to make
23	Q Do you recall if the prior	23	sure she gets an accurate record of our
24	depositions that you provided 10 to 15 years ago	24	discussion here today. Fair?
25	in connection with your work at Gen-Probe	25	A Yes.
	in connection with your work at Oen-11000		

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1QOkay. (Exhibit Number 1001 was marked1AYou mean - other Hum Hologic, you mean the specific individual that I worked with?3for identification.)QNo. Hologic is the answer I was looking for.Iooking for.4BY MR, STADNICK:4Iooking for.5QI handed you the first exhibit to for identification.)AOh.6First exhibit 1001 in both the 820 and the 822 iPRs.AOh.7ACorrect.9independent consultant, other than operating your own independent consultant, but it's all through my business.10ACorrect.10A11ACorrect.10A12analyzed in connection with your work for 1212AI do contract work, work as a consultant, but it's all through my business.13Hologic on the IPR matters; correct?13AI do not.14AI dorn treedle by anyone cles custide of my business.16QDo you hold any positions, executive positions, board positions, anything like that with any companies currently?13Possible it was 2016. I don't 197 patent at all?Page 1714QLet me try it a different way.2115AI honestly don't recall for sure.2216QOkay. Going back to the '197 patent at all?2417AI honestly don't necall for sure.2518AI honestly don't necall for sure.2519Page 172		Page 14		Page 16	
2(Eshibit Number 1001 was marked if orientification.)2mean the specific individual that 1 worked with?4BY MR. STADNICK:3QNo. Hologic is the answer I was looking for.5QI handed you the first exhibit to is our deposition today. If is been pre-marked as Exhibits 1001 in both the 820 and the 822 IPRs. Exhibits 1001 in a correct.GThat work was also for Hologic? A7A Correct.0QBacking up to your role as an independent consultant, other than operating you employed by anybody currently?2analyzed in connection with your work for 1212AI do correct.13Hologic on the IPR matters; correct?13GO you hold any positions, executive positions, board positions, anything like that with any companies currently?14A I don't recall exactly. It's 16P oor you hold any positions, executive position, board positions, anything like that with any companies currently?2QI kan text I ad on't recall for sure.20QQ axy. Going back to the '197 reconsidering my answer. I also work for a2Prior to getting involved in working with Hologic on these LPR matters, had you seen the getting involved in working with 1721AI don trecall for sure.2Page 17Company here in San Diego termed – named Aggea, and 1 do that as a consultant work how it all show for a2AI honestly don't recall for sure.25anal do that as a consultant work how it it's technically construed as an employee. I dot with any consultant work on another tree consid	1	O Okay.	1	A You mean other than Hologic, you	
3for identification.)3QNo. Hologic is the answer I was4BY MR. STADNCK:4A5QI handed you the first exhibit to5A6ParticleCorrect.6Q7ACorrect.78Exhibit 1001 is on opy of U.S. Patent 7.064,197;99independent consultant, other than operating910ACorrect.1011QAnd that's the Enzo patent that you1112anabyzed in connection with your work for12A13Hologic on the IPR matters; correct?1314AThat is correct.1415GDo you hold any positions, executive16first time you ever saw the '197 patent?1617AI don't recall exactly. If's1718possible it was 2014. That's possible but1819recrainly early this year in 2016. I don't1919AI don tread for sure.2021QLet me try it a different way.2122Prior to getting involved in working with2123Hologic on these IPR matters, had you seper that2324ACan we pause for just a moment? I'm25AI honestly don't recall for sure.2426You might have sen the '197 patent fare that all?2427QIn what context do you suspect that2428AI correct sup anyone eis a			2		
4BY MR. STADNICK:4looking for.5QI handed you the first exhibit to5AOh.7Exhibits 1001 is both the 820 and the 822 IPRs.67A8Exhibits 1001 is a copy of U.S. Patent 7,064,197;7ACorrect.9and yzed in connection with your work for12ACorrect.11QAnd that's the Enzo patent that you11you cov ni hegendent consultant, hout it's all through my business.12analyzed in connection with your work for12AI do contract work, work as a14AThat is correct.13So I'm not employed by anybody currently?14AThat is correct.14So I'm not employed by anybody currently?15QWhen did you first - when is the15business.16first time you ever saw the '197 patent?16QDo you hold any positions, anything like that18possible it was 2014. That's possible but18with any companies currently?19certail the 2014 for sure.20QOkay. Going back to the '19721QLett me try it a different way.21patent al '1723AI honestly don't recall for sure.22form, in general terns, the subject matter of the '197 patent?24AThat seernthe I'P7 patent tal '221patent al '225AI honestly don't recall for sure.23form, in what ontext do you suspect that you suppose the '1426A <td></td> <td></td> <td></td> <td></td>					
5QI handed you the first exhibit to5AOh.6your deposition today. It's beam pre-marked as6QThat work was also for Hologic?7Exhibits 1001 in both the 820 and the 822 IPRs.7ACorrect.8Exhibit 1001 is a copy of U.S. Patent 7,064,197;99Madependent consultant, other than operating10ACorrect.10your own independent consultant, other than operating12analyzed in connection with your work for12AI do contract work, work as a13Hologic on the IPR matters; correct?13Correct.A14A That is correct.14So Ir mot employed by anybody currently?15QWhen did you first - when is the15QDo you hold any positions, executive16first time you ever saw the '197 patent?16QDo you hold any positions, executive17AI don't recall exactly. It's17NI do not.20QLet me try it a different way.21patent, Exhibit 1001, could you pleake describe21QLet me try it a different way.21Thenestly don't recall for sure.2022QI honestly don't recall for sure.21Thenestly don't recall for sure.2223AI honestly don't recall for sure.23the'197 patent?24'197 patent at all?24ACar we pause for just a moment? I'm25AI honestly don't recall for sure.24<					
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7Exhibits 1001 is both the 820 and the 822 IPRs.7ACorrect.8Exhibits 1001 is a copy of U.S. Patent 7,064,197; 9 correct?90Backing up to your role as an independent consultant, other than operating your own independent consultant business, are you employed by anybody currently?10ACorrect.1011QAnd that's the Enzo patent that you 111112analyzed in connection with your work for 1212A13Hologic on the IPR matters; correct?1314AThat is correct.1415DWhen did you first when is the 151516first time you ever saw the '197 patent?1617AI don't recall exactly. It's1718possible it was 2014. That' possible but recall the 2014 for sure.2020QLet me try it a different way.2121QLet me try it a different way.2122Prior to getting involved in working with 1422723AI honestly don't recall for sure.2524'197 patent at all?24ACan we pause for just a moment? Tm25AI honestly don't recall for sure.2526Fage 1511company here in San Diego termed named Aegea, and 1 do that as a consultant, but I also have an arrangement with them which I don't know if it's technically construed as an employee. I don't think have son think you may 1627QIn what context do you				O That work was also for Hologic?	
9correct?1010independent consultant, other than operating your own independent consultant business, are your own independent consultant business, are you employed by anybody currently?12analyzed in connection with your work for 1212AI do contract work, work as a consultant business.13Hologic on the IPR matters; correct?13AT do contract work, work as a consultant, but it's all through my business.14AT hat is correct.14So F m not employed by anyone else outside of my business.15QWhen did you first - when is the15So F m not employed by anyone else outside of my business.16first time you ever saw the '197 patent?16QDo you hold any positions, anything like that with any companies currently?16first time you ever saw the '197 patent?16QO (Acy, Going back to the '19717QLet me try it a different way.21patent, Exhibit 1001, could you please describe for me, in general terms, the subject matter of the '197 patent?24'197 patent at all?24AC an we pause for just a moment? I'm25AT brow orked in this industry for d11company here in San Diego termed named Aegea, and 1 do that as a consultant, but I also have an arrangement with them which I don't know if it's technically construed as an employee. I don't trial the past. That's the part I mormal course of researching literature that I apicat don't recall the ast, the part I have come across it then?'1015AT be worked in this indu			7		
9correct?1010independent consultant, other than operating your own independent consultant business, are your own independent consultant business, are you employed by anybody currently?12analyzed in connection with your work for 1212AI do contract work, work as a consultant business.13Hologic on the IPR matters; correct?13AT do contract work, work as a consultant, but it's all through my business.14AT hat is correct.14So F m not employed by anyone else outside of my business.15QWhen did you first - when is the15So F m not employed by anyone else outside of my business.16first time you ever saw the '197 patent?16QDo you hold any positions, anything like that with any companies currently?16first time you ever saw the '197 patent?16QO (Acy, Going back to the '19717QLet me try it a different way.21patent, Exhibit 1001, could you please describe for me, in general terms, the subject matter of the '197 patent?24'197 patent at all?24AC an we pause for just a moment? I'm25AT brow orked in this industry for d11company here in San Diego termed named Aegea, and 1 do that as a consultant, but I also have an arrangement with them which I don't know if it's technically construed as an employee. I don't trial the past. That's the part I mormal course of researching literature that I apicat don't recall the ast, the part I have come across it then?'1015AT be worked in this indu			8	O Backing up to your role as an	
10 A Correct. 10 your own indegendent consultant business, are you employed by anybody currently? 11 analyzed in connection with your work for 12 A I do contract work, work as a 13 Hologic on the IPR matters; correct? 13 Consultant, but i's all through my business. 14 A That is correct. 14 No temployed by anybody currently? 15 Q When did you first when is the 15 So Tm not employed by anybody set on the iPR matters; this the 16 first time you ever saw the '197 patent? 16 Q Do you hold any positions, executive 18 possible it was 2014. That's possible but 18 with any companies currently? 19 certainly early this year in 2016. I don't 19 A I do not. 20 Q Let me try it a different way. 21 patent, Exhibit 1001, could you please describe 21 Prient at al? 24 A Can we pause for just a moment? Tm 25 A I two rotexid in this industry for 5 A rew worked in this industry for 24 Hologic? 4 10 company here in San Diego termed - named Acgea, and I do that as a consultant, but i's always paid 25 A Twe worked in this industry for					
11 Q And that's the Enzo patent that you 11 'you employed by anybody currently? 12 analyzed in connection with your work for 12 A I do contract work, work as a 13 Hologic on the IPR matters; correct? 13 Consultant, but it's all through my business. 14 A That is correct. 14 So I'm not employed by anyone else outside of my 14 By obsible it was 2014. That's possible but 18 Positions, board positions, anything like that 17 A I don't recall exactly. It's 17 positions, board positions, anything like that 18 possible it was 2014. That's possible but 18 with any companies currently? 19 certainly early this year in 2016. I don't 19 A I do not. 20 Q Let me try it a different way. 21 patent. Exhibit 1001, could you please describe 21 Q Let me try it a different way. 21 A Can we pause for just a moment? I'm 24 '197 patent at all? 24 A Can we pause for just a moment? I'm 25 A I honestly don't recall for sure. 10 company here in San Diego termed - nam					
12 analyzed in connection with your work for 12 A I do contract work, work as a 13 Hologic on the IPR matters; correct? 13 consultant, but it's all through my business. 14 A That is correct. 14 So Tm not employed by anyone else outside of my business. 15 Q When did you first - when is the 15 business. 16 first time you ever saw the '197 patent? 16 Q Do you hold any positions, executive positions, board positions, anything like that 18 possible it was 2014. That's possible but 18 with any companies currently? 19 certainly early this year in 2016. I don't 19 A I do not. 20 Q Clast the '197 patent. Exhibit 1001, could you please describe for me, in general terms, the subject matter of 21 Q Last context do you suspect that 22 reconsidering my answer. I also work for a 22 Pior to getting involved with the IPR proceedings for 1 a company here in San Diego termed - named Agega, and I do that as a consultant, but I also have 3 and I do bat as a consultant, but I also have am arrangement with them, but I don't know if it's technically construed as in menployee. I	11	Q And that's the Enzo patent that you	11		
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