

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ENZO LIFE SCIENCES, INC.,

PLAINTIFF,

V.

ROCHE MOLECULAR SYSTEMS, INC.,
ROCHE DIAGNOSTICS CORPORATION,
ROCHE DIAGNOSTICS OPERATIONS,
INC., AND ROCHE NIMBLEGEN, INC.,

DEFENDANTS.

CIVIL ACTION NO. 12-106-LPS

~~PROPOSED~~ PARTIAL FINAL JUDGMENT PURSUANT TO FED. R. CIV. P. 54(b)

WHEREAS on June 28, 2017, the Court entered an Order and Opinion in the above-captioned case (“the Roche case”): (1) granting the Defendants’ motion for summary judgment of invalidity of U.S. Patent No. 6,992,180 (the “’180 Patent”) for nonenablement; and (2) denying Defendants’ motion for summary judgment of invalidity of the ’180 Patent for failure to comply with the written description requirement. (D.I. 328, 329.)

WHEREAS the patents-in-suit in the Roche case are the ’180 Patent and U.S. Patent No. 7,064,197 (the “’197 Patent”).

WHEREAS other than the summary judgment motions resolved by the Court’s June 28, 2017 Order, the following motions for summary judgment and *Daubert* motion are pending in the Roche case: (1) Enzo’s motion for summary judgment of infringement of claims 25 and 83 of the ’180 Patent (D.I. 259); (2) Enzo’s motion for summary judgment of infringement of claim 131 of the ’197 Patent (D.I. 259); (3) Enzo’s motions for summary judgment of no patent misuse and equitable estoppel (D.I. 259); (4) Enzo’s motion to exclude opinions of Roche’s proffered damages expert (D.I. 259); (5) Roche’s motion for summary judgment of noninfringement of the asserted claims of the ’180 Patent (D.I. 262); (6) Roche’s motion to exclude opinions of Enzo’s experts related to damages (D.I. 271); and (7) Roche’s motion for no willful infringement of the ’180 Patent (D.I. 265) (collectively, the “Remaining Motions”).

WHEREAS although the motion granted by the Order granting summary judgment of invalidity of the ’180 Patent for nonenablement was filed in only certain cases (in C.A. Nos. 12-104 (Gen-Probe) and 12-276 (Hologic)) coordinated for pre-trial purposes with the Roche case, Roche joined the motion, it was argued on behalf of Roche at the April 4, 2017 summary judgment hearing, and the Court’s Order and Opinion regarding nonenablement of the ’180 Patent were entered in the Roche case. (*See* D.I. 269 at 1 n.1 (Roche joining Hologic’s motion);

D.I. 327 at 70, 103 (hearing transcript) (counsel for Hologic arguing the motion “on behalf of all the defendants”); D.I. 328, 329.)

WHEREAS the Roche case is currently set for trial beginning on November 27, 2017.

The Court, finding no just reason for further delay, enters final judgment as to the claims concerning the '180 Patent pursuant to Fed. R. Civ. P. 54(b) as follows.

1. Final judgment of invalidity of the asserted claims of the '180 Patent on the basis of nonenablement is entered in favor of Defendants and against Plaintiff in light of the Court's June 28, 2017 Order and Opinion (D.I. 328, 329) pursuant to Fed. R. Civ. P. 54(b).
2. There is no just reason for delay of a final, appealable judgment of invalidity of the asserted claims of the '180 Patent pursuant to Fed. R. Civ. P. 54(b). The Court enters final judgment as to the '180 Patent to conserve judicial resources and to avoid the need to conduct multiple trials in the Roche case. The adjudicated claim and the non-moot unadjudicated claims pertain to separate patents-in-suit, the '197 Accused Products are different than the '180 Accused Products, and the '180 and '197 patents are not in the same family and do not share common priority or a common specification. Entering judgment as to the '180 Patent under Fed. R. Civ. P. 54(b) will also facilitate allowing the parties in the Roche case to participate in an appeal of that judgment concurrent with any appeal of the final judgment entered against Plaintiff in the coordinated cases involving other defendants in C.A. Nos. 12-104 (Gen-Probe) and 12-276 (Hologic) based on the same Order and Opinion granting summary judgment of invalidity of the asserted claims of the '180 Patent for nonenablement.

3. Remaining Motions 1 (D.I. 259), 4 (D.I. 259), 5 (D.I. 262), and 7 (D.I. 265) are denied without prejudice as moot. The aspects of Remaining Motions 3 (D.I. 259) and 6 (D.I. 271) relating to the '180 patent are denied without prejudice as moot.
4. All of the parties' remaining counterclaims and defenses regarding the '180 Patent are dismissed without prejudice as moot.
5. The trial date and all related pre-trial dates in the Roche case are vacated.
6. By separate Order, the remainder of the Roche case (including all motions, claims and defenses relating to the '197 Patent) will be stayed pending any appeal regarding the '180 Patent.

Dated: July 27, 2017

By: Respectfully submitted,

RICHARDS, LAYTON & FINGER, PA

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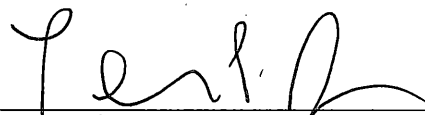
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Counsel for Plaintiff Enzo Life Sciences, Inc.

SO ORDERED this 2nd day of August, 2017.


The Honorable Leonard P. Stark
Chief United States District Judge