

Sullivan, R

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3-5-14

ENZO BIOCHEM, INC. and ENZO LIFE
SCIENCES, INC.,

Plaintiffs,

vs.

03 Civ. 3817 (RJS)

PERKINELMER INC. and PERKINELMER
LIFE SCIENCES INC.,

Defendants,

and YALE UNIVERSITY,

Nominal Defendant.

**JOINT STIPULATION OF DISMISSAL OF
PATENT INFRINGEMENT CLAIMS AND DEFENSES AND ~~PROPOSED~~ ORDER**

WHEREAS Enzo Biochem, Inc. and Enzo Life Sciences, Inc. (collectively "Enzo") brought patent infringement claims against PerkinElmer Inc. and PerkinElmer Life Sciences, Inc. ("PerkinElmer") based on U.S. Patent Nos. 4,707,440, 4,711,955, 4,994,373, 5,013,831, 5,175,269, 5,241,060, 5,328,824, 5,449,767, and 5,476,928 (collectively, "the Asserted Patents"), *see* Compl. ¶¶ 67-73, Count 2;

WHEREAS PerkinElmer filed counterclaims seeking declaratory judgments of non-infringement and invalidity of U.S. Patent Nos. 5,449,767 and 5,476,928, *see* Answer ¶¶ 1-10;

WHEREAS, with respect to certain PerkinElmer products, the Court granted summary judgment of non-infringement of the '824, '767, and '373 patents, *see* Dkt. No. 280 (02-cv-8448); and

WHEREAS Plaintiff has asserted that it has alleged contract claims against Defendants with regard to all Exhibit C Products, as identified in the Distributorship Agreement effective as of January 1, 1999 ("DA"), including certain "custom products" for which Defendants have made payment in purported performance of the DA, (the "Products"); and

WHEREAS, the Court has set a trial in this matter for March 18, 2014.

NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED by and between the Parties by their undersigned counsel, that:

1. In the interests of judicial economy and efficiency and for the purposes of streamlining the issues for trial, any remaining patent claims, and related counterclaims and defenses with respect to any of the Asserted Patents are hereby dismissed pursuant to Fed. R. Civ. P. 41(a)(1), preserving the parties' right to appeal for the purpose of challenging the Court's prior rulings or orders. Enzo shall not reassert those remaining patent infringement claims in a new action or matter, but in the event that this matter is remanded following a reversal, vacation or modification of the Court's claim construction and/or summary judgment rulings on appeal, the parties agree that each party has not waived, but instead has reserved, and may assert, any of such remaining patent claims, counterclaims, arguments and defenses regarding any of the Asserted Patents in this case, to the extent permitted by the decision of the appellate court. This stipulation shall not represent an adjudication of the merits of such remaining patent claims, counterclaims and defenses and shall not be deemed as an admission by either party as to those claims, counterclaims and defenses. This stipulation shall not affect and/or be deemed a dismissal of any of the parties remaining non-patent claims, counterclaims or defenses.

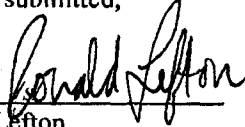
2. This Stipulation is without prejudice to and does not in any way affect Plaintiffs' contract claims with regard to all Products under the DA and the related Settlement Agreement.

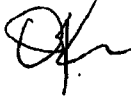
and Defendants' defenses and positions with respect to whether those claims are or were in the case, including the claims that those Products which the Court held do not infringe are nevertheless subject to the DA because said Products are (i) listed in Exhibit C, or (ii) covered by claims of a patent identified in Exhibit A to the DA, and any related defenses.

3. Each party shall bear its own costs and attorneys' fees with respect to the aforesaid remaining patent claims, counterclaims and defenses with regard to the dismissal provided for by this stipulation.

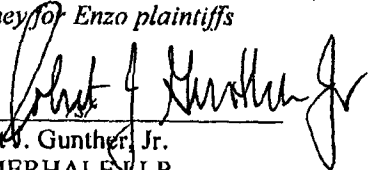
Dated: March 4, 2014

Respectfully submitted,

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SO ORDERED this 5th
day of March, 2014


Richard J. Sullivan, U.S.D.J.