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Filing date: **11/07/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91194218
Party	Plaintiff Illumina, Inc.
Correspondence Address	SUSAN M NATLAND KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN ST, 14TH FL IRVINE, CA 92614 UNITED STATES efiling@knobbe.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Brian C. Horne
Filer's e-mail	efiling@knobbe.com
Signature	/Brian C. Horne/
Date	11/07/2014
Attachments	Signed Declaration of William Morrison ILLINC.266M.pdf(369503 bytes) Exhibit 401.pdf(563473 bytes) Exhibit 402.pdf(109647 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Illumina, Inc.,)	Opposition No.: 91194218
)	
Opposer,)	
)	
v.)	
)	
Meridian Bioscience, Inc.,)	
)	
Applicant.)	
)	

DECLARATION OF WILLIAM MORRISON

I, William Morrison, declare as follows:

1. I have personal knowledge of the matters set forth herein and if called upon to testify, I could and would competently testify thereto.

2. I have been employed with Illumina, Inc. ("Illumina") since 2012. In my current role as Patent Attorney, I am familiar with Illumina's trademark portfolio.

3. Illumina has used the ILLUMINA® mark as a house mark and company name since the company formed in 1998. Illumina's main domain name to promote its goods and services has been www.illumina.com since 1998.

4. Attached hereto as Exhibit 401 is a true and correct copy of an excerpt from Meridian Bioscience, Inc.'s 2010 Annual Report, which is available on Meridian's website at <http://investor.meridianbioscience.com/phoenix.zhtml?c=117257&p=irol-reportsannual>.

5. Attached hereto as Exhibit 402 is a true and correct copy of a Technical Data Sheet for the DisplaceAce™ DNA Polymerase, which I understand is used in the ILLUMIGENE C. difficile assay.

The undersigned being warned that willful false statements and the like are punishable

and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Executed this 7th day of November, 2014 at San Diego, California



William Morrison

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing OPPOSER'S DECLARATION OF WILLIAM MORRISON upon Applicant's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on November 7, 2014, addressed as follows:

J. Michael Hurst
Keating Muething & Klekamp PLL
One East 4th Street
Suite 1400
Cincinnati, OH 45202



Sarah Beno Couvillion



Meridian

Bioscience, Inc.

Inspired Science. Trusted Solutions.®

2010 ANNUAL REPORT

**Innovative
Products / Targeted
Acquisitions**

 **illumigene**

 **BIOLINE**

SELECTED FINANCIAL DATA

Income Statement Information *(Amounts in thousands, except per share data)*

	FY 2010	FY 2009	FY 2008	FY 2007	FY 2006
Net sales	\$143,000	\$148,274	\$139,639	\$122,963	\$108,413
Gross profit	88,475	92,783	86,480	74,940	64,684
Operating income	41,138	48,779	44,350	35,030	26,894
Net earnings	26,647	32,759	30,202	26,721	18,333
Basic earnings per share	\$ 0.66	\$ 0.81	\$ 0.75	\$ 0.67	\$ 0.47
Diluted earnings per share	\$ 0.65	\$ 0.80	\$ 0.74	\$ 0.66	\$ 0.46
Cash dividends declared per share	\$ 0.74	\$ 0.65	\$ 0.53	\$ 0.40	\$ 0.28
Book value per share	\$ 3.38	\$ 3.40	\$ 3.19	\$ 2.83	\$ 2.40

Balance Sheet Information

	FY 2010	FY 2009	FY 2008	FY 2007	FY 2006
Current assets	\$94,020	\$117,147	\$99,458	\$93,745	\$80,742
Current liabilities	14,147	16,752	16,061	17,067	20,617
Total assets	154,785	155,997	146,431	132,698	120,528
Long-term debt obligations	-	-	-	-	1,803
Shareholders' equity	137,361	137,905	128,489	112,948	94,350

FORWARD LOOKING STATEMENTS

The Private Securities Litigation Reform Act of 1995 provides a safe harbor from civil litigation for forward-looking statements accompanied by meaningful cautionary statements. Except for historical information, this report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, which may be identified by words such as "estimates", "anticipates", "projects", "plans", "seeks", "may", "will", "expects", "intends", "believes", "should" and similar expressions or the negative versions thereof and which also may be identified by their context. Such statements, whether expressed or implied, are based upon current expectations of the Company and speak only as of the date made. The Company assumes no obligation to publicly update or revise any forward-looking statements even if experience or future changes make it clear that any projected results expressed or implied therein will not be realized. These statements are subject to various risks, uncertainties and other factors that could cause actual results to differ materially, including, without limitation, the following:

Meridian's continued growth depends, in part, on its ability to introduce into the marketplace enhancements of existing products or new products that incorporate technological advances, meet customer requirements and respond to products developed by Meridian's competition. While Meridian has introduced a number of internally developed products, there can be no assurance that it will be successful in the future in introducing such products on a timely basis. Ongoing consolidations of reference laboratories and formation of multi-hospital alliances may cause adverse changes to pricing and distribution. Recessional pressures on the economy and the markets in which our customers operate, as well as adverse trends in buying patterns from customers can change expected results. Costs and difficulties in complying with laws and regulations administered by the United States Food and Drug Administration can result in unanticipated expenses and delays and interruptions to the sale of new and existing products. Changes in the relative strength or weakness of the U.S. dollar can also change expected results. One of Meridian's main growth strategies is the acquisition of companies and product lines. There can be no assurance that additional acquisitions will be consummated or that, if consummated, will be successful and the acquired businesses will be successfully integrated into Meridian's operations. There may be risks that acquisitions may disrupt operations and may pose potential difficulties in employee retention and there may be additional risks with respect to Meridian's ability to recognize the benefits of acquisitions, including potential synergies and cost savings or the failure of acquisitions to achieve their plans and objectives. The Company cannot predict the possible impact of recently-enacted United States healthcare legislation and any similar initiatives in other countries on its results of operations. In addition to the factors described in this paragraph, Part I, Item 1A Risk Factors of our Form 10-K contains a list and description of uncertainties, risks and other matters that may affect the Company.

CORPORATE PROFILE

Meridian is a fully integrated life science company that manufactures, markets and distributes a broad range of innovative diagnostic test kits, purified reagents and related products and offers biopharmaceutical enabling technologies. Utilizing a variety of methods, these products and diagnostic tests provide accuracy, simplicity and speed in the early diagnosis and treatment of common medical conditions, such as gastrointestinal, viral and respiratory infections. Meridian's diagnostic products are used outside of the human body and require little or no special equipment. The Company's products are designed to enhance patient well-being while reducing the total outcome costs of healthcare. Meridian has strong market positions in the areas of gastrointestinal and upper respiratory infections, serology, parasitology and fungal disease diagnosis. In addition, Meridian is a supplier of rare reagents, specialty biologicals and related technologies used by biopharmaceutical companies engaged in research for new drugs and vaccines. The Company markets its products and technologies to hospitals, reference laboratories, research centers, veterinary testing centers, diagnostics manufacturers and biotech companies in more than 60 countries around the world. The Company's shares are traded through NASDAQ's Global Select Market, symbol VIVO. Meridian's website address is www.meridianbioscience.com.



TO OUR SHAREHOLDERS

Following nearly a decade of uninterrupted growth, fiscal 2010 could be described as a “reset” year for Meridian Bioscience. During the past year, our Diagnostics businesses faced an environment in which testing for influenza virtually disappeared when the H1N1 pandemic abruptly ended and “seasonal” flu, which normally strikes during the first calendar quarter, never arrived. In addition, our core franchise in hospital acquired infections was challenged by new test offerings from our traditional competitors and new testing technologies from new competitors that were beginning to encroach into the infectious disease labs. More broadly, the impact of a weak employment picture continued to erode healthcare utilization rates as coverage lapsed for the unemployed. However, during this difficult period our focus on future growth continued and the strategic achievements we made during this challenging year will provide the tools and technologies to recapture Meridian’s traditional growth trajectory.

Our work to expand the transition of lab customers to our rapid tests for foodborne infections intensified and produced excellent results. We continued to leverage our managed care and reference lab relationships to drive physician practices towards ordering our HpSA[®]

stomach ulcer tests prior to prescribing drugs that only mask the symptoms of gastritis. We accelerated the expansion of our Life Science business through a strategic acquisition and optimized efforts with our key industrial customers. Finally, we introduced our simple and novel molecular testing platform, *illumigene*[®], globally in the latter part of the year. We believe that these actions have produced sustainable opportunities for growth and that Meridian is on track for another long run of successes.

On a macro level, opportunities for growth in medical diagnostics continue to increase based upon factors including: (i) an aging population that will require and seek more physician interaction resulting in greater utilization of healthcare services; (ii) the same aging population that is living longer and will therefore be more susceptible to

conditions that require diagnosis and treatment; (iii) advances in molecular biology that have made the human genome a powerful and predictive target for diagnosing acute and chronic diseases as well as aiding in selecting appropriate therapies; and (iv) regardless of its final form, the impact of healthcare reform which is likely to drive greater utilization of related products and services. At Meridian, therefore, our mission is to drive innovation, develop simple but powerful tests and utilize technologies that enable labs to be leaders in rapidly diagnosing disease causes while helping reduce overall costs and improving patient well-being. Our focus is three-fold. First, we develop improved methods that reduce labor and turnaround time compared to results associated with current testing procedures. Second, we target emerging diseases and build testing demand by educating and motivating physicians to order new diagnostic tests as they strive to better manage and treat their patients. Finally, we use our strong balance sheet to make accretive strategic acquisitions that complement Meridian’s diagnostics and life science businesses.



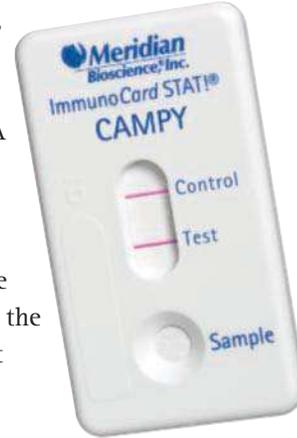
William J. Motto



John A. Kraeutler

INCREASING SHAREHOLDER RETURN THROUGH GROWTH AND DIVIDENDS

On the diagnostic side of the business, we completed product development for our first molecular amplification technology, *illumigene*. Historically, Meridian has been built upon simple technologies for detecting specific proteins, or antigens and antibodies, which are produced by disease-causing pathogens or as a result of the body's response to these pathogens. We utilize a variety of simple technologies as the basis for our diagnostic tests based upon antigen-antibody binding such as Premier™, ImmunoCard®, ImmunoCard STAT!®, and more recently, TRU. All of these technologies use "immunoassay" principles to help create a detectable color change or other evident change based on binding or aggregation. More recently, a new DNA based technology was introduced into the clinical laboratory market. This new technology, PCR, was so sensitive that it could isolate a single DNA fragment from a human sample and then amplify that DNA via elaborate chemistry to make it detectable by sophisticated instrumentation. Due to the complexity of PCR, expensive instrumentation was required to help simplify the technology for routine laboratory usage. As a result, the initial markets that embraced PCR were typically high volume applications such as blood unit screening for viruses and STD testing.



Early on, Meridian recognized that DNA testing technology should be developed or acquired as a future core technology. The needs of our customer base, however, were not likely to support high volume testing, as the infectious disease labs tend to work with single or small volumes of patient samples. Therefore, we needed a special type of DNA amplification technology that could be performed as easily on one sample as on ten or twenty. Further, all other DNA technologies required expensive capital equipment to be justified and maintained by the customer. Meridian's DNA technology would have to have minimal or no capital equipment requirement. We evaluated numerous technologies in the early years of our quest. Ultimately we licensed a technology termed "LAMP", loop-mediated isothermal amplification. After licensing LAMP, our product development teams raced to perfect the technology and to design a simple reader that would fit the workflow and daily demands of our microbiology and virology lab customers. We

chose *Clostridium difficile*, an important hospital associated pathogen and our largest product category, as the initial target. Following successful pilot studies during the second quarter of fiscal 2010 we completed formal clinical trials and, in March, we submitted our regulatory application to the FDA. *illumigene C. difficile* was launched to non-U.S. markets in late May, and in July we received clearance to market in the U.S. Although we are still in the early stages of market release, *illumigene* has already been very well received. Our scientists and outside collaborators have published strong supporting studies that have been peer reviewed and



DisplaceAce™ DNA Polymerase

Cat. No. **D090710K**

DisplaceAce™ DNA Polymerase* is a recombinant enzyme derived from a thermophilic bacterium that has been altered by truncation to remove the 5'→3' exonuclease activity of the full-length enzyme. It has strong strand-displacing DNA polymerase activity, similar to that of *Bacillus* DNA polymerases. The DNA-dependent DNA polymerase activity is optimal at approximately 65°C. It also has RNA-dependent DNA polymerase activity. The enzyme can be inactivated by incubation at 80°C for 20 minutes. Thus, if thermal denaturation of a DNA substrate is intended (>75°C), the enzyme must be added after this step to ensure activity.

DisplaceAce DNA Polymerase is provided in a 10,000-units size (100 U/μl) along with 10X DisplaceAce Reaction Buffer. Please inquire for other package sizes or concentrations.

Product Specifications

Storage: Store only at -20°C in a freezer without a defrost cycle.

Storage Buffer: DisplaceAce DNA Polymerase is supplied in a 50% glycerol solution containing 50 mM Tris-HCl (pH 7.5), 0.1 M NaCl, 0.1 mM EDTA, 1 mM dithiothreitol, and 0.1% Triton[®] X-100.

Unit Definition: One unit converts 10 nmol of dNTPs into acid-insoluble material in 30 minutes at 65°C.

Activity Assay: The activity assay is performed in a 50-μl reaction containing 25 mM TAPS (pH 9.3), 50 mM KCl, 2.0 mM MgCl₂, 0.2 mM of each dNTP, 10 μg activated calf thymus DNA, and varying amounts of enzyme.

10X DisplaceAce Reaction Buffer: 0.2 M Tris-HCl (pH 8.5) and 50 mM MgCl₂.

Contaminating Activity Assays: DisplaceAce DNA Polymerase is free of detectable exo- and endonuclease and RNase activities.

Related Products: The following products are also available:

– dNTP Solutions

* patent pending

Triton is a registered trademark of Rohm & Haas, Philadelphia, Pennsylvania.

DisplaceAce is a trademark of EPICENTRE, Madison, Wisconsin.

Lit. #289
9/09