

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

LABRADOR DIAGNOSTICS LLC,

Plaintiff,

v.

BIOFIRE DIAGNOSTICS, LLC and  
BIOMERIEUX S.A.,

Defendants.

C.A. No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**LABRADOR DIAGNOSTICS LLC'S COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Labrador Diagnostics LLC ("Labrador"), by and through its undersigned counsel, pleads the following against BioFire Diagnostics, LLC ("BioFire") and bioMerieux S.A. ("bioMerieux") (collectively, "Defendants") and alleges as follows:

**THE PARTIES**

1. Plaintiff Labrador is a Delaware limited liability company duly organized and existing under the laws of the State of Delaware.
2. On information and belief, Defendant BioFire is a corporation duly organized and existing under the laws of the State of Delaware. On information and belief, Defendant BioFire is a wholly owned subsidiary of Defendant bioMerieux S.A.

3. On information and belief, Defendant bioMerieux S.A. is a foreign corporation, formed under the laws of France.

### **JURISDICTION AND VENUE**

4. This is an action arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.* Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Defendant BioFire because on information and belief BioFire manufactures infringing products that are and have been used, offered for sale, sold, and/or purchased in the District of Delaware, and BioFire has committed, and continues to commit, acts of infringement in the District of Delaware, has conducted business in the District of Delaware, and/or has engaged in continuous and systematic activities in the District of Delaware. For example, upon information and belief, Defendant BioFire makes, uses, offers for sale, sells, and induces and contributes to the infringement of its products known as the BioFire FilmArray System, BioFire FilmArray 2.0, BioFire FilmArray EZ, BioFire FilmArray Torch, BioFire FilmArray pouches and/or panels ("pouches"), and BioFire FilmArray software running on computers (individually and in combination the "Accused Products") in this District. Further, Defendant BioFire has submitted itself to the jurisdiction of this Court by electing to incorporate in the State.

6. This Court has personal jurisdiction over Defendant bioMerieux because on information and belief bioMerieux directly or indirectly through control of its subsidiary BioFire manufactures infringing products that are and have been used, offered for sale, sold, and purchased in the District of Delaware, and bioMerieux has directly or indirectly through control of its subsidiary BioFire committed, and continues to commit, acts of infringement in the District of

Delaware, has directly or indirectly through control of its subsidiary BioFire conducted business in the District of Delaware, and/or has engaged in continuous and systematic activities in the District of Delaware.

7. For example, upon information and belief, Defendant bioMerieux through its subsidiary Defendant BioFire submitted FilmArray pouches, to be used in conjunction with the FilmArray 2.0, FilmArray EZ, and/or FilmArray Torch as part of the FilmArray System in an infringing manner, to the FDA for FDA clearance. *See, e.g.*, bioMerieux Website, "bioMerieux submits for FDA Clearance of the BIOFIRE® FILMARRAY® Pneumonia Panel," April 19, 2018, <https://www.biomerieux.com/en/biomerieux-submits-fda-clearance-biofirer-filmarrayr-pneumonia-panel>; bioMerieux Website, "bioMerieux submits enhanced BIOFIRE® BCID2 Panel for FDA clearance," January 13, 2020, <https://www.biomerieux.com/en/biomerieux-submits-enhanced-biofirer-bcid2-panel-fda-clearance>.

8. As an additional example, upon information and belief, Defendant bioMerieux advertises use of the Accused Products on its website and in its literature for use in the United States in an infringing manner for example, by advertising its FDA status, (*see, e.g., id.*; bioMerieux 2018 Annual Report at, e.g., 16, available at [https://www.biomerieux.com/sites/corporate/files/biomerieux\\_annual\\_report\\_2018.pdf](https://www.biomerieux.com/sites/corporate/files/biomerieux_annual_report_2018.pdf)), and providing contact information for the purchase of the Accused Products.

9. As a further example, upon information and belief, Defendant bioMerieux has pervasive control over the activities of its subsidiary Defendant BioFire. As one illustration, Defendant bioMerieux directs and controls the infringing activities of its subsidiary Defendant BioFire as shown, for example, by its referral to the Accused Products as "our [bioMerieux's]

BIOFIRE® product line" as "a clear growth driver that has propelled bioMerieux to the position of market leader." *Id.* at 2.

10. As a yet further example of bioMerieux's pervasive control over the activities of its subsidiary Defendant BioFire, upon information and belief, Defendant bioMerieux directs and controls the infringing activities of its subsidiary Defendant BioFire by its direct control of BioFire senior management. In particular, Randy Rasmussen is both the "CEO of BioFire Diagnostics and Executive VP Molecular Biology of bioMerieux." *See, e.g.,* bioMerieux Website, <https://www.biomerieux-diagnostics.com/biomerieux-submits-enhanced-biofirer-bcid2-panel-fda-clearance>. On an affiliated US website, bioMerieux lists Mr. Rasmussen among its "Corporate Governance" leaders, noting that "The Management Committee is responsible for putting bioMerieux's strategy into effect: overseeing strategic projects, deciding on priorities and implementing the necessary resources within the Company's various divisions." bioMerieux USA Website, "About bioMerieux: Corporate Governance," <https://www.biomerieux-usa.com/about-us/corporate-governance>. The "Corporate Governance" group of bioMerieux also lists Kirk Ririe as "Corporate VP, Chief Innovative Officer." *Id.* On information and belief, Mr. Ririe is also a co-founder of BioFire and identifies as the "CEO" at BioFire Diagnostics. *See* LinkedIn, Kirk Ririe, <https://www.linkedin.com/in/kirk-ririe-81692bb>.

11. Defendant bioMerieux has additionally availed itself of the privileges of this Court. For example, bioMerieux has sought to enforce patent rights against an alleged infringer in this District. *See bioMerieux, S.A. v. Hologic Inc.*, Case No. 1:18-cv-00021-LPS. The trial was completed only days ago, on February 25, 2020, and is currently undergoing post-trial motions.

12. Under 28 U.S.C. §§ 1391(b)-(d) and 1400(b), venue is proper in this judicial district as to Defendant BioFire because at least BioFire resides within this District, as it is incorporated

in the State of Delaware. Further, on information and belief, venue is additionally proper because Defendant BioFire has committed acts of infringement within this judicial district giving rise to this action.

13. Further, under 28 U.S.C. §§ 1391(b)-(d), venue is proper in this judicial district as to Defendant bioMerieux because bioMerieux is a foreign corporation and, as described above, is subject to this Court's jurisdiction.

### **FIRST CLAIM**

#### **(Infringement of U.S. Patent No. 8,283,155)**

14. Labrador re-alleges and incorporates herein by reference Paragraphs 1-13 of its Complaint.

15. The '155 Patent, entitled "Point-of-Care Fluidic Systems and Uses Thereof," was duly and lawfully issued on October 9, 2012. A true and correct copy of the '155 Patent is attached hereto as Exhibit 1.

16. The '155 Patent has been in full force and effect since its issuance. Labrador owns by assignment the entire right, title, and interest in and to the '155 Patent, including the right to seek damages for past, current, and future infringement thereof.

17. The '155 Patent relates generally to "the field of medical devices," including "portable medical devices that allow real-time detection of analytes from a biological fluid." Ex. 1 at Abstract.

18. Labrador is informed and believes, and on that basis alleges, that Defendants individually and collectively<sup>1</sup> have infringed and, unless enjoined will continue to infringe, one or

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<sup>1</sup> All reference to Defendants or Defendants' products refer to the Defendants individually and collectively and to products over which the Defendants individually and collectively control.

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