

3/17/20 REUTERS LEGAL 23:16:06

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March 17, 2020

Facing uproar, patent holder clarifies case against COVID-19 test maker

Jan Wolfe

(Reuters) - In an apparent effort to quell backlash, an entity holding patents originally awarded to disgraced blood testing startup Theranos on Tuesday issued a press release clarifying its demands in a recent infringement case against a company developing a COVID-19 test.

Labrador Diagnostics LLC, an entity holding Theranos patents backed by hedge fund Fortress Investment Group, said in the press release that its March 9 infringement complaint against bioMérieux Inc "focuses on activities over the past six years that are not in any way related to COVID-19 testing."

Labrador said that when it filed the case it did not know that bioMérieux, a French diagnostics company, was developing a COVID-19 test.

Labrador said it fully supports efforts to end the pandemic and will offer to grant royalty-free licenses to third parties to use its patented diagnostics technology for use in tests directed to COVID-19.

Theranos, the original owner of Labrador's patents, was a once-celebrated Silicon Valley blood-testing firm that dissolved after evidence mounted that it lied to investors and the public about its technology.

Theranos founder Elizabeth Holmes and her former second-in-command are scheduled to stand trial later this year on fraud charges.

In 2018, Theranos sold its patent portfolio to Fortress, a division of Japanese conglomerate SoftBank.

Labrador's lawsuit, filed in Delaware by its lawyers at Irell & Manella, implicated BioFire Filmarray, a machine that detects several pathogens.

BioMérieux said earlier this month that it has added COVID-19 to the list of pathogens its devices can detect, and it expects to make this capability available soon.

Labrador's lawsuit drew negative publicity in publications including Techdirt and Ars Technica and on Twitter.

"This could be the most tone-deaf IP suit in history," said Stanford Law School professor Mark Lemley in a tweet.

BioMérieux did not immediately respond to a request for comment.

The case is Labrador Diagnostics LLC v. BioFire Diagnostics LLC et al in the U.S. District Court for the District of Delaware, No. 20cv00348.

For bioMérieux: not immediately available

For Labrador: Morgan Chu of Irell & Manella

---- **Index References** ----

Company: BIOFIRE DEFENSE LLC; FORTRESS INVESTMENT GROUP LLC; SOFTBANK GROUP CORP; THERANOS INC; BIOMERIEUX SA

News Subject: (Information Technology Crime (1IN42); Intellectual Property (1IN75); Legal (1LE33); Patents (1PA79))

Industry: (Clinical Diagnostics (1DI45); Clinical Laboratory (1CL83); Healthcare (1HE06); Healthcare Services (1HE13); Pharmaceuticals & Biotechnology (1PH13); Security (1SE29))

Region: (Americas (1AM92); Delaware (1DE13); North America (1NO39); U.S. Mid-Atlantic Region (1MI18); USA (1US73))

Language: EN

Other Indexing: (IRELL & MANELLA; Labrador Diagnostics LLC; ars technica) (Morgan Chu; Mark Lemley; Elizabeth Holmes)

Keywords: ip; fedlit; health (OCC:OLRTXT); (N2:US)Keywords:

Word Count: 360

End of Document

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