

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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ENZO LIFE SCIENCES, INC.,  
*Petitioners,*

v.

ROCHE MOLECULAR SYSTEMS, INC., ROCHE  
DIAGNOSTICS CORPORATION, ROCHE DIAGNOSTICS  
OPERATIONS, INC., ROCHE NIMBLEGEN, INC., BECTON  
DICKINSON AND COMPANY, AKA Becton Dickson and  
Company, BECTON DICKINSON DIAGNOSTICS INC., AKA  
Becton Dickson Diagnostics, GENE OHM SCIENCES  
INC., ABBOTT LABORATORIES, ABBOTT MOLECULAR,  
INC.,

*Respondents.*

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**APPLICATION TO THE HONORABLE CHIEF  
JUSTICE JOHN G. ROBERTS, JR. FOR AN  
EXTENSION OF TIME WITHIN WHICH TO  
FILE A PETITION FOR A WRIT OF  
CERTIORARI**

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Petitioner Enzo Life Sciences, Inc. hereby moves by its undersigned counsel, pursuant to Rules 13(5) and 30 of the Rules of this Court, for an extension of time of 30 days, to and including Wednesday, February 26, 2020, for the filing of a petition for certiorari to review the decision of the United States Court of Appeals for the Federal Circuit dated June 20, 2019 (928 F.3d 1340, Attachment 1), on which panel rehearing and rehearing *en banc* was denied on October 29, 2019 (Attachment 2). In support of this application, counsel for petitioner hereby states as follows:

1. Unless extended, the time for filing a petition for a writ of certiorari will expire January 27, 2020. This application is submitted to the Court more than 10 days prior to that deadline, pursuant to Rules 13(5) and 30(2).

2. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

3. Undersigned counsel has been retained by petitioner to prepare and file a petition for a writ of certiorari with this Court. Preparation of a petition that will adequately present the issues for this Court's consideration will require substantial research, including review of decisions and rules of this Court and the Court of Appeals for the Federal Circuit.

4. Undersigned counsel currently has imminent litigation commitments and deadlines, including preparation of expert reports in a civil case before the United States District Court for the District of Delaware, preparation of expert reports and expert depositions in a civil case before the United States District Court for the Central District of California, and preparation of expert reports in a civil case before the United States District Court for the District of Utah. Undersigned counsel also had significant litigation commitments in the time leading up to the present deadline, including legal memoranda and hearings in November and December of 2019 in a civil case before the United States District Court for the Central District of California, preparation of expert reports and legal memoranda in November and December of 2019 and January of 2020 in a civil case before the United States District Court for the District of Delaware, and a claim construction hearing on January 14, 2020, in the United States District Court for the District of Utah.

5. An extension is warranted because this case presents fundamental and complex issues of patent law concerning patent validity, including issues of enablement under 35 U.S.C. § 112. The Federal Circuit's decision created intra-circuit conflicts regarding whether a patent challenger must present proof of inoperability within a genus or class to find the claimed art unpredictable, and whether a patent need prove with certainty that the claimed invention works. The questions presented in Enzo's petition will have significant impact on U.S. patent law and uniformity among the lower courts in evaluating whether a patent is sufficiently enabled. The requested 30-day extension will allow petitioner's counsel to provide a thorough and complete petition to advise this Court of the issues.

6. Petitioner has not previously sought an extension of time from this Court.

For the foregoing reasons, petitioner hereby requests that an extension of time of 30 days, to and including February 26, 2020, be granted within which petitioner may file a petition for a writ of certiorari.

Dated: January 14, 2020

Respectfully submitted,



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cc: Counsel for Respondents