

GEN PROBE INC
Form 8-K
October 21, 2009

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**FORM 8-K
CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): October 19, 2009

Gen-Probe Incorporated

(Exact Name of Registrant as Specified in Charter)

Delaware

(State or Other Jurisdiction of
Incorporation)

001-31279

(Commission
File Number)

33-0044608

(I.R.S. Employer
Identification No.)

**10210 Genetic Center Drive
San Diego, CA**

(Address of Principal Executive Offices)

92121

(Zip Code)

(858) 410-8000

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 8.01. Other Events.

On October 19, 2009, Gen-Probe Incorporated (the Company) filed a complaint for patent infringement against Becton, Dickinson and Company in the United States District Court for the Southern District of California. The complaint alleges that Becton Dickinson's Viper XTR testing system infringes five of the Company's U.S. patents covering automated processes for preparing, amplifying and detecting nucleic acid targets. The Company's complaint also alleges that Becton Dickinson's ProbeTec Female Endocervical and Male Urethral Specimen Collection Kits for Amplified Chlamydia trachomatis/Neisseria gonorrhoeae (CT/GC) DNA Assays used with the Viper XTR testing system infringe two of the Company's U.S. patents covering penetrable caps for specimen collection tubes. Finally, the complaint alleges that Becton Dickinson has infringed the Company's U.S. patent on methods and kits for destroying the ability of a nucleic acid to be amplified. The complaint seeks monetary damages and injunctive relief.

In connection with the lawsuit, the Company has entered into an agreement with the law firm of Latham & Watkins LLP concerning attorneys' fees for the litigation. The agreement provides for various cost-containment measures for the litigation. The agreement also provides that the law firm will receive certain contingent payments in connection with successful resolution of the litigation. The Company expects to incur additional costs related to the litigation, which are not covered by the agreement with Latham & Watkins.

There can be no assurances as to the final outcome of the litigation.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: October 21, 2009

GEN-PROBE INCORPORATED

By: /s/ R. William Bowen
R. William Bowen
Senior Vice President, General Counsel
and Corporate Secretary