

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE**

ST. JUDE CHILDREN'S  
RESEARCH HOSPITAL, INC.

Plaintiff,

v.

XCOVERY HOLDING COMPANY LLC

Defendant.

Civil Case No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff, St. Jude Children's Research Hospital, Inc., files this Complaint and demand for jury trial seeking relief for patent infringement by the Defendant. Plaintiff states and alleges the following:

**THE PARTIES**

1. Plaintiff St. Jude Children's Research Hospital, Inc. ("St. Jude") is a non-profit medical corporation organized and existing under the laws of Tennessee, with its principal place of business at 262 Danny Thomas Place, Memphis, Tennessee 38105. St. Jude is a pediatric cancer research center. Its mission is to find cures for children with cancer and other catastrophic diseases through research and treatment.

2. On information and belief, Defendant Xcovery Holding Company LLC ("Xcovery") is a limited liability company organized and existing under the laws of Delaware, with its principal place of business at 505 South Flagler Dr., Suite 1330, West Palm Beach, Florida 33401.

## **JURISDICTION AND VENUE**

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

4. This Court has personal jurisdiction over Xcovery because it regularly conducts business in the State of Tennessee and has substantial and continuous contacts within this judicial district; because it has purposefully availed itself to the privileges of conducting business in this judicial district; and/or because it has committed acts of patent infringement in this judicial district.

5. More particularly, Xcovery has conducted various activities in its efforts to research, develop, and evaluate small molecule tyrosine kinase inhibitors, including, but not limited to, X-396. Since at least June 15, 2012, Xcovery has been conducting a Phase 1 Study of X-396 at Sarah Cannon Research Institute and Vanderbilt University. The activities relating to the research, development, and evaluation of X-396 form the basis of this action.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

### **COUNT I** **(Patent Infringement)**

7. St. Jude restates and realleges the preceding paragraphs of this Complaint.

8. On June 25, 1996, United States Patent No. 5,529,925 (“the ’925 patent”) entitled “Nucleic Acid Sequences and Fusion Proteins Present in Human T(2;5) Lymphoma” was duly and legally issued by the United States Patent and Trademark Office. St. Jude owns the ’925 patent by assignment. A true and correct copy of the ’925 patent is attached as Exhibit A.

9. On June 23, 1998, United States Patent No. 5,770,421 (“the ’421 patent”) entitled “Human ALK Protein Tyrosine Kinase” was duly and legally issued by the United States Patent and Trademark Office. St. Jude owns the ’421 patent by assignment. A true and correct copy of the ’421 patent is attached as Exhibit B.

10. On February 24, 2004, United States Patent No. 6,696,548 (“the ’548 patent”) entitled “Antibodies for Recognition of ALK Protein Tyrosine/Kinase Receptor” was duly and legally issued by the United States Patent and Trademark Office. St. Jude owns the ’548 patent by assignment. A true and correct copy of the ’548 patent is attached as Exhibit C.

11. Xcovery has conducted various activities to research, develop, and evaluate small molecule tyrosine kinase inhibitors, including, but not limited to, X-396. Upon information and belief, as part of those activities, Xcovery has made or used ALK nucleic acids, proteins, polypeptides, and/or antibodies in a manner that infringes the ’925, ’421, and ’548 patents.

12. After an investigation of publicly-available information, St. Jude suspected that Xcovery may have infringed the ’925, ’421, and ’548 patents. On August 27, 2012, St. Jude sent a letter to Sheridan G. Snyder, the CEO of Xcovery. That letter notified Xcovery of the ’925, ’421, and ’548 patents and identified certain activities conducted by Xcovery that would require a license to those patents.

13. After receiving no response, St. Jude contacted Xcovery by phone to confirm receipt of the August 27, 2012 letter. An employee of Xcovery confirmed receipt of the letter and indicated that a response was forthcoming.

14. After more than three months passed without response from Xcovery, St. Jude sent another letter on December 3, 2012. The December 3 letter referenced the previous letter dated August 27, 2012 and offered to discuss a potential license to the St. Jude patents.

15. In January 2013, St. Jude contacted Xcovery by phone once again regarding the letters that had previously been sent. No one from Xcovery responded to the inquiry.

16. On March 28, 2013, St. Jude sent a letter to Xcovery regarding the previous letters and other communications. The letter requested a response by April 10, 2013. Xcovery never responded to the March 28, 2013 letter.

17. Because Xcovery has refused to respond to St. Jude's inquiries, St. Jude has not been able to analyze the extent of Xcovery's infringement beyond the information that is publicly available. Therefore, St. Jude also pleads in the alternative that Xcovery has made and used, and is currently making and using ALK nucleic acids, proteins, polypeptides, and/or antibodies that practice one or more claims of the '925, '421, and '548 patents under the precedent established in *Hoffmann-La Roche Inc. v. Invamed Inc.*, 213 F.3d 1359 (Fed. Cir. 2000).

18. On information and belief, Xcovery has been and is infringing the '925, '421, and '548 patents with knowledge of the patents, and thus, Xcovery's infringement is willful.

19. On information and belief, Xcovery will continue to infringe the '925, '421, and '548 patents unless and until it is enjoined by this Court.

20. Xcovery has caused and will continue to cause St. Jude irreparable injury and damage by infringing the '925, '421, and '548 patents. St. Jude will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Xcovery is enjoined from infringing the '925, '421, and '548 patents.

#### **PRAYER FOR RELIEF**

WHEREFORE, St. Jude respectfully requests that this Court:

(1) Enter judgment that Xcovery has infringed the '925, '421, and '548 patents;

(2) Enter an order permanently enjoining Xcovery and its officers, agents, employees, attorneys, and all persons in active concert or participation with it, from infringing the '925, '421, and '548 patents;

(3) Award St. Jude damages in an amount sufficient to compensate it for Xcovery's infringement of the '925, '421, and '548 patents, together with pre-judgment and post-judgment interest and costs under 35 U.S.C. § 284;

(4) Award St. Jude an accounting for Xcovery's acts of infringement not presented at trial and an award by the Court of additional damage for any such acts of infringement;

(5) Treble the damages awarded to St. Jude under 35 U.S.C. § 284 by reason of Xcovery's willful infringement of the '925, '421, and '548 patents;

(6) Declare this case to be "exceptional" under 35 U.S.C. § 285 and award St. Jude its attorney fees, expenses, and costs incurred in this action; and

(7) Award St. Jude such other and further relief as this Court deems just and proper.

**JURY TRIAL DEMAND**

St. Jude demands a jury trial on all issues so triable.

Dated: October 11, 2013

Respectfully Submitted,

By: s/ Amy M. Pepke

Amy M. Pepke (TN Bar No. 18174)

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