

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

GENSETIX, INC.,

Plaintiff,

and

**THE BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM,**

Involuntary Plaintiff,

v.

**BAYLOR COLLEGE OF MEDICINE,
DIAKONOS RESEARCH, LTD.,
and WILLIAM K. DECKER,**

Defendants.

Civil Action No. 4:17-cv-01025

JURY TRIAL DEMANDED

GENSETIX, INC.'S COMPLAINT

Plaintiff Gensetix, Inc., along with Involuntary Plaintiff The Board of Regents of the University of Texas System, in support of the complaint against Defendants Baylor College of Medicine, Diakonos Research, Ltd., and William K. Decker (collectively “Defendants”), herein alleges as follows:

NATURE OF THE ACTION

1. This is a civil action related to patent infringement and related misconduct, involving United States Patent Nos. 8,728,806 (“the ’806 patent”) and 9,333,248 (“the ’248 patent”) (collectively, the “Patents-in-Suit”) attached hereto as Exhibits A and B, respectively. Gensetix invested in the patented technology hoping to help cure cancer. Defendants have impeded and continue to impede the development and commercialization of the patented technology. Gensetix seeks to enjoin Defendants from engaging in further acts of infringement as

well as monetary relief. William Decker, a professor at Baylor College of Medicine, assigned all of his rights to the Patents-in-Suit to The University of Texas, and Gensetix is now the exclusive licensee of those patents. William Decker departed UT for BCM and began infringing and continues to infringe the Patents-in-Suit. Further, without informing Gensetix, Decker filed new patent applications and licensed those patent applications and related technology to Diakonos—all while continuing to use Gensetix technology.

THE PARTIES

2. Plaintiff Gensetix, Inc. (“Gensetix”) is a Delaware corporation, and its principal place of business is 3119 Mountain Oak Court, Houston, Texas.

3. Gensetix is the exclusive licensee of the Patents-in-Suit.

4. Involuntary Plaintiff, The Board of Regents of The University of Texas System (“UT”), is an agency of the State of Texas, located at 201 West 7th Street, Austin, Texas 78701.

5. UT is the owner of the Patents-in-Suit.

6. Prior to filing this action, Gensetix requested that UT join the present suit as a co-plaintiff, but UT declined that request and refused to voluntarily join as a co-plaintiff.

7. Insofar as UT is deemed a necessary and indispensable party to the prosecution of Counts 1 and 2 for patent infringement and injunctive relief, and is not subject to service of process, Gensetix has joined UT as an Involuntary Plaintiff in this action pursuant to Rule 19(a) of the Federal Rules of Civil Procedure.

8. On information and belief, defendant Baylor College of Medicine (“BCM”) is a private university institution, located at One Baylor Plaza, Houston, Texas 77030.

9. On information and belief, defendant Diakonos Research Ltd. (“Diakonos”) is a limited liability corporation in Texas, and names Dan C. Faust as the registered agent.

10. On information and belief, defendant William K. Decker (“Decker”) is an individual who resides in Houston, Texas, and is employed at Baylor College of Medicine, One Baylor Plaza, Houston, Texas 77030.

11. Decker was formerly affiliated with UT, but is now affiliated with BCM.

JURISDICTION AND VENUE

12. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

13. The complaint presents federal question jurisdiction for patent infringement, under Title 35, U.S.C. § 101, *et seq.*, and supplemental jurisdiction for other related causes of action which arise from substantially the same transactions and occurrences set forth below.

14. This Court has personal jurisdiction over BCM, Diakonos, and Decker because they are residents in this State. Defendants have committed and will commit acts of patent infringement in this State.

15. Venue is proper in this judicial district under 28 U.S.C. §§ 191(b) and (c) and § 1400(b) and because BCM, Diakonos, and Decker are residents in this District. Defendants have committed and will commit acts of patent infringement in this District.

FACTS AS TO ALL COUNTS

Gensetix Obtains License To Cancer Treatment Patents

16. The '806 patent, entitled “Methods and composition related to Th-1 dendritic cells,” was duly and legally issued by the United States Patent and Trademark Office (“PTO”) on May 20, 2014.

17. The '248 patent, entitled “Methods and composition related to Th-1 dendritic cells,” was duly and legally issued by the United States Patent and Trademark Office (“PTO”) on May 10, 2016.

18. The '806 and '248 patents claim a priority date of December 6, 2008. All work shown in the patents was developed and reduced to practice on or before that date.

19. The '806 and '248 patents generally relate to methods of treating cancer using dendritic cells loaded with tumor antigens.

20. UT is the owner by assignment of the '806 and '248 patents. All of the named inventors of those patents assigned their rights to UT in connection with those patents.

21. UT in September 2008 provided an exclusive license to Mr. Alex Mirrow for all patent rights related to certain work performed by Decker (and others) while Decker was at UT, including the rights to the '806 and '248 patents and any related patents and patent applications.

22. Mr. Alex Mirrow in January 2014 provided an assignment of his rights to Gensetix, including as to the '806 and '248 patents and any related patents and patent applications.

23. In June 2014, UT confirmed the fact of the exclusive license to Gensetix, and signed an amendment to the exclusive license.

24. Gensetix is the sole and exclusive licensee for the '806 and '248 patents and any related patents and patent applications.

25. Gensetix paid and continues to pay fees and costs in connection with the acquisition of the '806 and '248 patents.

Decker Leaves UT But Continues Using Patented Technology

26. Decker is one of the named inventors on the '806 and '248 patents, and he was at UT when the work reflected in those patents was completed. Decker does not have any license to those patents.

27. Decker left UT and joined BCM in approximately 2011.

28. On information and belief, Decker and his lab are supported by BCM. BCM does not have any license to the '806 and '248 patents.

29. Decker continues to use technology that infringes upon one or more claims of the '806 and '248 patents, including at least claim 1 of the '806 patent and claim 1 of the '248 patent.

30. Claim 1 of the '806 patent claims: "A method for inducing an immunologic response in a patient comprising: (a) obtaining monocytic dendritic cell precursors from the patient; (b) culturing the monocytic dendritic cell precursors to induce differentiation into immature dendritic cells; (c) differentiating the immature dendritic cells into mature dendritic cells by (i) transfecting into the immature dendritic cells a nucleic acid composition encoding one or more tumor antigens; and (ii) contacting the immature dendritic cells with a tumor antigen composition, wherein a tumor antigen of the tumor antigen composition comprises an epitope having a sequence that overlaps minimum of 5 amino acids with the sequence of an epitope of a tumor antigen encoded by the nucleic acid composition of step (i) but is not identical thereto; (d) culturing the immature dendritic cells to produce mature dendritic cells; and (e) administering the mature dendritic cells to the patient."

31. Claim 1 of the '248 patent claims: "A method for inducing an immunologic response to a tumor in a patient comprising: (a) obtaining monocytic dendritic cell precursors from the patient, wherein the patient has breast cancer, a glioma, melanoma, pancreatic cancer or prostate cancer; (b) culturing the monocytic dendritic cell precursors to induce differentiation into immature dendritic cells; (c) differentiating the immature dendritic cells into mature dendritic cells by providing to said cells a tumor antigen composition comprising at least one Major Histocompatibility Complex (MHC) Class I epitope and at least one MHC Class II

epitope, wherein the Class I and the Class II epitopes have a sequence overlap of at least 5 amino acids; (d) administering the mature dendritic cells to the patient.”

32. Decker’s current conduct continues to focus on the patented technology even though he moved to BCM. This is evidenced, for example, by Decker’s publications confirming infringement of at least claims 1 of the ’806 and ’248 patents, including his publication entitled “Discovery of CTLA-4 in dendritic cells opens new possibilities to fight cancer,” published in April 2016.

33. Further evidence that Decker’s conduct at BCM continues to focus on the patented technology includes International Patent Publication Number WO 2016/179001, filed on May 6, 2016, listing Decker as an inventor and BCM as the applicant, and entitled “Methods for Enhancing an Immune Response with a CTLA-4 Antagonist.” This application incorporates the ’806 patent by reference in the section entitled “Dendritic Cell Populations of the Embodiments,” and cites the ’806 patent for the following proposition: “U.S. Patent 8,728,806, which is incorporated herein by reference in its entirety, provides detailed methods for providing antigen primed dendritic cells that may be used in the compositions and methods of the embodiments.”

34. Additional evidence that Decker’s conduct at BCM continues to focus on the patented technology includes International Patent Publication Number WO 2016/179475, filed on May 6, 2016, listing Decker as an inventor and BCM as the applicant, and entitled “Dendritic Cell Immunotherapy.” This application incorporates the ’806 patent by reference in the sections entitled “The Present Embodiments,” and “Dendritic Cell Populations of the Embodiments,” and cites the ’806 patent for the following propositions:

- a. “Previous studies have demonstrated that dendritic cells can be effectively primed to stimulate a T-cell response that is specifically targeted to a cell population in [a] subject, such as [a] cancer cell (see, *e.g.*, U.S. Patent 8,728,806, which is incorporated herein by reference)”;
- b. “U.S. Patent 8,728,806, which is incorporated herein by reference in its entirety, provides detailed methods for providing antigen primed dendritic cells that may be used in the compositions and methods of the embodiments”; and
- c. “In preferred aspects, primed dendritic cells for use according to the embodiments are homologously-loaded with antigen as detailed herein and in U.S. Patent 8,728,806.”

35. Decker’s current conduct is directed to infringing clinical trials and commercial product development. This is evidenced, for example, by Decker’s application for grants directed to commercializing infringing treatments based on Decker’s current conduct.

36. BCM’s website quotes Decker as stating, “The treatment uses the patient’s own blood cells and own tumor cells to generate a powerful vaccine that can attack the tumor while sparing normal tissue. Funding of this project will enable his research group to generate the necessary data to allow a clinical trial to proceed, Decker noted.”
(www.bcm.edu/news/grants/grants-support-immunotherapy-for-kids-cancer).

37. Decker received a grant from “Alex’s Lemonade Stand Foundation,” whose grants are directed to “overcome barriers that impede the translation of innovative pediatric oncology research ideas from the lab to the clinic.”

38. Gensetix agreed to pay Decker fees to help develop the patented technology so it could be commercialized, and in fact paid Decker hundreds of thousands of dollars which Decker said he required to continue lab operations even while he was at BCM.

Decker Interferes With Gensetix Business Dealings

39. In August of 2011, Decker assigned to UT the rights to the '806 patent "and any divisional, renewal, continuation in whole or in part, substitution, conversion, reexamination, reissue, prolongation or extension thereof."

40. On information and belief, UT provided Decker with a copy of the existing Gensetix Exclusive License Agreement contract, and Decker reviewed it and was aware that UT's assignment of the '806 and '248 patents to Gensetix contains the same language including "any divisional, renewal, continuation in whole or in part, substitution, conversion, reexamination, reissue, prolongation or extension thereof."

41. On information and belief, at least the International Patent Publication Numbers WO 2016/179001 and WO 2016/179475, for which BCM has applied, listing Decker as an inventor, constitute extensions of the '806 patent.

42. On information and belief, Decker knew that any extensions of the '806 and '248 patents could only be made or sold by infringing Gensetix IP.

43. In the summer of 2014, Gensetix sought to acquire patent rights for any patent applications that Decker or BCM may submit for cancer treatments based on the technology covered by the Gensetix Exclusive License Agreement.

44. While Gensetix and BCM were in discussions and exchanging draft agreements, without authority or permission, Decker independently approached BCM and on information and belief made statements that disparaged and/or discouraged BCM from concluding their

agreements with Gensetix. After BCM's conversations and meetings with Decker, BCM informed Gensetix that it was no longer interested in concluding the assignment agreements.

45. Decker's interference in the prospective business relationship between Gensetix and BCM was independently wrongful. In particular, Decker refused to cooperate with Gensetix's efforts to close the BCM assignment while also tortiously interfering with Gensetix's performance of certain commercialization and clinical trial progress obligations under the existing Exclusive License Agreement contract between Gensetix and UT.

46. Decker's interference in the prospective business relationship between Gensetix and BCM was also independently wrongful because that interference reneged on a promise he had made to Gensetix to assist with commercialization activities for the benefit of Gensetix based on the substantial funding Gensetix had provided to Decker.

47. Decker's interference with the BCM relationship caused Gensetix injury and damages by depriving it of intellectual property licenses and related revenue.

48. In March and April 2015, Gensetix conducted meetings and negotiations with a potential business partner, Fannin Innovation, to assist with funding and managing commercialization and clinical trial activities contemplated in Gensetix's Exclusive License Agreement with UT.

49. Fannin Innovation expressed great interest in supporting the technology for which Gensetix held an exclusive license. In April 2015, after extensive discussions and meetings between Fannin Innovation and Gensetix, Fannin Innovation sent potential partnership terms in writing to Gensetix. Gensetix was encouraged based on the proposed terms that there was a reasonable probability that it would enter into a business relationship (a partnership that would at least include shared costs, shared equity, and management services) with Fannin Innovation.

50. Gensetix and Fannin Innovation never closed their expected deal, however, because Decker—acting with a conscious desire to prevent the Gensetix / Fannin Innovation deal from occurring—interfered with the potential deal. In particular, Decker refused to cooperate and assist Gensetix in closing the Fannin Innovation deal, because Decker insisted on working with Diakonos—and in fact he was secretly negotiating with Diakonos for his own deal for the benefit of himself and Diakonos rather than Gensetix. Decker’s refusal to cooperate and interference with the prospective Fannin Innovation relationship caused Fannin Innovation to walk away from the relationship with Gensetix. Specifically, Fannin Innovation was unwilling to invest its time and capital because such a venture was too risky without the cooperation of Decker—the inventor of the very technology in which Fannin Innovation desired to invest.

51. Decker’s interference in the prospective business relationship between Gensetix and Fannin Innovation was independently wrongful. In particular, Decker refused to cooperate with Gensetix’s efforts to close the Fannin Innovation deal while also tortiously interfering with Gensetix’s performance of certain commercialization and clinical trial progress obligations under the existing Exclusive License Agreement contract between Gensetix and UT.

52. Decker’s interference in the prospective business relationship between Gensetix and Fannin Innovation was also independently wrongful because that interference reneged on a promise he had made to Gensetix to assist with commercialization activities for the benefit of Gensetix based on the substantial funding Gensetix had provided to Decker.

53. Decker’s interference with the Fannin Innovation relationship caused Gensetix injury and damages by undermining and delaying Gensetix’s ability to share costs, fund, and manage commercialization activities and clinical trials. Decker’s interference also caused

Gensetix to spend additional time and money searching for other potential business partners once the Fannin Innovation deal did not go forward.

BCM And Decker Are Diverting Gensetix Business Opportunities

54. On information and belief, BCM later assigned rights for any patent applications that Decker or BCM may submit related to the patented cancer treatments not to Gensetix, but instead assigned such rights to Diakonos.

55. Decker and BCM are currently diverting assets that Gensetix provided to further Decker's own interests and those of Diakonos, despite Decker's repeated agreement to further Gensetix's interests and develop clinically available products in exchange for funding for Decker's lab, which Gensetix provided on multiple occasions.

56. In May 2015, unaware of Decker's and BCM's dealings with Diakonos, Gensetix reached out to Decker again to clarify matters. Gensetix explained the importance of the intellectual property and patents that were developed while Decker was at UT and exclusively licensed to Gensetix.

57. In response, Decker confirmed the value of the Gensetix intellectual property and described it as an "impenetrable wall." Decker continues to use the Gensetix intellectual property because, in his own words, he admitted that any work that could bypass the patents "if they can exist at all, are yet to be developed."

58. Decker promised to Gensetix that he would continue to work on a cure, and even asked Gensetix for additional separate funding earmarked for his lab, payable directly to him.

59. Specifically, in at least May of 2015, Decker sent emails asking Gensetix for funding for his lab, and threatened to “disengage from Gensetix” and “terminate my employees” if Gensetix did not provide the funding, but promised to cooperate with Gensetix with a “full speed ahead mentality” to get the IND “off clinical hold” and “refrain[] from any activities that might not be in [Gensetix’s] best interests” if Gensetix provided the requested funding.

60. In at least May of 2015, Gensetix “made a handshake agreement” to pay Decker to cooperate, which Decker confirmed via email.

61. In at least May of 2015, Gensetix paid Decker as requested, but Decker broke his promise to cooperate with Gensetix.

62. BCM is a business. In 2012, BCM was reported to have opened “a \$375 million cancer hospital and outpatient center.” The same article explained that “Baylor and [another university] are pouring money into their facilities in an effort to attract new patients.”

63. The work Decker is pursuing at BCM is to further BCM’s business objectives, including the marketing of its faculty and staff, purportedly increasing the status of the institution, and to lure lucrative research grants. The patent infringement at issue is therefore for a commercial purpose and commercial in nature.

64. On information and belief, Decker is developing a product to make it available commercially.

65. Gensetix has invested time and money in applying for and obtaining patents, legal fees for intellectual property analysis, and financial support directly to Decker and his lab. In return, Decker proceeded to divert Gensetix business opportunities to others, including Diakonos.

66. Diakonos, on its website, claims it will be “offered the first right of refusal for all technologies disclosed to Baylor OTC.” But Gensetix has the enabling intellectual property for those technologies, and as a result, Diakonos’s claims put a cloud on Gensetix’s rights to the technologies disclosed to Baylor.

67. Diakonos, on its website, further claims it will undertake further commercial activities including “clinical data management, U.S. Food and Drug Administration (FDA) regulatory filings, management salaries, phase I manufacturing activities, and for general corporate expenses.” It further states it is “deriving revenue from partners in the veterinary space” using the infringing technology.

68. Diakonos, on its website, further asserts that it has already undertaken phase I FDA activities, specifically “to determine the safety and feasibility of the technology in relapsed high-grade pediatric brain malignancy.”

69. Diakonos, on its website, also concedes that the company’s entire work with Decker and BCM is based on “developing the clinical version of a dendritic cell based therapy that is the ‘next generation of immunotherapy.’”

70. Gensetix and UT—not any other person or entity— should be the one reaping the benefits for the investments made in the technologies over the course of several years. Those benefits relate to commercialization of the Gensetix IP, and Gensetix has the rights to such products.

71. On information and belief, Decker owns shares in Diakonos.

72. As a result of Decker’s, Diakonos’s and BCM’s conduct, Gensetix is and will be irreparably harmed.

Decker, Diakonos, And BCM Interfere With Gensetix's Contract with UT

73. Gensetix provided a copy of its existing Exclusive License Agreement contract with UT, pursuant to a Non-Disclosure and Confidentiality Agreement entered into by Gensetix and BCM. BCM reviewed and was aware of the terms of the Gensetix Exclusive License Agreement no later than July 30, 2014.

74. BCM willfully, intentionally, and improperly interfered with Gensetix's performance of certain commercialization and clinical trial progress obligations under the Exclusive License Agreement contract between Gensetix and UT by delaying Gensetix's performance of those obligations, and causing Gensetix's performance to be more expensive or burdensome.

75. BCM willfully and intentionally interfered with Gensetix's existing contract with UT by at least the following acts:

- a. Refusing to grant Gensetix licenses to Decker patent applications and patents that Decker had previously agreed by contract were assigned to UT, and for which Gensetix owned the exclusive licenses, even though BCM knew that Gensetix had funded Decker's work at BCM.
- b. Granting licenses to Decker patent applications and patents to Diakonos, even though BCM knew that Decker had already assigned those rights to UT, and even though BCM knew Gensetix held an exclusive license to such patent applications and patents; and even though BCM knew that Gensetix had funded Decker's work at BCM.
- c. Willfully infringing the Patents-in-Suit without a license from Gensetix, to prevent, delay, and make more expensive and burdensome Gensetix's performance of its existing contract with UT.

76. On information and belief, UT provided Decker with a copy of the existing Gensetix Exclusive License Agreement contract, and Decker reviewed it and was aware of its terms.

77. Decker willfully, intentionally, and improperly interfered with Gensetix's performance of certain commercialization and clinical trial progress obligations under the Exclusive License Agreement contract between Gensetix and UT by delaying Gensetix's performance of those obligations, and causing Gensetix's performance to be more expensive or burdensome.

78. Decker willfully and intentionally interfered with Gensetix's existing contract with UT by at least the following acts:

- a. Refusing and encouraging BCM to refuse to grant Gensetix licenses to Decker patent applications and patents that Decker had previously agreed by contract were assigned to UT, and for which Gensetix owned the exclusive licenses, even though Decker knew that Gensetix had funded Decker's work at BCM.
- b. Bringing Diakonos, instead of Gensetix, to BCM as a commercialization partner, and encouraging BCM to grant licenses to Decker patent applications and patents to Diakonos, even though Decker knew that he had already assigned those rights to UT, and even though Decker knew Gensetix held an exclusive license to such patent applications and patents; and even though Decker knew that Gensetix had funded his work at BCM.

- c. Willfully infringing the Patents-in-Suit without a license from Gensetix, to prevent, delay, and make more expensive and burdensome Gensetix's performance of its existing contract with UT.
- d. Reneging on his promise to Gensetix to work on commercialization of the inventions for the benefit of Gensetix, in exchange for Gensetix's agreement to fund Decker's work at BCM.
- e. Refusing to cooperate with Gensetix's efforts to secure additional funding and investment for commercialization and clinical trial activities by refusing to cooperate and insisting to work only with Diakonos.

79. On information and belief, Decker disclosed the existing Gensetix License Agreement contract and/or its materials terms to Diakonos, and Diakonos was aware of its terms.

80. Diakonos willfully, intentionally, and improperly interfered with Gensetix's performance of certain commercialization and clinical trial progress obligations under the Exclusive License Agreement contract between Gensetix and UT by delaying Gensetix's performance of those obligations, and causing Gensetix's performance to be more expensive or burdensome.

81. Diakonos willfully and intentionally interfered with Gensetix's existing contract with UT by at least the following acts:

- a. Encouraging BCM and Decker to grant Diakonos a license instead of Gensetix—and entering into a license agreement with BCM and Decker—for Decker patent applications and patents that Diakonos knew Decker had previously agreed by contract were assigned to UT, and for which Diakonos knew Gensetix owned the exclusive licenses.

- b. Publicly announcing that Diakonos had obtained rights to Decker patent applications and patents that had already been assigned to UT and exclusively licensed to Gensetix, in order to cloud Gensetix's exclusive license in order to prevent, delay, and make more expensive and burdensome Gensetix's performance of its existing contract with UT.
- c. Willfully infringing the Patents-in-Suit without a license from Gensetix, to prevent, delay, and make more expensive and burdensome Gensetix's performance of its existing contract with UT.

82. On information and belief, Decker, Diakanos, and BMC had an agreement amongst themselves to willfully and intentionally interfere with Gensetix's existing contract with UT.

83. Defendants' actions have caused and are continuing to cause injury and damages to Gensetix at least by frustrating and delaying Gensetix's ability to fund commercialization and clinical trial activities, and by making it more expensive and burdensome for Gensetix to perform its existing contract with UT.

FIRST COUNT – As To Diakonos, Decker and BCM
(Willful Infringement of the '806 Patent)

84. Gensetix repeats and re-alleges each of the foregoing Paragraphs as if fully set forth herein.

85. Upon information and belief, Decker, Diakonos, and BCM are infringing claim 1 of the '806 patent, and discovery is expected to show they are infringing additional claims.

86. Upon information and belief, Decker, Diakonos, and BCM will commercially benefit from continuing to infringe. Decker, Diakonos, and BCM will use the patented method, or manufacture or sell products or therapies that use the patented method.

87. Upon information and belief, Decker, Diakonos, and BCM have been taking and will take steps to induce and/or contribute to third-party infringement of one or more claims of the '806 patent.

88. Decker, Diakonos, and BCM have been aware of the '806 patent before the filing of this action, and despite such knowledge they have taken actions that have willfully infringed and continue to willfully infringe one or more claims of the '806 patent, thus rendering their infringement egregious under 35 U.S.C. § 284.

89. Gensetix is suffering irreparable harm as a result of Defendants' willful infringement. Gensetix also seeks monetary relief for past and future willful infringement.

SECOND COUNT – As to Diakonos, Decker and BCM
(Willful Infringement of the '248 Patent)

90. Gensetix repeats and re-alleges each of the foregoing Paragraphs as if fully set forth herein.

91. Upon information and belief, Decker, Diakonos, and BCM are infringing claim 1 of the '248 patent, and discovery is expected to show they are infringing additional claims.

92. Upon information and belief, Decker, Diakonos, and BCM will commercially benefit from continuing to infringe. Decker, Diakonos, and BCM will use the patented method, or manufacture or sell products or therapies that use the patented method.

93. Upon information and belief, Decker, Diakonos, and BCM have been taking and will take steps to induce and/or contribute to third-party infringement of one or more claims of the '248 patent.

94. Decker, Diakonos, and BCM have been aware of the '248 patent before the filing of this action, and despite such knowledge they have taken actions that have willfully infringed

and continue to willfully infringe one or more claims of the '248 patent, thus rendering their infringement egregious under 35 U.S.C. § 284.

95. Gensetix is suffering irreparable harm as a result of Defendants' willful infringement. Gensetix also seeks monetary relief for past and future willful infringement.

THIRD COUNT – As to Decker
(Breach of Contract)

96. Gensetix repeats and re-alleges each of the foregoing Paragraphs as if fully set forth herein.

97. Gensetix and Decker entered into a "Non-Disclosure and Confidentiality Agreement" effective March 19, 2015. The agreement prevented Decker from disclosing any Gensetix confidential information to third parties, specifically in view of anticipated consulting, funding and marketing of the exclusive license held by Gensetix.

98. Pursuant to that agreement, Gensetix disclosed confidential information and details to Decker.

99. On information and belief, on June 24, 2015—just one month after the effective date of the Gensetix-Decker confidentiality agreement—Dan Faust registered Diakonos Research Ltd. as a corporate entity.

100. On information and belief, Decker disclosed to Diakonos—without Gensetix's permission—confidential information of Gensetix, including confidential information about Gensetix's intellectual property rights, assessments, financials, and other sensitive information that belonged to Gensetix.

101. Decker's misconduct has caused and continues to cause harm to Gensetix. In particular, as a result of Decker's breach, Diakonos is now developing commercial treatments for the benefit of Diakonos, Decker, and BCM instead of for the benefit of Gensetix and UT.

102. Gensetix is suffering irreparable harm as a result of Decker's breach. Gensetix has also suffered damages as a result of Decker's breach, in the form of lost intellectual property licenses, lost revenue, and lost goodwill.

FOURTH COUNT - As to Decker
(Tortious Interference with BCM)

103. Gensetix repeats and re-alleges each of the foregoing Paragraphs as if fully set forth herein.

104. Gensetix in 2014 was pursuing a business deals to acquire licenses to intellectual property for any work Decker did at BCM. Gensetix had a reasonable expectation of a business relationship with BCM for acquiring IP.

105. Decker was aware of these business dealings with BCM.

106. On information and belief, Decker willfully and intentionally interfered with Gensetix's business opportunities and deliberately acted in a way that would cause the business dealings with BCM to suffer, including by communicating with them to disparage and/or discourage BCM from concluding their agreements with Gensetix.

107. Gensetix did not reach agreement as a result with BCM.

108. Decker's interference in the prospective business relationship between Gensetix and BCM was independently wrongful as alleged herein.

109. Gensetix is suffering irreparable harm as a result of these violations. Gensetix also suffered damages as a result, in the form of lost intellectual property licenses and lost revenue.

FIFTH COUNT - As to Decker
(Tortious Interference with Fannin)

110. Gensetix repeats and re-alleges each of the foregoing Paragraphs as if fully set forth herein.

111. Gensetix in 2015 was pursuing a business deal to sell its interest in the Gensetix IP to Fannin. Gensetix had a reasonable expectation of a business relationship with Fannin for selling IP.

112. Decker was aware of these business dealings with Fannin.

113. On information and belief, Decker purposefully and knowingly interfered with Gensetix's business opportunities and deliberately acted in a way that would cause the business dealings with Fannin to suffer, including by communicating with them to disparage and/or discourage the Fannin from concluding their agreement with Gensetix.

114. Gensetix did not reach agreement as a result with Fannin.

115. Decker's interference in the prospective business relationship between Gensetix and Fannin was independently wrongful as alleged herein.

116. Gensetix is suffering irreparable harm as a result of these violations. Gensetix also suffered damages as a result, in the form of lost revenue, and goodwill.

SIXTH COUNT – As to Decker
(Promissory Estoppel)

117. Gensetix repeats and re-alleges each of the foregoing Paragraphs as if fully set forth herein.

118. In reliance on "handshake agreement" promises made by Decker as recently as May of 2015, and confirmed by Decker via email, to develop a commercial product and "refrain[] from any activities that might not be in [Gensetix's] best interests," Gensetix paid large sums of money personally and directly to Decker to support his lab work.

119. Decker understood and agreed that if his cancer treatments were to become more widely available, then Gensetix would be entitled to the benefits and revenues as a result of Gensetix's investments.

120. Decker nonetheless diverted the money and now is developing commercial treatments for the benefit not of Gensetix but of third parties such as Diakonos and BCM.

121. Decker's misconduct has caused and continues to cause harm to Gensetix.

122. Gensetix is suffering irreparable harm as a result of these violations. Gensetix also suffered damages as a result, in the form of lost intellectual property licenses, lost revenue, and goodwill.

SEVENTH COUNT – As to Decker, Diakonos, and BCM
(Tortious Interference with Existing Contract)

123. Gensetix repeats and re-alleges each of the foregoing Paragraphs as if fully set forth herein.

124. Gensetix had and continues to have an existing contract with UT in the form of an Exclusive License Agreement.

125. Decker, Diakonos, and BCM have willfully and intentionally interfered with Gensetix's existing contract with UT as alleged herein.

126. Defendants' interference with Gensetix's existing contract has caused injury and damages to Gensetix, at least by frustrating and delaying Gensetix's ability to fund commercialization and clinical trial activities, and by making it more expensive and burdensome for Gensetix to perform its existing contract with UT as alleged herein.

EIGHTH COUNT – As to Decker, Diakonos, and BCM
(Civil Conspiracy)

127. Gensetix repeats and re-alleges each of the foregoing Paragraphs as if fully set forth herein.

128. On information and belief, Decker, Diakanos, and BMC had an agreement amongst themselves to willfully and intentionally interfere with Gensetix's existing contract with UT as alleged herein.

129. Decker, Diakanos, and BCM have intentionally and overtly interfered with Gensetix's existing contract with UT as alleged herein.

130. Defendants' conspiracy to interfere with Gensetix's existing contract has caused injury and damages to Gensetix, at least by frustrating and delaying Gensetix's ability to fund commercialization and clinical trial activities, and by making it more expensive and burdensome for Gensetix to perform its existing contract with UT as alleged herein.

NINTH COUNT – As to Decker, Diakanos, and BCM
(Declaratory Judgment)

1. Gensetix repeats and re-alleges each of the foregoing Paragraphs as if fully set forth herein.

2. Diakanos purports to have a "first right of refusal" to Decker's work using the infringing technology disclosed to BCM. But Gensetix holds senior interest in the technology and in the intellectual property.

3. This count arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq. and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and seeks a declaration that Gensetix—not Diakanos, Decker, or BCM—has the right and title to revenues derived from Decker's work using the infringing technology.

4. There is an actual and justiciable controversy between the parties concerning patent infringement and the relative rights of Gensetix and Diakanos, Decker, and BCM in the commercialization of the infringing technology.

5. Gensetix is entitled to a judicial declaration that any and all revenues derived from Defendants' work using the infringing technology belong to and are due to Gensetix.

PRAYER FOR RELIEF

WHEREFORE, Gensetix respectfully request that the Court enter a Judgment and Order in their favor and against Defendants as follows:

A. For a declaration and judgment that Diakonos, Decker, and BCM have infringed, and any future use of the methods will infringe, at least claim 1 of the '806 patent either directly or indirectly.

B. For a declaration and judgment that Diakonos, Decker, and BCM have infringed, and any future use of the methods will infringe, at least claim 1 of the '248 patent either directly or indirectly, with damages awarded to Gensetix.

C. Injunctive relief precluding Defendants from manufacturing, using, selling, offering to sell, or importing items or methods that infringe the asserted patents before they expire.

D. A judgment pursuant to 35 U.S.C. § 284, finding willful patent infringement by Diakonos, Decker, and BCM, and awarding Gensetix treble damages.

E. A judgment finding that, pursuant to 35 U.S.C. § 285, this is an exceptional case and awarding Gensetix costs and attorneys' fees.

F. A judgment that Decker has tortiously interfered with business opportunities with BCM belonging to Gensetix, with damages awarded to Gensetix.

G. A judgment that Decker has tortiously interfered with business opportunities with Fannin belonging to Gensetix, with damages awarded to Gensetix.

H. A judgment that Decker, Diakonos, and BCM have tortiously interfered with Gensetix's existing contract with UT.

I. A judgment that Decker, Diakonos, and BCM entered into a civil conspiracy to tortiously interfere with Gensetix's existing contract with UT.

J. A judgment that Decker is liable for promissory estoppel based on representations and actions such that Gensetix is entitled to recovery, with damages awarded to Gensetix.

K. A judgment that Decker violated his duty of confidentiality and breached a confidentiality agreement, with damages award to Gensetix.

L. A declaration that Gensetix has the right to all revenues stemming from Decker's work at BCM using the infringing technology.

M. A judgment awarding Gensetix its costs under Fed. R. Civ. P. 54(d) and 28 U.S.C. § 1920; and

N. Such other and further relief as this Court may deem just and proper.

Date: April 3, 2017

Respectfully submitted:

/s/ Sarah E. Spires

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