

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**MORPHOSYS AG,**

Plaintiff,

v.

**JANSSEN BIOTECH, INC., GENMAB  
US, INC. and  
GENMAB A/S**

Defendants.

C.A. No. 16-221 (LPS) (CJB)

**JURY TRIAL DEMANDED**

**SECOND AMENDED COMPLAINT**

Plaintiff MorphoSys AG (“MorphoSys”), for its Complaint against Defendants Janssen Biotech, Inc. (“Janssen”), Genmab A/S (“Genmab”) and Genmab US, Inc. (“Genmab US”) (collectively “Defendants”) hereby alleges as follows:

**PARTIES**

1. Plaintiff MorphoSys is a German biotechnology company with its principal place of business at Lena-Christ-Str. 48, 82152 Martinsried/Planegg, Germany.

2. MorphoSys is a leading pharmaceutical company in the field of therapeutic antibodies and well-known for its innovative antibody technologies. Founded in Martinsried/Planegg near Munich in 1992, MorphoSys is committed to developing exceptional new treatments for patients suffering from serious diseases. MorphoSys is the recipient of several awards, including the 2009 Technology Pioneer award, and the 2013 Mediscience Award. MorphoSys has also succeeded in building a therapeutic pipeline of more than 100 human antibody drug candidates for the treatment of diseases such as inflammatory disease, cancer, and Alzheimer’s disease.

3. Upon information and belief, Defendant Janssen is a Pennsylvania corporation with its principal place of business at 800 Ridgeview Road, Horsham, Pennsylvania 19044.

4. Upon information and belief, Defendant Genmab is a Danish biotechnology company with its principal place of business at Bredgade 34E, 1260 Copenhagen K, Denmark.

5. Upon information and belief, Defendant Genmab US, Inc. is a wholly owned subsidiary of Genmab A/S, and is a corporation organized and existing under the laws of the state of Delaware.

### **NATURE OF THE ACTION**

6. This is a civil action for infringement of United States Patent Nos. 8,263,746 (the “746 Patent”), 9,200,061 (the “061 Patent), and 9,758,590 (the “590 Patent”), under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* This action arises out of Defendants’ current manufacture, use, sale, offer to sell within the United States directly and/or indirectly of Defendants’ anti-CD38 antibody known as Darzalex (daratumumab) for the treatment of patients with multiple myeloma.

### **JURISDICTION AND VENUE**

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

8. This Court has personal jurisdiction over Janssen because, among other things, Janssen has committed, aided, abetted, contributed to, and/or participated in the commission of patent infringement in this judicial district and elsewhere that led to a foreseeable harm and injury to MorphoSys through its manufacture, use, sale, and/or offer to sell within the United States of its Darzalex (daratumumab) products.

9. This Court also has personal jurisdiction over Janssen because, among other reasons, Janssen has established minimum contacts within the forum such that the exercise of

jurisdiction over Janssen will not offend traditional notions of fair play and substantial justice. For instance, Janssen has placed products that practice the claimed invention of the '746 Patent into the stream of commerce with the reasonable expectations and/or knowledge that purchasers and users of such products were located within the District of Delaware. Janssen has sold, advertised, marketed and distributed products in this District that practice the claimed invention of the '746 Patent.

10. This court has personal jurisdiction over Genmab, under Fed. R. Civ. P. 4(k)(2), because on information and belief Genmab is not subject to jurisdiction in any particular state's courts of general jurisdiction, and because Genmab has extensive contacts with the United States, and exercising jurisdiction over Genmab is consistent with the laws of the United States and the Constitution. Among other things, Genmab has a commercial relationship and business dealings with Janssen in the United States, through and with its wholly owned subsidiary and United States corporation, Genmab US, Inc. (formerly Genmab, Inc.).

11. Upon information and belief, Genmab collaborates with Janssen to develop, make, and sell Darzalex in the United States.

12. Upon information and belief, Genmab also markets the infringing product, Darzalex, in the United States. Upon information and belief, Genmab worked in the United States for FDA approval of Darzalex. *See* Dkt. 25 at 3; Dkt. 26 at Exs. 6, 12-16. Upon information and belief, Genmab provided technical support for the making, using, and selling of Darzalex. Upon information and belief, Genmab has attended United States conferences to promote Darzalex, conducted experiments unrelated to FDA approval, and collaborated with key opinion leaders in the United States. Dkt. 25 at 5-7; Dkt. 26 at Ex. 17. Upon information and belief, Genmab has made and imported daratumumab, which is the active ingredient of Darzalex.

Dkt. 25 at 5; Dkt. 26 at Ex. 16 at 129. Genmab has also availed itself of the United States patent system, and has been granted U.S. Patent No. 7,829,673. Genmab has availed itself of the United States trademark system and has applied for and obtained the “HuMax®” trademark, which Genmab and Janssen have used to describe the infringing antibody, and establishes Genmab’s intention to use Darzalex in United States commerce. Dkt. 25 at 3; Dkt. 26 at Ex. 3.

13. Genmab’s CEO Dr. Van de Winkle has repeatedly stated that Genmab is continuing efforts to develop, make, use or sell Darzalex, including in the United States subsequent to Genmab signing the licensing and collaboration agreement with Janssen in 2012. Dkt. 25 at 4; Dkt. 26 at Ex. 5 at 3, Ex. 2 at 3, Ex. 6 at 4, Ex. 7. Dr. Van de Winkle stated as recently as Genmab’s 2015 Annual Report that “Together with Janssen, we continue to work on the further development of daratumumab...” Dkt. 26 at Ex. 7.

14. Genmab’s employees also credit themselves for developing Darzalex as a United States product. Dkt. 25 at 4; Dkt. 26 at Ex. 8, Ex. 9 and Ex. 10.

15. Upon information and belief, Genmab US, Inc., a corporation formed and existing under the laws of the state of Delaware, is a wholly owned subsidiary of Genmab. Genmab, Inc. became Genmab US, Inc. in 2013.

16. Upon information and belief, Genmab, US Inc., under the control of Genmab, led the business development effort in constructing the August 2012 agreement between Janssen and Genmab for the manufacture, development, and advertisement of Darzalex.

17. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

#### **FACTUAL BACKGROUND**

18. United States Patent No. 8,263,746 (the “746 Patent”), entitled “Anti-CD38 Human Antibodies and Uses Thereof,” was duly and legally issued by the United States Patent

and Trademark Office on September 11, 2012. A true and correct copy of the '746 Patent is attached hereto as **Exhibit A**.

19. United States Patent No. 9,200,061 (the "'061 Patent), entitled "Generation and Profiling of Fully Human HuCAL Gold®-Derived Therapeutic Antibodies Specific for Human CD3[8]." was duly and legally issued by the United States Patent and Trademark Office on December 1, 2015. A true and correct copy of the '061 Patent is attached hereto as **Exhibit B**.

20. United States Patent No. 9,758,590 (the "'590 Patent"), entitled "Anti-CD38 Human Antibodies and Uses Thereof" was duly and legally issued by the United States Patent and Trademark Office on September 12, 2017. A true and correct copy of the '590 Patent is attached hereto as **Exhibit C**.

21. MorphoSys is the assignee of the '746 Patent and has the right to sue and recover damages for any current or past infringement of the '746 Patent. The '746 Patent covers certain anti-CD38 antibodies.

22. MorphoSys is the assignee of the '061 Patent and has the right to sue and recover damages for any current or past infringement of the '061 Patent. The '061 Patent covers certain methods for treating hematologic cancer associated with the presences of CD38+ cells.

23. MorphoSys is the assignee of the '590 Patent and has the right to sue and recover damages for any current or past infringement of the '590 Patent. The '590 Patent covers certain anti-CD38 antibodies.

24. The '746, '061, and '590 Patents are directed to antibodies that are specific for CD38, a surface protein that is expressed by multiple myeloma cells. The inventors of the '746 patent were able to identify an anti-CD38 antibody that binds CD38 and has particular kinds of efficacy in killing CD38 expressing cells. The inventors of the '061 Patent were able to identify

methods for treating certain hematologic cancer through use of an anti-CD38 antibody that binds certain novel CD38 amino acid residues.

25. This therapy using anti-CD38 antibodies to treat hematologic cancers is especially important given the gravity of these diseases. For example, multiple myeloma is a common blood cancer in the United States that afflicts tens of thousands of new patients yearly, with over ten thousand people dying from the disease in the United States last year alone.

26. Upon information and belief, Genmab developed daratumumab (later known as Darzalex).

27. Upon information and belief, Darzalex is an anti-CD38 antibody indicated for treatment of patients with multiple myeloma.

28. Upon information and belief, Darzalex is used to treat multiple myeloma by administering it to a subject.

29. Upon information and belief, in August 2012 Genmab granted Janssen a license and collaboration agreement to develop, manufacture, and commercialize Darzalex.

30. Upon information and belief, this August 2012 license includes several milestone payments to be remitted by Janssen to Genmab, some upon information and belief has already been paid, and includes a \$55 million upfront payment and a \$45 million payment for the first sale in the United States, made by Janssen. This license agreement included a provision in which Johnson & Johnson Corporation, Janssen's parent, would invest \$80 million in Genmab shares.

31. Upon information and belief, the Food and Drug Administration granted approval to Genmab for Darzalex (daratumumab) on November 16, 2015 for the treatment of certain types of patients with multiple myeloma.

32. Upon information and belief, Genmab participated in clinical trials in the United States related to the development of Darzalex. Both Janssen and Genmab pursued the clinical development of Darzalex for sale in the United States. Upon information and belief, Genmab imported Darzalex into the United States, including for the purposes of seeking FDA approval to make, use and sell Darzalex in the United States. Dkt. 25 at 5-6; Dkt. 26 at Ex. 16 at 129, Ex. 17.

33. Upon information and belief, Janssen has been manufacturing antibodies, and advertising and selling Darzalex in the United States since at least November 2015, with the active aiding and abetting of Genmab, including based on the conduct listed above. Genmab has also frequently issued press releases promoting Darzalex, and detailing the milestones achieved in developing the Darzalex product in the United States.

34. Upon information and belief, Genmab markets Darzalex and promotes the sale of Darzalex in the United States.

35. Upon information and belief, Janssen sells, markets and promotes the sale of Darzalex in the United States.

36. Upon information and belief, Genmab continued to develop daratumumab and collaborate with Janssen in the promotion of Darzalex after the issuance of the '746 Patent. Dkt. 26 at Ex. 33 at 8. Dr. Van de Winkle after the August 2012 license and collaboration agreement between Genmab and Janssen was executed said that Genmab will remain "very, very involved" in the future concerning Darzalex. *Id.*

37. Upon information and belief, Genmab is the assignee for United States Patent No. 7,829,673 (the "'673 Patent"), filed March 23, 2006.

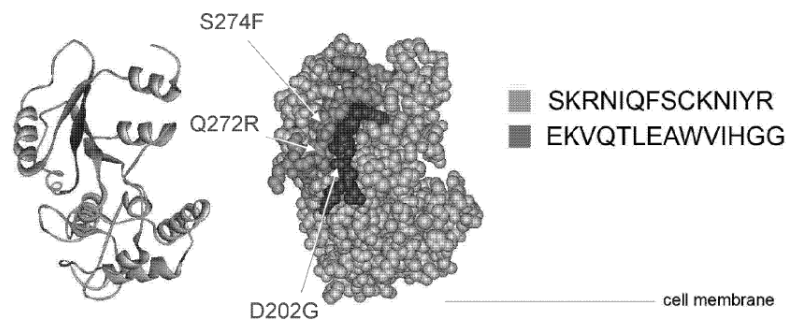
38. Upon information and belief, Genmab relied on the information and antibody within MorphoSys's published patent application in the characterization of an antibody that Genmab identified as "-005." Genmab relied on the MOR03079 antibody in the benchmarking analysis of anti-CD38 antibodies of the '673 Patent. The MOR03079 antibody is described in PCT publication WO/2005/103083 and has ADCC and CDC efficacy that is covered by claims of the '746 patent. This application is cited in the body and on the face of the '673 Patent and was cited by Genmab on an Information Disclosure Statement during prosecution of the '673 patent. The '746 Patent is the National Phase patent, which derived from PCT publication WO/2005/103083. Upon information and belief, Genmab and Janssen have subsequently published that the -005 antibody is related to daratumumab, the active ingredient in Darzalex.

39. Darzalex has been reported to have the efficacy in killing CD38 expressing cells in the manner described in the '746 Patent, such that, upon information and belief, it mediates killing of a CD38+ target cell in the manner recited by one or more claims of the '746 Patent. *See, e.g.*, Claim 1, 8.

40. Upon information and belief, Darzalex contains an antibody-binding region which specifically binds to CD38 at least within amino acids 44 to 206, in the manner recited by one or more claims of the '746 Patent, and meets all the limitations of the '746 Patent claims including claim 14. For example, Genmab itself has stated publicly at a Keystone Symposium that amino acid 202 of CD38 is "essential for daratumumab's binding."



**Daratumumab epitope  
Mapped on CD38 structure**



**Amino acids D202, Q272 and especially S274 are essential for daratumumab binding**



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41. Upon information and belief, use of Darzalex by Defendants directly infringes one or more claims of the '061 Patent, including because Defendants use, and encourage others to use Darzalex to treat hematologic cancer, and Darzalex is an anti-CD38 antibody that “binds an epitope of CD38 that contains one or more amino acid residues within 192-206” of CD38, and meets all the elements of, for example, claim 1 of the '061 patent. *See, e.g.*, Claim 1.

42. Upon information and belief, Genmab has administered and/or directed others to administer Darzalex to treat multiple myeloma in the United States in a manner that infringes, for example, claim 1 of the '061 Patent.

43. Upon information and belief, Janssen has administered and/or directed others to administer Darzalex to treat multiple myeloma in the United States in a manner that infringes, for example, claim 1 of the '061 Patent.

44. Upon information and belief, Genmab and Janssen’s August 2012 license and collaboration agreement, including any amendments or supplemental agreements thereto, require

Genmab to assist, support and cooperate in the clinical development, approval and post-approval development, marketing and sale of Darzalex in the United States for therapeutic indications, including but not limited to multiple myeloma.

45. To the best of MorphoSys's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, Darzalex is an anti-CD38 antibody that contains a framework sequence, a VH3 heavy chain, a kappa light chain, an IgG1 constant region, and six complementarity determining regions, and binds to VSRRFAEAACDVVHV, and this meets all limitations of at least claim 1 of the '590 Patent. These allegations have evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

46. MorphoSys issued a press release concerning the issuance of the '746 patent on June 12, 2012 and its subject matter related to anti-CD38 antibodies. <http://www.euroinvestor.dk/nyheder/2012/12/06/morphosys-strengthens-patent-position-on-anti-cd38-cancer-program-mor202/12157906>. Upon information and belief, Genmab knew of the '746 patent as part of its efforts to develop anti-CD38 antibodies and seek partners for Darzalex.

47. Genmab's CEO, Dr. Van de Winkel publicly stated that Janssen and Genmab have known of the '746 patent since 2011, stating "this patent was known since 2011 and has been studied very carefully. There has been extensive due diligence by Janssen as well as more than 10 other pharma or biotech companies on this patent case, we believe." D.I. 26, Ex. 11 at 11.

48. Upon information and belief, Defendants have known that Darzalex and its use to treat multiple myeloma infringes one or more claims of the '746, '061, and '590 Patents since the date these patents issued.

49. Janssen filed a European Opposition to EP2511297 on January 7, 2016; Genmab filed a European Opposition brief to the same patent on January 8, 2016. The '746 Patent is the National Stage Entry of PCT/IB05/02746, WIPO application No. WO 2005/103083, which was also published as EP2511297. Both EP2511297 and the '746 Patent claim priority to the same five United States Provisional Applications, 60/614,471; 60/599,014; 60/553,948; 60/547,584; and 60/541,911.

50. Upon information and belief, Janssen was aware of the '746 Patent at least as of 2011 and its date of issuance on September 11, 2012.

51. Upon information and belief, Genmab and Genmab, US, Inc. were aware of the '746 Patent at least as of 2011 and its date of issuance on September 11, 2012.

52. Upon information and belief, Janssen was aware of the '061 Patent as of at least its date of issuance on December 1, 2015.

53. Upon information and belief, Genmab and Genmab, US, Inc. were aware of the '061 Patent as of its date of issuance on December 1, 2015.

54. Janssen was aware of the '590 Patent as of at least its date of issuance on September 12, 2017.

55. Genmab and Genmab, US, Inc. were aware of the '590 Patent as of at least its date of issuance on September 12, 2017.

56. Defendants were aware that the U.S. Patent and Trademark Office allowed the claims that issued as the '590 Patent before September 12, 2017, and nevertheless continued to make, use, and sell Darzalex (daratumumab).

57. Upon information and belief, Genmab and Genmab US, Inc. acted in concert with Janssen in the development, manufacture, FDA approval, and marketing of Darzalex. Upon

information and belief, Genmab has provided technical support in the making, using and selling of Darzalex.

58. Upon information and belief, Janssen, Genmab and Genmab US, Inc. were aware of Darzalex's infringement of one or more claims of the '746 patent and/or understood the high probability of Darzalex's infringement and took deliberate actions to avoid learning of that infringement, including in the manner by which they examined and tested the qualities of Darzalex.

59. Upon information and belief, Genmab performed specific scientific studies that demonstrated Darzalex infringes the '746, '061, and '590 Patents, and specifically intended to infringe and to aid and abet Janssen's infringement by way of its clinical development of Darzalex and subsequent collaboration with Janssen to make, use, sell, market and promote Darzalex in the United States.

60. Upon information and belief, Defendants sought to obscure the scientific evidence that Darzalex infringes one or more claims of the '746, '061, and '590 Patents, including, but not limited to withholding from the public after the issuance of the '746 Patent data demonstrating that Darzalex binds amino acid residues of CD38 in the manner recited by more or more of these patents' claims.

61. After Genmab publicly discussed data indicating that daratumumab infringes the claims of the '746, '061, and '590 Patents including at the Keystone Symposium noted above, after issuance of the '746 Patent, Defendants only published incomplete data concerning daratumumab including concerning the manner in which daratumumab binds amino acids of CD38, and upon information and belief, ceased publicly noting that residue 202 of CD38 is essential for daratumumab binding.

62. Upon information and belief, Defendants have engaged in specific acts of aiding and abetting infringement of the '061 Patent, which they understand infringe and cause infringement of these patents by their making, using, selling Darzalex, and instructing physicians to use Darzalex in a manner that infringes one or more method claims recited by the '061 Patent.

63. Defendants contributed to obtaining an FDA approved indication for Darzalex, which encourages and induces third parties, such as physicians, to administer Darzalex in a manner that infringes the '061 Patent.

64. Darzalex's FDA approved indications and usage state that "Darzalex is a human CD38-directed monoclonal antibody indicated for the treatment of patients with multiple myeloma who have received at least three prior lines of therapy including a proteasome inhibitor (PI) and an immunomodulatory agent or who are double-refractory to a PI and an immunomodulatory agent."

65. Upon information and belief, Defendants have obtained FDA approval to sell Darzalex, which infringes the '746 and '590 Patents, and includes instructions on administration of Darzalex for the treatment of multiple myeloma, which induce third parties to infringe the '061 Patent.

66. Upon information and belief, Defendants are seeking additional FDA approvals to sell Darzalex for additional hematologic indications, which, if approved, will infringes the '746 and '590 Patents, and upon information and belief will include instructions on administration of Darzalex, which will induce third parties to infringe the '061 Patent.

### **COUNT I**

#### **Infringement of the '746 Patent by Janssen**

67. Paragraphs 1 through 66 are incorporated by reference as if fully stated herein.

68. Janssen, either alone or in conjunction with others, has infringed and will continue to infringe, one or more claims of the '746 Patent under 35 U.S.C. § 271, either literally and/or under the doctrine of equivalents, by making, using, offering to sell, selling and/or importing into the United States certain anti-CD38 antibodies, for example and without limitation, Darzalex.

69. MorphoSys has been and continues to be damaged by Janssen's infringement of the '746 Patent.

70. On information and belief, Janssen acted with knowledge of the '746 Patent and the high likelihood that its daratumumab products infringe the '746 Patent without a reasonable basis for a good faith belief that it would not be liable for infringement of the '746 patent, and thus Janssen's ongoing and past infringement is willful and deliberate.

71. This case is exceptional, and MorphoSys is entitled to an award of attorneys' fees under 35 U.S.C. § 285.

## **COUNT II**

### **Infringement of the '746 Patent by Genmab**

72. Paragraphs 1 through 71 are incorporated by reference as if fully stated herein.

73. On information and belief, Genmab, alone or in conjunction with others including Janssen, has directly and/or indirectly infringed and will continue to infringe, either literally or by the doctrine of equivalents, one or more claims of the '746 Patent under 35 U.S.C. § 271 by directly and/or indirectly making, using, offering to sell, selling and/or importing into the United States certain anti-CD38 antibodies, for example and without limitation, Darzalex.

74. MorphoSys has been and continues to be damaged by Genmab's infringement of the '746 Patent.

75. On information and belief, Genmab has acted with knowledge of the '746 Patent and the high likelihood that its daratumumab products infringed the '746 Patent, and thus its ongoing and past infringement is willful and deliberate.

### **COUNT III**

#### **Infringement of the '746 Patent by Genmab US, Inc.**

76. Paragraphs 1 through 75 are incorporated by reference as if fully stated herein.

77. On information and belief, Genmab US Inc., alone or in conjunction with others including Janssen, has directly and/or indirectly infringed and will continue to infringe, either literally or by the doctrine of equivalents, one or more claims of the '746 Patent under 35 U.S.C. § 271 by directly and/or indirectly making, using, offering to sell, selling and/or importing into the United States certain anti-CD38 antibodies, for example and without limitation, Darzalex.

78. MorphoSys has been and continues to be damaged by Genmab US, Inc.'s infringement of the '746 Patent.

79. On information and belief, Genmab US, Inc. has acted with knowledge of the '746 Patent and the high likelihood that its daratumumab products infringed the '746 Patent, and thus its ongoing and past infringement is willful and deliberate.

### **COUNT IV**

#### **Infringement of the '746 patent by Janssen/Genmab/Genmab US, Inc.**

80. Paragraphs 1 through 79 are incorporated by reference as if fully stated herein.

81. Janssen/Genmab/Genmab US, Inc., either alone or in conjunction with each other, have infringed and will continue to infringe directly or indirectly, one or more claims of the '746 Patent under 35 U.S.C. § 271 including sections (a-b), either literally and/or under the doctrine of equivalents, by making, using, offering to sell, selling and/or importing into the United States certain anti-CD38 antibodies, for example and without limitation, Darzalex.

82. Upon information and belief, Genmab and Genmab US's aiding and abetting of Janssen as described above, including with respect to FDA approval of Darzalex, marketing of Darzalex, the offering to sell, sale and/or importation of Darzalex actively induces Janssen's infringement pursuant to 35 U.S.C. § 271(b) of one or more claims of the '746 Patent.

83. MorphoSys has been and continues to be damaged by Janssen/Genmab/Genmab US, Inc.'s infringement of the '746 Patent.

84. On information and belief, Janssen/Genmab/Genmab US, Inc. acted with knowledge of the '746 Patent and the high likelihood that its daratumumab products infringe the '746 Patent, and thus Janssen's ongoing and past infringement is willful and deliberate.

85. This case is exceptional, and MorphoSys is entitled to an award of attorneys' fees under 35 U.S.C. § 285.

#### **COUNT V**

##### **Infringement of the '061 Patent by Janssen**

86. Paragraphs 1 through 85 are incorporated by reference as if fully stated herein.

87. Upon information and belief, Janssen, either alone or in conjunction with others, has directly and/or indirectly infringed and will continue to infringe, either literally or under the doctrine of equivalents, one or more claims of the '061 Patent, including at least Claim 1 under 35 U.S.C. § 271, including sections (a-c).

88. Upon information and belief, Janssen infringes one or more claims of the '061 Patent, either literally and/or under the doctrine of equivalents, by making, using, offering to sell, selling and/or importing into the United States certain methods for treating a hematologic cancer associated with the presence of CD38+ cells, for example and without limitation, by administering Darzalex.



89. Upon information and belief, the offering to sell, sale and/or importation by Janssen of certain anti-CD38 antibodies actively induces infringement by others pursuant to 35 U.S.C. § 271(b), such as medical professionals, of one or more claims of the '061 Patent.

90. Upon information and belief, Janssen's anti-CD38 antibody products, when used as directed, are used by others, such as medical professionals, in a manner that directly infringes one or more claims of the '061 Patent either literally or under the doctrine of equivalents.

91. Upon information and belief, Janssen had actual notice of the existence of the '061 Patent at least as of the filing of this Amended Complaint. Moreover, Janssen had actual and/or constructive notice of the '061 Patent as of the time of issuance.

92. Upon information and belief, Janssen knows of or is willfully blind to the fact that its actions with respect to its anti-CD38 antibodies induce the direct infringement of the '061 Patent.

93. Upon information and belief, the use of Janssen's anti-CD38 antibody products constitutes a material part of the invention recited in one or more claims of the '061 Patent. Upon information and belief, Janssen's anti-CD38 antibody products are especially made or adapted for use in infringing one or more claims of the '061 Patent, either literally or under the doctrine of equivalents. Upon information and belief, Janssen's anti-CD38 antibody products are not staple articles of commerce or commodities of commerce suitable for substantial noninfringing use. Upon information and belief, Janssen was aware of the '061 Patent and aware that the use of its anti-CD38 antibody products may be covered by a claim of the '061 Patent.

94. Upon information and belief, Janssen's offering to sell, sale, and/or importation of its anti-CD38 antibody products contributorily infringes at least one claim of the '061 Patent, either literally or under the doctrine of equivalents pursuant to 35 U.S.C. § 271(c).

95. Upon information and belief, by its promotional activities and package insert for its anti-CD38 antibody products, Janssen knows or should know that it aids and abets another's direct infringement of at least one of the claims of the '061 Patent.

96. MorphoSys has been and continues to be damaged by Janssen's infringement of the '061 Patent.

97. Upon information and belief, Janssen acted with knowledge of the '061 Patent and the high likelihood that its anti-CD38 antibody products infringe the '061 Patent without a reasonable basis for a good faith belief that it would not be liable for infringement of the '061 patent, and thus Janssen's ongoing and past infringement is willful and deliberate.

98. This case is exceptional, and MorphoSys is entitled to an award of attorneys' fees under 35 U.S.C. § 285.

## **COUNT VI**

### **Infringement of the '061 Patent by Genmab**

99. Paragraphs 1 through 98 are incorporated by reference as if fully stated herein.

100. Upon information and belief, Genmab, alone or in conjunction with others including Janssen, has directly and/or indirectly infringed and will continue to infringe, either literally or by the doctrine of equivalents, one or more claims of the '061 Patent, including at least Claim 1 under 35 U.S.C. § 271, including sections (a-c).

101. Upon information and belief, Genmab infringes one or more claims of the '061 Patent, either literally and/or under the doctrine of equivalents, by making, using, offering to sell, selling and/or importing into the United States certain methods for treating a hematologic cancer associated with the presence of CD38+ cells, for example and without limitation, by administering Darzalex.

102. Upon information and belief, Genmab's offering to sell, sale, importation marketing and contributing to clinical studies for the FDA approval for use of Dazalex for treatment of multiple myeloma actively induces infringement by others pursuant to 35 U.S.C. § 271(b), such as Janssen and medical professionals, of one or more claims of the '061 Patent.

103. Upon information and belief, Genmab's anti-CD38 antibodies, when used as directed, are used by others, such as Janssen and medical professionals, in a manner that directly infringes one or more claims of the '061 Patent either literally or under the doctrine of equivalents.

104. Upon information and belief, Genmab had actual notice of the existence of the '061 Patent at least as of the filing of this Amended Complaint. Moreover, Genmab had actual and/or constructive notice of the '061 Patent as of the time of issuance.

105. Upon information and belief, Genmab knows of or is willfully blind to the fact that its actions with respect to its anti-CD38 antibodies induce the direct infringement of the '061 Patent.

106. Upon information and belief, the use of Genmab's anti-CD38 antibodies constitutes a material part of the invention recited in one or more claims of the '061 Patent. Upon information and belief, Genmab's anti-CD38 antibodies are especially made or adapted for use in infringing one or more claims of the '061 Patent, either literally or under the doctrine of equivalents. Upon information and belief, Genmab's anti-CD38 antibodies are not staple articles of commerce or commodities of commerce suitable for substantial noninfringing use. Upon information and belief, Genmab was aware of the '061 Patent and aware that the use of its anti-CD38 antibodies may be covered by a claim of the '061 Patent.

107. Upon information and belief, Genmab's, either alone or in conjunction with others, including Janssen, offering to sell, sale, and/or importation of its anti-CD38 antibodies contributorily infringes at least one claim of the '061 Patent pursuant to 35 U.S.C. § 271(c), either literally or under the doctrine of equivalents.

108. Upon information and belief, by its promotional and licensing activities for its anti-CD38 antibodies, Genmab knows or should know that it aids and abets another's direct infringement of at least one of the claims of the '061 Patent.

109. MorphoSys has been and continues to be damaged by Genmab's infringement of the '061 Patent.

110. Upon information and belief, Genmab has acted with knowledge of the '061 Patent and the high likelihood that its anti-CD38 antibodies infringed the '061 Patent without a reasonable basis for a good faith belief that it would not be liable for infringement of the '061 patent, and thus its ongoing and past infringement is willful and deliberate.

## **COUNT VII**

### **Infringement of the '061 Patent by Genmab US, Inc.**

111. Paragraphs 1 through 110 are incorporated by reference as if fully stated herein.

112. Upon information and belief, Genmab US, Inc., alone or in conjunction with others including Janssen, has directly and/or indirectly infringed and will continue to infringe, either literally or by the doctrine of equivalents, one or more claims of the '061 Patent, including at least Claim 1 under 35 U.S.C. § 271, including sections (a-c).

113. Upon information and belief, Genmab US, Inc. infringes one or more claims of the '061 Patent, either literally and/or under the doctrine of equivalents, by making, using, offering to sell, selling and/or importing into the United States certain methods for treating a

hematologic cancer associated with the presence of CD38+ cells, for example and without limitation, by administering Darzalex.

114. Upon information and belief, Genmab US, Inc.'s offering to sell, sale, importation marketing and contributing to clinical studies for the FDA approval for use of Dazalex for treatment of multiple myeloma actively induces infringement by others pursuant to 35 U.S.C. § 271(b), such as Janssen and medical professionals, of one or more claims of the '061 Patent.

115. Upon information and belief, Genmab US, Inc.'s anti-CD38 antibodies, when used as directed, are used by others, such as Janssen and medical professionals, in a manner that directly infringes one or more claims of the '061 Patent either literally or under the doctrine of equivalents.

116. Upon information and belief, Genmab US, Inc. had actual notice of the existence of the '061 Patent at least as of the filing of this Amended Complaint. Moreover, Genmab US, Inc. had actual and/or constructive notice of the '061 Patent as of the time of issuance.

117. Upon information and belief, Genmab US, Inc. knows of or is willfully blind to the fact that its actions with respect to its anti-CD38 antibodies induce the direct infringement of the '061 Patent.

118. Upon information and belief, the use of Genmab US, Inc.'s anti-CD38 antibodies constitutes a material part of the invention recited in one or more claims of the '061 Patent. Upon information and belief, Genmab US, Inc.'s anti-CD38 antibodies are especially made or adapted for use in infringing one or more claims of the '061 Patent, either literally or under the doctrine of equivalents. Upon information and belief, Genmab US, Inc.'s anti-CD38 antibodies are not staple articles of commerce or commodities of commerce suitable for substantial

noninfringing use. Upon information and belief, Genmab US, Inc. was aware of the '061 Patent and aware that the use of its anti-CD38 antibodies may be covered by a claim of the '061 Patent.

119. Upon information and belief, Genmab US, Inc.'s, either alone or in conjunction with others, including Janssen, offering to sell, sale, and/or importation of its anti-CD38 antibodies contributorily infringes at least one claim of the '061 Patent, either literally or under the doctrine of equivalents pursuant to 35 U.S.C. § 271(c).

120. Upon information and belief, by its promotional and licensing activities for its anti-CD38 antibodies, Genmab US, Inc. knows or should know that it aids and abets another's direct infringement of at least one of the claims of the '061 Patent.

121. MorphoSys has been and continues to be damaged by Genmab US, Inc.'s infringement of the '061 Patent.

122. Upon information and belief, Genmab US, Inc. has acted with knowledge of the '061 Patent and the high likelihood that its anti-CD38 antibodies infringed the '061 Patent without a reasonable basis for a good faith belief that it would not be liable for infringement of the '061 patent, and thus its ongoing and past infringement is willful and deliberate.

### **COUNT VIII**

#### **Infringement of the '061 patent by Janssen/Genmab/Genmab US, Inc.**

123. Paragraphs 1 through 122 are incorporated by reference as if fully stated herein.

124. Upon information and belief, Janssen/Genmab/Genmab US, Inc., either alone or in conjunction with each other, have directly and/or indirectly infringed and will continue to infringe, either literally or under the doctrine of equivalents, one or more claims of the '061 Patent, including at least Claim 1 under 35 U.S.C. § 271, including sections (a-c).

125. Upon information and belief, Janssen/Genmab/Genmab US, Inc., either alone or in conjunction with each other, infringe one or more claims of the '061 Patent, either literally

and/or under the doctrine of equivalents, by making, using, offering to sell, selling and/or importing into the United States certain methods for treating a hematologic cancer associated with the presence of CD38+ cells, for example and without limitation, by administering Darzalex.

126. Upon information and belief, the offering to sell, sale and/or importation by Janssen/Genmab/Genmab US, Inc. of certain anti-CD38 antibodies actively induces infringement by others pursuant to 35 U.S.C. § 271(b), such as medical professionals, of one or more claims of the '061 Patent.

127. Upon information and belief, Janssen/Genmab/Genmab US, Inc.'s anti-CD38 antibody products, when used as directed, are used by others, such as medical professionals, in a manner that directly infringes one or more claims of the '061 Patent either literally or under the doctrine of equivalents.

128. Upon information and belief, Janssen/Genmab/Genmab US, Inc. had actual notice of the existence of the '061 Patent at least as of the filing of this Amended Complaint. Moreover, Janssen/Genmab/Genmab US, Inc. had actual and/or constructive notice of the '061 Patent as of the time of issuance.

129. Upon information and belief, Janssen/Genmab/Genmab US, Inc. know of or is willfully blind to the fact that their actions with respect to its anti-CD38 antibodies induce the direct infringement of the '061 Patent.

130. Upon information and belief, the use of Janssen/Genmab/Genmab US, Inc.'s anti-CD38 antibody products constitutes a material part of the invention recited in one or more claims of the '061 Patent. Upon information and belief, Janssen/Genmab/Genmab US, Inc.'s anti-CD38 antibody products are especially made or adapted for use in infringing one or more claims of the

'061 Patent, either literally or under the doctrine of equivalents. Upon information and belief, Janssen/Genmab/Genmab US, Inc.'s anti-CD38 antibody products are not staple articles of commerce or commodities of commerce suitable for substantial noninfringing use. Upon information and belief, Janssen/Genmab/Genmab US, Inc. were aware of the '061 Patent and aware that the use of their anti-CD38 antibody products may be covered by a claim of the '061 Patent.

131. Upon information and belief, Janssen/Genmab/Genmab US, Inc.'s offering to sell, sale, and/or importation of its anti-CD38 antibody products contributorily infringes at least one claim of the '061 Patent, either literally or under the doctrine of equivalents pursuant to 35 U.S.C. § 271(c).

132. Upon information and belief, by their promotional activities and package insert for their anti-CD38 antibody products, Janssen/Genmab/Genmab US, Inc. know or should know that they aid and abet another's direct infringement of at least one of the claims of the '061 Patent.

133. MorphoSys has been and continues to be damaged by Janssen/Genmab/Genmab US, Inc.'s infringement of the '061 Patent.

134. Upon information and belief, Janssen/Genmab/Genmab US, Inc. acted with knowledge of the '061 Patent and the high likelihood that their anti-CD38 antibody products infringe the '061 Patent without a reasonable basis for a good faith belief that they would not be liable for infringement of the '061 patent, and thus Janssen/Genmab/Genmab US, Inc.'s ongoing and past infringement is willful and deliberate.

135. This case is exceptional, and MorphoSys is entitled to an award of attorneys' fees under 35 U.S.C. § 285.



**COUNT IX**

**Infringement of the '590 Patent by Janssen**

136. Paragraphs 1 through 135 are incorporated by reference as if fully stated herein.

137. Upon information and belief, Janssen, either alone or in conjunction with others, has directly and/or indirectly infringed and will continue to infringe, either literally or under the doctrine of equivalents, one or more claims of the '590 Patent, including at least Claim 1 under 35 U.S.C. § 271, including sections (a-c).

138. Upon information and belief, Janssen infringes one or more claims of the '590 Patent, either literally and/or under the doctrine of equivalents, by making, using, offering to sell, selling and/or importing into the United States certain anti-CD38 antibodies, for example and without limitation, Darzalex.

139. Upon information and belief, the offering to sell, sale and/or importation by Janssen of certain anti-CD38 antibodies actively induces infringement by others pursuant to 35 U.S.C. § 271(b).

140. Upon information and belief, Janssen's anti-CD38 antibody products are used by others, such as medical professionals, and that use directly infringes one or more claims of the '590 Patent either literally or under the doctrine of equivalents.

141. Upon information and belief, Janssen was aware of the '590 Patent as of at least its date of issuance on September 12, 2017, and Janssen was aware that the U.S. Patent and Trademark Office allowed the claims that issued as the '590 Patent before September 12, 2017, and nevertheless continued to make, use, and sell Darzalex (daratumumab).

142. Upon information and belief, Janssen knows of or is willfully blind to the fact that its actions with respect to its anti-CD38 antibodies constitute direct infringement of the '590 Patent and induce infringement of the '590 Patent.

143. Upon information and belief, the use of Janssen's anti-CD38 antibody products constitutes a material part of the invention recited in one or more claims of the '590 Patent. Upon information and belief, Janssen's anti-CD38 antibody products are especially made or adapted for use in infringing one or more claims of the '590 Patent, either literally or under the doctrine of equivalents. Upon information and belief, Janssen's anti-CD38 antibody products are not staple articles of commerce or commodities of commerce suitable for substantial noninfringing use. Upon information and belief, Janssen was aware of the '590 Patent and aware that the use of its anti-CD38 antibody products may be covered by a claim of the '590 Patent.

144. Upon information and belief, Janssen's offering to sell, sale, and/or importation of its anti-CD38 antibody products contributorily infringes at least one claim of the '590 Patent, either literally or under the doctrine of equivalents pursuant to 35 U.S.C. § 271(c).

145. MorphoSys has been and continues to be damaged by Janssen's infringement of the '590 Patent.

146. Upon information and belief, Janssen acted with knowledge of the '590 Patent and the high likelihood that its anti-CD38 antibody products infringe the '590 Patent without a reasonable basis for a good faith belief that it would not be liable for infringement of the '590 patent, and thus Janssen's ongoing and past infringement is willful and deliberate.

147. This case is exceptional, and MorphoSys is entitled to an award of attorneys' fees under 35 U.S.C. § 285.

### **COUNT X**

#### **Infringement of the '590 Patent by Genmab**

148. Paragraphs 1 through 147 are incorporated by reference as if fully stated herein.

149. Upon information and belief, Genmab, alone or in conjunction with others including Janssen, has directly and/or indirectly infringed and will continue to infringe, either

literally or by the doctrine of equivalents, one or more claims of the '590 Patent, including at least Claim 1 under 35 U.S.C. § 271, including sections (a-c).

150. Upon information and belief, Genmab infringes one or more claims of the '590 Patent, either literally and/or under the doctrine of equivalents, by making, using, offering to sell, selling and/or importing into the United States certain anti-CD38 antibodies, for example and without limitation, Darzalex.

151. Upon information and belief, Genmab's offering to sell, sale, importation marketing and contributing to clinical studies for the FDA approval for use of Dazalex for treatment of multiple myeloma actively induces infringement by others pursuant to 35 U.S.C. § 271(b), of one or more claims of the '590 Patent.

152. Upon information and belief, Genmab's anti-CD38 antibodies are used by others, such as Janssen and medical professionals, and that use directly infringes one or more claims of the '590 Patent either literally or under the doctrine of equivalents.

153. Upon information and belief, Genmab was aware of the '590 Patent as of at least its date of issuance on September 12, 2017, and Genmab was aware that the U.S. Patent and Trademark Office allowed the claims that issued as the '590 Patent before September 12, 2017, and nevertheless continued to make, use, and sell Darzalex (daratumumab).

154. Upon information and belief, Genmab knows of or is willfully blind to the fact that its actions with respect to its anti-CD38 antibodies directly infringe the '590 Patent and induce infringement of the '590 Patent.

155. Upon information and belief, the use of Genmab's anti-CD38 antibodies constitutes a material part of the invention recited in one or more claims of the '590 Patent. Upon information and belief, Genmab's anti-CD38 antibodies are especially made or adapted for

use in infringing one or more claims of the '590 Patent, either literally or under the doctrine of equivalents. Upon information and belief, Genmab's anti-CD38 antibodies are not staple articles of commerce or commodities of commerce suitable for substantial noninfringing use. Upon information and belief, Genmab was aware of the '590 Patent and aware that the use of its anti-CD38 antibodies may be covered by a claim of the '590 Patent.

156. Upon information and belief, Genmab's, either alone or in conjunction with others, including Janssen, offering to sell, sale, and/or importation of its anti-CD38 antibodies contributorily infringes at least one claim of the '590 Patent pursuant to 35 U.S.C. § 271(c), either literally or under the doctrine of equivalents.

157. Upon information and belief, by its promotional and licensing activities for its anti-CD38 antibodies, Genmab knows or should know that it aids and abets another's direct infringement of at least one of the claims of the '590 Patent.

158. MorphoSys has been and continues to be damaged by Genmab's infringement of the '590 Patent.

159. Upon information and belief, Genmab has acted with knowledge of the '590 Patent and the high likelihood that its anti-CD38 antibodies infringed the '590 Patent without a reasonable basis for a good faith belief that it would not be liable for infringement of the '590 patent, and thus its ongoing and past infringement is willful and deliberate.

## **COUNT XI**

### **Infringement of the '590 Patent by Genmab US, Inc.**

160. Paragraphs 1 through 159 are incorporated by reference as if fully stated herein.

161. Upon information and belief, Genmab US, alone or in conjunction with others including Janssen, has directly and/or indirectly infringed and will continue to infringe, either

literally or by the doctrine of equivalents, one or more claims of the '590 Patent, including at least Claim 1 under 35 U.S.C. § 271, including sections (a-c).

162. Upon information and belief, Genmab US infringes one or more claims of the '590 Patent, either literally and/or under the doctrine of equivalents, by making, using, offering to sell, selling and/or importing into the United States certain anti-CD38 antibodies, for example and without limitation, Darzalex.

163. Upon information and belief, Genmab US's offering to sell, sale, importation marketing and contributing to clinical studies for the FDA approval for use of Dazalex for treatment multiple myeloma actively induces infringement by others pursuant to 35 U.S.C. § 271(b), of one or more claims of the '590 Patent.

164. Upon information and belief, Genmab US's anti-CD38 antibodies are used by others, such as Janssen and medical professionals, and that use directly infringes one or more claims of the '590 Patent either literally or under the doctrine of equivalents.

165. Upon information and belief, Genmab US was aware of the '590 Patent as of at least its date of issuance on September 12, 2017, and Genmab US was aware that the U.S. Patent and Trademark Office allowed the claims that issued as the '590 Patent before September 12, 2017, and nevertheless continued to make, use, and sell Darzalex (daratumumab).

166. Upon information and belief, Genmab US knows of or is willfully blind to the fact that its actions with respect to its anti-CD38 antibodies directly infringe the '590 Patent and induce infringement of the '590 Patent.

167. Upon information and belief, the use of Genmab US's anti-CD38 antibodies constitutes a material part of the invention recited in one or more claims of the '590 Patent. Upon information and belief, Genmab US's anti-CD38 antibodies are especially made or adapted

for use in infringing one or more claims of the '590 Patent, either literally or under the doctrine of equivalents. Upon information and belief, Genmab US's anti-CD38 antibodies are not staple articles of commerce or commodities of commerce suitable for substantial noninfringing use. Upon information and belief, Genmab US was aware of the '590 Patent and aware that the use of its anti-CD38 antibodies may be covered by a claim of the '590 Patent.

168. Upon information and belief, Genmab US's, either alone or in conjunction with others, including Janssen, offering to sell, sale, and/or importation of its anti-CD38 antibodies contributorily infringes at least one claim of the '590 Patent pursuant to 35 U.S.C. § 271(c), either literally or under the doctrine of equivalents.

169. Upon information and belief, by its promotional and licensing activities for its anti-CD38 antibodies, Genmab US knows or should know that it aids and abets another's direct infringement of at least one of the claims of the '590 Patent.

170. MorphoSys has been and continues to be damaged by Genmab US's infringement of the '590 Patent.

171. Upon information and belief, Genmab US has acted with knowledge of the '590 Patent and the high likelihood that its anti-CD38 antibodies infringed the '590 Patent without a reasonable basis for a good faith belief that it would not be liable for infringement of the '590 patent, and thus its ongoing and past infringement is willful and deliberate.

## **COUNT XII**

### **Infringement of the '590 patent by Janssen/Genmab/Genmab US, Inc.**

172. Paragraphs 1 through 171 are incorporated by reference as if fully stated herein.

173. Upon information and belief, Janssen/Genmab/Genmab US, Inc., either alone or in conjunction with each other, have directly and/or indirectly infringed and will continue to

infringe, either literally or under the doctrine of equivalents, one or more claims of the '590 Patent, including at least Claim 1 under 35 U.S.C. § 271, including sections (a-c).

174. Upon information and belief, Janssen/Genmab/Genmab US, Inc., either alone or in conjunction with each other, infringe one or more claims of the '590 Patent, either literally and/or under the doctrine of equivalents, by making, using, offering to sell, selling and/or importing into the United States certain anti-CD38 antibodies, for example and without limitation, Darzalex.

175. Upon information and belief, the offering to sell, sale and/or importation by Janssen/Genmab/Genmab US, Inc. of certain anti-CD38 antibodies actively induces infringement by others pursuant to 35 U.S.C. § 271(b), such as medical professionals, of one or more claims of the '590 Patent.

176. Upon information and belief, Janssen/Genmab/Genmab US, Inc.'s anti-CD38 antibody products are used by others, such as medical professionals, and that use directly infringes one or more claims of the '590 Patent either literally or under the doctrine of equivalents.

177. Upon information and belief, Janssen/Genmab/Genmab US, Inc. was aware of the '590 Patent as of at least its date of issuance on September 12, 2017, and Janssen/Genmab/Genmab US, Inc. was aware that the U.S. Patent and Trademark Office allowed the claims that issued as the '590 Patent before September 12, 2017, and nevertheless continued to make, use, and sell Darzalex (daratumumab).

178. Upon information and belief, Janssen/Genmab/Genmab US, Inc. know of or is willfully blind to the fact that their actions with respect to its anti-CD38 antibodies directly infringe the '590 Patent and induce infringement of the '590 Patent.

179. Upon information and belief, the use of Janssen/Genmab/Genmab US, Inc.'s anti-CD38 antibody products constitutes a material part of the invention recited in one or more claims of the '590 Patent. Upon information and belief, Janssen/Genmab/Genmab US, Inc.'s anti-CD38 antibody products are especially made or adapted for use in infringing one or more claims of the '590 Patent, either literally or under the doctrine of equivalents. Upon information and belief, Janssen/Genmab/Genmab US, Inc.'s anti-CD38 antibody products are not staple articles of commerce or commodities of commerce suitable for substantial noninfringing use. Upon information and belief, Janssen/Genmab/Genmab US, Inc. were aware of the '590 Patent and aware that the use of their anti-CD38 antibody products may be covered by a claim of the '590 Patent.

180. Upon information and belief, Janssen/Genmab/Genmab US, Inc.'s offering to sell, sale, and/or importation of its anti-CD38 antibody products contributorily infringes at least one claim of the '590 Patent, either literally or under the doctrine of equivalents pursuant to 35 U.S.C. § 271(c).

181. Upon information and belief, by their promotional activities and package insert for their anti-CD38 antibody products, Janssen/Genmab/Genmab US, Inc. know or should know that they aid and abet another's direct infringement of at least one of the claims of the '590 Patent.

182. MorphoSys has been and continues to be damaged by Janssen/Genmab/Genmab US, Inc.'s infringement of the '590 Patent.

183. Upon information and belief, Janssen/Genmab/Genmab US, Inc. acted with knowledge of the '590 Patent and the high likelihood that their anti-CD38 antibody products infringe the '590 Patent without a reasonable basis for a good faith belief that they would not be



liable for infringement of the '590 Patent, and thus Janssen/Genmab/Genmab US, Inc.'s ongoing and past infringement is willful and deliberate.

184. This case is exceptional, and MorphoSys is entitled to an award of attorneys' fees under 35 U.S.C. § 285.

**PRAYER FOR RELIEF**

WHEREFORE, MorphoSys respectfully requests that the Court enter judgment against Defendants, and for the following relief:

A. A judgment that Defendants have infringed at least one claim of the '746 Patent, '061 Patent, and '590 Patent;

B. A judgment that Defendants infringement of the '746 Patent, '061 Patent, and '590 Patent was willful and deliberate;

C. An award to MorphoSys of damages adequate to compensate it for Defendants' past infringement and any continuing or future infringement including interest, costs, and disbursements as justified under 35 U.S.C. § 284.

D. Trebling any and all damages awarded to MorphoSys based on Defendants' willful and deliberate infringement, pursuant to 35 U.S.C. § 285;

E. A judgment that this case is exceptional within the meaning of 35 U.S.C. § 285 and a judgment awarding MorphoSys its reasonable attorneys' fees, costs and expenses accrued in this action pursuant to 35 U.S.C. § 285;

F. Such other and further relief in law or equity as the Court deems just and appropriate.

**DEMAND FOR JURY TRIAL**

MorphoSys hereby demands a trial by jury on all issues so triable.

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