

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EXCELLTHERA INC., REJUVENRX
INC., and UNIVERSITE DE
MONTREAL,

Plaintiffs,

v.

SELLECK CHEMICALS, LLC,

Defendant,

§
§
§
§
§
§
§
§
§
§
§

Case No. _____

COMPLAINT

Plaintiffs ExCellThera Inc., RejuvenRX Inc., and the Université de Montréal (together “Plaintiffs”), by its attorneys, jointly file this Complaint against Selleck Chemicals, LLC (“Selleck”) and allege as follows:

PARTIES

1. The Université de Montréal (“UM”) is a non-profit, undergraduate and graduate institution located in Canada. UM is the assignee of U.S. Patent Nos. 9,409,906 and 10,336,747. These patents are the result of groundbreaking research led by the University. The patents disclose compounds capable of expanding of hematopoietic stem and progenitor cells and methods for their use in treating a broad range of blood diseases and disorders. Two compounds claimed in both the ’906 and ’747 patents are commercially known as “UM171” and “UM729.”

2. ExCellThera is a cell and molecular medicine company based in Canada. It was started by one of the named inventors on both the ’906 and ’747 patents. The company was created to pursue the development of therapeutic treatments, based on the patented UM171 and UM729 compounds, for rare blood disorders, including certain types of leukemia and sickle cell

disease. To accomplish this work, UM granted ExCellThera an exclusive license to its patented UM171 and UM729 compounds in the fields of (1) stem and progenitor cell transplantation, (2) gene editing, transfer, and therapy, and (3) targeted therapy.

3. RejuvenRX is a wholly-owned subsidiary of ExCellThera. RejuvenRX has been granted an exclusive license to use the patented UM171 and UM729 compounds in the field of targeted therapy.

4. Selleck is an online retailer, based in Houston, Texas, of bioactive compounds.

NATURE OF THE ACTION

5. This is an action for patent infringement. Plaintiffs bring this action to protect their intellectual property rights in UM171 and UM729. Plaintiffs have invested heavily in developing these technologies to provide therapeutic benefits to patients suffering from rare disorders.

6. ExCellThera is actively developing and testing stem cell and immune cell therapies to help patients with blood cancers and other blood disorders. It is currently performing clinical trials on its ECT-001 Cell Therapy, which uses UM171 to provide safe, one-time treatment to patients suffering from blood diseases.

7. ExCellThera has conducted successful clinical trials in Canada, in which patients received cord blood expanded using UM171. ExCellThera's technology received an FDA orphan drug designation in 2018 and an FDA Regenerative Medicine Advanced Therapy designation in 2019. ExCellThera is committed to protecting its proprietary technology while it diligently navigates the rigorous testing and trials needed to gain regulatory approval for its therapeutic treatments.

8. RejuvenRX is embarking on research into novel uses of UM171 in the field of cancer therapy. It is intent on preserving its own rights while pursuing this important work.

9. Selleck Chemicals, LLC is an online retailer of inhibitors and small molecule compounds. Selleck sold the proprietary molecules on which ExCellThera's and RejuvenRX's technology is based, UM171 and UM729. Selleck persisted with those sales even after ExCellThera notified Selleck of its infringement of the '906 patent. Plaintiffs bring this action to obtain redress for Selleck's infringement of both patents and to prevent future harm to their businesses and interests.

JURISDICTION AND VENUE

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

11. This Court has personal jurisdiction over Selleck because Selleck maintains its principal place of business in Texas.

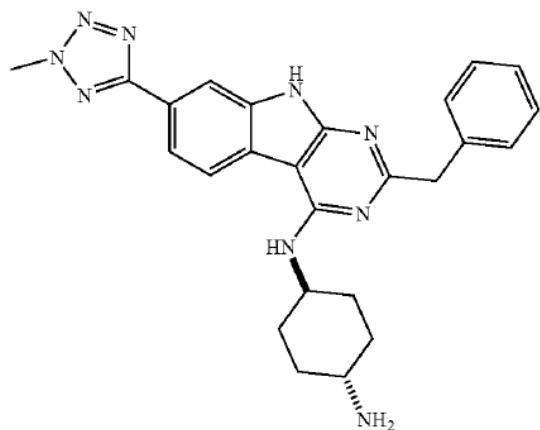
12. Alternatively, this Court has personal jurisdiction over Selleck because Selleck operates its U.S. headquarters in Texas, where it is registered as a limited liability company. From Texas, Selleck sold and/or distributed bioactive compounds including those at issue in this case.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. 1400(b) and 28 U.S.C. § 1391(c) because Selleck resides in this district, has a regular and established place of business in this district, and has committed acts of infringement in this district.

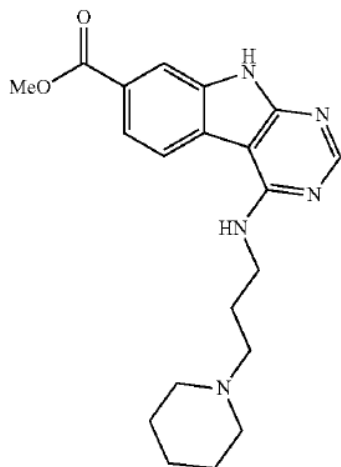
THE PATENTS-IN-SUIT

14. The '906 patent, entitled "Pyrimido[4, 5-b]indole Derivatives and Use Thereof in the Expansion of Hematopoietic Stem Cells," was issued by the USPTO on August 9, 2016. The patent was issued to UM as assignee of the named inventors.

15. The UM171 compound is a pyrimido[4,5-b]indole derivative. It is covered by numerous claims of the '906 patent. Claim 17 of the '906 patent covers its precise composition, which is shown below.



16. The UM729 compound is also a pyrimido[4,5-b]indole derivative. It is covered by numerous claims of the '906 patent. Claim 16 of the '906 patent covers its precise composition, which is shown below.



17. The '747 patent, entitled "Pyrimido[4, 5-b]indole Derivatives and Use Thereof in the Expansion of Hematopoietic Stem Cells," was issued by the USPTO on July 2, 2019. The patent was issued to UM as assignee of the named inventors.

18. Claim 1 of the '747 patent consists of a composition claim which covers both the UM171 and UM729 compounds. The '747 patent also includes numerous method claims which cover use of the UM171 and UM729 compounds.

19. Through agreements with UM, ExCellThera was granted an exclusive license to the UM171 and UM729 technology described in the '906 and '747 patents in the fields of (1) stem and progenitor cell transplantation, (2) gene editing, transfer, and therapy, and (3) targeted therapy.

20. ExCellThera assigned its rights to the patented UM171 technology in the field of targeted therapy to RejuvenRX.

DEFENDANT'S INFRINGING CONDUCT

21. Selleck operates a website at <http://www.selleckchem.com> through which it sold UM171 and UM729 direct to customers.

22. UM171 and UM729 are trade names representing the compounds detailed in claim 17 and 16 of the UM's '906 patent. Selleck sold those products under those trade names.

23. Selleck further identified the UM171 and UM 729 molecules on its website by including drawings depicting their chemical structure. Those chemical structures matched those of UM171 and UM729 as shown above and as claimed in the '906 patent.

24. The Selleck website described UM171 as “a potent agonist of human hematopoietic stem cell renewal,” directly implicating the method claims of the '906 patent, which include a “method . . . , comprising administering to the subject in need of such treatment, hematopoietic stem and/or progenitor cells expanded using [UM171].”

25. In addition to direct online sales, Selleck sold UM171 and UM729 to retailers in the U.S. and abroad who, in turn, offered those compounds for sale in the United States.

Plaintiffs possesses knowledge of one such retailer, Cedarlane Corporation in Canada, and expect to identify others after taking discovery.

26. Selleck sold and wholesaled its infringing products under the “Selleck Chemicals” brand as catalog numbers S7608 (UM171) and S7510 (UM729). ExCellThera requires discovery to confirm that Selleck was the manufacturer of the infringing products or had the infringing products manufactured on its behalf.

27. Selleck Chemicals-branded UM171 and UM729 were used to perform unlicensed research, as documented in scientific articles published as recently as 2020.

28. On October 30, 2018, Plaintiff ExCellThera notified Selleck of its infringement of the '906 patent in accordance with 35 U.S.C. § 287. It also alerted Selleck to the pending approval of the '747 patent. ExCellThera demanded that Selleck cease all use, distribution, manufacture, and sale of UM171 and UM729.

29. On April 1, 2019, ExCellThera sent Selleck a second notice of infringement, again identifying the infringing products and demanding that Selleck cease and desist infringing acts.

30. Only after ExCellThera filed a claim against Selleck alleging infringement of the Canadian patent rights on September 15, 2020, did Selleck finally remove UM171 and UM729 from its website. However, Selleck has refused to formally confirm that it has ceased all infringing activity, including the manufacture, importation, distribution, use, and sale of UM171 and UM729.

FIRST CAUSE OF ACTION

(Infringement of U.S. Patent No. 9,409,906)

31. Plaintiffs incorporate the foregoing allegations by reference.

32. Selleck has infringed the '906 patent by engaging in the commercial manufacture, use, offer to sell, sale, or importation into the United States of UM171 and UM729 before the expiration of the '906 patent and by actively inducing and/or contributing to the infringement of others in violation of 35 U.S.C. § 271(a), (b), (c), or (g).

33. Selleck has knowingly and willfully infringed the '906 patent.

34. Plaintiffs will be substantially and irreparably harmed if Selleck is not enjoined from infringing the '906 patent.

35. Plaintiffs have no adequate remedy at law.

36. This case is exceptional, and Plaintiffs are entitled to an award of attorney fees under 35 U.S.C. § 285.

SECOND CAUSE OF ACTION
(Infringement of U.S. Patent No. 10,336,747)

37. Plaintiffs incorporate the foregoing allegations by reference.

38. Selleck has infringed the '747 patent by engaging in the commercial manufacture, use, offer to sell, sale, or importation into the United States of UM171 and UM729 before the expiration of the '747 patent and by actively inducing and/or contributing to the infringement of others in violation of 35 U.S.C. § 271(a), (b), (c), or (g).

39. Selleck has knowingly and willfully infringed the '747 patent.

40. Plaintiffs will be substantially and irreparably harmed if Selleck is not enjoined from infringing the '747 patent.

41. Plaintiffs have no adequate remedy at law.

42. This case is exceptional, and Plaintiffs are entitled to an award of attorney fees under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

1. A judgment that the '906 and '747 patent have been infringed;
2. Any available injunctive relief to prevent future infringement of the patents in suit;
3. Any available damages pursuant to 35 U.S.C. § 284, including an award of treble damages;
4. A judgment that this is an exceptional case and that Plaintiffs be awarded their attorney fees incurred in this action pursuant to 35 U.S.C. § 285;
5. Costs and expenses in this action;
6. Such other and further relief as the Court deems just and appropriate.

Dated: April 21, 2021

Respectfully submitted,

SMYSER KAPLAN & VESELKA, L.L.P.

/s/ Lee L. Kaplan

Lee L. Kaplan
Texas State Bar No. 11094400
S.D. Texas Bar No. 1840
717 Texas Avenue, Suite 2800
Houston, Texas 77002
Telephone: (713) 221-2300
Facsimile: (713) 221-2320
lkaplan@skv.com

Of Counsel:

MORRISON & FOERSTER LLP

/s/ Michael A. Jacobs

Michael A. Jacobs, *pro hac vice pending*
California State Bar No. 111664
425 Market Street
San Francisco, CA 94105
Telephone: (415) 268-7000
mjacobs@mofo.com

Sarah Vandervalk, *pro hac vice pending*
California State Bar No. 332651
12531 High Bluff Drive
San Diego, CA 92130
Telephone: (858) 720-5100
svandervalk@mofo.com

**ATTORNEYS FOR PLAINTIFFS
EXCELLTHERA INC., REJUVENRX INC.,
and UNIVERSITE DE MONTREAL**