

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ZYMOGENETICS, INC., a)
Washington Corporation,)

Plaintiff,)

v.)

BRISTOL-MYERS SQUIBB CO.,)
a Delaware Corporation, and)
DOES 1 through 100,)

Defendants.)

Civil Action No.

DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff ZymoGenetics, Inc. ("Plaintiff" or "ZymoGenetics") alleges as follows:

THE PARTIES

1. Plaintiff ZymoGenetics is a corporation organized and existing under the laws of the State of Washington, with its principal place of business at 1201 Eastlake Avenue East Seattle, WA 98102.

2. On information and belief, Defendant Bristol-Myers Squibb Company ("Defendant" or "BMS") is a corporation organized and existing under the laws of the State of Delaware with its corporate headquarters at 345 Park Avenue, New York, NY 10154-0037.

JURISDICTION AND VENUE

3. This action arises under the Patent Act, 35 U.S.C. §271 *et seq.* This Court has original jurisdiction over this controversy pursuant to 28 U.S.C. §§1331 and 1338.

4. Venue in this judicial district is proper under 28 U.S.C. §§ 1391 (b) and (c) and/or 28 U.S.C. § 1400(b). Personal jurisdiction over Defendant BMS is proper because

Defendant BMS is a Delaware corporation and/or has and continues to infringe, contributorily infringe and/or induce the infringement of U.S. Patent Nos. 5,843,725 and 6,018,026 in this district.

PLAINTIFF'S PATENTS

4. On December 1, 1998, United States Patent No. 5,843,725 ("the '725 Patent"), entitled "METHODS FOR PRODUCING SECRETED RECEPTOR ANALOGS AND BIOLOGICALLY ACTIVE DIMERIZED POLYPEPTIDE FUSIONS," was issued to Andrzej Z. Sledziewski, Lillian Anne Bell and Wayne R. Kindsvogel. ZymoGenetics was assigned all ownership rights, title and interest to the '725 Patent. A true and correct copy of the '725 Patent is attached to this complaint as Exhibit A and is incorporated by reference herein.

5. On January 25, 2000, United States Patent No. 6,018,026, entitled "BIOLOGICALLY ACTIVE DIMERIZED AND MULTIMERIZED POLYPEPTIDE FUSIONS," was issued to Andrzej Z. Sledziewski, Lillian Anne Bell and Wayne R. Kindsvogel. On July 4, 2006, the United States Patent and Trademark Office issued Reexamination Certificate 6,018,026 C1 ("the '026 Patent"). ZymoGenetics was assigned all ownership rights, title and interest to the '026 Patent. A true and correct copy of the '026 Patent is attached to this complaint as Exhibit B and is incorporated by reference herein.

6. The '026 Patent and the '725 Patent are directed to biologically active polypeptide fusion compositions and methods for producing biologically active polypeptide fusion compositions respectively.

PATENT INFRINGEMENT

7. On information and belief, Defendant BMS is in the business of developing, manufacturing and distributing pharmaceuticals and biologicals as health care products. A reasonable opportunity for further investigation or discovery will show that Defendant BMS has and continues to infringe the '725 and '026 Patents by making, using, selling, distributing,

advertising and marketing products, including but not limited to ORENCIA® (abatacept), that infringes the '725 and '026 Patents.

FIRST CAUSE OF ACTION

(Infringement of the '725 Patent)

9. ZymoGenetics realleges each and every allegation set forth in Paragraphs 1 through 7, inclusive, and incorporates them herein by reference.

10. A reasonable opportunity for further investigation or discovery will show that Defendant has been and continues to infringe, contributorily infringe, and/or induce infringement the '725 Patent by making, using, selling and/or offering to sell products which infringe the '725 Patent, including but not limited to ORENCIA® (abatacept), and will continue to do so until enjoined by this Court.

11. As a result of Defendant's unlawful activities, ZymoGenetics has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law. Accordingly, ZymoGenetics is entitled to preliminary and/or permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

13. As a result of Defendant's unlawful activities, ZymoGenetics has been and will be damaged, and is entitled to be compensated for such damages pursuant to 35 U.S.C. § 284 in an amount that cannot presently be ascertained, but that will be determined at trial.

14. A reasonable opportunity for further investigation or discovery will show that Defendant's past and continuing infringement of the '725 Patent has been deliberate and willful, and that this case is therefore an exceptional case which warrants an award of treble damages and attorneys' fees to ZymoGenetics in accordance with 35 U.S.C. § 285.

SECOND CAUSE OF ACTION

(Infringement of the '026 Patent)

15. ZymoGenetics realleges each and every allegation set forth in Paragraphs 1 through 14, inclusive, and incorporates them herein by reference.

16. A reasonable opportunity for further investigation or discovery will show that Defendant has been and continues to infringe, contributorily infringe, and/or induce infringement the '026 Patent by making, using, selling and/or offering to sell products which infringe the '026 Patent, including but not limited to ORENCIA® (abatacept), and will continue to do so until enjoined by this Court.

17. As a result of Defendant's unlawful activities, ZymoGenetics has suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law. Accordingly, ZymoGenetics is entitled to preliminary and/or permanent injunctive relief against such infringement pursuant to 35 U.S.C. § 283.

19. As a result of Defendant's unlawful activities, ZymoGenetics has been and will be damaged, and is entitled to be compensated for such damages pursuant to 35 U.S.C. § 284 in an amount that cannot presently be ascertained, but that will be determined at trial.

20. A reasonable opportunity for further investigation or discovery will show that Defendant's past and continuing infringement of the '026 Patent has been deliberate and willful, and that this case is therefore an exceptional case which warrants an award of treble damages and attorneys' fees to ZymoGenetics in accordance with 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, ZymoGenetics prays that the Court grant the following relief and judgment:

A. A preliminary and permanent injunction against BMS and its respective officers, employees, agents, servants, attorneys, instrumentalities, and/or those in privity with them, from infringing, contributorily infringing, or inducing the infringement of the '725

Patent and '026 Patent, and for all further and proper injunctive relief pursuant to 35 U.S.C. §283;

B. An award to ZymoGenetics of such damages as it shall prove at trial against BMS, that are adequate to fully compensate it for their infringement of the '725 Patent and '026 Patent, said damages to be no less than a reasonable royalty;

C. An award to ZymoGenetics for willful infringement against BMS of three times the damages so determined, as provided by 35 U.S.C. §284, together with prejudgment interest from the date infringement of the '725 Patent and '026 Patent began;

D. A finding that this case is "exceptional" and an award to ZymoGenetics of its costs and reasonable attorney's fees, as provided by 35 U.S.C. §285;

E. Such further and other relief as the Court and/or jury may deem proper and just.

DEMAND FOR JURY TRIAL

ZymoGenetics hereby demands a trial by jury on all issues triable by a jury.

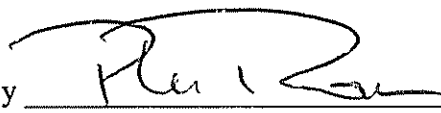
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