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3:01-CV-01223 ISIS PHARMACEUTICALS V. SEQUITUR INC

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CMP.

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Attorneys for Plaintiff
ISIS PHARMACEUTICALS, INC.

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

11 ISIS PHARMACEUTICALS, INC., a Delaware
12 corporation,
13 Plaintiff,
14 v.
15 SEQUITUR, INC., a Delaware corporation,
16 Defendant.

No. 01 CV 1223 BTM (JFS)
COMPLAINT FOR PATENT INFRINGEMENT
DEMAND FOR JURY TRIAL

17 Plaintiff Isis Pharmaceuticals, Inc. ("Isis") alleges:

18 1. In this action, Isis seeks damages and injunctive relief for infringement of a patent
19 encompassing fundamental antisense technology. This technology uses drugs that work at the
20 genetic level to interrupt the process by which disease-causing proteins are produced. The
21 particular patent at issue in this action discloses and claims target validation and drug discovery
22 methods essential to antisense drug discovery.

23 THE PARTIES

24 2. Isis is a corporation organized under the laws of Delaware, with its principal place
25 of business located at 2292 Faraday Avenue, Carlsbad, California. Founded in 1989, Isis has
26 focused on exploiting the potential of antisense technology. Isis' efforts in drug discovery and
27 development have focused on RNA as a novel target for drug discovery. Through those efforts,
28 Isis has created a dominant position in core disciplines surrounding RNA.

COOLEY GODWARD LLP
ATTORNEYS AT LAW
SAN FRANCISCO

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1. ORIGINAL

1 3. Isis is informed and believes, and based thereon alleges, that Defendant
2 Sequitur, Inc. ("Sequitur") is a corporation organized under the laws of Delaware, with its
3 principal place of business located at 14 Tech Circle, Natick, Massachusetts. Isis is informed and
4 believes, and based thereon alleges, that Sequitur transacts substantial business, either directly or
5 through its agents, on an ongoing basis in this judicial district and elsewhere in the United States.

6 JURISDICTION AND VENUE

7 4. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*,
8 more particularly 35 U.S.C. §§ 271 and 281.

9 5. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1338(a).

10 6. Venue is established in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and
11 1400(b).

12 THE PATENT-IN-SUIT

13 7. On December 14, 1999, the United States Patent and Trademark Office ("Patent
14 Office") issued United States Patent No. 6,001,653 (the "'653 Patent") entitled "HUMAN TYPE 2
15 RNASE H," to Stanley T. Crooke, Walter F. Lima and Hongjiang Wu.

16 8. Isis owns, by assignment, all right, title and interest in and to the '653 Patent.

17 9. Among other things, the '653 Patent claims polynucleotides encoding human Type
18 2 RNase H (subsequently renamed "Human Rnase H 1" and thus hereinafter referred to as
19 "Human RNase H 1"), a method of screening oligonucleotides to identify effective antisense
20 oligonucleotides, wherein the method includes Human Rnase H 1, and further claims a method for
21 determining Human Rnase H 1-sensitive sites on RNA.

22 10. During reexamination proceedings subsequent to the issuance of the '653 patent,
23 the Patent Office affirmed the patentability of Claim 12, and other claims, of the '653 patent.

24 CLAIM FOR RELIEF

25 11. Isis is informed and believes, and based thereon alleges, that Sequitur has been and
26 is directly and indirectly infringing the '653 Patent. Isis is further informed and believes, and
27 based thereon alleges, that Sequitur has committed infringing activities in this judicial district and
28 elsewhere in the United States, and will continue to do so unless enjoined by this Court.

1 12. Defendant's infringement of the '653 Patent has caused and will continue to cause
2 Isis substantial and irreparable injury for which Isis is entitled to receive injunctive relief and
3 damages adequate to compensate it for such infringement.

4 13. Isis is informed and believes, and based thereon alleges, that Defendant's
5 infringement of the '653 Patent has been and is committed in a willful manner, and in deliberate
6 and intentional disregard of Isis' rights.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff Isis prays that this Court:

9 1. Adjudge that Defendant has infringed the '653 Patent;

10 2. Preliminarily and permanently enjoin Defendant, its employees and agents, and any
11 other person(s) in active concert or participation with them from infringing, directly or indirectly,
12 the '653 Patent;

13 3. Award Isis its damages adequate to compensate Isis for Defendant's past
14 infringement;

15 4. Award Isis treble damages pursuant to 35 U.S.C. § 284 as a consequence of
16 Defendant's willful infringement;

17 5. Declare this case exceptional pursuant to 35 U.S.C. § 285 and award Isis its costs
18 and attorney's fees; and

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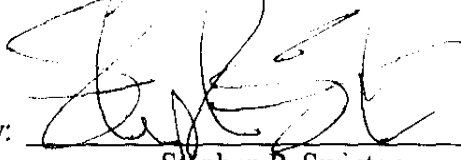
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6. Grant Isis such other and further relief as is just and proper.

Dated: July 9, 2001

STEPHEN P. SWINTON (106398)
J. CHRISTOPHER JACZKO (149317)
COOLEY GODWARD LLP

By: 
Stephen P. Swinton

Attorneys for Plaintiff
ISIS PHARMACEUTICALS, INC.

Of Counsel:

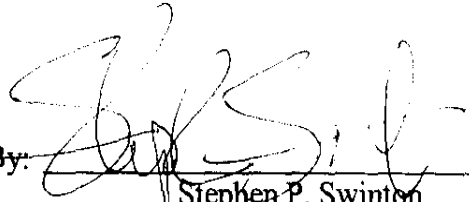
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Philadelphia, PA 19103
Telephone: (215) 568-3100
Facsimile: (215) 568-3439

JURY DEMAND

Plaintiff, Isis Pharmaceuticals, Inc., hereby demands trial by jury for all issues so triable, specifically including, but not limited to, the issue of infringement of United States Patent No. 6,001,653.

Dated: July 9, 2001

STEPHEN P. SWINTON (106398)
J. CHRISTOPHER JACZKO (149317)
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By: 
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Of Counsel:

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TO: Commissioner of Patents and Trademarks Washington, D.C. 20231	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT
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In compliance with the Act of July 19, 1952 (66 Stat. 814; 35 U.S.C. 290) you are hereby advised that a court action has been filed on the following patent(s) in the U.S. District Court:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
01-CV-1223 BTM(JFS)	07-09-01	United States District Court, Southern District of California
PLAINTIFF		DEFENDANT
Isis Pharmaceuticals, Inc.		Sequitur, Inc.
PATENT NO.	DATE OF PATENT	PATENTEE
1 6,001,653	12-14-99	Stanley T. Crooke, Walter F. Lima, Hongjiang Wu
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In the above-entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY			
	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
PATENT NO.	DATE OF PATENT	PATENTEE		
1				
2				
3				
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5				

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1 - Upon initiation of action, mail this copy to Commissioner Copy 3 - Upon termination of action, mail this copy to Commissioner
 Copy 2 - Upon filing document adding patent(s), mail this copy to Commissioner Copy 4 - Case file copy

I. (a) PLAINTIFFS
 ISIS PHARMACEUTICALS, INC., a Delaware corporation

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
 STEPHEN P. SWINTON (106398)
 J. CHRISTOPHER JACZKO (149317)
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 TEL. (858) 550-6000; FAX (858) 453-3555

DEFENDANTS
 SEQUITUR, INC., a Delaware corporation

01 CV 1223 BTM (JFS)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PT	DEF		PT	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)
 ISIS seeks damages and injunctive relief for infringement of U.S. Patent No. 6,001,653
 35:0271 (JFS)

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 510 Motion to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

VI. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding
 2 Removal from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ As Proven CHECK YES only if demanded in complaint: JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ Docket Number _____
 DATE July 9, 2001 SIGNATURE OF ATTORNEY OF RECORD Stephen P. Swinton

Receipt # 70864 PD 1580 # 4102

ORIGINAL