

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

ALZHEIMER'S INSTITUTE OF AMERICA, )  
INC. )  
a Florida Corporation )  
1300 N. 78th Street )  
Kansas City, Kansas 66112, )  
Plaintiff, )

vs. )

MAYO CLINIC JACKSONVILLE, INC. )  
a Florida Corporation )  
4500 San Pablo Road )  
Jacksonville, Florida 32224 )

MAYO FOUNDATION FOR MEDICAL )  
EDUCATION AND RESEARCH )  
a Minnesota Corporation )  
200 SW First Street )  
Rochester, Minnesota 55902 )

MYRIAD GENETICS INC. )  
a Delaware Corporation )  
320 Wakara Way )  
Salt Lake City, Utah 84108 )

MYRIAD PHARMACEUTICALS INC. )  
a Delaware Corporation )  
320 Wakara Way )  
Salt Lake City, Utah 84108, )  
Defendants. )

Civil Action No. 03-2645-CM

JURY TRIAL DEMANDED

8:05-cv-1049-T-  
26 TBM

**SEALED**

COMPLAINT

For its Complaint in this action against defendants Mayo Clinic Jacksonville, Inc., Mayo Foundation For Medical Education and Research, Myriad Pharmaceuticals Inc. and Myriad Genetics Inc., plaintiff Alzheimer's Institute of America, Inc. alleges and states as follows:

Kansas Dkt # 3

1. This is an action for patent infringement.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter under 28 U.S.C. §§ 1331 and 1338.
3. Venue exists under 28 U.S.C. §§ 1391 and 1400.

### **THE PARTIES**

4. Plaintiff Alzheimer's Institute of America, Inc. is a Florida corporation that has its principal place of business at 1300 North 78th Street, Kansas City, Kansas 66112.

5. Defendant Mayo Clinic Jacksonville, Inc., is a Florida corporation that has its principal place of business at 4500 San Pablo Road, Jacksonville, Florida 32224.

6. Defendant Mayo Foundation for Medical Education and Research is a Minnesota corporation that has its principal place of business at 200 SW First Street, Rochester, Minnesota 55902.

7. Defendants Myriad Pharmaceutical Inc. and Myriad Genetics Inc., are Delaware corporations that both have their principal place of business located at 320 Wakara Way, Salt Lake City, Utah 84108.

### **ALLEGATIONS AND CLAIM FOR RELIEF**

8. Plaintiff owns United States Patent No. 5,455,169 (the '169 Patent; attached as Exhibit 1), which discloses and claims a nucleic acid sequence encoding a mutated form of human amyloid precursor protein or fragment of such protein, as well as a mammalian cell line incorporating this sequence.

9. Plaintiff owns United States Patent No. 5,795,963 (the '963 Patent; attached as Exhibit 2), which discloses and claims a mutated form of human amyloid precursor protein.

10. Defendant Mayo Clinic Jacksonville has performed or directed research that is documented in the attached Exhibit 3, Eriksen et al., *NSAIDs and enantiomers of flurbiprophen target  $\gamma$ -secretase and lower  $A\beta_{42}$  in vivo*, American Society for Clinical Investigation J. Clin Invest. 112(3):440-449 (2003), which reports use of H4 human neuroglioma cells overexpressing APP695NL to screen a group of twenty nonsteroidal anti-inflammatory drugs, and the use of CHO cells overexpressing APP695NL, I-his in performing  $\gamma$ -secretase assays.

11. Certain acts undertaken by defendant Mayo Clinic Jacksonville, Inc. constitute infringements of the '169 and '953 Patents under 35 U.S.C. § 271.

12. Defendant Mayo Clinic Jacksonville, Inc.'s infringing activities have been undertaken in willful disregard of the '169 and '953 Patents.

13. On information and belief, defendant Mayo Foundation For Medical Education and Research has sold certain research services performed by Mayo Clinic Jacksonville to defendants Myriad Pharmaceuticals Inc. and Myriad Genetics Inc.

14. Certain acts undertaken by Mayo Foundation for Medical Education and Research constitute infringement of the '169 and '953 Patents under 35 U.S.C. § 271.

15. Defendant Mayo Foundation for Medical Education and Research's infringing activities have been undertaken in willful disregard of the '169 and '953 Patents.

16. On information and belief, defendants Myriad Pharmaceuticals Inc. and Myriad Genetics Inc. have benefited from research described in Exhibit 4—an Internet publication obtained from Myriad Genetics Inc.'s website--, have collaborated in the research documented in Exhibit 4, have induced others to perform the research, and are using results from the research to develop new drugs, such as MPC-7869.

17. Certain acts undertaken by Myriad Pharmaceutical Inc. and Myriad Genetics Inc. constitute infringement of the '169 and '953 Patents under 35 U.S.C. § 271.

18. Defendant Myriad Pharmaceutical Inc. and Myriad Genetics Inc.'s infringing activities have been undertaken in willful disregard of the '169 and '953 Patents.

19. Plaintiff Alzheimer's Institute of America, Inc. has been and continues to be irreparably harmed by the infringing activities of defendants Mayo Clinic Jacksonville, Inc., Mayo Foundation For Medical Education and Research, Myriad Genetics Inc. and Myriad Pharmaceuticals Inc.

#### **PRAYER**

WHEREFORE plaintiff Alzheimer's Institute of America, Inc. requests judgment:

A. Preliminarily and permanently restraining defendants Mayo Clinic Jacksonville, Inc., Mayo Foundation For Medical Education and Research, Myriad Genetics Inc. and Myriad Pharmaceutical Inc. and all parties in privity with any of defendants Mayo Clinic Jacksonville, Inc., Mayo Foundation For Medical Education and Research, Myriad Genetics Inc. and Myriad Pharmaceuticals Inc. from continuing their infringing activities.

B. Directing defendants Mayo Clinic Jacksonville, Inc., Mayo Foundation For Medical Education and Research, Myriad Genetics Inc. and Myriad Pharmaceuticals Inc. and all parties in privity with either of defendants Mayo Clinic Jacksonville, Inc., Mayo Foundation For Medical Education and Research, Myriad Genetics Inc. and Myriad Pharmaceutical Inc. all embodiments of the infringing compositions in their possession, custody or control.

D. Awarding to plaintiff Alzheimer's Institute of America, Inc. all damages caused by the infringement.

E. Awarding to plaintiff Alzheimer's Institute of America, Inc. all of its damages trebled.

F. Awarding to plaintiff Alzheimer's Institute of America, Inc. such other and further relief as the Court may deem just and proper, including increased damages, attorney fees and costs.

**JURY DEMAND**

Plaintiff Alzheimer's Institute of America, Inc. Demands a trial by jury of all claims asserted in this complaint.

Respectfully submitted,



David V. Clark KS FED # 70014

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U.S. (DISTRICT COURT)  
DISTRICT OF KANSAS) ss:

I hereby certify that  
the foregoing is a true copy  
of the original on file in  
this court and cause.

RALPH L. DeLOACH, Clerk

By RK Mast

Deputy

Dated: 6-7-05