

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Western Division
No. 5:12-CV-00174-H

PRECISION BIOSCIENCES,)	
INC. and DUKE UNIVERSITY,)	
)	
Plaintiffs,)	FIRST AMENDED
)	COMPLAINT FOR PATENT
v.)	INFRINGEMENT
)	
CELLECTIS SA, CELLECTIS)	
BIORESEARCH, and CELLECTIS)	
BIORESEARCH INC.,)	(JURY TRIAL DEMANDED)
)	
Defendants.)	

Pursuant to FED. R. CIV. P. 15(a)(1)(B), plaintiffs Precision BioSciences, Inc. and Duke University hereby file this First Amended Complaint for Patent Infringement against defendants Collectis SA, Collectis bioresearch and Collectis bioresearch Inc., alleging as follows, on personal knowledge as to their own activities and on information and belief as to all other matters:

PARTIES

1. Plaintiff Precision BioSciences, Inc. (“Precision”) is a Delaware corporation having a principal place of business at 302 East Pettigrew Street, Dibrell Building, Suite A-100, Durham, North Carolina 27701.

2. Plaintiff Duke University (“Duke”) is an educational, research and health care institution and a North Carolina nonprofit corporation located in Durham, North Carolina.

3. Defendant Collectis SA (“Collectis”) is a corporation organized under the laws of France having a principal place of business at 8 Rue de la Croix Jarry, 75013 Paris France.

4. Defendant Collectis bioresearch (“Collectis bioresearch”) is a corporation organized under the laws of France having a principal place of business at 8 Rue de la Croix Jarry, 75013 Paris France.

5. Defendant Collectis bioresearch Inc. (“Collectis bioresearch USA”) is a Delaware corporation having a principal place of business at One Broadway, Cambridge Massachusetts 02142. Collectis bioresearch USA is a subsidiary of Collectis bioresearch established in 2010 and is responsible for the US-wide promotion of Collectis bioresearch products and services.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. § 101, *et seq.*

7. This Court has personal jurisdiction over Collectis, Collectis bioresearch, and Collectis bioresearch USA because, *inter alia*, they regularly conduct business in North Carolina and in this judicial district, directly and through their agents, and they have committed acts of infringement in North Carolina and in this judicial district.

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

INFRINGEMENT OF U.S. PATENT NO. 8,148,098

9. United States Patent No. 8,148,098 (the “’098 patent”), entitled “Methods of Cleaving DNA with Rationally-Designed Meganucleases,” was duly and legally issued by the United States Patent and Trademark Office on April 3, 2012. A true and correct copy of the ’098 patent is attached hereto as Exhibit 1.

10. Duke is the owner of the '098 patent. Duke has been the owner of the '098 patent at all times since its issuance.

11. Precision is the exclusive licensee of the '098 patent. Precision has been the exclusive licensee of the '098 patent at all times since its issuance.

12. Collectis, Collectis bioresearch and/or Collectis bioresearch USA have infringed and, subsequent to the filing of this action, continue to infringe one or more claims of the '098 patent in violation of 35 U.S.C. § 271 by making, using, offering for sale, selling and importing into the United States one or more products, including but not limited to meganucleases targeting the HIV1 genome and/or by contributing to and inducing others to make, use, offer for sale, sell and import into the United States one or more products, including but not limited to meganucleases targeting the HIV1 genome.

13. As a result of the infringement of the '098 patent by Collectis, Collectis bioresearch and/or Collectis bioresearch USA, Precision and Duke have suffered and continue to suffer injury to their business and property in an amount to be determined as damages.

14. Unless an injunction is issued enjoining Collectis, Collectis bioresearch and/or Collectis bioresearch USA, and their respective officers, agents, servants, employees and attorneys, and all those persons and entities in active concert and participation with them, from infringing the '098 patent, Precision and Duke will be irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Precision and Duke respectfully request entry of a judgment that includes:

- A. A finding that Collectis, Collectis bioresearch and Collectis bioresearch USA have infringed the '098 patent;

- B. A preliminary and permanent injunction enjoining Cellectis, Cellectis bioresearch and Cellectis bioresearch USA, and their respective officers, agents, servants, employees and attorneys, and all those persons and entities in active concert with them, from infringing the '098 patent;
- C. An award of damages in favor of Precision and Duke and against Cellectis, Cellectis bioresearch and Cellectis bioresearch USA, such damages being in an amount sufficient to fully compensate Precision and Duke for infringement of the '098 patent by Cellectis, Cellectis bioresearch and Cellectis bioresearch USA, and an assessment of prejudgment and post-judgment interest;
- D. A finding by the Court that this is an exceptional case under 35 U.S.C. § 285 and an award to Precision and Duke of their costs, expenses and attorneys' fees in this action; and
- E. Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Precision and Duke hereby demand trial by jury as to all issues triable by jury as of right.

This the 1st day of June, 2012.

/s/ Robert J. Morris

Robert J. Morris
N.C. State Bar No. 15981
jmorris@smithlaw.com
SMITH ANDERSON BLOUNT DORSETT
MITCHELL & JERNIGAN, LLP
2500 Wachovia Capitol Center
Post Office Box 2611
Raleigh, North Carolina 27602-2611
Telephone: (919) 821-6800
Facsimile: (919) 821-6800

Attorneys for Plaintiff
Precision BioSciences, Inc.

OF COUNSEL:

E. Anthony Figg
efigg@rothwellfigg.com
C. Nichole Gifford
ngifford@rothwellfigg.com
Sharon E. Crane, Ph.D.
scrane@rothwellfigg.com
ROTHWELL, FIGG, ERNST & MANBECK, P.C.
1425 K Street, N.W.
Suite 800
Washington, DC 20005
Telephone: (202) 783-6040
Facsimile: (202) 783-6031

/s/ Richard T. Matthews
Richard T. Matthews
N.C. State Bar No. 32817
rmatthews@myersbigel.com
MYERS BIGEL SIBLEY & SAJOVEC,
P.A.
4140 Parklake Avenue
Suite 600
Raleigh, North Carolina 27612
Telephone: (919) 854-1400
Facsimile: (919) 854-1401

Attorneys for Plaintiff
Duke University

CERTIFICATE OF SERVICE

I hereby certify that, on the 1st day of June, 2012, I electronically filed the foregoing First Amended Complaint for Patent Infringement with the Clerk of Court using the CM/ECF system, which will send notification to the attorneys of record for Collectis SA, Collectis bioresearch and Collectis bioresearch Inc. as follows:

Matthew Nis Leerberg	matt.leerberg@smithmoorelaw.com Jeanne.foley@smithmoorelaw.com nancy.tackett@smithmoorelaw.com prichter@kenyon.com ali@kenyon.com CollectisvPrecision@kenyon.com
Kelly Tillotson Ensslin	kelly@ktelaw.com apowell@apluslegalservices.net

/s/ Robert J. Morris

Robert J. Morris
N.C. State Bar No. 15981
jmorris@smithlaw.com
SMITH, ANDERSON, BLOUNT, DORSETT,
MITCHELL & JERNIGAN, LLP
2500 Wachovia Capitol Center
Post Office Box 2611
Raleigh, North Carolina 27602-2611
Telephone: (919) 821-1220
Facsimile: (919) 821-6800