

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

THE MATHILDA AND TERENCE KENNEDY)	
INSTITUTE OF RHEUMATOLOGY TRUST,)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	
)	
AMGEN, INC. and WYETH,)	
)	JURY TRIAL DEMANDED
Defendants.)	

COMPLAINT

Plaintiff, THE MATHILDA AND TERENCE KENNEDY INSTITUTE OF RHEUMATOLOGY TRUST (“KENNEDY”), through its attorneys, complaining of Defendants, AMGEN, INC. and WYETH, alleges as follows:

THE PARTIES

1. KENNEDY is a registered charity organized and existing under the laws of the United Kingdom, having a place of business at 65 Aspenlea Road, Hammersmith, London W6 8LH England.
2. AMGEN is a corporation organized and existing under the laws of the State of Delaware, having a place of business at One Amgen Center Drive, Thousand Oaks, California 91320-1799. Amgen is doing business within this Judicial District.
3. WYETH is a corporation organized and existing under the laws of the State of Delaware, having a place of business at 5 Giralda Farms, Madison, New Jersey 07940. Wyeth is doing business within this Judicial District.

4. On information and belief, AMGEN and WYETH have a co-promotion agreement for distributing an anti-tumor necrosis factor receptor or functional portion thereof under the brand name ENBREL (etanercept).

NATURE OF CLAIM, JURISDICTION AND VENUE

5. This action for patent infringement arises under the Patent Law of the United States, 35 U.S.C. §1 et seq.

6. This Court has jurisdiction over the parties and the subject matter pursuant to 28 U.S.C. §§ 1331, 1332(a) and 1338(a). The matter in controversy exceeds the amount of \$75,000, exclusive of interest and costs.

7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

FACTS

8. KENNEDY is the owner of all right, title and interest in and to U.S. Patent No. 6,270,766, granted August 7, 2001, entitled “Anti-TNF Antibodies and Methotrexate in the Treatment of Arthritis and Crohn’s Disease” (“the ‘766 patent”). The ‘766 patent relates to treating arthritis and other diseases by co-administering methotrexate and an anti-tumor necrosis factor alpha receptor (“anti-TNF α receptor”).

9. The KENNEDY inventors named on the ‘766 patent, Dr. Marc Feldmann and Sir Ravinder Maini, have received critical recognition for their invention, including the Janssen Award for Biomedical Research, the Lasker Award for Medical Research, the Inventor of the Year Award by the European Patent Office (to Dr. Feldmann), and the Crafoord Prize of the Royal Swedish Academy of Science. Dr. Maini was awarded a knighthood by Queen Elizabeth II and Drs. Maini and Feldmann have been elected to the Royal Society.

10. The three largest distributors of anti-TNF α antibodies and receptors worldwide are Centocor (a subsidiary of Johnson & Johnson), Abbott Laboratories and a joint promotional arrangement of AMGEN and WYETH.

11. KENNEDY has licensed two of these major pharmaceutical companies, Centocor and Abbott Laboratories, under the '766 patent. Centocor and Abbott Laboratories have paid to KENNEDY tens of millions of dollars in royalties for use of the '766 patent.

12. Despite due notice and repeated demands, AMGEN and WYETH have refused to pay reasonable royalties to KENNEDY for use of the '766 patent.

CLAIM FOR PATENT INFRINGEMENT

13. KENNEDY'S '766 patent is valid and enforceable.

14. AMGEN and WYETH infringed and induced infringement of claims 28-30 of the '766 patent by distributing, offering for sale and selling ENBREL anti-TNF α receptors or functional portions thereof for intended use in treating arthritis in individuals in need of treatment by co-administering to the individuals, in therapeutically effective amounts, methotrexate and the soluble p75 TNF α receptors or functional portions thereof, without KENNEDY's consent or authorization.

15. On information and belief, AMGEN's and WYETH's infringement was and is intentional and willful.

16. On information and belief, AMGEN and WYETH will continue to infringe and induce infringement of KENNEDY's '766 patent unless and until they are precluded from doing so by this Court. KENNEDY has been and is likely to be irreparably injured by the continued infringement and has no adequate remedy at law.

WHEREFORE, Plaintiff KENNEDY demands Judgment:

(a) That Defendants AMGEN and WYETH have infringed and induced infringement of KENNEDY'S '766 patent;

(b) That Defendants AMGEN and WYETH, and all those in active concert or participation with them, be enjoined from promoting, advertising, distributing, offering for sale and selling anti-TNF α receptors or functional portions thereof for co-administered use with methotrexate for treating individuals having arthritis in the absence of a license from KENNEDY;

(c) That Defendants AMGEN and WYETH pay to KENNEDY damages sustained by KENNEDY in an amount no less than a reasonable royalty plus interest and that the damages be trebled on account of willful infringement;

(d) That Defendants AMGEN and WYETH pay to KENNEDY its attorneys' fees and costs; and

(e) That Plaintiff KENNEDY be awarded such other and further relief as the Court deems just and proper.

Dated: October 27, 2009

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