

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PHYLONIX PHARMACEUTICALS, INC.,)	
)	
Plaintiff,)	C. A. No. _____
)	
v.)	
)	JURY TRIAL DEMANDED
ZYGOGEN, LLC,)	
)	
Defendant.)	

COMPLAINT

Plaintiff Phylonix Pharmaceuticals, Inc. (“Phylonix” or “Plaintiff”), by and through its attorneys, hereby demands a jury trial and complains of Defendant ZygoGen, LLC (“ZygoGen” or “Defendant”) as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement resulting from Defendant’s “Z-Tag Angiogenesis Assay,” which is used to screen for compounds influencing angiogenesis in zebrafish, Defendant’s “Z-Tag Cardiotoxicity Assay,” which is used to analyze and screen compounds for cardiotoxic effects in zebrafish, and Defendant’s “Z-Tag Cardiotoxicity Starter Kit,” which is used to analyze and screen compounds for cardiotoxic effects in zebrafish, that infringe one or more claims of United States Patent No. 6,656,449 (the “’449 Patent”), United States Patent No. 7,041,276 (the “’276 Patent”), and United States Patent No. 7,482,507 (the “’507 Patent”), each entitled “Methods of Screening Agents For Activity Using Teleosts.” Copies of the ’449, ’276, and ’507 Patents are attached as Exhibits A, B, and C, respectively.

THE PARTIES

2. Phylonix Pharmaceuticals, Inc. is a company organized and existing under the laws of Delaware with a place of business at 100 Inman Street, Cambridge, Massachusetts 02139.

3. Plaintiff Phylonix is the lawful assignee of all right, title and interest in and to the '449, '276, and '507 Patents.

4. Upon information and belief, Defendant Zygogen, LLC is a limited liability company organized and existing under the laws of Georgia with a principal place of business at 58 Edgewood Avenue NE, Room 122, Atlanta, Georgia 30303.

JURISDICTION AND VENUE

5. This is an action arising under the patent laws of the United States, 35 U.S.C. §§ 101 *et seq.* This Court has subject matter jurisdiction pursuant to 35 U.S.C. §§ 271 *et seq.* and 28 U.S.C. §§ 1331 and 1338.

6. This Court has personal jurisdiction over Defendant because, upon information and belief, Defendant regularly conducts business in this judicial district and the Defendant's acts of patent infringement have occurred and are occurring within this judicial district.

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

COUNT I

(Patent Infringement of United States Patent No. 6,656,449)

8. Paragraphs 1 through 7 are incorporated by reference as if fully restated herein.

9. The '449 Patent was lawfully issued on December 2, 2003 with George N. Serbedzija, Wen Lin Seng and Patricia McGrath as the named inventors.

10. Defendant makes, uses, sells, offers to sell and/or imports into the United States products, services, methods or processes, including the Defendant's "Z-Tag Angiogenesis Assay" and related compound screening services, in this judicial district and elsewhere that infringe the '449 Patent directly and/or indirectly, under 35 U.S.C. §§ 271(a), (b) and (c).

11. Defendant infringes, *inter alia*, Claim 30 of the '449 Patent, which reads as follows:

A method of screening an agent for a property comprising:

- (a) providing a multi-well plate, the wells containing teleosts in a medium and having a volume of 300 microliters or smaller per well;
- (b) introducing agents into different wells of the multi-well plate, and incubating the agents with the teleosts for sufficient time to induce a response;
- (c) detecting the response in each well to which an agent was introduced relative to the response from a control well lacking the agent as an indication of the property of the agent introduced in the well.

12. Defendant has had actual and/or constructive notice and knowledge of the '449 Patent.

13. Defendant has been and continues infringing one or more of the claims of the '449 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court. Defendant's wrongful conduct has caused Plaintiff to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering to sell and importing the patented inventions.

14. Plaintiff is entitled to recover damages adequate to compensate for the infringement.

COUNT II

(Patent Infringement of United States Patent No. 7,041,276)

15. Paragraphs 1 through 13 are incorporated by reference as if fully restated herein.

16. The '276 Patent was lawfully issued on May 9, 2006 with George N. Serbedzija, Carlos Semino and Deanna Frost as the named inventors.

17. Defendant makes, uses, sells, offers to sell and/or imports into the United States products, services, methods or processes, including the Defendant's "Z-Tag Angiogenesis Assay" and related compound screening services, in this judicial district and elsewhere that infringe the '276 Patent directly and/or indirectly, under 35 U.S.C. §§ 271(a), (b) and (c).

18. Defendant infringes, *inter alia*, Claim 1 of the '276 Patent, which reads as follows:

A method of screening a candidate agent for an activity that is potentially useful in treatment or prophylaxis of diseases involving angiogenic processes, wherein the activity is an enhancement, inhibition, or prevention of a formation or outgrowth of a blood vessel or a lymph vessel, and wherein the method comprises the steps of:

- (i) administering the agent to a teleost,
- (ii) measuring formation or outgrowth of a blood vessel or a lymph vessel in the teleost;
- (iii) comparing the formation or outgrowth of a blood vessel or a lymph vessel in the teleost administered the agent with the formation or outgrowth of a blood vessel or a lymph vessel in a control teleost, which was not administered the candidate agent;

wherein a change in the formation or outgrowth of a blood vessel or a lymph vessel in the teleost administered the candidate agent compared to the formation or outgrowth of a blood vessel or a lymph vessel in the control teleost indicates that the agent is an agent having an activity that is potentially useful in treatment or prophylaxis of diseases involving angiogenic processes.

19. Defendant has had actual and/or constructive notice and knowledge of the '276 Patent.

20. Defendant has been and continues infringing one or more of the claims of the '276 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court. Defendant's wrongful conduct has caused Plaintiff to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering to sell and importing the patented inventions.

21. Plaintiff is entitled to recover damages adequate to compensate for the infringement.

COUNT III

(Patent Infringement of United States Patent No. 7,482,507)

22. Paragraphs 1 through 19 are incorporated by reference as if fully restated herein.

23. The '507 Patent was lawfully issued on January 27, 2009 with George N. Serbedzija, Carlos Semino and Deanna M. Frost as the named inventors.

24. Defendant makes, uses, sells, offers to sell and/or imports into the United States products, services, methods or processes, including the Defendant's "Z-Tag Cardiotoxicity Assay," and related compound screening services, and Defendant's "Z-Tag Cardiotoxicity Starter Kit," in this judicial district and elsewhere that infringe the '507 Patent directly and/or indirectly, under 35 U.S.C. §§ 271(a), (b) and (c).

25. Defendant infringes, *inter alia*, Claim 1 of the '507 Patent, which reads as follows:

A method of screening a test agent for a toxic activity affecting cardiovascular function in a mammal, the method comprising:

(a) contacting a zebrafish with a test agent in vivo, wherein the test agent is administered to the zebrafish through culture media;

(b) evaluating a parameter of cardiovascular function in the zebrafish contacted with the test agent relative to the parameter in a control zebrafish that has not been contacted with

the test agent to determine whether the parameter is responsive to the test agent, a difference in the parameter being indicative of a toxic activity affecting cardiovascular function in the zebrafish contacted with the test agent; and

(c) correlating the toxic activity of the test agent affecting cardiovascular function in the zebrafish with a predicted effect on cardiovascular function in a mammal.

26. Defendant has had actual and/or constructive notice and knowledge of the '507 Patent.

27. Defendant has been and continues infringing one or more of the claims of the '507 Patent through the aforesaid acts, and will continue to do so unless enjoined by this Court. Defendant's wrongful conduct has caused Plaintiff to suffer irreparable harm resulting from the loss of its lawful patent rights to exclude others from making, using, selling, offering to sell and importing the patented inventions.

28. Plaintiff is entitled to recover damages adequate to compensate for the infringement.

JURY DEMAND

Plaintiff respectfully requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant, granting Plaintiff the following relief:

(A) that this Court adjudge and decree that the '449, '276, and '507 Patents are valid and enforceable against the Defendant;

(B) that this Court adjudge and decree that the Defendant has infringed and continues to infringe the '449, '276, and '507 Patents;

(C) that this Court order an accounting of all damages sustained by Plaintiff as a result of the acts of infringement by the Defendant;

(D) that this Court enter an award to Plaintiff of such damages as it shall prove at trial against Defendant that is adequate to compensate Plaintiff for said infringement, said damages to be no less than a reasonable royalty together with prejudgment interest and costs;

(E) that this Court order an award to Plaintiff of damages and other fees and costs as provided by 35 U.S.C. §§ 284 and 285; and

(G) that this Court grant to Plaintiff such other, further, and different relief as may be just and proper.

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

/s/ Brian T. Moriarty

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