

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

ST. JUDE CHILDREN’S
RESEARCH HOSPITAL, INC.

Plaintiff,

v.

AMGEN INC.,

Defendant.

Civil Case No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, St. Jude Children’s Research Hospital, Inc., files this Complaint and demand for jury trial seeking relief for patent infringement by the Defendant. Plaintiff states and alleges the following:

THE PARTIES

1. Plaintiff, St. Jude Children’s Research Hospital, Inc. (“St. Jude”), is a non-profit medical corporation organized and existing under the laws of Tennessee, with its principal place of business at 262 Danny Thomas Place, Memphis, Tennessee. St. Jude is a pediatric cancer research center. Its mission is to find cures for children with cancer and other catastrophic diseases through research and treatment.

2. On information and belief, Defendant, Amgen Inc. (“Amgen”), is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at One Amgen Center Drive, Thousand Oaks, California.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Amgen because it regularly conducts business in the State of Tennessee and has substantial and continuous contacts within this judicial district and because it has purposefully availed itself to the privileges of conducting business in this judicial district.

5. More particularly, Amgen has and continues to promote, market, and sell its products in this judicial district. Upon information and belief, Amgen has derived substantial sums of revenue from these sales. Additionally, in its efforts to develop and evaluate new products, Amgen has and continues to sponsor research and clinical studies in this judicial district. Currently, Amgen is sponsoring and recruiting participants for at least three such studies in Memphis, Tennessee.

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

COUNT I
(Patent Infringement)

7. St. Jude restates and realleges the preceding paragraphs of this Complaint.

8. On June 25, 1996, United States Patent No. 5,529,925 (“the ’925 patent”) entitled “Nucleic Acid Sequences and Fusion Proteins Present in Human T(2;5) Lymphoma” was duly and legally issued by the United States Patent and Trademark Office. St. Jude owns the ’925 patent by assignment. A true and correct copy of the ’925 patent is attached as Exhibit A.

9. On June 23, 1998, United States Patent No. 5,770,421 (“the ’421 patent”) entitled “Human ALK Protein Tyrosine Kinase” was duly and legally issued by the United States Patent and Trademark Office. St. Jude owns the ’421 patent by assignment. A true and correct copy of the ’421 patent is attached as Exhibit B.

10. On February 24, 2004, United States Patent No. 6,696,548 (“the ’548 patent”) entitled “Antibodies for Recognition of ALK Protein Tyrosine/Kinase Receptor” was duly and legally issued by the United States Patent and Trademark Office. St. Jude owns the ’548 patent by assignment. A true and correct copy of the ’548 patent is attached as Exhibit C.

11. Clones containing the anaplastic lymphoma kinase (ALK) cDNA and the NPM/ALK cDNA were deposited under the terms of the Budapest Treaty at the American Type Culture Collection (ATCC) with the accession numbers ATCC 69497 and ATCC 69776, respectively.

12. An Amgen affiliate obtained a sample of the clone deposited with accession number ATCC 69497 in or around June 2004.

13. Amgen has conducted various activities to research, develop, and evaluate small molecule tyrosine kinase inhibitors. Upon information and belief, as part of those activities, Amgen has made or used ALK nucleic acids, proteins, polypeptides, and/or antibodies in a manner that infringes the ’925, ’421, and ’548 patents.

14. In March 2011, Amgen exclusively licensed its rights to ALK compounds to Tesaro, Inc. (“Tesaro”). Upon information and belief, Amgen made and used ALK nucleic acids, proteins, polypeptides, and/or antibodies in a manner that infringes the ’925, ’421, and ’548 patents to develop the ALK compounds licensed to Tesaro.

15. Under the terms of the license agreement between Amgen and Tesaro, Amgen received an up-front payment of \$500,000. Tesaro is also required to make milestone payments to Amgen of up to an aggregate of \$138 million if specified clinical development, regulatory, initial commercialization and annual net product sales milestones are achieved. In addition, if commercial sales of a product commence, Tesaro may also be required to pay Amgen tiered royalties at percentage rates ranging from the mid-single digits to slightly above the single digits based on cumulative worldwide net sales.

16. After an investigation of publicly-available information, St. Jude sent a letter to Amgen on September 13, 2012. That letter notified Amgen of the '925, '421, and '548 patents and identified certain activities conducted by Amgen that would require a license to those patents.

17. St. Jude and Amgen attempted to agree on licensing terms for the '925, '421, and '548 patents. The licensing discussions between St. Jude and Amgen did not result in a license agreement and ended in November 2013.

18. On information and belief, Amgen infringed the '925, '421, and '548 patents with knowledge of the patents, and thus, Amgen's infringement was willful.

PRAYER FOR RELIEF

WHEREFORE, St. Jude respectfully requests that this Court:

- (1) Enter judgment that Amgen has infringed the '925, '421, and '548 patents;
- (2) Award St. Jude damages in an amount sufficient to compensate it for Amgen's infringement of the '925, '421, and '548 patents, together with pre-judgment and post-judgment interest and costs under 35 U.S.C. § 284;

(3) Award St. Jude an accounting for Amgen's acts of infringement to the extent those acts are not presented at trial and an award by the Court of additional damage for any such acts of infringement;

(5) Treble the damages awarded to St. Jude under 35 U.S.C. § 284 by reason of Amgen's willful infringement of the '925, '421, and '548 patents;

(6) Declare this case to be "exceptional" under 35 U.S.C. § 285 and award St. Jude its attorney fees, expenses, and costs incurred in this action; and

(7) Award St. Jude such other and further relief as this Court deems just and proper.

JURY TRIAL DEMAND

St. Jude demands a jury trial on all issues so triable.

Dated: April 8, 2014

Respectfully Submitted,

By: *s/ Amy M. Pepke*

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