

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

CELLECTIS S.A.,

*Plaintiff,*

v.

PRECISION BIOSCIENCES, INC.,

*Defendant.*

Civil Action No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff Cellectis S.A. (“Cellectis”), by and through its attorneys, hereby brings this action against Defendant Precision Biosciences, Inc. (“Precision”) and requests a jury trial on all issues so triable. Plaintiff alleges, on personal knowledge as to its own activities and on information and belief as to all other matters, as follows:

**THE PARTIES**

1. Plaintiff Cellectis is a corporation organized under the laws of France, and maintains its principal place of business at 8 Rue De La Croix Jarry, 75013 Paris, France.
2. Defendant Precision is a corporation organized under the laws of Delaware, and maintains a principal place of business at 302 East Pettigrew Street, Dibrell Building, Suite A-100, Durham, NC 27701.

### **NATURE OF THE ACTION**

3. This is an action for declaratory judgment arising under 28 U.S.C. § 2201. The subject matter of this declaratory judgment action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

5. This Court has personal jurisdiction, general and specific, over Precision because: (a) it is incorporated in the State of Delaware and knowingly transacts business in this judicial district; and (b) it regularly avails itself of the benefits of this judicial district, including the jurisdiction of the courts.

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

### **RELATED LITIGATION**

7. This action is related to another two patent infringement actions currently pending in this District before Judge Sue L. Robinson, both styled *Collectis S.A. v. Precision Biosciences, Inc.* The first is Case No. 1:11-cv-00173-SLR, in which Collectis is asserting that Precision infringes Collectis's U.S. Patent No. 7,897,372 ("the '372 patent"). The '372 patent infringement suit was filed in this District on March 1, 2011, and is presently proceeding with discovery. Trial in that case is set for February, 2013. The second is Case No. 1:11-cv-890-SLR, in which Collectis filed a declaratory judgment against Precision seeking a determination that U.S. Patent No. 8,021,867 ("the '867 patent"), which on information and belief is exclusively licensed to Precision, was invalid and not infringed.

8. The present action is a declaratory judgment action on two additional patents that, on information and belief, are exclusively licensed to Precision, *i.e.*, U.S. Patent Nos. 8,119,361 (“the ’361 patent”) and 8,119,381 (“the ’381 patent”). This declaratory judgment action is related to the other two litigations referenced above in paragraph 7 because: all patents-in-suit concern the same field of technology, *i.e.*, “modified” or “altered” I-*CreI* meganucleases; the ’381 patent and the ’361 patent assert a claim of priority on their respective faces to the same patent application as does the ’867 patent, which is the subject of the above-referenced declaratory judgment action brought by Collectis that is currently before this Court; Collectis’s ’372 patent-in-suit before this Court is prior art to each of the ’867, ’381 and ’361 patents; the parties in all three cases are the same (*i.e.*, Collectis and Precision); and the discovery in all three cases likely would substantially overlap.

#### **BACKGROUND**

9. Meganucleases are proteins that can be found in nature in many single-celled organisms. These meganucleases are highly specific “DNA scissors” that are able to recognize their specific binding site (of, *e.g.*, from 12 to over 30 base pairs in a genome) within an organism in which they reside and cleave (or break) the DNA at or near that binding site. “I-*CreI*” meganucleases are one member of the family of Group I intron-encoded homing endonucleases, which family was classified by scientists years ago when such homing endonucleases were first identified in nature.

10. Collectis was founded in 1999 and is a pioneering company in the field of genetic engineering, particularly with regard to the use of meganucleases as innovative tools to enable targeted modifications in DNA. Collectis’s scientists have worked with meganucleases found in nature and developed techniques to design and make engineered meganucleases. For example,

Collectis designs and markets engineered meganucleases that are “tailor-made” to cleave a specific site in a given genome of an organism, thereby enabling modification of the genome at that specific targeted cleavage site.

11. Collectis’s ground-breaking, engineered I-*CreI* meganucleases are useful in numerous fields, such as therapeutics (*e.g.*, gene therapy and antiviral therapy), agricultural biotechnology (*e.g.*, addition or removal of a trait and protein production) and for use in generation of transgenic organisms. The claims of the ’372 patent define such engineered or tailor-made I-*CreI* meganucleases (which can be used for genetic engineering) and/or monomers that comprise such meganucleases.

12. Upon information and belief, Precision is the exclusive licensee under each of the ’361 and ’381 patents and has asserted that it is the owner of all substantial rights with regard to both of them, including the right to file suit on these two patents. The ’361 and ’381 patents are entitled “Rationally-Designed Meganucleases with Altered Sequence Specificity and DNA-Binding Affinity,” and were each issued by the United States Patent and Trademark Office (“the PTO”) on February 21, 2012. On information and belief, true and accurate copies of the ’361 and ’381 patents are attached as Exhibits A and B, respectively.

**COUNT I  
INVALIDITY OF THE ’361 AND ’381 PATENTS**

13. Collectis repeats and realleges each and every allegation contained in paragraphs 1 to 12 as though fully set forth herein.

14. Each of the claims of the ’361 and ’381 patents is invalid for failure to comply with one or more sections of the patent laws of the United States, including, but not limited to, 35 U.S.C. §§ 102, 103, and/or 112.

**COUNT II  
NON-INFRINGEMENT OF THE '361 AND '381 PATENTS**

15. Collectis repeats and realleges each and every allegation contained in paragraphs 1 to 14 as though fully set forth herein.

16. Collectis does not directly infringe any claim of the '361 and '381 patents, either literally and/or under the doctrine of equivalents, and Collectis does not induce or contribute to the infringement of any of those claims by any third parties.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Collectis hereby prays that the Court enter judgment as follows:

- (a) Declaring that each and every claim of U.S. Patent No. 8,119,361 is invalid;
- (b) Declaring that each and every claim of U.S. Patent No. 8,119,381 is invalid;
- (c) Declaring that Collectis does not infringe, either literally and/or under the doctrine of equivalents, any claim of U.S. Patent No. 8,119,361, and Collectis does not contribute to and/or induce any third parties to infringe that patent;
- (c) Declaring that Collectis does not infringe, either literally and/or under the doctrine of equivalents, any claim of U.S. Patent No. 8,119,381, and Collectis does not contribute to and/or induce any third parties to infringe that patent;
- (c) Declaring that Precision and its officers, agents, employees, representatives, counsel, and all persons in active concert or participation with any of them, directly or indirectly, be enjoined from threatening or charging infringement of, or instituting or continuing any action for infringement of U.S. Patent Nos. 8,119,361 and 8,119,381 against Collectis;
- (d) Declaring this case an exceptional case under 35 U.S.C. § 285;
- (e) Awarding Collectis its costs and expenses and reasonable attorneys' fees; and
- (f) Granting such other and further relief as this Court deems just and proper.

**JURY DEMAND**

Plaintiff Collectis respectfully demands a jury trial pursuant to Rule 38(b) of the Federal Rules of Civil Procedure on all issues so triable.

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*/s/ Chad M. Shandler*

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Dated: February 21, 2012