

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Action No. 5:10-CV-550

PRECISION BIOSCIENCES, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>COMPLAINT FOR DECLARATORY</b>
	)	<b>JUDGMENT</b>
	)	
CELLECTIS S.A.,	)	
	)	
Defendant.	)	<b>(JURY TRIAL DEMANDED)</b>

Plaintiff Precision Biosciences, Inc. (“Precision”) brings this action against Defendant Cellectis S.A. (“Cellectis”), to obtain declaratory judgments that the claims of United States Patent No. 7,842,489 (“the ’489 patent”) are not infringed by Precision and are invalid. 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 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.

2. Defendant Cellectis is a corporation organized under the laws of France, and maintains its principal place of business at 102 Rue de Noissy, 93235 Romainville Cedex, Paris, France.

### **NATURE OF THE ACTION**

3. This is a declaratory judgment action 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 subject matter jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

5. Collectis is subject to personal jurisdiction in this District, at least by virtue of its institution of its lawsuit against Precision in Docket No. 5:08-CV-00119-H2 in this district.

6. Venue for this action is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

### **RELATED LITIGATION**

7. This action relates to a patent infringement action concerning United States Patent Nos. 6,610,545 (“the ‘545 Patent”) and 7,309,605 (“the ‘605 Patent”), which was initiated by Collectis against Precision on March 13, 2008 and is pending in this district before Judge Malcolm J. Howard, captioned *Collectis S.A. v. Precision BioSciences, Inc.*, Case No. 5:08-CV-00119-H2 (“the 2008 Action”). Precision asserted counterclaims in the 2008 Action seeking declaratory judgments of non-infringement and invalidity regarding the ‘545 Patent and the ‘605 Patent and that the ‘545 Patent and ‘605 Patent were unenforceable by virtue of inequitable conduct. On August 31, 2010, following extensive discovery and briefing on claim construction, the Court stayed the 2008 Action pending the outcome of *inter partes* reexamination of the ‘545 Patent and ‘605 Patent in the United States Patent and Trademark Office (“PTO”) after the PTO

repeatedly rejected all asserted claims of those patents and issued Actions Closing Prosecution in each case.

8. The instant case arises from an actual controversy between the parties regarding allegations by Collectis that Precision is undertaking activities and conduct that Collectis previously claimed infringe the '545 Patent and '605 Patent in the 2008 Action.

### **BACKGROUND**

9. Upon information and belief, Collectis is the owner of United States Patent No. 7,842,489 B2 ("the '489 Patent"), entitled "Use of Meganucleases for Inducing Homologous Recombination Ex Vivo and In Toto in Vertebrate Somatic Tissues and Application Thereof," which issued on November 30, 2010. A copy of the '489 Patent is attached as Exhibit A.

9. On November 30, 2010, the same day the '489 Patent issued, Collectis filed suit against Precision in the United States District Court for the District of Delaware, captioned *Collectis S.A. v. Precision BioSciences, Inc.*, Case No. 10-CV-1033-UNA, alleging that Precision infringes the '489 patent. Collectis effected service on Precision on December 3, 2010. Accordingly, there is an actual controversy between the parties that vests this Court with jurisdiction under 28 U.S.C. §§ 2201 and 2202 and Article III of the United States Constitution.

### **COUNT ONE**

#### **(Non-Infringement of the '489 Patent)**

10. Precision repeats and re-alleges the allegations of the preceding Complaint Paragraphs 1-9 as if fully set forth herein.

11. Precision does not infringe the claims of the '489 patent.

12. To resolve the legal and factual questions raised by Collectis and to afford relief from the controversy Collectis's accusations have precipitated, Precision is entitled to a declaratory judgment that it does not infringe the claims of the '489 Patent.

**COUNT TWO**  
**(Invalidity of the '489 Patent)**

13. Precision repeats and re-alleges the allegations of the preceding Complaint Paragraphs 1-12 as if fully set forth herein.

14. The claims of the '489 patent are invalid for failing to meet one or more of the requisite statutory and decisional requirements and/or conditions for patentability under Title 35 of the United States Code, including without limitation, §§ 102, 103, and/or 112.

15. To resolve the legal and factual questions raised by Collectis and to afford relief from the controversy Collectis's accusations have precipitated, Precision is entitled to a declaratory judgment that the claims of the '489 patent are invalid.

**PRAYER FOR RELIEF**

WHEREFORE, Precision requests entry of judgment in its favor and against Collectis as follows:

- A. Declaring that Precision has not infringed and does not infringe any claim of the '489 patent;
- B. Declaring that the claims of the '489 patent are invalid;
- C. Finding that this is an exceptional case and award Precision its costs (including expert fees), disbursements, and reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and,
- D. Awarding Precision such other relief as the Court may deem appropriate and just under the circumstances.

**DEMAND FOR JURY TRIAL**

Defendant Precision demands a trial by jury on all issues so triable.

This the 6th day of December, 2010.

/s/ Robert J. Morris

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