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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEATTLE GENETICS, INC.

Plaintiff,

vs.

ARIZONA TECHNOLOGY ENTERPRISES,
ARIZONA BOARD OF REGENTS and
ARIZONA STATE UNIVERSITY,

Defendants.

No.

**COMPLAINT FOR DECLARATORY
JUDGMENT**

JURY TRIAL DEMAND

Plaintiff Seattle Genetics, Inc. (“Seattle Genetics”), by and through its counsel, respectfully submits this Complaint for Declaratory Judgment against Defendants Arizona Technology Enterprises (“AzTE”), the Arizona Board Of Regents (“Arizona Board”) and Arizona State University (“ASU”) (collectively “Defendants”). In support thereof, Plaintiff alleges as follows:

THE PARTIES

1. Plaintiff Seattle Genetics is a publicly traded (SGEN) biotechnology company focused on developing antibody-based therapeutics for the treatment of cancer. Seattle

1 Genetics is a corporation organized and existing under the laws of the State of Delaware, having
2 its principal place of business at 21823 - 30th Drive S.E., Bothell, WA 98021.

3 2. Upon information and belief, Defendant AzTE is a corporation organized
4 and existing under the laws of the State of Arizona having its principal place of business
5 at 1475 N. Scottsdale Road, Scottsdale, AZ 85257.

6 3. Upon information and belief, Defendant Arizona Board is an entity
7 organized and existing under the laws of the State of Arizona having its principal place
8 of business at 2020 N. Central Avenue, Suite 230, Phoenix, AZ 85004.

9 4. Upon information and belief, Defendant ASU is a public institution
10 organized and existing under the laws of the State of Arizona having a principal location
11 at 300 E. University Drive, Tempe, AZ 85281.

12 **JURISDICTION AND VENUE**

13
14 5. This is an action seeking a declaration regarding the parties' rights and
15 obligations under the patent laws of the United States, 35 U.S.C. §§ 1 et seq. More
16 particularly, Plaintiff Seattle Genetics seeks a declaration that United States Patent
17 No. 5,635,483 ("the '483 patent") is not infringed by Plaintiff and that Plaintiff is not in
18 breach of a license to the '483 patent issued by Defendants to Plaintiff ("the '483 Patent
19 License").

20 6. This Court has original jurisdiction over the subject matter of this action
21 under 28 U.S.C. §§ 1331 and 1338 because it involves claims arising under the Patent
22 Laws of the United States, and under the Declaratory Judgment Act (28 U.S.C. §§ 2201
23 and 2202) because there is an actual controversy concerning infringement of the '483
24 patent and the scope of Plaintiff's rights under the '483 Patent License.

1 7. There exists a substantial and continuing actual, justiciable case and
2 controversy between Seattle Genetics and Defendants regarding infringement of the '483
3 patent and the scope of Plaintiff's rights and obligations under the '483 Patent License.

4 8. This Court can and should declare the rights and legal relations of the
5 parties regarding noninfringement of the '483 patent and the scope of Plaintiff's rights
6 and obligations under the '483 Patent License pursuant to the Declaratory Judgment Act,
7 28 U.S.C. §§ 2201 and 2202.

8 9. This Court has specific personal jurisdiction over Defendants because
9 Defendants engaged in negotiations with the Plaintiff in this forum with respect to the
10 '483 patent and entered into the '483 Patent License with the Plaintiff in this forum with
11 the understanding that the obligations under the '483 Patent License were to be and have
12 been performed in this forum, including but not limited to Defendants' sending materials
13 related to the '483 Patent License to Plaintiff in this forum, Defendants' authorization of
14 certain commercial activities in this forum pursuant to the '483 Patent License,
15 Defendants' authorization of Plaintiff to take legal action in this forum against infringers
16 of the '483 patent, and the ongoing collection of annual maintenance fees by the
17 Defendants from the Plaintiff in this forum under the '483 Patent License.

18 10. This Court also has general jurisdiction over Defendant ASU with respect
19 to ASU's ongoing, systematic and continuous outreach, recruiting, marketing and fund
20 raising activities conducted in this forum.

21 11. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and/or
22 1400.

FACTUAL BACKGROUND

23
24 12. Upon information and belief, on or about June 3, 1997, the United States
25 Patent and Trademark Office issued the '483 patent, entitled "Tumor Inhibiting

1 Tetrapeptide Bearing Modified Phenethyl Amides.” The named inventors on the face of
2 the '483 patent are George R. Pettit and Jozef Barkoczy. The named assignee on the face
3 of the '483 patent is the Arizona Board of Regents acting on behalf of Arizona State
4 University. A true and correct copy of the '483 patent is attached as Exhibit A.

5 13. Upon information and belief, Defendant AzTE is the exclusive intellectual
6 property management company for ASU.

7 14. In 1999, the Defendants engaged in licensing negotiations with Seattle
8 Genetics to license the technology described and claimed in the '483 patent. Defendants
9 issued the '483 Patent License to Seattle Genetics on February 3, 2000. A redacted
10 version of the '483 Patent License is attached as Ex. B.

11 15. Soon after the '483 Patent License was issued, Defendants contacted
12 Plaintiff to discuss an amendment to the license. On February 18, 2000, Defendants sent
13 a letter to Plaintiff with the proposed terms of the amendment. The proposed amendment
14 was signed by the Plaintiff on February 24, 2000 (the “First Amendment”). A true and
15 correct copy of the First Amendment is attached as Ex. C.

16 16. In March 2002 Defendants engaged in additional negotiations with Seattle
17 Genetics to amend the '483 Patent License. In March 2002 Defendants agreed to and
18 signed an amendment to the '483 Patent License (the “Second Amendment”). A redacted
19 version of the Second Amendment is attached as Ex. D.

20 17. In early 2004, Defendants engaged in additional discussions with Seattle
21 Genetics concerning the '483 Patent License. During these discussions, Plaintiff advised
22 Defendants of the discoveries it had made with respect to its own development work on
23 new compounds and its belief that these new compounds were not covered by the '483
24 patent.

1 18. During these discussions, Defendants acknowledged and agreed that the
2 '483 patent did not cover certain chemicals: (a) MMAE, MMAF and AFP; and (b) any
3 prodrug forms of MMAE, MMAF and AFP (collectively, "SGI COMPOUNDS").
4 Defendants also acknowledged and agreed that Plaintiff would not pay Defendants any
5 milestones or royalties with respect to products utilizing or incorporating SGI
6 COMPOUNDS or any variants, analogues or derivatives thereof (collectively,
7 "INDEPENDENT PRODUCTS").

8 19. In exchange for this acknowledgement and agreement, Plaintiff agreed to
9 pay and did pay Defendants a one-time fee and predetermined annual maintenance fees
10 thereafter until the expiration of the '483 patent. This agreement to amend the '483
11 Patent License became effective on August 17, 2004 (the "Third Amendment"). A
12 redacted version of the Third Amendment is attached as Ex. E.

13 20. Approximately eight years later, on August 20, 2012, the Vice President of
14 Chemistry at Seattle Genetics, Dr. Peter Senter, received a telephone call from one of the
15 inventors listed on the '483 patent, Dr. George Pettit (the "August 20th Telephone Call").
16 During this telephone conversation, Dr. Pettit advised Dr. Senter that ASU was about to
17 sue Seattle Genetics for infringement of the '483 patent. Senter Declaration ¶¶ 2-3. See
18 Exhibit H.

19 21. Soon thereafter, on August 30, 2012, the General Counsel of Seattle
20 Genetics received a letter from the law firm of Irell & Manella claiming to represent
21 AzTE, the Arizona Board of Regents and ASU (the "August 30th letter"). In this letter,
22 Defendants' counsel claimed that the '483 Patent License only granted Seattle Genetics
23 "certain narrow rights" in the '483 patent and that AzTE was now prepared to grant
24 Seattle Genetics a license to the '483 patent that encompassed the full scope of the claims
25

1 of the '483 patent, both literally and under the doctrine of equivalents. A true and correct
2 copy of the August 30, 2012 letter is attached as Exhibit F.

3 22. On September 5, 2012, counsel for the Defendants sent a proposed
4 confidentiality agreement to Seattle Genetics (the "Proposed Confidentiality
5 Agreement"). A true and correct copy of the September 5, 2012 Proposed
6 Confidentiality Agreement is attached as Exhibit G.

7 23. In the Proposed Confidentiality Agreement, Defendants' counsel proposed
8 that the Parties agree that communications between them would be governed by Rule 408
9 of the Federal Rules of Evidence, and that they further agree not to contest in any legal
10 proceeding the applicability of Rule 408 to these communications. Ex. G ¶ 1.

11 24. In the Proposed Confidentiality Agreement, Defendants' counsel also
12 proposed that the Parties agree that they would not seek to obtain through discovery,
13 attempt to admit into evidence, or attempt to use for any purpose, communications
14 between them in any legal proceeding, regardless of whether Seattle Genetics or AzTE
15 were parties to such legal proceedings, and regardless of the subject matter of such legal
16 proceedings. Ex. G ¶ 2.

17 25. The combination of the August 20th Telephone Call, the August 30th letter
18 and the September 5th Proposed Confidentiality Agreement convinced Plaintiff that
19 Defendants are poised to file imminently a lawsuit against Seattle Genetics for
20 infringement of the '483 patent and/or breach of the '483 Patent License.

21 **COUNT I – DECLARATION OF NON-INFRINGEMENT**
22 **OF U.S. PATENT NO. 5,635,483**

23 26. Seattle Genetics hereby incorporates by reference its allegations contained
24 in Paragraphs 1- 25 of this Complaint as though fully set forth herein.

1 27. Seattle Genetics products and commercial activities do not infringe any of
2 the valid claims of the '483 patent literally or under the doctrine of equivalents and
3 Seattle Genetics denies any claim of infringement.

4 28. Defendants previously acknowledged in the Third Amendment that ASU's
5 patent rights did not cover Plaintiff's Independent Products and Defendants have
6 therefore waived or are estopped from asserting infringement against Plaintiff's
7 Independent Products.

8 29. Seattle Genetics believes that Defendants intend to assert imminently
9 allegations of infringement of the '483 patent based on Plaintiff's marketing,
10 manufacture, use, and/or sale of its commercial product, ADCETRIS® (brentuximab
11 vedotin), which received accelerated approval by the FDA in August 2011 for the
12 treatment of relapsed Hodgkin lymphoma and anaplastic large cell lymphoma.
13 ADCETRIS is an Independent Product as defined by the Third Amendment and therefore
14 is not covered by ASU's patent rights. ADCETRIS is an Independent Product because it
15 incorporates one of Plaintiff's own compounds, MMAE, which is an SGI Compound
16 pursuant to the Third Amendment. Ex. E ¶ 1. Thus, a present, genuine, and justiciable
17 controversy exists between the parties with respect to alleged infringement of the '483
18 patent.

19 30. As a result of the foregoing, there exists an actual and present controversy
20 between the parties within the meaning of the Declaratory Judgment Act, 28 U.S.C. §§
21 2201 and 2202.

22 31. Accordingly, Seattle Genetics seeks and is entitled to a judicial declaration
23 that the '483 patent is not infringed by ADCETRIS or any of Seattle Genetics'
24 commercial activities.
25

**COUNT II – DECLARATION OF NON-BREACH
OF THE ‘483 PATENT LICENSE**

32. Seattle Genetics hereby incorporates by reference its allegations contained in Paragraphs 1- 25 of this Complaint as though fully set forth herein.

33. Seattle Genetics has performed all of its material obligations under the ‘483 Patent License, has not breached the ‘483 Patent License by its commercial activities and Defendants are not entitled to any additional payments under the ‘483 Patent License other than those set forth in the license.

34. Seattle Genetics believes that Defendants intend to assert imminently allegations of breach of the ‘483 Patent License by Seattle Genetics based on the marketing, manufacture, use, and/or sale of its commercial product, ADCETRIS® (brentuximab vedotin) or SGI Compounds or Independent Products. Thus, a present, genuine, and justiciable controversy exists between the parties with respect to the scope of rights and obligations under the ‘483 Patent License and whether or not it has been breached.

35. As a result of the foregoing, there exists an actual and present controversy between the parties within the meaning of the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

36. Accordingly, Seattle Genetics seeks and is entitled to a judicial declaration that it has not breached the ‘483 Patent License and that Defendants are not entitled to any payments under the ‘483 Patent License or otherwise for Plaintiff’s development, manufacture, marketing, use and sale of ADCETRIS, SGI Compounds or Independent Products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Seattle Genetics respectfully requests that this Court issue a declaratory judgment, declaring that:

- A. Plaintiff has not infringed and does not infringe the '483 patent;
- B. Defendants have waived or are estopped from asserting infringement of the '483 patent by Plaintiff;
- C. The '483 Patent License is valid, binding and enforceable;
- D. The '483 Patent License has not been breached by virtue of Plaintiff's development, manufacture, marketing, use, and sale of ADCETRIS or any other SGI Compound or Independent Product;
- E. Plaintiff has no obligation to make any payments to Defendants for the development, manufacture, marketing, use, and sale of ADCETRIS or any other SGI Compound or Independent Product; and
- F. Plaintiff is entitled to such other and further relief as this Court may deem just and proper, including reasonable attorney's fees and costs.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues and claims so triable.

1 DATED this 5th day of October, 2012.

2 **CORR CRONIN MICHELSON**
3 **BAUMGARDNER & PREECE LLP**

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