

**FILED**

JAN - 5 2007

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

NOVARTIS VACCINES AND DIAGNOSTICS,  
INC.  
4560 Horton Street  
Emeryville, California 94605,

No.

Plaintiff,

v.

INSTITUT PASTEUR  
25-28 rue de Dr. Roux  
75015 Paris, France

CASE NUMBER 1:07CV00034

JUDGE: Richard W. Roberts

DECK TYPE: General Civil

DATE STAMP: 01/5/2007

and

CENTRE NATIONALE DE LA RECHERCHE  
SCIENTIFIQUE  
3 rue Michel-Ange  
75794 Paris, France,

Defendants.

**COMPLAINT FOR REVIEW OF INTERFERENCE DETERMINATION  
PURSUANT TO 35 U.S.C. SECTION 146**

Plaintiff Novartis Vaccines and Diagnostics, Inc. (formerly, Chiron Corporation) through its undersigned attorneys, as and for its Complaint against Defendants Institut Pasteur and Centre Nationale de la Recherche Scientifique alleges as follows:

**NATURE OF ACTION**

1. This is an action under 35 U.S.C. § 146 to review a decision of the Board of Patent Appeals and Interferences (the "Board") of the United States Patent and Trademark Office ("PTO") in a patent interference. Specifically, this action seeks review of the Decision on Preliminary Motions (Paper 67), dated September 1, 2006, the Decision on Luciw Request for

Rehearing (Paper 75), dated December 4, 2006, and the Judgment (Paper 76), dated December 4, 2006, entered by the Board in Patent Interference No. 105,289 (“the ’289 Interference”).

Pursuant to 35 U.S.C. § 146, the time period for filing a civil action for remedy regarding these determinations ends on February 2, 2007. This complaint, therefore, is timely filed.

#### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction of this action under 28 U.S.C. §§ 1331 & 1338 and 35 U.S.C. § 146. This Court has personal jurisdiction over Defendant Institut Pasteur and Defendant Centre Nationale de la Recherche Scientifique pursuant to 35 U.S.C. § 146. Venue is proper in this district under 28 U.S.C. §§ 1391(d) and 35 U.S.C. § 146.

#### **PARTIES**

3. Plaintiff Novartis Vaccines and Diagnostics, Inc. (“NOVAD”) is a Delaware corporation with a principal place of business at 4560 Horton Street, Emeryville, California 94608.

4. On information and belief, defendant Institut Pasteur (“IP”) is a private foundation established under the laws of France, with headquarters at 25-28 rue de Dr. Roux, 75015 Paris, France.

5. On information and belief, defendant Centre Nationale de la Recherche Scientifique (“CNRS”) is a public research organization formed under the French Ministry of Research, with headquarters at 3 rue Michel-Ange, 75794 Paris, France.

#### **THE PATENT INTERFERENCE**

6. NOVAD is the owner of the entire right, title and interest in and to U.S. Patent No. 6,531,276 (issued March 11, 2003) (“the Luciw ’276 patent”), entitled “Methods for Detecting Human Immunodeficiency Virus Nucleic Acid.” The patent was issued from an application 08/403,588 filed on March 14, 1995. The named inventors are Paul L. Luciw and Dino Dina (collectively referred to as “Luciw, et al.”).

7. On information and belief, IP and CNRS are the owners of the entire right, title and interest in and to the inventions disclosed in U.S. Patent Application No. 07/999,410 (filed December 31, 1992) (“the Alizon ’410 application”), entitled “Cloned DNA Sequences, Hybridizable with Genomic RNA of Lymphadenopathy-Associated Virus (LAV).” The named inventors of this application are Marc Alizon, Françoise Barre Sinoussi, Pierre Sonigo, Pierre Tiollais, Jean-Claude Chermann, Luc Montagnier, and Simon Wain-Hobson (collectively referred to as “Alizon, et al.”).

8. On February 28, 2005 the Board declared and instituted the ’289 Interference between the Luciw ’276 patent and the Alizon ’410 application, based on subject matter defined by a single count, Count 1.

9. The Board held that the claims of the parties corresponding to Count 1 of the ’289 Interference are claims 1-45 of the Luciw ’276 patent and claims 44-46, 48 & 49 of the Alizon ’410 Application.

10. On September 1, 2006, the Board issued a Decision on Preliminary Motions (Paper 67) that erroneously denied Luciw, et al.’s two preliminary motions. The Board erroneously denied Luciw, et al.’s motion that for purposes of establishing priority, Alizon, et al. should not be afforded benefit of three earlier filed patent applications: application no. 06/558,109, filed in the United States on December 5, 1983; application no. 84/7005, filed in South Africa on September 6, 1984; and application no. 443,605 filed in Canada on December 19, 1983, because the applications fail to describe and enable a constructive reduction to practice of an embodiment within the scope of Count 1 (Motion 1). The Board also erroneously denied Luciw, et al.’s motion to designate claims 2-4 and 7-45 of the Luciw ’276 patent as not corresponding to Count 1 (Motion 2).

11. On December 4, 2006, the Board issued a Decision on Luciw Request for Rehearing (Paper 75) that erroneously denied Luciw, et al.’s request for reconsideration of the Board’s denial of Luciw, et al.’s Motion 2 in the Decision on Preliminary Motions (Paper 67).

12. On December 4, 2006, the Board issued and entered Judgment in the '289 Interference adverse to Luciw, et al., and favorable to Alizon, et al., which erroneously ordered, contrary to fact and law, that:

- a. Priority as to Count 1 be entered against Luciw, et al.; and
- b. Luciw, et al. is not entitled to claims 1-45 of the Luciw '276 patent.

13. NOVAD, as a real party in interest, is dissatisfied with the determinations of the Board in the '289 Interference. The rulings and judgment of the Board in its Decision on Preliminary Motions, dated September 1, 2006, its Decision on Luciw Request for Rehearing, dated December 4, 2006, and its Judgment, dated December 4, 2006 in the '289 Interference were erroneous, and NOVAD is entitled to a judgment correcting the erroneous judgment and rulings of the Board, based on the record before the Board and any additional evidence that NOVAD may introduce in this action.

14. NOVAD is furthermore entitled to priority of invention, as it was the first to invent the subject matter of Count 1 in the '289 Interference.

WHEREFORE, NOVAD demands judgment that:

A. The Board's Decision on Preliminary Motions, dated September 1, 2006, Decision on Luciw Request for Rehearing, dated December 4, 2006, and Judgment, dated December 4, 2006 in the '289 Interference be reversed and vacated;

B. Alizon, et al. are not entitled to the benefit of the 06/558,109 Application, filed December 5, 1983, South Africa 84/7005 Application, filed September 6, 1984 and Canada 443,605 Application, filed December 19, 1983 because the applications fail to describe and enable a constructive reduction to practice of an embodiment within the scope of Count 1;

C. Claims 2-4 and 7-45 of the Luciw '276 patent are designated as not corresponding to Count 1;

D. Luciw, et al. are awarded priority as to Count 1 and are entitled to a patent containing claims embodying Count 1 and all claims in the interference corresponding to the Count;

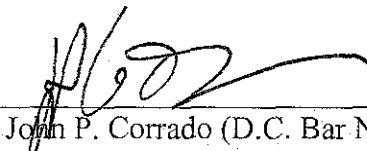
E. Alizon, et al. are not entitled to a patent on claims 44-46, 48 & 49 of the Alizon '410 Application.

F. Costs and attorneys fees be awarded in favor of NOVAD against Defendants; and

G. NOVAD is granted such other and further relief as may be appropriate.

Dated: January 5, 2007

By: \_\_\_\_\_

  
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