IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ZYMOGENETICS, INC., a Washington Corporation, Plaintiff, v. BRISTOL-MYERS SQUIBB CO., a Delaware Corporation, and DOES 1 through 100, Defendants.	)	C.A. No. 06-500-SLR **PUBLIC VERSION**

PLAINTIFF ZYMOGENETICS, INC.'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED AND LEGAL ISSUES IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT OF VALIDITY OF PATENTS-IN-SUIT WITH RESPECT TO THE CAPON PATENTS AND SEED PATENT

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Dated: May 16, 2008
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In accordance with the Court's Revised Scheduling Order of March 14, 2008, Plaintiff ZymoGenetics, Inc. ("ZymoGenetics") files this Statement of Material Facts As To Which There Is No Genuine Issue To Be Tried And Legal Issues In Support of Plaintiff's Motion for Summary Judgment of Validity of Patents-in-Suit With Respect To The Capon Patents And The Seed Patent. ZymoGenetics respectfully sets forth that the following material facts are not in dispute and therefore there is no genuine issue to be tried:

1. At a date no later than January 4th-5th, 1988, the inventors of the '725 and '026 Patents had a definite and permanent idea of the invention of the '725 and '026 Patents that one skilled in the art could understand the invention. *See* Ex.1 at 25:20-21; 74:15-18; 178:9-23; 183:5-9; 186:2-17; 187:4-18; Ex.3 at ZG 033206; Declaration of Paul Edward Purdue ("Purdue Decl") at ¶ 2; 4; Ex. 3 at 178:25-179:4; Ex.8 at 15:19.[1]

2. ZymoGenetics exercised reasonable diligence to reduce the invention to practice. *See* Ex.1 at 77:6-8; 109:14-17; Ex.2 at ZG33217, ZG33220, ZG58359; Ex.10 at Fig.2; Ex.11 at Fig.2; Purdue Decl. ¶ 7-8; Ex.8; Ex.4 at ZG40464; Ex.7 at 56:19-62:1.

3. Prior to September 28, 2008, ZymoGenetics had constructed an embodiment of the invention, determined that the invention would work for its intended purpose, and there was sufficient evidence to corroborate

[1] Citations to "Ex.#" refer to the Exhibits attached to Declaration of Hannah Lee Submitted in Support of Plaintiff's Motion for Summary Judgment of Validity of Patents-in-Suit With Respect to The Capon Patents and The Seed Patent filed concurrently herewith.

inventor testimony regarding these events. *See* Ex.2 at 77:3-4; 78:5-15; 81:22-83:5; Purdue Decl. at ¶ 9-12.

4. United States Patent No. 6,004,781 ("the Seed patent") claims a priority date that falls after the date of the invention of the '725 and '026 Patents, and is, therefore, not prior art under 35 U.S.C. § 102(e). *See* Ex. 5 at ¶ 164; Ex.12.

5. United States Patent Nos. 5,336,603; 5,556,335; 6,117,655; 6,710,169 (collectively, "the Capon patents") claim a priority date that falls after the date of the invention of the '725 and '026 Patents and is, therefore, not prior art under 35 U.S.C. § 102(e) or § 103. *See* Ex. 5 at ¶ 74, Ex. 13-16.

ZymoGenetics also respectfully sets forth that judgment is sought on the following legal issues:

1. Whether summary judgment should be granted that the conception and the date of invention was no later than January 4th-5th, 1988.

2. Whether summary judgment should be granted that the '725 and '026 Patents are valid over the Seed and Capon patents under 35 U.S.C. § 102(e) and § 103.

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CERTIFICATE OF SERVICE

I, Philip A. Rovner, hereby certify that on May 22, 2008, the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following; that the document was served on the following counsel as indicated; and that the document is available for viewing and downloading from CM/ECF.

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