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**

DECLARATION OF AMY SUN IN SUPPORT OF PLAINTIFF ZYMOGENETICS, INC.'S MOTION TO EXCLUDE TESTIMONY OF BRISTOL-MYERS SQUIBB CO.'S EXPERTS

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Dated: May 16, 2008
Public Version: May 22, 2008

I, AMY SUN, declare:

1. I am an attorney with the law firm of King & Spalding LLP, counsel of record for Plaintiff ZymoGenetics, Inc. I have personal knowledge of the facts set forth in this declaration and can testify competently to those facts.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Expert Rebuttal Report of Jeffrey V. Ravetch, M.D., Ph.D. Regarding Non-Infringement of U.S. Patent Nos. 5,843,725 and 6,018,026.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Expert Report of Jeffrey V. Ravetch, M.D., Ph.D. Regarding Invalidity of U.S. Patent Nos. 5,843,725 and 6,018,026.

4. Attached hereto as Exhibit 3 is a true and correct copy of a letter dated March 11, 1993 from Forrester & Boehmert to the European Patent Office, bearing bates numbers ZG031859-68.

5. Attached hereto as Exhibit 4 is a true and correct copy of an office action from the European Patent Office dated June 4, 1993.

6. Attached hereto as Exhibit 5 is a true and correct copy of pages 24-28, 39-43, 54-56, 140-144, 152-155, 200-201, 235-244, and 246-252 from the transcript of the deposition of Daniel Capon, taken on May 2, 2008.

7. Attached hereto as Exhibit 6 is a true and correct copy of pages 21-24, 36-38, 43-44, 77-80, and 198-204 from the transcript of the deposition of John Kuriyan, taken on May 9, 2008.

8. Attached hereto as Exhibit 7 is a true and correct copy of the Expert Report of Daniel J. Capon, Ph.D. Regarding Invalidity of U.S. Patent Nos. 5,843,725 and 6,018,026.

9. Attached hereto as Exhibit 8 is a true and correct copy of the Expert Rebuttal Report of John Kuriyan, Ph.D. Regarding Non-Infringement of U.S. Patent Nos. 5,843,725 and 6,018,026.

10. Attached hereto as Exhibit 9 is a true and correct copy of pages from the laboratory notebook of Andrzej Sledziewski, bearing bates numbers ZG033202-03 and ZG033206.

I declare under penalty of perjury under the laws of the State of California and the United States that each of the above statements is true and correct.

Executed on May 16, 2008 in Redwood Shores, California.

Amy Sun

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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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I hereby certify that on May 22, 2008 I have sent by E-mail the foregoing document to the following non-registered participant:

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EXHIBIT 1

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EXHIBIT 2

THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY

EXHIBIT 3

THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY

EXHIBIT 4

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Examiners' clerk (other matters)	(0 89) 23 99- 8051

Please give the complete application number in all communications

Application No./Patent No.	Ref.	Date
89100787.4-2105	FB 2472 06	04.99
Applicant/Proprietor		
ZYMOGENETICS, INC.		

Communication pursuant to Article 96(2) and Rule 51(2) EPC

The /further/ examination of the above-identified application has revealed that it does not meet the requirements of the European Patent Convention for the reasons enclosed herewith. If the deficiencies indicated are not rectified the application may be refused pursuant to Article 97(1) EPC.

You are invited to file your observations and insofar as the deficiencies are such as to be rectifiable to correct the indicated deficiencies within a period

of 4 months

from the notification of this communication, this period being computed in accordance with Rules 78(3) and 83(2) and (4) EPC.

Amendments to the description, claims and drawings are to be filed where appropriate within the said period in three copies on separate sheets (Rule 36(1) EPC).

Failure to comply with this invitation in due time will result in the application being deemed to be withdrawn (Article 96(3) EPC).

S. Yeats
Primary examiner
for the Examining Division

Communication despatched, EXRE and statistical data recorded

31.03.99
Date Initials

Enclosures: 3 page/s reasons (Form 2906)

Registered letter **File Copy**

EPO Form 2001.2 06.98

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Bescheid/Protokoll (Anlage)	Communication/Minutes (Annex)	Notification/Procès-verbal (Annexe)
Datum	Blatt	Anmelde-Nr.
Date	Sheet 1	Application No.: 89 100 787.4
Date 06.04.93	Feuille	Demande n°.

The examination is being carried out on the following application documents:

Description:
Pages 1-64 as originally filed

Claims:
Nos. 1-25 filed with your letter of 11.3.1993

Drawings:
Sheets 1-13 as originally filed

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1. The new claims are allowable under Article 123(2) EPC.

2. The Examining Division wishes to apologise for having erroneously cited D2 in the previous communication. As you have pointed out, it is not citable since it has a later priority date than the present application.

3. Claim 1 relates to a method for producing a secreted human PDGF receptor (PDGF-R) analogue, comprising the expression in a recombinant host of a gene encoding at least part of the extracellular domain of a human PDGF-R, which gene is preceded by a signal sequence. This subject-matter was already acknowledged as novel (Article 54(1)(2) EPC) and inventive (Article 56 EPC) in the previous communication.

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Bescheid/Protokoll (Anlage).	Communication/Minutes (Annex)	Notification/Procès-verbal (Annexe)
Datum	Blatt	Aktenzeichen
Date 06.04.93	Sheet 2	Application No.: 89 100 787.4
Date	Feuille	Demande n°.

3.1 However, Claim 1 is worded in purely functional terms and thus lacks technical features. It is therefore not allowable under Article 84 EPC and Rule 29(1) EPC. A reference to the sequence mentioned in Claim 2 should be introduced into Claim 1. An analogous objection applies to Claims 17, 19, 22, 24 and 25.

4. The introduction of the term "non-immunoglobulin" into Claims 3 and 9 in order to define the peptide requiring dimerisation does not serve to overcome the objection of lack of novelty raised aginst these claims. While the T-cell receptor is encoded by immunoglobulin-like genes, the receptor is nevertheless not an immunoglobulin in the accepted sense of the word. Claims 3, 6-10, 15 and 16 are in consequence still considered to lack novelty.

4.1 In view of the fact that the applicant has maintained the above generic claims, it seems pertinent to remark that all the examples of the present application are concerned with the production of a truncated secreted PDGF-R analogue. There is no teaching in the application concerning the production of any other proteins. The extension of the scope of the claims to cover the production of any peptide dimer is thus regarded as unsupported by the description and therefore not allowable under Article 84 EPC.

5. You are invited to file amended claims taking account of the above comments, conforming to the requirements of Rules 29(1) and 36(1) EPC. The description should be brought into line with the new claims. Care should be taken during the revision not to add any subject-matter which extends beyond the content of the application as

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Bescheid/Protokoll (Anlage)	Communication/Minutes (Annex)	Notification/Procès-verbal (Annexe)
Datum 06.04.93	Blatt 3	Anmelde-Nr.
Date	Sheet	Application No.: 89 100 787.4
Date	Feuille	Demande n°.

originally filed (Article 123(2) EPC).

S. YEATS

EXHIBIT 5

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EXHIBIT 6

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EXHIBIT 7

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EXHIBT 8

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EXHIBIT 9

THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY