IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

BRISTOL-MYERS SQUIBB COMPANY'S
STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF ITS MOTION FOR SUMMMARY JUDGMENT OF NO WILLFULNESS

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Attorneys for Defendant
Bristol-Myers Squibb Co.

Dated: May 16, 2008

In accordance with the Court's March 13, 2008 Order (D.I. 148 at 1), Bristol-Myers Squibb Company ("Bristol") submits this Statement of Undisputed Facts Regarding No Willfulness in support of its Motion for Summary Judgment of No Willfulness providing a short and concise statement of the material facts as to which there is no genuine issue to be tried, along with citations to the record supporting each contention.

The citations below are citations to the Exhibits filed along with the Declaration of John W. Kirkland In Support of Bristol's Motion for Summary Judgment of No Willfulness.

STATEMENT OF UNDISPUTED FACTS

1. Each asserted claim of the patents-in-suit requires a "dimerizing protein". (U.S. Patent No. 6,018,026, Claims 1-4, 7 and 30 at ZG000003, ZG000076)(Exh. 1); (U.S. Patent No. 5,843,725, Claims 1-3, 5, 6, 21, 22, 24, 25, 50, 51 at ZG000844, ZG000917)(Exh. 2).

2. ZymoGenetics alleges that the claim term "dimerizing protein" should be construed to mean: "a polypeptide chain having affinity for a second polypeptide chain, such that the two chains associate under physiological conditions to form a dimer. The second polypeptide chain may be the same or a different chain." (D.I. 153, Exh. A at 3, 4).

3. The asserted claims require that the "dimerizing protein" be: "selected from the group consisting of yeast invertase, at least a portion of an immunoglobulin light chain comprising at least an immunoglobulin light chain constant region domain, and at least a portion of an immunoglobulin heavy chain comprising at least an immunoglobulin heavy chain constant region domain." (Exh. 1, Claim 1 at ZG000003) (Exh. 2, Claim 1 at ZG000844).

4. Each asserted claim requires either a non-immunoglobulin polypeptide or a ligand-binding domain of a receptor "requiring dimerization for biological activity".

5. ZymoGenetics did not include a proposed construction of "requiring dimerization for biological activity" in the Joint Claim Construction Chart filed on May 7, 2008. (D.I. 153, Exh. A at 2, 3).

6. On October 17, 2006, Bristol propounded an interrogatory requesting that ZymoGenetics: "State with particularity all facts which Plaintiff relies upon for their contention that this case is an exceptional case under 35 U.S.C. § 285, and identify the persons most knowledgeable about, and all documents and things relating to, such contention." (Bristol-Myers Squibb Company's First Set of Interrogatories to ZymoGenetics, Inc., Interrogatory No. 7 at 4)(Exh. 5).

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12. The patents-in-suit define "biological activity" as "a function or set of activities performed by a molecule in a biological context (*i.e.*, in an organism or an in vitro facsimile thereof)". (Exh. 1 at ZG000031, Col. 9, ll. 54-56).

REDACTED

15. In an article authored by Bristol scientists entitled "Binding Stoichiometry of the Cytotoxic T Lymphocyte-associated Molecule-4 (CTLA-4)" in 1995, it was reported that: "Each monomeric polypeptide chain of CTLA4 contains a high affinity binding site for B7 molecules" and "monomeric and dimeric forms of CTLA-4 bound CD80 and CD86 [both forms of B7]". (Linsley *et al.*, *Binding Stoichiometry of the Cytotoxic T lymphocyte-associated Molecule (CTLA-4)*, J. BIOL. CHEM. 270:15417 at 15417, 15421 (1995))(Exh. 12).

16. In an article authored by Bristol scientists entitled "CD28/CTLA4 Receptor Structure, Binding Stoichiometry and Aggregation During T-Cell Activation" in 1995, it was reported that: "CTLA4 was stably expressed as a monomer when cysteine 120 was mutated to serine, and monomeric CTLA4 contained a high affinity binding site for B7 molecules." (Linsley *et al.*, *CD28/CTLA-4 receptor structure, binding stoichiometry and aggregation during T-cell activation*, RESEARCH IN IMMUNOL. at 146:130 at 133 (1995))(Exh. 13).

17. In an article authored by Bristol scientists entitled "Binding Stoichiometry of the Cytotoxic T Lymphocyte-associated Molecule-4 (CTLA-4)", it was reported that: "The relative avidities of monomeric and dimeric CTLA-4 were compared by competitive binding assay in the experiment . . . . Monomeric CTLA-4 was a more effective competitor than multimeric CD28Ig . . . ." (Exh. 12 at 15421-22).

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UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 16, 2008, I electronically filed the foregoing document with the Clerk of Court using CM/ECF and caused the same to be served on the plaintiff at the address and in the manner indicated below:

BY HAND DELIVERY AND E-MAIL

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UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 23, 2008, I electronically filed the foregoing document with the Clerk of Court using CM/ECF and caused the same to be served on the plaintiff at the address and in the manner indicated below:

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