

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ABBVIE INC. and ABBVIE)	
BIOTECHNOLOGY LTD.,)	
)	Case No. 1:21-cv-2899
Plaintiffs,)	
)	Hon. Judge John Z. Lee
v.)	
)	Magistrate Judge M. David Weisman
ALVOTECH HF.,)	
)	
Defendant.)	

**DEFENDANT ALVOTECH HF.'S RENEWED RULE 12(B)(1), 12(B)(2), 12(B)(6),
AND 12(B)(7) MOTION TO DISMISS FOR LACK OF SUBJECT MATTER
JURISDICTION, LACK OF PERSONAL JURISDICTION, FAILURE TO
STATE A CLAIM, AND FAILURE TO JOIN A NECESSARY PARTY**

Defendant Alvotech hf. respectfully moves this Court to dismiss Plaintiff AbbVie Inc.'s and Plaintiff AbbVie Biotechnology Ltd.'s First Amended Complaint (Dkt No. 77).

Alvotech hf. recognizes the Court's Memorandum Opinion and Order (Dkt. No. 51) in *AbbVie Inc. et al. v. Alvotech hf.*, 1:21-cv-2258 (N.D. Ill. Aug. 23, 2021). In this case, the Court has not ruled on Alvotech hf.'s original Motion to Dismiss (Dkt. No. 28). Thus, Alvotech hf. files the instant renewed motion to preserve its rights.

As previously argued by Alvotech hf. in reference to the Original Complaint (Dkt. No. 1), the Court should dismiss AbbVie's First Amended Complaint under Federal Rule of Civil Procedure Rule 12(b)(1) for lack of subject matter jurisdiction or, in the alternative, under Rule 12(b)(6) for failure to state a claim for relief because AbbVie's 35 U.S.C. § 271(e) claims and AbbVie's declaratory judgment claims are all improper under the BPCIA and AbbVie did not sue the BLA applicant as required by Federal statute. The Court should also dismiss the First Amended

Complaint under Rule 12(b)(7) because Alvotech USA Inc. is a required party under Rule 19 and cannot be joined to this matter in this venue. The Court should also dismiss this suit under Rule 12(b)(2) for lack of personal jurisdiction.

In support of this renewed motion, Defendant Alvotech hf. incorporates by reference the arguments set forth in its Memorandum of Law in Support of Defendant Alvotech hf.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction, Lack of Personal Jurisdiction, Failure to State a Claim, and Failure to Join a Necessary Party (Dkt. No. 29) ("Original Motion to Dismiss"). Specifically, within the argument section of Alvotech's Original Motion to Dismiss:

- Sections I.A and II apply to the 35 U.S.C. § 271(e) claims in AbbVie's First Amended Complaint;
- Sections I.B, II, and III apply to the declaratory judgment claims in AbbVie's First Amended Complaint; and
- Section IV applies to all claims in AbbVie's First Amended Complaint.

For the reasons set forth above and in the Original Motion to Dismiss, incorporated herein by reference, Defendant Alvotech hf. respectfully renews its motion to dismiss AbbVie's First Amended Complaint with prejudice.

Date: December 3, 2021

Respectfully submitted,

ALVOTECH HF.

By: /s/ Louis E. Fogel

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Attorneys for ALVOTECH HF.

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2021 I caused a true and correct copy of the foregoing to be electronically served on counsel of record via the Court's CM/ECF system.

/s/ Louis E. Fogel
Louis E. Fogel