

**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 Second Amended Complaint (Dkt No. 130).

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 Second 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 Second

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").¹ 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 Second Amended Complaint;
- Sections I.B, II, and III apply to the declaratory judgment claims in AbbVie's Second Amended Complaint; and
- Section IV applies to all claims in AbbVie's Second 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 Second Amended Complaint with prejudice.

Date: December 29, 2021

Respectfully submitted,

ALVOTECH HF.

By: /s/ Louis E. Fogel

Louis E. Fogel (# 6281404)

JENNER & BLOCK LLP

353 N. Clark St.

Chicago, IL 60654

Tel: 312-222-9350 / Fax: 312-527-7764

¹ Alvotech hf. previously filed a Renewed Motion to Dismiss AbbVie's First Amended Complaint, which similarly incorporated by reference the arguments set forth in its Original Motion to Dismiss. *See* Dkt. No. 91.

Email: lfogel@jenner.com

Jonathan Singer
FISH & RICHARDSON P.C.
12860 El Camino Real, Ste. 400
San Diego, CA 92130
Tel: 858-678-5070 / Fax: 858-678-5099
Email: singer@fr.com

Martina Tyreus Hufnal
Douglas McCann
FISH & RICHARDSON P.C.
222 Delaware Ave, 17th Fl.
Wilmington, DE 19801
Tel: 302-652-5070 / Fax: 302-652-0607
Email: tyreushufnal@fr.com;
dmccann@fr.com

Attorneys for ALVOTECH HF.

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 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