

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ALNYLAM PHARMACEUTICALS, INC.,)	
)	
Plaintiff,)	C.A. No. 22-335-CFC (CONSOLIDATED)
)	
v.)	
)	
MODERNA, INC., MODERNATX, INC., and MODERNA US, INC.,)	
)	
Defendants.)	
)	
)	

**STIPULATION AND JOINT MOTION FOR ENTRY OF
FINAL JUDGMENT OF NON-INFRINGEMENT**

Plaintiff Alnylam Pharmaceuticals, Inc. (“Alnylam”) and Defendants Moderna, Inc., ModernaTX, Inc., and Moderna US, Inc. (collectively, “Moderna”), by their undersigned counsel, hereby stipulate and agree, subject to the approval of the Court, to entry of final judgment as follows:

1. This is a patent infringement action brought by Alnylam against Moderna. In response, Moderna has asserted affirmative defenses and counterclaimed for declaratory judgments of non-infringement, invalidity, and under 28 U.S.C. § 1498.

2. This Court has jurisdiction over the claim and counterclaims in this action pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

3. The patents-in-suit are U.S. Patent No. 11,246,933 (“the ’933 Patent”) and U.S. Patent No. 11,382,979 (“the ’979 Patent”) (collectively, the “Patents-in-Suit”).

4. On March 17, 2022, Alnylam filed its Complaint against Moderna asserting infringement of the ’933 Patent.

5. On July 12, 2022, Alnylam filed its Complaint against Moderna asserting infringement of the ’979 Patent.

6. On July 27, 2022, the Court entered an order consolidating both actions. D.I. 25.

7. On May 10, 2023, Moderna filed its Counterclaims and Answers to the Complaints (D.I. 87, 88) asserting affirmative defenses and counterclaims of non-infringement, invalidity, and under 28 U.S.C. § 1498.

8. Alnylam’s allegations of infringement are directed to Moderna’s mRNA COVID-19 vaccine products (the “Accused Products”)—marketed as SPIKEVAX[®]. Alnylam asserts that Moderna infringes claims 18 and 20-27 of the ’933 Patent and claims 1-3, 5-14, 18-20, and 22-30 of the ’979 Patent (the “Asserted Claims”).

9. On August 21, 2023, the Court entered an Order on claim construction (the “Claim Construction Order”) in the above-captioned case. D.I. 125.

10. In the Claim Construction Order, the Court ordered that:

A. **branched alkyl** (all Asserted Claims) means “A saturated hydrocarbon moiety group in which one carbon atom in the group (1) is bound to at least three other carbon atoms, and (2) is not a ring atom of a cyclic group.”

B. **branched C₁₀-C₂₀ alkyl** (all Asserted Claims) means “A saturated hydrocarbon moiety group with 10 to 20 carbon atoms and in which one carbon atom in the group (1) is bound to at least three other carbon atoms, and (2) is not a ring atom of a cyclic group”

C. **R¹³ is a branched C₁₀-C₂₀ alkyl** (all Asserted Claims) means “R¹³ is a saturated hydrocarbon moiety group with 10 to 20 carbon atoms and in which one carbon atom in the group (1) is bound to at least three other carbon atoms and (2) is not a ring atom of a cyclic group.”

11. Alnylam has concluded that the foregoing claim constructions preclude it from obtaining a judgment in its favor with respect to infringement by the Accused Products of the Asserted Claims as currently formulated. Accordingly, the parties stipulate and agree to the entry of a final judgment that Moderna’s Accused Products as currently formulated do not infringe the Asserted Claims of the Patents-in-Suit based on the Court’s construction of the foregoing claim terms.

12. The parties agree that this stipulation is being entered without prejudice to either party’s otherwise available rights in the event that the case is remanded after appeal for any reason.

13. The parties further stipulate and agree that the affirmative defenses and counterclaims asserted in Moderna's Counterclaims and Answers to the Complaints should be dismissed without prejudice.

14. The parties reserve all of their respective appellate rights, including the right to challenge the Court's Claim Construction Order.

15. The parties further stipulate that, in the current procedural posture, each party should bear its own fees and costs, including attorneys' fees, incurred in this action through the date of this stipulation. The parties reserve the right to seek any additional fees and costs incurred in this action (including in any appeal) in the future. Further, if the judgment of non-infringement based on the present stipulation were vacated and the case remanded, the parties reserve the right to seek fees and costs incurred to date (*e.g.*, based on additional facts first learned via further discovery).

FARNAN LLP

/s/ Michael J. Farnan

Brian E. Farnan (#4089)
Michael J. Farnan (#5165)
919 N. Market Street, 12th Floor
Wilmington, Delaware 19801
(302) 777-0300
(302) 777-0301
bfarnan@farnanlaw.com
mfarnan@farnanlaw.com

*Attorneys for Defendants
Moderna, Inc., Moderna TX, Inc.,
and Moderna US, Inc.*

Dated: August 25, 2023

MCDERMOTT WILL & EMERY LLP

/s/ Ethan H. Townsend

Ethan H. Townsend (#5813)
The Nemours Building
1007 North Orange Street, 10th Floor
Wilmington, DE 19801
(302) 485-3910
ehtownsend@mwe.com

*Attorneys for Plaintiff
Alnylam Pharmaceuticals, Inc.*