

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

ACUITAS THERAPEUTICS INC.,)
MICHAEL J. HOPE, STEVEN M.)
ANSELL, and XINYAO DU,)

Plaintiffs,)

v.)

ALNYLAM PHARMACEUTICALS,)
INC.,)

Defendant.)

C.A. No. 24-cv-816-CFC

**OPENING BRIEF IN SUPPORT OF MOTION TO DISMISS
BY DEFENDANT ALNYLAM PHARMACEUTICALS, INC.**

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I. NATURE AND STAGE OF THE PROCEEDINGS

In their Complaint (D.I. 1), Acuitas Therapeutics Inc. (“Acuitas”) and Michael Hope, Steven Ansell, and Xinyao Du (“Acuitas Scientists” and collectively, “Plaintiffs”) request under 35 U.S.C. § 256 that the Court order correction of inventorship on seven patents (“Patents-in-Suit”) owned by Defendant Alnylam Pharmaceuticals, Inc. (“Alnylam”). This is Alnylam’s Opening Brief in Support of its Motion to Dismiss.¹

II. SUMMARY OF ARGUMENT

1. The Complaint should be dismissed under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) because Plaintiffs have not pleaded facts sufficient to show that the Court has subject matter jurisdiction. There are nine named inventors across the seven Patents-in-Suit, many of whom are not currently employed by Alnylam. Plaintiffs have not pleaded that they provided notice to any of the named inventors, thus failing to establish a jurisdictional prerequisite under 35 U.S.C. § 256.

2. The Complaint should be dismissed under Rules 12(b)(1) and 12(b)(6) because Acuitas has not demonstrated it has standing. Acuitas asserts that “Acuitas

¹ Alnylam is not currently filing an answer, because a Rule 12 motion “extend[s] the time to file an answer until ten days after receiving notice of the District Court’s action on its motion.” *Brown v. Interbay Funding LLC*, 198 F. App’x 223, 225 (3d Cir. 2006).

owns the rights that Drs. Hope, Ansell, and Du have as inventors of the Patents-in-Suit.” D.I. 1 ¶19. Acuitas does not plead any facts in support of this claim.

3. The Complaint should be dismissed under Rules 12(b)(1) and 12(b)(6) because the Acuitas Scientists also do not plead any facts to support standing. If the Acuitas Scientists transferred all their rights to Acuitas, as Plaintiffs contend (D.I. 1 ¶19), then each “stands to reap no benefit.” *Larson v. Correct Craft, Inc.*, 569 F.3d 1319, 1326 (Fed. Cir. 2009). The Acuitas Scientists assert “reputational and economic” harm (D.I. 1 ¶19), but do not plead what that harm is. These allegations are not “concrete and particularized” and do not demonstrate standing. *Shukh v. Seagate Tech., LLC*, 803 F.3d 659, 663 (Fed. Cir. 2015).

4. The Complaint should be dismissed under Rule 12(b)(6) because it lacks the specificity required by Rule 9(b) or even the lower Rule 8 standard. The Complaint does not plead facts to support contribution by each putative inventor and the corroboration of such specific contribution.

III. STATEMENT OF FACTS

A. Facts Relating to Notice Requirements

There are nine named inventors across the seven Patents-in-Suit. D.I. 1 ¶7 (listing the inventors). The Complaint does not allege that any of these individuals have been notified of this proceeding.

B. Facts Relating to Standing

Acuitas was formerly known as “AlCana,” which was a contraction of

“Alnylam Canada.” D.I. 1 ¶5. Acuitas is a private Canadian corporation organized under the laws of Canada, and Drs. Ansell, Hope, and Du are residents of Canada. D.I. 1 ¶¶14-15. The Complaint has not identified any employment agreements or assignment agreements between Acuitas and the Acuitas Scientists.

C. Facts Relating to Failure to State a Claim

AlCana was founded in 2009 by Drs. Thomas Madden, Pieter Cullis, and Michael Hope. D.I. 1 ¶5. Dr. Cullis was the lab director at which Drs. Madden, Hope, and Du worked. *See* D.I. 1 ¶¶24, 31, 32 (referring to “Dr. Cullis’s lab”). Many other scientists worked in Dr. Cullis’s lab, including Jay Chen, Ying Tam, and Barb Mui. *See, e.g.*, D.I. 1 ¶¶35, 41. Acuitas does not seek to add any of these other scientists to the Patents-in-Suit, even though they and their scientific publications are referenced dozens of times in the Complaint.

IV. LEGAL STANDARD

Alnylam presents here the standards for a motion to dismiss and will address the legal standards specific to each argument within the Argument section.

A. Legal Standards for Motions to Dismiss Under Rule 12(b)(1)

“The party asserting subject matter jurisdiction has the burden of proving its existence. Challenges to subject matter jurisdiction under Rule 12(b)(1) may be facial or factual. A facial attack contests the sufficiency of the pleadings, whereas a factual attack contests the sufficiency of jurisdictional facts. In reviewing a facial attack, the court considers only the allegations in the complaint and any documents

referenced in or attached to the complaint, in the light most favorable to the plaintiff. In contrast, when reviewing a factual attack, the court may weigh and consider evidence outside the pleadings. Finally, in a factual challenge, no presumptive truthfulness attaches to plaintiffs' allegations." *Genentech, Inc. v. Amgen Inc.*, 310 F. Supp. 3d 467, 469 (D. Del. 2018) (internal citations omitted).

B. Legal Standards for Motions to Dismiss Under Rule 12(b)(6)

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint should be dismissed under Rule 12(b)(6) when it fails to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). It is not sufficient to allege facts that are merely consistent with liability; a complaint that alleges only such facts "stops short of the line between possibility and plausibility" and should be dismissed. *Id.* at 546.

V. ARGUMENT

A. Plaintiffs Fail to Adequately Plead Notice to All Concerned Parties

The Complaint should be dismissed because Plaintiffs have not satisfied the requirements for subject matter jurisdiction. *See Genentech*, 310 F. Supp. 3d at 469 ("The party asserting subject matter jurisdiction has the burden of proving its existence."). For an action under 35 U.S.C. § 256, subject matter jurisdiction requires that "notice" be provided to "all parties concerned."

The statute [Section 256] prescribes only one prerequisite to judicial action: all parties must be given notice and an opportunity to be heard. If that is done, there is subject-matter jurisdiction in the district court over a dispute raising solely a joint inventorship issue among contending co-inventors.

MCV, Inc. v. King-Seeley Thermos Co., 870 F.2d 1568, 1570 (Fed. Cir. 1989); *see Magnetar Techs. Corp. v. Six Flags Theme Parks, Inc.*, No. 07-127-LPS-MPT, 2017 WL 3279120, at *4 (D. Del. Aug. 2, 2017) (notice provisions are “procedural prerequisites to maintain a correction action”).

Courts have interpreted the term “parties concerned” in Section 256 to require that notice of the proceeding be provided to “named inventors, omitted inventors, and assignees.” *Harish v. Rubinstein*, 602 F. Supp. 3d 696, 701 (D.N.J. 2022). The listed inventors do not necessarily need “to be named as a defendant; however, they must at least be notified of the pending action and given the opportunity to be heard with respect to issues impacting their interests.” *Id.* at 701 n.7. This is true even when the listed inventor has assigned his rights to others. *See id.* at 700 (noting that inventor “Weinzimmer assigned his interest in the ... [p]atent to Plaintiff”). When a plaintiff “has not named Weinzimmer [a listed inventor] as a defendant nor indicated whether [the listed inventor] has been notified of this action,” then the complaint “is subject to dismissal on that basis alone.” *Id.* at 702; *see Dyke v. Wake Forest Univ. Health Scis.*, No. 1:21-CV-627, 2021 WL 5566505, at *7 (M.D.N.C. Nov. 29, 2021) (“There is no subject matter jurisdiction if the contending inventor

does not give the required notice”), *aff’d*, No. 2022-1317, 2023 WL 1810508 (Fed. Cir. Feb. 8, 2023).

The Complaint does not plead that notice was provided to *any* of the nine named inventors and it does not name any of the nine inventors as parties. *See* D.I. 1 ¶7. The Complaint should be dismissed because the requirements for subject-matter jurisdiction under 35 U.S.C. § 256 have not been met.

B. Plaintiffs Fail to Adequately Plead Standing to Bring a Claim for Correction of Inventorship

“Standing has three elements: the plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements.” *Ellison v. Am. Bd. Of Orthopaedic Surgery*, 11 F.4th 200, 205 (3d Cir. 2021) (internal citations omitted). “A plaintiff seeking to establish injury in fact must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.” *Id.* at 205 (internal citations omitted). These requirements of standing also apply to “a plaintiff seeking correction of inventorship under § 256.” *Larson*, 569 F.3d at 1326 (district court lacked jurisdiction because plaintiff lacked standing to assert inventorship claim).

A plaintiff in a Section 256 action can show injury in fact in any of three ways:

(a) an ownership interest in the disputed patent; (b) a “concrete financial interest” in being named an inventor; and (c) a “concrete and particularized reputational injury” arising from being omitted as an inventor. *See Fina Oil & Chem. Co. v. Ewen*, 123 F.3d 1466, 1470 (Fed. Cir. 1997) (ownership interest); *Chou v. Univ of Chi.*, 254 F.3d 1347, 1359 (Fed. Cir. 2001) (financial interest); *Shukh v. Seagate Tech. LLC*, 803 F.3d 659 (Fed. Cir. 2015) (reputational interest); *see also Sywula v. Teleport Mobility, Inc.*, 652 F. Supp. 3d 1195, 1202 (S.D. Cal. 2023) (summarizing the three interests). Plaintiffs have not demonstrated they have standing.

a. Failure to Adequately Plead an “Ownership” Interest by Any Plaintiffs in the Patents-in-Suit

According to the Complaint, “Acuitas owns the rights that Drs. Hope, Ansell, and Du have as inventors of the Patents-in-Suit.” D.I. 1 ¶19. The Complaint does not plead what “the rights” are. Nor does the Complaint plead any facts in support of the conclusion that those rights were transferred to Acuitas.

In an analogous case, Judge Burke granted a motion to dismiss for failure to adequately plead an ownership interest. *Illumina, Inc. v. Guardant Health, Inc.*, No. 22-334-GBW-CJB, 2023 WL 1407716 (D. Del. Jan. 31, 2023), *report and recommendation adopted*, No. 22-334-GBW-CJB, 2023 WL 2867219 (D. Del. Mar. 29, 2023). Illumina had filed a Section 256 suit to correct inventorship, arguing that two of its employees (Mr. Steemers and another) should be added as co-inventors to patents owned by Guardant. The Court dismissed the case for lack of standing,

because “the Complaint asserts in only conclusory fashion that Illumina should be declared co-owner of the 35 patents based on ‘Steemers’ assignments to Illumina.” *Illumina*, 2023 WL 1407716 at *6. Though the pleading stated that *other* employees had entered into assignment agreements, “there are no clear factual allegations that *Steemers* executed any such assignment agreements.” *Id.* (emphasis in original). The Court therefore concluded that “Illumina has not demonstrated standing to assert ownership over any patents that may include contributions made by Steemers.” *Id.*

Here, there are three individuals whom Plaintiffs seek to add to the Patents-in-Suit: Drs. Hope, Ansell, and Du. The Complaint does not plead any assignment agreements, employment agreements, or other explanation of *why* or *how* Acuitas owns their patent rights.

Again, these are [Plaintiff’s] employment agreements. So presumably [Plaintiff] would be in a position to know which of their employees signs what type of agreement, and whether and why it is plausible that any particular employee (here, Steemers) did so in the past.

Illumina, 2023 WL 1407716, at *6 n.10. The Complaint also does not plead how or whether Canadian law imputes ownership of patent rights to employers, particularly since Acuitas is a private Canadian corporation and the Acuitas Scientists are also Canadian residents. D.I. 1 ¶¶14-15. The Complaint does not assert that the Acuitas Scientists have any ownership rights in the Patents-in-Suit (let alone what those rights are), and the Complaint is facially deficient to adequately plead Acuitas’ ownership interest.

b. Failure to Adequately Plead a “Financial” Interest by Any Plaintiffs in the Patents-in-Suit

Absent any evidence or explanation, the Complaint asserts in conclusory manner that there was “financial harm to Acuitas or its scientists.” D.I. 1 ¶8; *see* ¶19 (“economic harm”); ¶49 (“financial interests in connection with each of the Patents-in-Suit”). These generic allegations do not identify that financial harm, let alone whether the financial harm was to Acuitas (the corporate entity) or to any or all of the individual alleged inventors (Ansell, Hope, and Du). A generic financial interest does not meet the pleading requirements for standing. Rather, there must be “a concrete financial interest in the patent” at issue. *See Chou*, 254 F.3d at 1359.

The Complaint does not allege how adding Plaintiffs Ansell, Hope, and Du as inventors to the Patents-in-Suit entitles them to additional compensation or other financial benefit. Because Ansell, Hope, and Du each “lacks an ownership interest” and because adding them as inventors “will not generate any other direct financial rewards,” they lack standing to bring a claim under Section 256. *Larson*, 569 F.3d at 1327.

Acuitas also does not demonstrate its own financial interest to establish standing. Acuitas alleges that the “failure to name Drs. Hope, Ansell, and Du on the Patents-in-Suit therefore has resulted in a lawsuit in which Acuitas’s partners have been sued.” D.I. ¶19. However, Acuitas has not been sued for infringement of the Patents-in-Suit or threatened with suit, and the Complaint has not pleaded what the

financial implications (if any) will be to Acuitas based on the co-pending patent infringement lawsuits against Pfizer/BioNTech and Moderna. Nor has the Complaint pleaded any indemnity or other financial obligations between Acuitas and its partners.

c. Failure to Adequately Plead a “Reputational” Interest by Any Plaintiffs in the Patents-in-Suit

Absent any evidence or explanation, the Complaint asserts that “Alnylam’s failure to credit Drs. Hope, Ansell, and Du as co-inventors of the Patents-in-Suit now causes them, and Acuitas itself, reputational and economic harm.” D.I. 1 ¶19. The Complaint asserts that the scientists have “been deprived of proper attribution for their work,” and “Acuitas is being deprived of recognition of its ownership of the Patents-in-Suit.” *Id.*; *see* ¶49 (“reputational and financial interests in connection with each of the Patents-in-Suit”). A desire for more bragging rights does not establish standing, because only a showing of “concrete and particularized reputational injury can give rise to Article III standing.” *Shukh*, 803 F.3d at 663.

The Complaint does not plead any concrete reputational injury. For example, the Complaint does not allege that any Acuitas Scientists have suffered from an “inability to obtain employment” or how the “employment prospects would improve if the inventorship of the disputed patents was corrected.” *Id.* at 667. On information and belief, each of Drs. Ansell, Hope, and Du are still gainfully employed by

Acuitas, and the Complaint has not pleaded otherwise.² Courts routinely dismiss threadbare allegations of reputational injury, such as those in the Complaint. *See, e.g., Kamdem-Ouaffo v. PepsiCo Inc.*, 657 F. App'x 949, 954 (Fed. Cir. 2016) (affirming dismissal of Section 256 complaint because “reputational injury alone is not sufficient; rather, it must be tied to economic consequences, such as loss of employment prospects.”); *Feuss v. Enica Eng'g, PLLC*, No. 20-02034-KM-JBC, 2021 WL 1153146, at *4 (D.N.J. Mar. 26, 2021) (“Plaintiffs here provide no plausible factual allegations to support an inference that Nady’s reputation stands to benefit from correction of the listing. ... Accordingly, the Complaint fails to sufficiently plead a redressable injury as required by *Chou, Larson, and Shukh*”); *Pedersen v. Geschwind*, 141 F. Supp. 3d 405, 417 (D. Md. 2015) (dismissing Section 256 action because plaintiff “does not identify a single instance in which he has been criticized, ostracized, or deprived of any opportunity whatsoever because of his error; he points to no actual financial loss, no forfeited teaching or research opportunities, nor even an uncomfortable conversation with a colleague”).

C. Plaintiffs Fail to State the Basis for Correction of Inventorship

In addition to the lack of subject matter jurisdiction, the Complaint should

² Nor does the Complaint assert how Acuitas itself has suffered any reputational harm for failing to have its employees listed as inventors. Indeed, Acuitas has a “Publications” page on its website that touts its numerous research publications, but does not identify any patents. <https://acuitastx.com/technology/publications/>.

also be dismissed under Rule 12(b)(6) for failure to state a claim. “The burden of proving that an individual should have been added as an inventor to an issued patent is a heavy one” that requires “clear and convincing evidence”³ to overcome, because the “issuance of a patent creates a presumption that the named inventors are the true and only inventors.” *HIP, Inc. v. Hormel Foods Corp.*, 66 F.4th 1346, 1350 (Fed. Cir. 2023) (internal citations omitted). A complaint to correct inventorship therefore “requires specific, nonclusory factual allegations that, if true, would plausibly rebut each [named inventor’s] presumption of inventorship.” *Harish*, 602 F. Supp. 3d at 702-702 (dismissing complaint). The Complaint does not plead facts to identify and corroborate the specific contributions of the Acuitas Scientists to any claims of the Patents-in-Suit.

a. The Heightened Pleading Standards of Rule 9(b) Apply, but Formulaic Recitations Do Not Even Satisfy Rule 8

Plaintiffs were required to plead their claim “with particularity” under the heightened pleading standards of Federal Rule of Civil Procedure 9(b), because a necessary element of Section 256 is “error of omitting inventors or naming persons

³ Courts have imposed this heightened standard for inventorship issues because of “important policy considerations.” Particularly for inventions that have been successful, “there is an equally strong temptation for persons who consulted with the inventor and provided him with materials and advice, to reconstruct, so as to further their own position, the extent of their contribution to the conception of the invention.” *Hess v. Advanced Cardiovascular Sys., Inc.*, 106 F.3d 976, 980 (Fed. Cir. 1997).

who are not inventors.” See 35 U.S.C. § 256(b). Courts have interpreted the term “‘error’ [to] include[] all varieties of mistakes—honest and dishonest.” *Egenera, Inc. v. Cisco Sys., Inc.*, 972 F.3d 1367, 1376-77 (Fed. Cir. 2020). Thus, correction-of-inventorship claims under Section 256 inherently involve “mistake” and are subject to Rule 9(b). Under Rule 9(b), “a party must state with particularity the circumstances constituting fraud or mistake.” In the patent context, Rule 9(b) requires a plaintiff to plead in detail “the specific who, what, when, where, and how” of the alleged fraud or mistake. *Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1327 (Fed. Cir. 2009).

And even under the lower pleading standard present in Rule 8, the complaint must still include “more than unadorned, ‘the defendant unlawfully harmed me’ accusation.” *Ashcroft*, 556 U.S. at 677-78. The allegations must be “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl.*, 550 U.S. at 555; see, e.g., *Vapor Point LLC v. Moorhead*, No. 4:11-cv-4639, 2013 WL 12141365, at *4 n.3 (S.D. Tex. Oct. 1, 2013) (declining to address whether Rule 9(b) applied because the issue had not been briefed, but dismissing a Section 256 complaint under the “lesser” standard of Rule 8).

b. The Complaint Fails to Clearly Plead What Each of Hope, Ansell, and Du Contributed to the Claimed Inventions, as Opposed to Other Named and Unnamed Individuals at Acuitas

To meet the pleading requirements even under the Rule 8 standard, the

complaint must: “(1) identify at least one concept that is included in at least one identified claim of a patent-at-issue and then (2) allege some facts rendering it plausible that the purported co-inventor actually contributed (in a non-insignificant way) to at least that portion of the claimed invention.” *Illumina*, 2023 WL 1407716 at *7. Importantly, this identification must be done on an inventor-by-inventor basis: the complaint must plead “the joint inventor’s contribution,” what the putative inventor “himself generated,” as opposed to what generic “personnel” contributed. *Id.* at *5, *7. After all, “if a complaint fails to allege sufficient facts for a court to understand how the purported co-inventor actually contributed to a concept that ended up in at least one identified claim of a patent, then how can the court conclude that a co-inventorship claim is plausible as to that patent?” *Id.* at *7; *see Ecojet, Inc. v. Pure Spa Components, Inc.*, No. SACV 16-01463-CJC-KES, 2017 WL 3485780, at *5 (C.D. Cal. Feb. 10, 2017) (dismissing complaint because the putative inventor “must show that he contributed to the conception of the claimed invention,” rather than merely being “part of a team that developed” the claims inventions).

The Complaint should be dismissed because it takes the “part of a team” approach, discussing the activities of Acuitas as a whole and of other scientists. The Complaint, however, fails to plead the specific contributions of each of Hope, Ansell, and Du. For example, Dr. Cullis is mentioned 20 times in the Complaint,

and Dr. Madden is mentioned 24 times in the Complaint.⁴ The Complaint then describes the research of other Acuitas scientists, such as Dr. Chen and Dr. Mui (D.I. 1 ¶¶35, 41), and even the organization as a whole:

Before Acuitas was founded, Alnylam had worked with Dr. Hope and Dr. Ansell (*among others, including Acuitas co-founder and CEO, Dr. Madden*) to develop LNPs to deliver siRNA. [D.I. 1 ¶6]

[E]ach of the Patents-in-Suit claims inventions conceived and developed by *Acuitas personnel* as part of the collaboration with Alnylam. [*Id.* ¶7]

Dr. Hope *along with other scientists at Acuitas* conceived, formulated, and confirmed the optimal molar ratio for the lipids of the siRNA-LNP formulations [*Id.* ¶41]

Acuitas decided to turn its focus to an entirely different therapeutic payload, messenger RNA (mRNA). [*Id.* ¶47]

Dr. Madden and Dr. Hope *understood* the potential therapeutic importance of mRNA.... The challenge they faced was substantially greater than for the delivery of siRNA.... *Dr. Madden* and Dr. Hope therefore set about development of methods to effectively load mRNA inside LNP.... [*Id.* ¶47]

Acuitas has invented hundreds of novel lipids and thousands of LNPs.... [D.I. 1 ¶48]

However, Acuitas does not seek to add Drs. Cullis, Madden, Chen, or Mui or any of its other unnamed scientists to the Patents-in-Suit.

⁴ The Complaint spends 20 pages describing the history of Acuitas and the research publications of its scientists (including prior art), but does not clarify what any of this has to do with the putative inventorship of Hope, Ansell, and Du to the claims of the Patents-in-Suit.

What matters is the specific contributions of the individual putative inventors (each of Ansell, Hope, and Du), but these are elided in the Complaint. The Complaint bulk pleads the work of these three individuals, what “Drs. Hope, Ansell, and Du” contributed. *See, e.g.*, D.I. 1 ¶¶59, 60, 61, 62, 71, 72, 74, 85, 86, 98, 110, 122, 136, 137. The Complaint does not plead, for example, what specifically Dr. Du individually contributed or what his contributions are to any one identified claim of any Patent-in-Suit.

c. The Complaint Fails to Specifically Plead the Alleged Contributions of Hope, Ansell, and Du or Any Facts Corroborating Those Specific Contributions

It is not enough to be working on a project as part of a broader team. It is the quality of contribution of each putative inventor that matters. The putative inventor “must contribute in a significant manner to the conception or reduction to practice of the invention, make a contribution to the invention that is not insignificant, and do more than explain well-known concepts or the current state of the art.” Further, “the failure to meet any one factor is dispositive on the question of inventorship.” *HIP*, 66 F.4th at 1353 (analyzing factors from *Pannu v. Iolab Corp.*, 155 F.3d 1344, 1349 (Fed. Cir. 1998)). These contributions must also be corroborated. *Fina Oil*, 123 F.3d at 1474 (“Every putative inventor must nonetheless provide corroborating evidence of any asserted contributions to the conception of the invention.”).

What the individual contributions are, and whether they are significant and

corroborated, is not reserved for the ultimate findings, but must also be assessed at the pleading phase. *See Pro Mktg. Sales, Inc. v. Secturion Sys., Inc.*, No. 1:19-CV-00113, 2020 WL 5912351, at *5 (D. Utah Oct. 6, 2020) (granting motion to dismiss section 256 complaint). The Complaint pays lip service to the inventorship factors, but does not identify (let alone corroborate) the inventive contributions of any of Ansell, Hope, and Du. For example, the Complaint includes this stock language in each count:

The contributions of Drs. Hope, Ansell, and Du to the subject matter claimed in the '933 Patent are not insignificant when measured against the dimension of the full invention.

The contributions of Drs. Hope, Ansell, and Du amount to more than merely explaining well-known concepts and/or the current state of the art.

D.I. 1 ¶¶61-62; *see also* ¶¶75-76, 87-88, 99-100, 111-112, 125-126, 138-139 (same language, but replacing the patent number). The Complaint asserts in summary fashion what the collective of Ansell, Hope, and Du contributed. *See, e.g.*, D.I. 1 ¶¶59-60, 72-73, 86, 98, 110, 122, 136. The Complaint does not break out what any of the putative inventors individually contributed (particularly Dr. Du), let alone provide any corroboration of those contributions, and should be dismissed. *See Pro Mktg.*, 2020 WL 5912351, at *5 (dismissing complaint because “absent identification of what [putative inventor] contributed, where it is found, and how it is connected to the Secturion Patents, Plaintiff fails to state a claim for co-

inventorship and co-ownership under Section 256.”). A properly pleaded complaint requires “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl.*, 550 U.S. at 555.

d. The Complaint Fails to Plead Corroborated Collaboration on the Claimed Inventions

An additional requirement for joint inventorship is that “the alleged joint inventor seeking to be listed on a patent must demonstrate that his labors were conjoined with the efforts of the named inventors.” *Eli Lilly & Co. v. Aradigm Corp.*, 376 F.3d 1352, 1359 (Fed. Cir. 2004). Here, the Complaint does not plead any collaboration (let alone provide corroborating evidence of collaboration) between the named inventors (*e.g.*, Maier, Jayaraman, Akinc, Matsuda, Kandasamy, Rajeev, Manoharan, Nair, and Baillie) on the one hand, and the specific putative inventors (Ansell, Hope, and Du) on the other hand. To the contrary, the Complaint pleads two separate tracks of patented inventions, each stemming from separate provisional applications filed by Alnylam on December 7, 2011. Application No. 61/568,133 names only Alnylam employees/consultants, while Application No. 61/568,121 names only Acuitas Scientists, Drs. Ansell and Du. D.I. 1 ¶¶5, 42. The Patents-in-Suit stem from the 61/568,133 application. The Complaint fails to adequately plead collaboration between the specific putative inventors and the specific named inventors in conception of the specific claims of the Patents-in-Suit. *See Vanderbilt Univ. v. ICOS Corp.*, 601 F.3d 1297, 1303 (Fed. Cir. 2010) (“The

interplay between conception and collaboration requires that each co-inventor engage with the other co-inventors to contribute to a joint conception”).

This failure to plead collaboration between putative inventors and named inventors itself provides sufficient grounds to dismiss the Complaint, because there “must also be ‘corroborated collaboration’ between the putative inventor and the inventors named on the challenged patent.” *See Blackhawk Network Inc. v. SL Card Co. Inc.*, 589 F. Supp. 3d 1115, 1126-27 (D. Ariz. 2022) (dismissing complaint), *amended on reconsideration*, No. CV-21-00813-PHX-MTL, 2022 WL 1136633 (D. Ariz. Apr. 18, 2022) (clarifying that the dismissal was without prejudice). Plaintiffs’ Complaint should be dismissed.

VI. CONCLUSION

For the reasons set forth above, Alnylam respectfully requests that the Court dismiss Acuitas’s Complaint under Rules 12(b)(1) and 12(b)(6). The Complaint fails to establish subject matter jurisdiction (through notice to all concerned parties), fails to establish Article III standing, and does not plead inventorship with the requisite specificity.

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WORD COUNT CERTIFICATION

Pursuant to the Court's Standing Order Regarding Briefing in All Cases (Nov. 10, 2022) and Local Rule 7.1.3(a)(4), the undersigned hereby certifies that the foregoing brief contains 4,599 words in Times New Roman 14-point font, counted using Microsoft Word's word count feature.

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CERTIFICATE OF SERVICE

The undersigned counsel certifies that a true and correct copy of the foregoing document was served on September 19, 2024 on the following counsel via EMAIL.

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