

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

TRUSTEES OF THE UNIVERSITY OF
PENNSYLVANIA,

Plaintiff,

vs.

ST. JUDE CHILDREN'S RESEARCH
HOSPITAL, INC.,

Defendant,

and

JUNO THERAPEUTICS, INC.,

Intervenor.

Civil Action No. 2:13-cv-01502-SD

ORDER

Upon the unopposed motion of Juno Therapeutics, Inc. ("Juno") to intervene in this action (the "Motion"), and on consideration of Juno's submission in support thereof, the Motion is **GRANTED**.

Juno may file the Answer and Counterclaim of Intervenor Juno Therapeutics, Inc., attached as Exhibit C to the Motion.

Dated: _____

BY THE COURT:

Dalzell, J.

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JURY TRIAL DEMANDED

JUNO THERAPEUTICS, INC.'S UNOPPOSED MOTION TO INTERVENE

Pursuant to Federal Rule of Civil Procedure 24, Proposed Intervenor Juno Therapeutics, Inc. ("Juno") moves to intervene in the present action. The reasons for this motion are set forth in the accompanying memorandum in support, which is incorporated herein by reference.

Respectfully submitted,

JUNO THERAPEUTICS, INC.

Dated: December 13, 2013

/s/ Robert S. Tintner

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MEMORANDUM IN SUPPORT OF JUNO THERAPEUTICS, INC.'S
UNOPPOSED MOTION TO INTERVENE

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I. INTRODUCTION

Juno Therapeutics, Inc. ("Juno") brings this motion to intervene in this consolidated action between the Trustees of the University of Pennsylvania ("Penn") and St. Jude Children's Research Hospital, Inc. ("St. Jude"). Neither Penn nor St. Jude opposes Juno's intervention.

Juno is a recently-formed biotechnology startup launched by several of the world's leading cancer research institutes—the Fred Hutchinson Cancer Research Center, Memorial Sloan-Kettering Cancer Center and Seattle Children's Research Institute. Juno's mission is to pursue a comprehensive clinical development plan to obtain regulatory approval for potentially curative immunotherapies for cancer, and thus to make a groundbreaking technology widely available to cancer patients as soon as possible.

As part of that mission, on December 3, 2013, Juno entered into an agreement with St. Jude for an exclusive license to St. Jude's patented chimeric antigen receptor ("CAR") technology for cancer immunotherapies, including St. Jude's U.S. Patent 8,399,645 (the "'645 patent"). St. Jude, a non-profit center for research and education, is committed to finding a cure for cancer and making groundbreaking therapies available to its patients and to cancer patients worldwide. In furtherance of that mission, St. Jude has partnered with Juno, which has the resources and capacity to bring to market breakthrough cancer therapies. Juno has invested significant capital to obtain the exclusive rights to St. Jude's patented CAR technology, and plans to invest millions more to make groundbreaking cancer treatments widely available to cancer patients.

In this dispute, Penn is asserting claims for a declaratory judgment that the '645 patent is invalid and not infringed by Penn. As the exclusive licensee of that patent, Juno has a direct and significant stake in defending those claims. In addition, as confirmed in a

separate agreement between the parties dated December 5, 2013, St. Jude has assigned to Juno "joint ownership of legal title to" and "an undivided interest in" its breach of contract claim against Penn. Juno therefore has a significant interest in pursuing St. Jude's claim that Penn has breached the terms of two Materials Transfer Agreements ("MTAs") between St. Jude and Penn by improperly commercializing and using St. Jude's CAR technology and in defending Penn's related declaratory judgment claim. As such, Juno seeks to intervene in this dispute under Federal Rule of Civil Procedure 24.

If this litigation were allowed to proceed without Juno, Juno's ability to protect its significant investment in the '645 patent and its contract claim against Penn would be seriously impaired. St. Jude, a non-profit hospital committed to treating children without charging their families for treatment, is not in a position to safeguard Juno's considerable commercial interests on its own. Indeed, in recognition of Juno and St. Jude's individual economic interests, the license agreement between Juno and St. Jude explicitly provides that Juno will "control, pursue, and defend" the present case between St. Jude and Penn, including both the patent- and contract-related claims.

Accordingly, pursuant to Federal Rule of Civil Procedure 24, Juno requests that the Court grant its motion to intervene in this action. Pursuant to Federal Rule of Civil Procedure 24(c), Juno has attached hereto as Exhibit C a true and correct copy of a proposed Answer and Counterclaim on Behalf of Intervenor Juno Therapeutics, Inc.

II. BACKGROUND

A. Juno's Exclusive License Agreement with St. Jude

On December 3, 2013, Juno and St. Jude executed an exclusive license agreement (the "Agreement") for the rights to St. Jude's patented technology relating to chimeric T-cell

receptors, including the '645 patent. A true and correct copy of the Agreement is attached hereto as Exhibit A ("Ex. A"). As set forth in the Agreement's recitals, St. Jude licensed its patent rights to "facilitat[e] the development and distribution of useful products and the utilization of new processes." Ex. A at 1. Juno obtained its exclusive license to "commercially develop, manufacture, use and/or distribute" products based upon or embodying St. Jude's patented technology. *Id.* The Agreement thus requires Juno, *inter alia*, to "exercise commercially reasonable efforts" to develop and to introduce products and services into the commercial market "as soon as practicable." Ex. A ¶ 5.3. Throughout the term of the Agreement, Juno is obligated to keep such products "reasonably available to the public." *Id.*

Juno has paid a significant up-front license fee and has agreed to pay St. Jude additional royalties subject to the terms of the Agreement. In exchange, St. Jude has granted Juno an "exclusive license to develop, make, have made, use, import, offer for sale, sell, and have sold" products and services covered by certain patent rights, including the '645 patent and related patent applications. Ex. A ¶ 2.1. Juno has the right to grant sub-licenses to third parties under the Agreement. *Id.* ¶ 2.2. Juno also has the "first right to conduct and control" all patent litigation related to the licensed patent rights, including the '645 patent, during the term of the Agreement. *Id.* ¶ 4.3a.

As for the present litigation between St. Jude and Penn, St. Jude has, as confirmed in a separate agreement between the parties dated December 5, 2013, assigned to Juno "joint ownership of legal title to" and "an undivided interest in" its breach of contract claim against Penn. A true and correct copy of the December 5, 2013 agreement is attached hereto as Exhibit B ("Ex. B"). Juno is obligated to "join as a party, and control, pursue and defend"

the action, including both the patent- and contract-related claims. Ex. A ¶ 4.3b. As of the date of the Agreement, Juno is responsible for 80% of the expenses incurred in this litigation, while St. Jude is responsible for the remaining 20%. *Id.* After reimbursement of St. Jude's litigation costs to date, any net recovery in the present litigation will be shared between the parties, with 70% of the proceeds going to Juno and 30% going to St. Jude. *Id.*

B. Juno's Proposed Pleading

Given Juno's strong interests in the present litigation over Penn's allegations that the '645 patent is invalid and not infringed, as well as Penn's breach of the MTAs, Juno now seeks to intervene (i) to defend Penn's declaratory judgment claims that the '645 patent is invalid and not infringed by Penn; (ii) to pursue, with St. Jude, claims that Penn has breached the MTAs; and (iii) to defend Penn's declaratory judgment claim that it has not breached the MTAs and that the 2003 MTA has been terminated. Attached hereto as Exhibit C is a true and correct copy of a Proposed Answer and Counterclaim on Behalf of Intervenor Juno Therapeutics, Inc. Through this motion, Juno respectfully requests that the Court grant Juno's motion to intervene and allow it to file the pleading attached hereto as Exhibit C.

III. APPLICABLE LEGAL STANDARDS

A. Applicable Circuit Law

Because a motion to intervene under Federal Rule of Civil Procedure 24 does not raise matters "unique to patent law," such a motion is governed by the substantive law of the regional circuit and not of the Federal Circuit. *Ericsson, Inc. v. InterDigital Commc'ns Corp.*, 418 F.3d 1217, 1220-21 (Fed. Cir. 2005). Here, Third Circuit law applies to Juno's motion. *See id.*

B. Intervention as of Right under Rule 24(a)(2)

Under Federal Rule of Civil Procedure 24(a)(2), the court must, on timely motion, permit any party to intervene that:

claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

FED. R. CIV. P. 24(a)(2). The Third Circuit has held that to intervene as a matter of right, an intervenor must establish that: (i) the application for intervention is timely; (ii) the applicant has a sufficient interest in the litigation; (iii) there is a threat that the interest may be affected or impaired, as a practical matter, by the disposition of the action; and (iv) the interest is not adequately represented by an existing party in the litigation. *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 969 (3d Cir. 1998).

C. Permissive Intervention under Rule 24(b)

Under Federal Rule of Civil 24(b), the court may, on timely motion, permit anyone to intervene who "has a claim or defense that shares with the main action a common question of law or fact." FED. R. CIV. P. 24(b). In exercising its discretion, the court should consider whether the intervention will "unduly delay or prejudice the adjudication of the original parties' rights." *Id.*

IV. ARGUMENT

A. Juno's Motion to Intervene Is Timely Filed

Both intervention as a matter of right under Rule 24(a)(2) and permissive intervention under Rule 24(b) require a "timely" motion by the proposed intervenor. Here, given the absence of any delay between Juno's execution of its Agreement with St. Jude and

Juno's motion for intervention, together with the relatively early stage of these proceedings, it is clear that Juno's motion is "timely" under Rule 24.

Timeliness "is not a purely temporal assessment of the time between plaintiffs' filing and [intervenor's] motion." *Pereira v. Foot Locker, Inc.*, No. 07-cv-2157, 2009 WL 1214240, at *2 (E.D. Pa. Apr. 27, 2009). Instead, timeliness is determined by the "totality of the circumstances," including "(1) [h]ow far the proceedings have gone when the movant seeks to intervene, (2) the prejudice which resultant delay might cause to other parties, and (3) the reason for the delay." *See U.S. v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1181-82 (3d Cir. 1994); *Choike v. Slippery Rock Univ. of Pa. State Sys. of Higher Educ.*, 297 Fed. Appx. 138, 140-41 (3d Cir. 2008).

Here, Juno's interests in the '645 patent and the subject matter of this litigation arose only on December 3, 2013, when the exclusive license agreement between Juno and St. Jude was executed. Juno filed the present motion just ten days later. Juno has not delayed in seeking to protect its interests. *See Pereira*, 2009 WL 121240 at *2 (finding that a thirteen-day delay between a proposed group of intervenors' learning of the main action and their application to intervene was a "relatively fast reaction" and granting motion to intervene).

Moreover, this case is still at a relatively early stage in the proceedings, and Juno is already diligently preparing its case and participating in ongoing settlement discussions with St. Jude and Penn. Allowing Juno to intervene in this matter will not prejudice the existing parties. *See Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 370 (3d Cir. 1995) (holding that, where some written discovery and settlement negotiations had occurred before motion to intervene, but no depositions had been taken or dispositive

motions filed, "we cannot say that intervention at this stage of the litigation would prejudice the current parties"). Notably, neither Penn nor St. Jude opposes the present motion.

B. Juno Is Entitled to Intervene as a Matter of Right under Rule 24(a)(2)

1. Juno Has Significant Interests in the Property and Transactions at Issue in this Lawsuit

The Third Circuit has held that to establish a sufficient interest for intervention, an applicant must demonstrate "an interest relating to the property or transaction which is the subject of the action." *Mountain Top*, 72 F.3d at 369 (quoting FED. R. CIV. P. 24(a)(2)).

"[T]he polestar for evaluating a claim for intervention is always whether the proposed intervenor's interest is direct or remote." *Kleissler*, 157 F.3d at 972. Intervenors should have an interest that is "specific to them, is capable of definition, and will be directly affected in a substantially concrete fashion by the relief sought." *Id.*

(a) Juno has an interest in the validity and infringement of the '645 patent

As the exclusive licensee of the '645 patent, Juno has a protectable legal interest in claims challenging the validity and/or infringement of the patent. Juno has paid a considerable sum for the right to exclude others from making, using, or selling products covered by St. Jude's patented technology. Maintaining the validity of the '645 patent is vital to protecting Juno's investment in the patent; if the patent is declared invalid, Juno will effectively lose its investment. In addition, defending Penn's claim that its activities do not infringe the '645 patent, and defining the scope of activities that *do* infringe the '645 patent, is vital to preserving Juno's interest in excluding others from making, using, or selling the patented technology.

Numerous courts have found that an exclusive licensee's significant stake in litigation over the validity and/or infringement of an exclusively-licensed patent constitutes an interest sufficient to support the licensee's intervention in the litigation. *See, e.g., Univ. of Kan. Ctr. for Research, Inc. v. U.S.*, No. 08-2565, 2009 WL 2877645, at *3-*4 (D. Kan. Sept. 2, 2009) (finding that exclusive licensees had sufficient interest to support intervention in lawsuit over validity of licensed patents); *Amgen, Inc. v. F. Hoffman-LaRoche Ltd.*, 456 F. Supp. 2d 267, 284 n. 11 (D. Mass. 2006) ("Possessing an exclusive license in a patent provides the licensee a sufficiently close relationship to the dispute between the litigants and an interest which is direct, not contingent.") (internal quotations and citation omitted). In fact, recognizing the importance of that interest, the Federal Circuit has held that under Federal Rule of Civil Procedure 19, an exclusive licensee is a necessary party and *must* be joined in any litigation over the validity and/or infringement of the exclusively-licensed patent. *See Aspex Eyewear, Inc. v. Miracle Optics, Inc.*, 434 F.3d 1336, 1344 (Fed. Cir. 2006) ("For the same policy reasons that a patentee must be joined in any lawsuit involving his or her patent, there must be joinder of any exclusive licensee."). Here, Juno's status as exclusive licensee clearly constitutes an "interest" sufficient to warrant its intervention to defend Penn's claim that the '645 patent is invalid and not infringed by Penn.

(b) **Juno has an interest in St. Jude's breach of contract claim against Penn**

In addition, pursuant to the Agreement, and as confirmed in a separate agreement between the parties dated December 5, 2013, St. Jude has assigned to Juno "joint ownership of legal title to" and "an undivided interest in" its breach of contract claim against Penn. *See* Ex. B. As the assignee of such an interest, Juno is a real party in interest in, and has standing to pursue with St. Jude, that claim against Penn. *See* Wright & Miller, 6A FED.

PRAC. & PROC. CIV. § 1545 (3d ed.) (stating that the assignee of a claim "should be treated as the real party in interest"). Thus, Juno has a sufficient protectable legal interest in St. Jude's claim for breach of contract. Because Penn's declaratory judgment claim relating to the MTAs is a direct mirror of St. Jude's breach of contract claim – alleging that the 2003 MTA is no longer valid and that Penn has not breached either MTA – Juno also has a protectable legal interest in defending that claim.

2. Juno's Ability to Protect Its Interests Would Be Impaired If It Could Not Intervene in this Action

Juno's ability to protect its exclusive rights in the '645 patent and to share in the recovery from St. Jude's contract claim against Penn would be significantly impaired if it could not intervene in this action. As set forth above, an order that the '645 patent is invalid, or that Penn's activities do not constitute infringement of the patent, would seriously impair Juno's exclusive rights in the '645 patent. In addition, a final disposition of the contract claim would seriously impair, if not entirely vitiate, Juno's ability to pursue or recover on that claim in the future. *See Kleissler*, 157 F.3d at 970 (quoting *Wright & Miller*, 7C FED. PRAC. & PROC. CIV. § 1908 (2d ed.) (holding that Rule 24 allows intervention by those "who might be practically disadvantaged by the disposition of the action").

3. St. Jude Cannot Adequately Represent Juno's Interests in Defending Penn's Declaratory Judgment Actions and Pursuing Its Breach of Contract Claim

While St. Jude and Juno assuredly have some common interests in this litigation, St. Jude's and Juno's interests are sufficiently different in nature to establish that St. Jude alone cannot adequately represent Juno's interests in this litigation. The Supreme Court has held that an intervening party need only show that representation of its interests by existing parties "*may* be inadequate," and the burden of making the showing shall be treated as

"minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n. 10 (1972) (emphasis added). An intervenor may satisfy its burden of showing that an existing party cannot adequately represent its interests by showing that "although the movant's interests are similar to those of one of the parties, they diverge sufficiently that the existing party cannot devote proper attention to the movant's interests." *Pereira*, 2009 WL 1214240 at *4 (internal quotation omitted).

Here, Juno's and St. Jude's interests in this litigation differ significantly, as is apparent from the terms of the license agreement between the parties. As the license agreement itself notes, St. Jude is a non-profit center for research and education. As set forth in St. Jude's own pleadings, an important component of St. Jude's activities is "attract[ing] world-class researchers and medical personnel to work at its facilities," and the ability to protect those individuals' research and scientific reputations "comprises a significant component of St. Jude's continuing ability to attract and retain world-class physicians and scientists." Dkt. No. 17, Counterclaim ¶ 7. Indeed, one of St. Jude's primary aims in this litigation is to secure recognition of St. Jude's and its researchers' contributions to the technology.

Juno, on the other hand, intends to commercially develop, manufacture, use, and distribute cancer immunotherapies throughout the world. Juno has already invested significant capital for the right to commercialize St. Jude's technology, and that investment is at risk in this litigation. Given Juno's significantly greater financial stake and economic risk in the outcome of this litigation, the Agreement obligates Juno to "control, pursue and defend" the contract and patent claims at issue in this case. Ex. A ¶ 4.3b. In addition, after both parties are reimbursed for costs and expenses incurred in the litigation, Juno is to

receive 70% of any recovery in this action, including any recovery on the contract claim—more than double what St. Jude stands to recover. *Id.*

In similar situations, other courts have found that an existing party with a less significant financial stake in the litigation could not adequately represent a proposed intervenor's interests. *See, e.g., Univ. of Kan. Center for Research*, 2009 WL 2877645 at *3 (finding that the interests of an exclusive licensee were not adequately represented by the patent owner, which had a "much smaller financial stake" in the outcome of the litigation); *U.S. Polo Ass'n v. PRL USA Holdings, Inc.*, No. 09-civ-9476, 2013 WL 837656, at *8 (S.D.N.Y. Mar. 6, 2013) (holding that interests of proposed intervenor in trademark infringement case were not adequately represented by existing parties where intervenor had much greater financial stake in litigation). St. Jude alone cannot adequately represent Juno's sizeable financial stake in this litigation, and Juno should be allowed to intervene as of right.

C. In the Alternative, Juno Should Be Permitted to Intervene Permissively

Even if the Court were to find that Juno is not entitled to intervene as a matter of right pursuant to Rule 24(a)(2), the Court should still allow Juno to intervene under Rule 24(b), which requires only that Juno has claims and defenses against Penn that share common issues of law and fact with the current action.

1. Juno Has Claims and Defenses Against Penn That Share Common Issues of Law and Fact with St. Jude's Claims and Defenses

There can be no question that Juno has claims and defenses that share common issues of law and fact with those already asserted in this action. Indeed, Juno's claims and defenses are identical to claims and defenses already asserted by St. Jude.

2. Allowing Juno to Intervene Will Not Significantly Delay or Prejudice the Adjudication of the Existing Parties' Rights

When determining whether to grant permissive intervention under Rule 24(b), the court must consider whether granting the motion will unduly delay or prejudice adjudication of the existing parties' rights. Again, given the relatively early stage of these proceedings, granting Juno's motion will not unduly delay adjudication of the parties' rights. As set forth above, discovery is in its earliest stages in this matter. Juno possesses few, if any, documents relevant to this matter, and adding Juno as a party should not impede discovery in any way.

In addition, there is no reason that granting Juno's motion will in any way prejudice adjudication of the existing parties' rights. In fact, allowing Juno to intervene in this action will potentially avoid subjecting Penn to multiple lawsuits over the subject matter of this litigation. For that very reason, the Federal Circuit has held that an exclusive licensee is a necessary party to any lawsuit involving the exclusively-licensed patent. *See Aspex Eyewear*, 434 F.3d at 1344 ("For the same policy reasons that a patentee must be joined in any lawsuit involving his or her patent, there must be joinder of any exclusive licensee."); *Amgen*, 456 F. Supp. 2d at 283 (citing *Aspex*, 434 F.3d at 1344) (holding that an exclusive licensee "must be joined" in suit over infringement of exclusively-licensed patent and noting that "[s]uch a rule ostensibly furthers the goal of preventing multiple concurrent or seriatim lawsuits"). Granting Juno's motion will not prejudice either Penn or St. Jude, neither of which opposes Juno's intervention.

V. CONCLUSION

For the foregoing reasons, Juno respectfully requests that the Court grant Juno's motion to intervene under Federal Rule of Civil Procedure 24(a)(b)(2) or, in the alternative,

Federal Rule of Civil Procedure 24(b)(2), and allow Juno to file the Answer and Counterclaims attached hereto as Exhibit C.

Respectfully submitted,

JUNO THERAPEUTICS, INC.

Dated: December 13, 2013

/s/ Robert S. Tintner

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CERTIFICATION PURSUANT TO LOCAL RULE 7.1(b)

I, Andrei Iancu, hereby certify that I have met and conferred with counsel for Plaintiff Trustees of the University of Pennsylvania, who confirmed that Plaintiff does not oppose the present motion to intervene. I further certify that I have met and conferred with counsel for Defendant St. Jude Children's Research Hospital, Inc., who confirmed that Defendant does not oppose the present motion to intervene.

/s/ Andrei Iancu
Andrei Iancu

CERTIFICATE OF SERVICE

I, Robert S. Tintner, do hereby certify that on this 13th day of December, 2013, I caused a true and correct copy of the foregoing Unopposed Motion to Intervene to be served via email upon:

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