

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THE UNIVERSITY OF UTAH,

Plaintiff,

v.

MAX-PLANCK-GESELLSCHAFT ZUR
FORDERUNG DER WISSENSCHAFTEN E.V., a
corporation organized under the laws of Germany;
MAX-PLANCK-INNOVATION GMBH, a
corporation organized under the laws of Germany;
WHITEHEAD INSTITUTE FOR BIOMEDICAL
RESEARCH, a Delaware corporation;
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY, a Massachusetts corporation;
UNIVERSITY OF MASSACHUSETTS, a
Massachusetts corporation; and ALNYLAM
PHARMACEUTICALS, INC., a Delaware
corporation; and ROBERT L. CARET, President of
the University of Massachusetts in his official
capacity; JAMES R. JULIAN, Executive Vice
President and Chief Operating Officer of the
University of Massachusetts, in his official capacity;
DAVID J. GRAY, Senior Vice President for
Administration, Finance & Technology and
University Treasurer of the University of
Massachusetts, in his official capacity; and JAMES
P. MCNAMARA, Executive Director, Office of
Technology Management of the University of
Massachusetts, in his official capacity, their
predecessors and successors in office,

Defendants.

Civil Action No. 11-10484-PBS

ORAL ARGUMENT REQUESTED

**THE OFFICIAL CAPACITY DEFENDANTS' MOTION TO DISMISS
UNIVERSITY OF UTAH'S SECOND AMENDED COMPLAINT**

For the reasons stated in the accompanying Memorandum in Support of Official Capacity Defendants' Motion to Dismiss University of Utah's Second Amended Complaint, defendants Robert L. Caret, President of the University of Massachusetts ("UMass"); James R. Julian, Jr., Executive Vice President and Chief Operating Officer of UMass; David J. Gray, Senior Vice President for Administration, Finance, and Technology and Treasurer of UMass; and James P. McNamara, Executive Director, Office of Technology Management for UMass (collectively, the "UMass Official Defendants") move to dismiss the University of Utah's ("Utah's") Second Amended Complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

This Court lacks subject matter jurisdiction over the Utah's claims against the UMass Official Defendants because these claims must be treated as claims against the state for which state sovereign immunity applies where Utah cannot invoke the narrow exception to state sovereign immunity set forth in *Ex Parte Young*, 209 U.S. 123 (1908). Consequently, these claims must be dismissed. Additionally, because UMass remains an indispensable party to this action as a co-owner of the patents whose inventorship Utah challenges, the case cannot proceed in the absence of UMass and therefore should be dismissed in its entirety.

Request for Oral Argument

Pursuant to Local Rule 7.1(d), UMass hereby requests oral argument on this Motion.

Respectfully submitted,

ROBERT L. CARET, JAMES R. JULIAN,
DAVID J. GRAY and JAMES P. MCNAMARA

By their attorney,

Martha Coakley
Attorney General for the Commonwealth
of Massachusetts

Of counsel:

Morgan Chu (70446)
David I. Gindler (117824)
Alan J. Heinrich (212782)
Lina F. Somait (263876)
IRELL & MANELLA LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067-4276
(310) 277-1010
mchu@irell.com
dgindler@irell.com
aheinrich@irell.com
lsomait@irell.com

/s/ Thomas F. Maffei
Thomas F. Maffei (BBO 313220)
Special Assistant Attorney General
GRIESINGER, TIGHE & MAFFEI, LLP
176 Federal Street
Boston, Massachusetts 02110
(617) 542-9900
tmaffei@gtmllp.com

Scott McConchie (BBO 634127)
GRIESINGER, TIGHE & MAFFEI, LLP
176 Federal Street
Boston, Massachusetts 02110
(617) 542-9900
smconchie@gtmllp.com

Dated: February 10, 2012

Certificate Pursuant to Local Rule 7.1(a)(2)

I, Thomas F. Maffei, hereby certify that counsel conferred and attempted in good faith to resolve or narrow the issues raised herein.

/s/ Thomas F. Maffei
Thomas F. Maffei

Certificate of Service

I, Thomas F. Maffei, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on February 10, 2012.

/s/ Thomas F. Maffei

Thomas F. Maffei