

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**

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

For the reasons stated in the accompanying Memorandum in Support of Defendants' Motion to Dismiss the University of Utah's Second Amended Complaint, defendants Max-Planck-Gesellschaft zur Förderung der Wissenschaften e.V., Max-Planck-Innovation GmbH, Whitehead Institute for Biomedical Research, Massachusetts Institute of Technology, and Alnylam Pharmaceuticals, Inc. (collectively, the "Moving Defendants") move to dismiss the University of Utah's ("Utah") Second Amended Complaint, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. All of Utah's claims against the Moving Defendants fail to state a claim for relief and thus should be dismissed.

Additionally, the Moving Defendants hereby join in Robert L. Caret, President of the University of Massachusetts; 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's, Executive Director, Office of Technology Management for UMass (collectively, the "UMass Official Defendants"), separately filed Motion to Dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. For the reasons set forth in the UMass Official Defendants' Motion, this court does not have jurisdiction over Utah's claims against the UMass Official Defendants. In addition, even though UMass is no longer a named defendant, it remains an indispensable party to this case as a co-owner of the Tuschl II Patents. Accordingly, Utah's entire case, including its claims against the Moving Defendants, should be dismissed.

**Request for Oral Argument**

Pursuant to Local Rule 7.1(d), the Moving Defendants hereby request oral argument on this Motion.

Respectfully submitted,

Max-Planck-Gesellschaft zur Förderung der  
Wissenschaften e.V.; Max-Planck-Innovation  
GmbH; Whitehead Institute for Biomedical  
Research; Massachusetts Institute of Technology;  
and Alnylam Pharmaceuticals, Inc.

By their attorneys,

/s/ Thomas F. Maffei

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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