

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

Civil Action No. 1:14-CV-01562-MSK-NYW

THE REGENTS OF THE UNIVERSITY OF COLORADO,

Plaintiff,

v.

ALLERGAN, INC.
and ALLERGAN BOTOX LIMITED,

Defendants.

ORDER ON PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT

Magistrate Judge Nina Y. Wang

This civil action comes before the court on Plaintiff The Regents of the University of Colorado's ("Plaintiff" or the "University") Motion (In the Alternative) for Leave to Amend Its Complaint (the "Motion for Leave to Amend"). [#58, filed February 17, 2015]. The matter was referred to this Magistrate Judge pursuant to the Order Referring Case dated March, 17, 2014 [#25] and the memorandum dated February 19, 2015 [#59].

The University initiated this action on June 3, 2014 by filing a Complaint asserting four counts for the breach of an Intellectual Property License Agreement by which it granted Defendants Allergan, Inc. and Allergan Botox Limited (collectively, "Defendants") licenses to certain patents for the treatment of various urology-related disorders with botulinum toxin. [#6]. Plaintiff amended its Complaint on July 24, 2014 to add a fifth count for breach of the License Agreement. [#32].

On January 22, 2015, Defendants filed a Motion for Judgment on the Pleadings as to Count I of Plaintiff's Amended Complaint, "Breach of the License Agreement: Failure to Use a Mutually Agreed-Upon Survey Provider." [#55].¹ In the instant Motion, The University asks for leave to amend its Complaint "to (1) clarify its breach of contract claim, and (2) assert a claim for breach of the implied covenant of good faith and fair dealing," *should* the court grant Defendants' Motion for Judgment on the Pleadings. [See #58].

IT IS ORDERED that the Motion for Leave to Amend [#58] is **DENIED** as premature, with leave to renew, if appropriate, following disposition of Defendants' Motion for Judgment on the Pleadings. At that time, the existing Response and Reply may also be renewed, so that the Parties do not need to spend time and resource re-arguing already briefed issues.

DATED: May 7, 2015

BY THE COURT:

s/Nina Y. Wang
United States Magistrate Judge

¹ The Motion for Judgment on the Pleadings was not referred to the undersigned Magistrate Judge.