

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ASSOCIATION FOR MOLECULAR PATHOLOGY;
AMERICAN COLLEGE OF MEDICAL GENETICS;
AMERICAN SOCIETY FOR CLINICAL PATHOLOGY;
COLLEGE OF AMERICAN PATHOLOGISTS;
HAIG KAZAZIAN, MD; ARUPA GANGULY, PhD;
WENDY CHUNG, MD, PhD; HARRY OSTRER, MD;
DAVID LEDBETTER, PhD; STEPHEN WARREN, PhD;
ELLEN MATLOFF, M.S.; ELSA REICH, M.S.;
BREAST CANCER ACTION; BOSTON WOMEN'S
HEALTH BOOK COLLECTIVE; LISBETH CERIANI;
RUNI LIMARY; GENAE GIRARD; PATRICE FORTUNE;
VICKY THOMASON; KATHLEEN RAKER,

09 Civ. 4515 (RWS)

Plaintiffs,

ECF Case

v.

UNITED STATES PATENT AND TRADEMARK
OFFICE; MYRIAD GENETICS; LORRIS BETZ,
ROGER BOYER, JACK BRITTAIN, ARNOLD B.
COMBE, RAYMOND GESTELAND, JAMES U.
JENSEN, JOHN KENDALL MORRIS, THOMAS PARKS,
DAVID W. PERSHING, and MICHAEL K. YOUNG,
in their official capacity as Directors of the University
of Utah Research Foundation,

PLAINTIFFS'
OPPOSITION TO
PARTICIPATION OF
ROSETTA GENOMICS
ET AL. AS AMICUS
CURIAE

Defendants.
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Rosetta Genomics et al. have filed a motion requesting leave to participate in this case as *amicus curiae*. Plaintiffs submit this opposition to that motion.

Plaintiffs consented to the participation of *amici* BIO et al. and Genetic Alliance, each of whom seeks to support defendants. Plaintiffs did not enter into a stipulation admitting all *amici* as recited by proposed *amici* BayBio et al. but plaintiffs do not object to their participation as *amici*. Plaintiffs have done so even though all of defendants' *amici* have submitted volumes of attachments to their briefs and BayBio has sought to file an oversized brief.

However, the proposed brief by Rosetta Genomics should be denied for two reasons. First, it is supported by what purports to be an expert declaration. There is reason to doubt the expertise of the declarant, who opines on legal issues. More importantly, it is inappropriate for *amici* to submit facts. Either the facts and opinions of Rosetta Genomics' proposed expert are duplicative of the facts proffered by defendants, in which case they are unnecessary and unhelpful, or they are new facts, in which case it is inappropriate for the Court to consider them. Second, the brief is untimely. Although there are no specific rules in this district governing the filing of such briefs, the convention has been to file them at the same time as the party whose position is being supported. In that way, the opposing party has an opportunity to oppose the views expressed. The brief by Rosetta Genomics was filed 20 days after the defendants' briefs.

For all these reasons, the motion by Rosetta Genomics et al. should be denied.


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