

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 BRITTAINE, 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,

DECLARATION OF
ROGER HUBBARD, PhD

Defendants.

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I, Roger Hubbard, declare under penalty of perjury:

1. I am President and Chief Executive Officer, Molecular Pathology Laboratory Network, Inc., Maryville, Tennessee (MPLN). I am also an Adjunct Associate Professor at the University of Tennessee Medical Center/Knoxville, Department of Pathology.

2. I am a member of the plaintiff American Society for Clinical Pathology (ASCP). I have a PhD in Biochemistry and Molecular Biology from the University of South Carolina. A complete copy of my curriculum vitae is attached.

3. Since 1989, MPLN has offered an expanding selection of molecular diagnostics and cytogenetic testing that targets hematologic malignancies, oncology, medical genetics and infectious disease.

4. MPLN offers a comprehensive selection of molecular diagnostics and cytogenetic testing with a focus on oncology, pharmacogenetics, prenatal care, infectious disease and medical genetics.

5. From screening and diagnosis to treatment selection and clinical course monitoring, our specialized test menus are designed to address every stage of patient management with extensive expertise in anatomic pathology, chromosome analysis, flow cytometry, fluorescence *in situ* hybridization (FISH), real-time polymerase chain reaction technology, immunohistochemistry and gene sequencing.

6. MPLN has the personnel, experience and equipment to analyze the BRCA genes. We currently sequence genes.

7. We receive an inquiry every few weeks from a hospital or laboratory asking us to analyze the BRCA genes. In each instance, we tell the requesting entity that we cannot do that analysis as a result of the patents enforced by defendant Myriad. It is common knowledge in the genetics profession and among laboratories that have the ability to analyze genes that Myriad owns patents on the BRCA1 and BRCA2 genes and that Myriad vigorously enforces its patents.

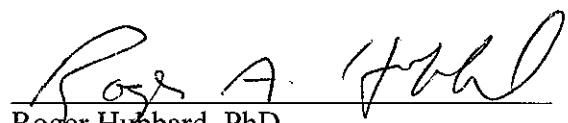
8. I am familiar with the analyses done by Myriad. Our laboratory could do those analyses were it not for the patents.

9. If the patents were invalidated, we would immediately consider doing BRCA testing in our laboratory. The only thing preventing us from BRCA testing in my lab is the

assertion of the BRCA related patents by Myriad and I have the earnest desire to immediately consider doing so.

I declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury under the laws of the United States, that the foregoing is true and correct to the best of my knowledge and belief.

Executed August 19, 2009



Roger Hubbard, PhD