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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COPY

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E-Filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

C 07 1427

11 EXONHIT THERAPEUTICS S.A.
12 a French société anonyme, and EXONHIT
13 THERAPEUTICS, INC., a Delaware
14 corporation,

Plaintiffs,

v.

15 JIVAN BIOLOGICS, INC.
16 a Delaware corporation,

Defendant.

Case No.

COMPLAINT FOR
INFRINGEMENT OF U.S.
PATENT NO. 6,881,571

EMC

DEMAND FOR JURY TRIAL

19 Plaintiffs, ExonHit Therapeutics S.A. ("ExonHit"), and ExonHit Therapeutics, Inc.
20 ("ExonHit Therapeutics"), for their Complaint against Defendant, Jivan Biologics, Inc. ("Jivan"),
21 for infringement of Plaintiff's U.S. Patent No. 6,881,571, issued April 19, 2005, allege as follows:

THE PARTIES

- 24 1. Plaintiff ExonHit Therapeutics S.A. is a French Société Anonyme, having
25 an office and place of business in Paris, France, located at 26, rue Brunel, F-75017, Paris, France.
- 26 2. Plaintiff ExonHit Therapeutics, Inc. is a Delaware corporation having
27 offices and a principal place of business at Avenel Business Park, 217 Perry Parkway,
28 Gaithersburg, MD 20877.

COMPLAINT FOR INFRINGEMENT OF U.S.
PATENT NO. 6,881,571

DEMAND FOR JURY TRIAL

1 screening.

2 11. On information and belief, Defendant Jivan manufactures, offers for sale,
3 sells, and uses microarrays known as SpliceExpress arrays for identifying spliced gene products.

4
5 **FIRST CLAIM FOR RELIEF**

6 **Infringement of '571 Patent**

7 12. Plaintiffs reallege and incorporates by reference as if fully restated herein
8 each and every allegation set forth in paragraphs 1-11 of this Complaint.

9 13. Plaintiffs are informed and believe, and on that basis allege, that Jivan has
10 directly infringed the '571 Patent and will continue to infringe the '571 Patent by making, using,
11 selling, offering to sell, and/or importing into the United States, in this judicial district, and
12 elsewhere throughout the United States, products embodying the patented inventions of the '571
13 Patent. Jivan will continue to infringe the '571 patent, in violation of 35 U.S.C. section 271(a),
14 unless enjoined by this Court.

15 14. Plaintiffs are informed and believe, and on that basis alleges, that Jivan has
16 been inducing, and/or contributing to the infringement of the '571 Patent and will continue to
17 induce and/or contribute to the infringement of the '571 Patent, in violation of 35 U.S.C. sections
18 271(b) and (c), unless enjoined by this Court.

19 15. As a direct and proximate consequence of Jivan's acts of infringement,
20 Plaintiffs have been irreparably injured. Unless such acts and practices are preliminarily and
21 permanently enjoined by this Court, Plaintiffs will continue to suffer additional and irreparable
22 injury.

23 16. Plaintiffs are entitled to injunctive relief pursuant to 35 U.S.C. § 283.

24 17. As a direct and proximate consequence of Jivan's acts of infringement,
25 Plaintiffs have suffered damages, in an amount not yet determined, of at least a reasonable royalty
26 due to infringing acts by Jivan, and lost profits due to loss of sales, profits, and potential sales that
27 Plaintiffs would have made but for the infringing acts and practices of Jivan, for which Plaintiffs
28 are entitled to relief pursuant to 35 U.S.C. § 284.

1 18. Jivan has been given actual notice of its infringement of the '571 Patent.

2 19. Jivan's infringement of the '571 Patent has been and continues to be willful
3 and deliberate, in disregard of Plaintiffs' rights in the '571 Patent.

4
5 **PRAYER FOR RELIEF**

6
7 WHEREFORE, Plaintiffs pray for judgment against Jivan as follows:

8 A. That this Court issue preliminary and permanent injunctions pursuant to 35
9 U.S.C. § 283, restraining, enjoining, and prohibiting Jivan and its respective officers, agents,
10 employees, and attorneys, and any person in active concert or participation with them or who are
11 acting under their direction, who receive actual notice of the injunction through personal service
12 or otherwise, from making, using, selling, offering for sale, or importing into the United States,
13 any product or products that infringe the '571 Patent.

14 B. That this Court issue preliminary and permanent injunctions pursuant to 35
15 U.S.C. §283 restraining, enjoining, and prohibiting Jivan and its respective officers, agents,
16 employees, and attorneys, and any person in active concert or participation with them or who are
17 acting under their direction, who receive actual notice of the injunction through personal service
18 or otherwise, from inducing or contributing to the infringement of the '571 Patent.

19 C. That this Court grant judgment in favor of Plaintiffs and award damages to
20 Plaintiffs adequate to compensate for the infringement by Jivan of the '571 Patent in an amount to
21 be determined at trial, but in no event less than a reasonable royalty.

22 D. That it be adjudged that Jivan's infringement of the '571 patent has been
23 willful and that this Court enhance the award of damages for willful infringement, up to three
24 times the amount of damages found, pursuant to 35 U.S.C. § 284.

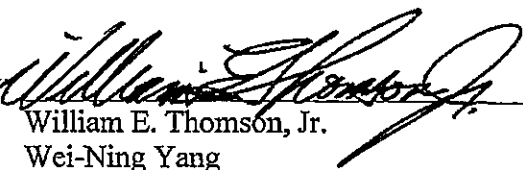
25 E. That this Court order against Jivan an assessment of interest on the
26 damages so computed, and an assessment of costs, pursuant to 35 U.S.C. § 284.

27 F. That this Court issue a declaration that this case is exceptional pursuant to
28 35 U.S.C. § 285 and accordingly order an award of attorneys' fees and costs in this action.

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G. That this Court afford Plaintiffs such other and further relief as the Court
deems equitable and just.

Date: March 12, 2007

By 
William E. Thomson, Jr.
Wei-Ning Yang
Clive M. McClintock

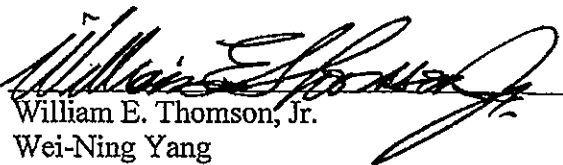
Attorneys for Plaintiff
EXONHIT THERAPEUTICS S.A.

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DEMAND FOR JURY TRIAL

Plaintiff ExonHit Therapeutics S.A. demands a trial by jury of all issues so triable.

Date: March 12, 2007

By: 
William E. Thomson, Jr.
Wei-Ning Yang
Clive M. McClintock

Attorneys for Plaintiff
EXONHIT THERAPEUTICS S.A.

EXHIBIT A

AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Northern District of California on the following Patents or Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT Northern District of California
PLAINTIFF		DEFENDANT
EXONHIT THERAPEUTICS S.A. EXONHIT THERAPEUTICS, INC.		JIVAN BIOLOGICS, INC.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,881,571	4/19/2005	ExonHit Therapeutics S.A.
2		
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4		
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In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY		
	<input checked="" type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill
	<input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and Complaint was made by me ¹	DATE March 15, 2007 @ 4:54 p.m.
Name of SERVER Francisco Yu	TITLE Process Server

Check one box below to indicate appropriate method of service

- Served Personally upon the Defendant. Place where served: Ed Wes, Agent for Service of Process, accepted by Erika Figueroa, Secretary at 101 Jefferson Dr., Menlo Park, CA 94025
- Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left:
- Returned unexecuted:
- Other (specify):

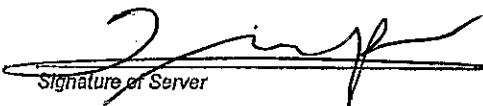
STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 4/03/07
Date


Signature of Server
ACE MESSENGER AND ATTORNEY SERVICE, INC.
149 9th Street, Suite 204
San Francisco, California 94102
Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

ATTACHED LIST OF DOCUMENTS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EXONHIT THERAPEUTICS S.A., ET. AL.. V.
JIVAN BIOLOGICS, INC., a Delaware corporation

CASE NO. C-07-1427 EMC

1. ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE AND ADR DEADLINES;
2. CIVIL COVER SHEET;
3. STANDING ORDER FOR CIVIL PRACTICE IN CASES ASSIGNED FOR ALL PURPOSES TO MAGISTRATE JUDGE EDWARD M. CHEN;
4. NOTICE OF ASSIGNMENT OF CASE TO A UNITED STATES MAGISTRATE JUDGE FOR TRIAL;
5. CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE;
6. DECLINATION TO PROCEED BEFORE A MAGISTRATE JUDGE AND REQUEST FOR REASSIGNMENT TO A UNITED STATES DISTRICT JUDGE;
7. U.S. E-FILING DISTRICT COURT NORTHERN CALIFORNIA ECF REGISTRATION INFORMATION HANDOUT