

# EXHIBIT I

LAW OFFICES  
WILLIAMS & CONNOLLY<sup>LLP\*</sup>

SHAUN P. MAHAFFY  
(202) 434-5554  
smahaffy@wc.com

680 MAINE AVENUE SW  
WASHINGTON, DC 20024  
(202) 434-5000  
WWW.WC.COM

EDWARD BENNETT WILLIAMS (1920-1988)  
PAUL R. CONNOLLY (1922-1978)

July 11, 2023

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**CONTAINS INFORMATION MODERNA DESIGNATED HIGHLY CONFIDENTIAL –  
OUTSIDE COUNSEL’S EYES ONLY**

**Via Email**

Mark C. McLennan  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, NY 10022  
(212) 909-3451  
mark.mclennan@kirkland.com

Re: *Arbutus Biopharma Corporation and Genevant Sciences GmbH v. Moderna, Inc.  
and ModernaTX, Inc.*, Case 1:22-cv-00252-MSG (D. Del.)

Dear Mark:

I write regarding Moderna’s Responses and Objections to Plaintiffs’ Second Set of Requests for Production, dated June 26, 2023, as well as Moderna’s letter dated June 30, 2023, concerning Plaintiffs’ RFP No. 111.

**RFP Nos. 99-100.** These RFPs request documents and communications by, with, or from Stéphane Bancel and/or Moncef Slaoui related to, *inter alia*, the Accused Product, Plaintiffs, and the Patents-in-Suit. Moderna has inappropriately refused to produce documents in response to these requests. Mr. Bancel has made public statements about the importance of mRNA delivery technology generally<sup>1</sup> and Arbutus’s technology specifically.<sup>2</sup> His significant role in Moderna’s

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<sup>1</sup> See Antonio Regalado, “None of us were ready’ to manufacture genetic vaccines for a billion people,” MIT Technology Review (Dec. 17, 2020), *available at* <https://www.technologyreview.com/2020/12/17/1014989/moderna-vaccine-availability-stephane-bancel-ceo/>.

<sup>2</sup> See Nathan Vardi, “Moderna’s Mysterious Medicines,” Forbes, (Dec. 14, 2016), *available at* <https://www.forbes.com/sites/nathanvardi/2016/12/14/modernas-mysterious-edicines/?sh=640b38ec6ef6>.

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product development decisions and commercial activity are at a matter of public record.<sup>3</sup> Moreover, it is our understanding that Mr. Bancel has been involved in patent-licensing discussions and decisions, including with respect to licensing of the Patents-in-Suit. As such, Mr. Bancel's documents are relevant at least to willfulness, validity (e.g., secondary considerations of nonobviousness), and damages. To the extent Moderna continues to refuse to produce Mr. Bancel's documents, please be prepared to explain the search that Moderna has undertaken to determine whether Mr. Bancel possesses non-cumulative, relevant documents.

Mr. Slaoui is a former member of Moderna's Board of Directors, who was subsequently appointed to lead Operation Warp Speed. The potential conflict of interest posed by this relationship was widely reported.<sup>4</sup> Moderna's relationship and communications with the government, and Mr. Slaoui in particular, are relevant at least to damages and Moderna's § 1498 defense.<sup>5</sup> To the extent that Moderna refuses to search for communications with Mr. Slaoui, please be prepared to provide details concerning the burden associated with such a search. Additionally, please let us know promptly whether you represent Mr. Slaoui with respect to this litigation.

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<sup>3</sup> See, e.g., Catherine Elton, "The Untold Story of Moderna's Race for a COVID-19 Vaccine," Boston Magazine (June 4, 2020), available at <https://www.bostonmagazine.com/health/2020/06/04/moderna-coronavirus-vaccine/>; Donna Young, "CDC reports 1st US case of coronavirus; NIH working with Moderna on vaccine," S&P Global Market Intelligence (Jan. 21 2020), available at <https://www.spglobal.com/marketintelligence/en/news-insights/trending/4urhd31MJzBeDot3X1frXw2>; Stéphane Bancel, "The Other Side" speaker series, Harvard Innovation Labs (Apr. 19, 2016), <https://www.youtube.com/watch?v=-P53wVGfvjw>; Damian Garde, "Ego, ambition, and turmoil: Inside one of biotech's most secretive startups," STAT News (Sept. 13, 2016), available at <https://www.statnews.com/2016/09/13/moderna-therapeutics-biotech-mrna/>; <https://www.c-span.org/video/?469926-1/president-trump-meeting-pharmaceutical-executives-coronavirus>; "The Never Again Plan!: Moderna CEO Stéphane Bancel wants to stop the next Covid-19—before it happens," <https://www.advisory.com/blog/2020/12/moderna-ceo-covid-vaccine-bancel>; <https://twitter.com/BarneyGrahamMD/status/1349512209370648578> ("1/13/20 was the day we shared our modified sequence recommendations with Moderna as requested by CEO Stephane Bancel on January 7th, 'Let us know in real time. I will get the team aware of it and (be) ready to run when you give us a sequence.'"); Peter Loftus, *The Messenger: Moderna, the Vaccine, and the Business Gamble That Changed the World* (2022).

<sup>4</sup> E.g., "Trump's Vaccine Chief Has Vast Ties to Drug Industry, Posing Possible Conflicts," (May 20, 2020), available at <https://www.nytimes.com/2020/05/20/health/coronavirus-vaccine-czar.html>.

<sup>5</sup> See, e.g., "Remarks by President Trump on Vaccine Development," <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-vaccine-development/> ("In fact, Mr. President, I have very recently seen early data from a clinical trial with a coronavirus vaccine. And this data made me feel even more confident that we will be able to deliver a few hundred million doses of vaccine by the end of 2020.").

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**RFP No. 121.** This request relates to Moderna's asserted prior art in Moderna's witnesses' custodial files, which is relevant at least to willfulness. Moderna states that it has already produced its asserted prior art. Such a production, however, does not disclose whether or not that prior art was in the possession of Moderna's custodians. Please confirm that Moderna will produce the requested documents.

**RFP Nos. 122-123.** These requests relate to communications concerning prior-art searches conducted with respect to the '069 patent and the '435 patent. Moderna has only committed to produce prior art asserted in its invalidity contentions. These RFPs, however, are relevant to the scope of Moderna's IPR estoppel. Please confirm that Moderna will produce documents in response to the full scope of these RFPs. If you intend to claim privilege over the results of Moderna's prior-art searches, please let us know and provide your legal basis for such an assertion. Please also confirm that Moderna will not rely on prior art not cited in its invalidity contentions.

**RFP Nos. 124-127.** These requests relate to prior-art searches concerning IPR2018-00739 and IPR2019-00554, as well as prior art and grounds that Moderna considered raising in those IPRs. Moderna states that it "is willing to meet and confer" regarding these requests. As noted above, these requests are relevant to the scope of Moderna's IPR estoppel. Please provide Moderna's position on these requests for us to consider in advance of our next meet-and-confer.

Sincerely,



Shaun P. Mahaffy

cc: Counsel of Record