

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

ACUITAS THERAPEUTICS INC.,

Plaintiffs,

v.

ARBUTUS BIOPHARMA CORP. and  
GENEVANT SCIENCES GMBH,

Defendants.

Civil Action No. 3:23-4200-ZNQ-TJB

**Motion Date: November 6, 2023**

**ORAL ARGUMENT REQUESTED**

**BRIEF IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS THE COMPLAINT**

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## INTRODUCTION

Acuitas Therapeutics Inc. (“Acuitas”) filed this declaratory judgment action against Genevant Sciences GmbH (“Genevant”) and Arbutus Biopharma Corp. (“Arbutus” and, together with Genevant, “Defendants”) with respect to ten patents that Arbutus owns and licensed to Genevant (“Defendants’ Patents”). The Complaint seeks declarations that the manufacture, use, offer to sell, and sale of the COVID-19 vaccine COMIRNATY® (“Comirnaty”) does not infringe any claim of Defendants’ Patents and that the patents are invalid. Comirnaty is manufactured and sold by nonparties Pfizer, Inc. (“Pfizer”) and BioNTech SE (“BNT”). Defendants hereby move to dismiss the Complaint for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) because Acuitas has not met its burden to allege an actual controversy between Acuitas and Defendants. In the alternative, the Court should exercise its discretion to decline to hear this declaratory judgment action.

The Complaint’s allegations do not establish a controversy between Acuitas and Defendants, because there is none. Acuitas does not make or sell Comirnaty, which is the sole product at issue, and Defendants have never accused Acuitas of infringing Defendants’ Patents or indicated an intent to sue Acuitas. Indeed, the Complaint does not allege that Defendants have ever accused Acuitas of infringing Defendants’ Patents (whether directly or indirectly), that Defendants have ever sent Acuitas any communication regarding Comirnaty whatsoever, or that Defendants have ever tried to stop Acuitas from licensing or supplying any lipid or LNP technology to Pfizer/BNT for use in Comirnaty. The only controversy is between Defendants and the nonparties Pfizer and BNT, which make and sell Comirnaty—a controversy that is currently being litigated in a separate action pending before this Court which does not involve Acuitas. *See Arbutus Biopharma Corp. et al. v. Pfizer Inc. et al.*, No. 3:23-cv-01876-ZNQ (D.N.J.) (the “Pfizer/BNT Action”). The Complaint should therefore be dismissed.

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