

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ACUITAS THERAPEUTICS INC.,

Plaintiff,

vs.

GENEVANT SCIENCES GMBH, and
ARBUTUS BIOPHARMA CORP.,

Defendants.

Case No. 1:22-cv-02229-MKV

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS THE FIRST AMENDED COMPLAINT**

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I. INTRODUCTION

Acuitas Therapeutics Inc. (“Acuitas”) initiated this declaratory judgment action against Genevant Sciences GmbH (“Genevant”) and Arbutus Biopharma Corp. (“Arbutus” and, together with Genevant, “Defendants”) on March 18, 2022, and filed a First Amended Complaint (“Amended Complaint”) on September 6, 2022. Acuitas seeks declarations that the manufacture, use, offer to sell, and sale of the COVID-19 vaccine COMIRNATY® (“Comirnaty”) made and sold by nonparties Pfizer Inc. (“Pfizer”) and BioNTech SE (“BNT”) does not infringe any claim of nine patents owned by Arbutus and licensed to Genevant (“Defendants’ Patents”) and that Defendants’ Patents are invalid. The Court should dismiss the Amended Complaint under Fed. R. Civ. P. 12(b)(1) because Acuitas has failed to meet its burden to show that there is an actual controversy between Acuitas and Defendants. Even if Acuitas could somehow establish subject matter jurisdiction, the Court should use its discretion to decline to hear Acuitas’s request for declaratory judgment for at least two independent reasons. *First*, this suit runs the serious risk of creating a multiplicity of actions regarding the same vaccine and the same patents, thereby serving no useful purpose. *Second*, pending discussions between Genevant¹ and Pfizer/BNT regarding a potential license for Comirnaty could moot this suit at any time, resulting in the Court having expended its time and resources unnecessarily.

II. SUMMARY OF ARGUMENT

Acuitas’s Amended Complaint is perhaps most notable for what it does not allege. It does not allege that Defendants have ever sent Acuitas any communication regarding Comirnaty. It does not allege that Defendants have ever accused Acuitas of infringing Defendants’ Patents, whether directly or indirectly. It does not allege that Acuitas makes or sells Comirnaty. It does

¹ Genevant has the authority by contract to license Defendants’ Patents in this situation.

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