UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES PATENT AND TRADEMARK OFFICE; MYRIAD GENETICS; LORRIS BETZ, ROGER BOYER, JACK BRITTAIN, ARNOLD B. COMBE, RAYMOND GESTELAND, JAMES U. JENSEN, JOHN KENDALL MORRIS, THOMAS PARKS, DAV])) W. PERSHING, and MICHAEL K. YOUNG, in their official capacity as Directors of the University of Utah Research Foundation,

Civil Action No. 09-4515 (RWS)

DECLARATION OF
ELLEN T. MATLOFF, M.S.

Defendants

Plaintiffs,

v.

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,)
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1. My name is Ellen T. Matloff. I am the Director of the Cancer Genetic Counseling

Shared Resource at the Yale Cancer Center in New Haven, Connecticut. I am

also a Research Scientist in the Department of Genetics at the Yale University

School of Medicine.

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question and return my calL Approximately a week later, another Myriad

representative called me and said that large rearrangement testing could not be

done at the DNA Diagnostics Lab because it would infringe Myriad's BRCA

patents. It took Myriad approximately a year to begin offering large

rearrangement testing which they called "BRCA Analysis Rearrangement

Testing," or BART, even though the DNA Diagnostics Lab could have performed

such additional analysis immediately. This period caused me grave concern for

my patients, because large rearrangement testing is capable of identifying cancer

related mutations that the basic BRCA 1 and BRCA2 testing offered by Myriad

does not identify.

9. It is my belief that Myriad's continuous and systematic assertion ofits BRCA

patents has resulted in the elimination of other genetic testing options available to

me and my patients that could be cheaper, better and more appropriate. Through

the BRCA patents, Myriad has exclusive access to extensive data about the

10. IfI learned that the BRCA patents owned by Myriad were invalidated, I would immediately begin to do several things that I have the capability and desire to do today, but am unable to do because of the BRCA patents.

11. First, 1 would send genetic samples from women who are appropriate candidates for BRCA gene analysis to laboratories other than Myriad Genetics, which would then be free to test for BRCA mutations without legal repercussion. This is not

13. Third, also due to the reduced cost of BRCA gene testing, I would expand the

population of women whom I counsel and for whom I arrange genetic testing.

Specifically, I would arrange for BRCA 1 and BRCA2 testing for all women with

certain types of cancer including triple negative breast cancer, medullary breast

cancer, and epithelial invasive ovarian cancer, because women with these types of

cancers are overrepresented in the population of women having BRCA1 and

BRCA-related genetic testing by Myriad that has resulted from its assertion of its

gene patents.

I declare, pursuant