Amerandus Research <amr@secure.mailbox.org> 7/21/2017 2:25 PM

business matter

To rtt@jsdc.com

Hi Ron,

I would like to get your assistance in a business matter.

My firm has produced two strains of genetically modified mice which we wish to market. We had for several years been working to this end with a U.S. mouse distributor (Taconic Laboratories of Germantown, NY).

Taconic recently gave what some experts in this area believe was a very poor offer to us, i.e. they wished to retain 90% of proceeds and expected we and our partners to split the remaining 10%. Common practice for such terms would have been their retaining 20-50%, with perhaps most often 35%. I can provide details and speculations about how this outcome may have transpired, but the important practical point is that we and our partners do not wish to take such a “deal”.

Our current IP attorney is just a generalist. He therefore conferred with and asked me to contact an expert, Dan Morath of Trask Britt, in such deals. This is what I wrote to our firm’s general IP attorney on May 24, 2017, after having had a discussion with a Morath:

> “I managed to get Dan on the phone before [my] leaving the country. He was very experienced. With respect to the transgenic strain [and Columbia University], he asked me to drop the term "laches" to you.
>
> I scribbled down a few other comments as he spoke:
> After listening to me describe the mice and then the split, he started:
> "Just no. No. That's completely unreasonable". That was pretty much the same reaction from the university IP attorney earlier this week. [A retired university IP attorney I had contacted.]
> Dan went on: "30, 35, 40%, that's kinda where the industry is" ... Maybe 50% if it's not patented.
>
> He then continued to ask questions to get more details.
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> He said they [Taconic] could want to not be held liable, but then we should get a larger share in order to take on the liability. He also said it would be very unlikely to be worth it to Columbia to take us to court, even if they had some rights, which it does not sound as though he believes they do, e.g. laches.
>
> He said there were many other distributors and that maybe we should threaten to pull the line from them [Taconic]. "We can come to a better number than 90%. ... Shop it around ... it doesn't sound like a fair price to me".
>
> We might be able to patent, he noted, but added that it would be a "long and costly process". [Neither my firm nor our partners are interested in pursuing patents.]
>
> In the end, he said, "It doesn't sound like they are negotiating with you in good faith." I agreed.”

Columbia has never made an explicit and clear statement of why they believe they have any IP rights to mice they declined to patent in 2000. We had contacted them in the first place last year, since we are more than happy to honor anyone’s rights to IP. Even without an extant IP right, we offered and others have accepted goodwill agreements with us. But Columbia operates on different principles. I can go into the details later.

The reality is that Columbia’s implied claims to rights to the IP were beyond specious. Please see the attached pdf for the “argument” made by the Columbia General Counsel. Rather than accept a goodwill agreement from us,

instead, Columbia fabricated a completely unsubstantiated claim that we had stored cryopreserved sperm of a precursor strain with them and that by so doing, they had IP rights to the derivative strain we wished to market. Naturally, we stated in no uncertain terms that no such cryopreservation had ever occurred. That exchange occurred last December (see pdf).

We also have some evidence that it was Columbia who contacted our original distributor, Taconic, to influence the unacceptable deal we were offered. After having not responded further to us for five months, Columbia's General Counsel in May of 2017 sent us a bizarre, negative argument that "We looked into this issue and we do not have any information on our end that would confirm that your information is correct", i.e. that we never stored any sperm of the precursor strain with them. (See pdf.) But of course, they are not showing any documentation that we *did* store such material with them. To me, it was like their saying, "You claim that you did not hijack a Cuban jetliner in 1973, but we cannot find any evidence that your claim is correct. Therefore, we still believe we have rights to act against your interests." (Too bad I did not make a YouTube video of the reactions of various attorneys to whom I have shown Columbia's "reasoning". But that is Columbia - I was associated with them for 17 years.)

That email sent by Columbia's General Counsel in May 2017 was coincident with Taconic's about face in dealing with us. Indeed, Taconic not only offered us only 10% for the line of mice that did *not* involve Columbia, but they *completely removed* any mention of the line that purportedly did involve Columbia. You will not be surprised to hear that the term, "tortious interference" leapt to our minds. (By the way, that is all consistent with my experience of the way Columbia operates. You take their deal or you are going to get no deal. IP and legal issues are often completely beside the point. Basically, they tend to make you an offer you can't refuse. They carry a lot of clout with firms like Taconic.)

The bottom line is that we and our partners felt it would be very wise to engage Dan Morath to represent us in find distributors would give us more reasonable licensing terms, i.e. consistent with customary practices. He and his firm agreed to do just that. Until two days ago, that is, when he wrote to me that the "board" of his firm had refused to represent us. I have no idea why.

At this point, I am at a loss. I do not seem to be able to engage in any successful business practice at this time with respect to these mice.

Therefore, I would like your assistance on a few points to help resolve this problem and to find a way to allow us to market our mice under customary and reasonable terms.

My suggestions for how you could help would include:

1) Contact attorney Morath and try to find out what the problem was that caused their firm to back out.

2) More importantly, please try to get a list of other firms from him, or by your research of firms like his, which are expert in negotiating distribution agreements for genetically modified mice.

> Quite frankly, we would be very willing at the point to use non-US IP firms and/or distributors located anywhere in the world, so long as we get reasonable terms and the distributors have a sufficient reach. With non-exclusive distribution agreements, we would be willing to have a Chinese/Asian distributor, for example, a South American distributor, a EU/Eastern European distributor, etc.

We have expended considerable time, money, and effort on this project, and have obtained agreements from several partners who either have an IP interest in the mice or to whom we offered good will agreements for their past support. I very much want to conclude this matter successfully. At this point, I do not believe that I can adequately represent myself or find the appropriate experts to do so. I believe that you could probably find such representatives and perhaps be helpful in maintaining their cooperation in support of our interests.

I look forward to your thoughts on this matter.

Thanks.

Robert

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