

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

BIONTECH SE, BIONTECH  
MANUFACTURING GMBH, AND  
PFIZER INC.,

Plaintiffs,

V.

CUREVAC AG,

Defendant.

C.A. No. 1:22-cv-11202

## JURY TRIAL DEMANDED

# COMPLAINT FOR DECLARATORY JUDGMENT OF NONINFRINGEMENT

Plaintiffs BioNTech SE and BioNTech Manufacturing GmbH (“BioNTech Manufacturing,” and with BioNTech SE collectively, “BioNTech”) and Pfizer Inc. (“Pfizer”) (collectively, “Plaintiffs”), by their undersigned attorneys, respectfully submit this Complaint for Declaratory Judgment of Noninfringement against CureVac AG (“CureVac” or “Defendant”), and hereby allege as follows:

## INTRODUCTION

1. This is an action brought by BioNTech and Pfizer who partnered together, and continue to work together, to address the greatest public health threat the United States and the world has faced in at least a century: the COVID-19 pandemic. Now, BioNTech and Pfizer must also face threats of a groundless patent infringement suit by a company, CureVac, who has been unable to bring to market any product to help in the fight against COVID-19.

2. BioNTech and Pfizer partnered together to develop, manufacture, and secure regulatory approval for a vaccine that proved to be effective in preventing severe disease, hospitalization, and death from COVID-19 infection. BioNTech and Pfizer did so at great risk to their companies, by investing considerable sums of money and countless hours in an effort to address this global pandemic. BioNTech and Pfizer successfully developed a product, proved its efficacy, established global manufacturing and supply chains, and gained regulatory approval in record time. Through their efforts they were able to help the United States and the world begin to move past the COVID-19 public health crisis.

3. Unlike BioNTech's and Pfizer's efforts, CureVac's failed, as it was unable to develop a COVID-19 vaccine product. After this failure, CureVac turned its attention to an attempt to profit from the success of BioNTech and Pfizer through threats of patent infringement.

4. BioNTech and Pfizer bring this action to resolve CureVac's meritless allegations.

#### **NATURE OF THE ACTION**

5. This is a civil action for a declaratory judgment that U.S. Patent Nos. 11,135,312, 11,149,278, and 11,241,493 (collectively, "the patents-in-suit" and attached as Exhibits 1 to 3 of this Complaint) are not infringed by the manufacture, use, offer to sell, and sale in the United States, and the importation into the United States, of the mRNA vaccine against COVID-19 that BioNTech created and made available to doctors and patients with Pfizer.

6. This action arises under the Declaratory Judgment Act, 28 U.S.C. § 2201 and the patent laws of the United States, including Title 35, United States Code.

#### **THE PARTIES**

7. Plaintiff BioNTech SE is a company organized and existing under the laws of Germany, having a principal place of business at An der Goldgrube 12, D-55131 Mainz, Germany.

8. Plaintiff BioNTech Manufacturing is a company organized and existing under the laws of Germany, having a principal place of business at An der Goldgrube 12, D-55131 Mainz, Germany.

9. BioNTech Manufacturing is a wholly owned subsidiary of BioNTech SE.

10. Plaintiff Pfizer is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 235 East 42nd Street, New York, New York 10017.

11. Upon information and belief, Defendant CureVac is a company organized and existing under the laws of Germany, having a place of business at Friedrich-Miescher-Straße 15, 72076 Tübingen, Germany.

#### **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338(a), and 2201.

13. As described in detail below, an actual, immediate, substantial, and justiciable controversy exists between Plaintiffs and CureVac as to whether the Pfizer-BioNTech COVID-19 vaccine (sold commercially as “COMIRNATY® vaccine”) has infringed or will infringe the patents-in-suit.

14. This Court has personal jurisdiction over CureVac under Fed. R. Civ. P. 4(k)(2).

15. This Court also has personal jurisdiction over CureVac, because, *inter alia*, upon information and belief, CureVac: (1) maintains pervasive, continuous, and systematic contacts with Massachusetts; (2) conducts business in Massachusetts through its office and agents located in Massachusetts; (3) sends agents into Massachusetts on a regular basis to conduct business; and (4) holds itself out as doing business in Massachusetts.

16. Upon information and belief, since at least November 2017, CureVac has entered into agreements and conducted business with multiple entities located in Massachusetts.

17. Upon information and belief, in 2020, in connection with its initial public offering, (a) CureVac N.V. was incorporated and became the holding company of CureVac and (b) the historical consolidated financial statements of CureVac became part of the historical consolidated financial statements of CureVac N.V. (Exhibit 4.)

18. Upon information and belief, CureVac is a wholly owned subsidiary of CureVac N.V.

19. Upon information and belief, CureVac also conducts business in Massachusetts, *inter alia*, through its wholly owned subsidiary CureVac, Inc.

20. Upon information and belief, CureVac, Inc. acts as an agent for CureVac for conducting business in the United States, including Massachusetts.

21. Upon information and belief, CureVac N.V. has designated CureVac, Inc. as its agent for service of process in the United States.

22. Upon information and belief, CureVac, Inc. maintains a lease on a property of more than 12,000 square feet at 250 Summer Street, 3rd Floor, Boston, Massachusetts 02210.

23. Upon information and belief, CureVac, Inc. is registered with the Commonwealth of Massachusetts as a business in Massachusetts.

24. Upon information and belief, the Foreign Corporation Certificate of Registration filed by CureVac, Inc. with the Commonwealth of Massachusetts lists the CEO of CureVac as a corporate officer and director of CureVac, Inc.

25. Upon information and belief, CureVac sends employees and agents into Massachusetts, including to CureVac, Inc.'s office located at 250 Summer Street, 3rd Floor, Boston, Massachusetts 02210, on a regular basis.

26. Upon information and belief, CureVac lists Boston, USA as one of its offices. For example, CureVac holds itself out as a “Tübingen, Germany/Boston, MA, USA” entity, *inter alia*, on its corporate website and in press releases. CureVac has also stated that it “employs more than 900 people at its sites in Tübingen, Frankfurt, and Boston, USA.” (Exhibit 20.)

27. This Court also has personal jurisdiction over CureVac because, *inter alia*, it sent communications regarding CureVac’s assertion of intellectual property (“IP”) rights in connection with COMIRNATY<sup>®</sup> vaccine to individuals at BioNTech US Inc., which is located in Cambridge, Massachusetts.

28. This Court also has personal jurisdiction over CureVac because, *inter alia*, the group of representatives who were involved in CureVac’s assertion of IP rights in connection with COMIRNATY<sup>®</sup> vaccine included the Director IP Management US of CureVac, Inc., which is located in Boston, Massachusetts.

29. This Court has personal jurisdiction over CureVac for at least the reasons set forth above and for other reasons that will be presented to the Court if such personal jurisdiction were to be challenged.

30. Venue is proper in this Court under 28 U.S.C. §§ 1391(c)(3) and 1400(b) because CureVac is a foreign corporation and is subject to this Court’s personal jurisdiction for at least the reasons set forth above.

31. Venue is proper for at least the reasons set forth above and for other reasons that will be presented to the Court if such venue were to be challenged.

32. This Court is authorized to issue declaratory judgments pursuant to 28 U.S.C. § 2201.

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