



Febit, Nearing Settlement with Codon Devices, Reconsiders Its Place in Synthetic Bio Market

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Newsletter: [BioArray News](#)

Febit is getting closer to settling a two-year-old legal dispute with Codon Devices over a patent that covers the manufacture of synthetic genes, and has decided to reevaluate its position in the competitive global synthetic-biology market.

"We don't want to be part of a commodity market with a lot of close competition," said Peer Stähler, Febit's chief scientific officer. "There are at least 20 companies worldwide that are competing to sell the cheapest genes."

Febit sued Codon in July 2007 for allegedly infringing US Patent No. 6,586,211, which covers a method for making synthetic nucleic acids on microarrays (see [BAN 7/17/2007](#)). The German life-sciences company filed the suit in the US District Court for the District of Delaware after the two companies failed to work out a licensing agreement for the IP.

According to court documents obtained by *BioArray News* this week, the litigation is winding down. In a March 27 letter to the court, attorneys for Febit wrote that the companies had "agreed to terms resolving their dispute," and that the "finalization of that agreement is subject to the approval of Febit and Codon's respective board of directors."

Once that approval is obtained, Febit and Codon plan to "execute an agreed-upon settlement agreement and submit an endorsed consent judgment concluding this litigation to the court for its entry," the letter states.

The letter said that the two parties hoped to have the settlement resolved by the first week of April. However, an attorney for one of the companies who wished to remain anonymous because the case is ongoing said the settlement agreement has not yet been concluded.

In addition, citing the settlement agreement, the court denied without prejudice Codon's motion filed last August seeking to dismiss Febit's amended complaint. Codon filed that motion to dismiss for "lack of standing" and "lack of subject matter jurisdiction."

Possibly delaying the settlement is the status of Codon's business. The *Boston Globe* reported two weeks ago that Codon, which is based in Cambridge, Mass., had decided to shut down after failing to secure additional financing. *BioArray News* tried to independently confirm Codon's closure, but a representative of Codon could not be reached for comment in time for this publication.

Codon had marketed its synthetic biology products and design services, including its BioFab production platform, to clients in the pharmaceutical, biotechnology, institutional, and bioenergy fields.

Codon last year raised \$11 million in a round of private financing through life-science venture-capital firms such as Alloy Ventures, Flagship Ventures, Highland Capital Partners, Khosla Ventures, Kleiner Perkins Caufield & Byers, and Tactics II Ventures. The company raised \$20 million in December 2006.

Stähler said this week that the two parties have been in discussion for settling the litigation, but

declined to speculate as to when it might end.

"The litigation so far has strongly confirmed the reach, validity, and enforceability of our patent," Stähler told *BioArray News*. "We have been asked by the court to discuss a settlement and the potential settlements would have been very favorable for Febit under the supervision of the judge."

Stähler said that he was aware of "press coverage and personal communication" indicating that Codon is being shuttered. He said that Febit is "happy whether [Codon] wants to settle or not.

"They either continue to compete against us and settle or they do not exist anymore; we are happy either way," Stähler said. He said that Febit had tried to create a "meaningful business relationship" with Codon for months prior to launching the suit, but that it "did not bear fruit," and so the company "switched to plan B" — litigation. "It worked out quite nicely," Stähler said of the suit.

"We don't know what will happen in synbio or sequence capture in the future, and we are now better positioned and more ready to defend our IP," he added.

