

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ABBVIE INC. and ABBVIE	)	
BIOTECHNOLOGY LTD.	)	
	)	Case No. 1:21-cv-1530
Plaintiffs,	)	
	)	Hon. Judge Harry D. Leinenweber
v.	)	
	)	Magistrate Judge Jeffrey Cummings
ALVOTECH HF.,	)	
	)	
Defendant.	)	

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT ALVOTECH HF.'S  
RULE 12(B)(2) AND 12(B)(6) MOTION TO DISMISS FOR LACK OF  
PERSONAL JURISDICTION AND FAILURE TO STATE A CLAIM**

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## INTRODUCTION

This meritless action is part of a scheme by AbbVie Inc. and AbbVie Biotechnology Ltd. (“AbbVie”) to do everything it can to try to prolong its monopoly on Humira<sup>®</sup>, AbbVie’s \$20-billion-per-year drug. Late last year, Alvotech USA Inc. (“Alvotech USA”)—a U.S. subsidiary of defendant Alvotech hf.—applied for FDA licensure of a Humira<sup>®</sup> biosimilar. Alvotech USA poses a unique threat to AbbVie, being the first to seek FDA licensure of a biosimilar to AbbVie’s 100 mg/mL formulation of Humira<sup>®</sup>. AbbVie and Alvotech USA are now engaged in patent litigation over Alvotech USA’s biosimilar product. But not satisfied with trying to impede Alvotech USA’s biosimilar with its large patent portfolio, AbbVie has filed this trade secret case against its parent, Alvotech hf.

AbbVie’s case is based on events from years ago, on the other side of the world, and lacks factual support. AbbVie alleges that Alvotech hf., a company in *Iceland* with no ties to Illinois, directed a former AbbVie employee, who now lives in *China*, to take trade secrets from an AbbVie facility in *Singapore*, and then used those trade secrets to develop a Humira<sup>®</sup> biosimilar in *Iceland*. Even if those allegations were true—and they are not—they have no connection to this Court. Belying its claims of wrongdoing, AbbVie waited over three years after the purported theft (and its knowledge thereof) to file this case, so long that the former AbbVie employee is no longer even an employee of Alvotech hf., having left nearly a year ago to work for another pharmaceutical company. AbbVie did nothing during those three years to try to stop its former employee from disclosing the allegedly stolen trade secrets. And as for Alvotech hf., AbbVie has nothing but naked (and false) allegations that Alvotech hf. directed the former employee to acquire the purported trade secrets and that Alvotech hf. used any such trade secrets to develop its biosimilar. The case should be dismissed for at least the following reasons.

First, while there is no merit to AbbVie’s allegations, the Court need not even go there

because the Court lacks personal jurisdiction over Alvotech hf., an Icelandic company. (Compl., ¶ 11.) AbbVie does not allege that Alvotech hf. has offices in Illinois, owns property in Illinois, has assets in Illinois, does business in Illinois or employs Illinois residents. Nor does AbbVie allege that Alvotech hf. has taken any actions in Illinois related to AbbVie’s alleged trade secrets. Instead, AbbVie’s allegations focus on alleged events in Iceland and Singapore, which even if true would not subject Alvotech hf. to personal jurisdiction in Illinois.

Second, AbbVie’s claims should be dismissed because neither the federal nor state trade secret statute reaches the alleged extraterritorial activity complained of by AbbVie. AbbVie cannot show that its claims, based on trade secrets allegedly stolen in Singapore for use in Iceland, “occurred primarily and substantially in Illinois,” as required under the ITSA. Nor can AbbVie show that Alvotech hf. acted in furtherance of the alleged misappropriation in the U.S., as required under the DTSA.

Third, putting aside the jurisdictional and extraterritoriality issues, AbbVie’s complaint is still fatally flawed. AbbVie does not allege plausible facts to support its allegations that Alvotech hf. improperly acquired, disclosed or used AbbVie’s trade secrets. And while it is filled with hyperbolic, inflammatory accusations about an alleged plot by Alvotech hf. to take AbbVie’s trade secrets, AbbVie’s complaint lacks any facts to back up those conclusory allegations. At bottom, AbbVie’s complaint rests on the lone fact that Alvotech hf. hired an employee from a competitor. Under the applicable pleading standards—and now more than three years after the alleged activities—AbbVie must do better than plead that Alvotech hf. must have used AbbVie’s trade secrets because it hired an AbbVie employee and has been successful in developing a Humira® biosimilar.

### **ALLEGATIONS IN THE COMPLAINT**

Alvotech hf. is a biotechnology company organized under the laws of Iceland, with its

principal place of business in Iceland's capital city, Reykjavík. (Compl., ¶ 12.) Since its founding in 2013, Alvotech hf. has been working on biosimilar versions of various monoclonal antibodies. (*Id.* at ¶ 66.) And Alvotech hf. has been working on a 100 mg/mL biosimilar of Humira<sup>®</sup>, currently AbbVie's best-selling product, since before Mr. Rongzan Ho joined Alvotech hf. (*Id.* at ¶ 87.)

AbbVie's complaint alleges trade secret misappropriation based on a series of events that happened years ago, outside the U.S. AbbVie's allegations focus on Mr. Ho, a former employee at an AbbVie facility in Singapore. (*Id.* at ¶ 39.) In March 2018, Mr. Ho left AbbVie Singapore and took a job at Alvotech hf. in Iceland. (*Id.* at ¶¶ 53-54.) AbbVie alleges that, before Mr. Ho left AbbVie Singapore: (1) Mr. Ho sent documents containing AbbVie trade secrets to his personal email account; (2) AbbVie's security system detected Mr. Ho's email activities; and (3) after the security system detected Mr. Ho's emails, AbbVie subsequently required Mr. Ho to sign a declaration dated March 2, 2018, stating that he returned and expunged all AbbVie information before he left the company. (*Id.* at ¶¶ 55-58.) The complaint does not indicate that AbbVie has taken any action with regard to Mr. Ho since he left AbbVie in 2018; AbbVie does not say it sued Mr. Ho or took any other steps against him.

Indeed, after Mr. Ho began work at Alvotech hf. and during his entire time with the company, AbbVie never raised any issues regarding Mr. Ho, his employment, or his alleged theft of AbbVie's trade secrets. (*See id.* at ¶ 7.) Mr. Ho left Alvotech hf. in July 2020. (*Id.* at ¶ 85.) But the first Alvotech hf. heard of any of this was February 24, 2021—coincidentally just a few months after the FDA accepted Alvotech USA's regulatory submission for its 100 mg/mL version of Humira<sup>®</sup>. (*Id.* at ¶¶ 7, 86.) Only then did AbbVie send a letter to Alvotech hf.—with allegations even more vague than those in the complaint. (*Id.* at ¶ 7.) Alvotech hf. responded to AbbVie's letter in a timely manner, offering to investigate promptly and asking AbbVie to identify the

alleged trade secrets. (*Id.* at ¶ 7.) Instead of responding to Alvotech hf., AbbVie filed this lawsuit two weeks later. (*See id.*)

In its complaint, AbbVie identifies nearly every aspect of its manufacturing process for Humira<sup>®</sup> as a potential trade secret without any attempt to separate out any “secrets” from information disclosed publicly. (*Id.* at ¶ 26.) Indeed, AbbVie admits that “aspects of the process have been described in patents and patent applications,” but makes no attempt to identify the aspects of its manufacturing process that have not been publicly disclosed in its 140-plus patents purportedly relating to Humira<sup>®</sup>. (*Id.* at ¶¶ 24, 26.)<sup>1</sup>

Without any support, AbbVie’s complaint makes vague allegations of a “plan” or “scheme” by Alvotech hf. to steal AbbVie’s ill-defined trade secrets. (*Id.* at ¶¶ 4, 6, 54, 95, 111.) All AbbVie does is point to the timing of Alvotech hf.’s development of its biosimilar product (*id.* at ¶¶ 66-89.) and speculate that, “Alvotech *could not have* independently developed its adalimumab biosimilar commercial manufacturing facility and manufacturing process, particularly in the timeframe in which it did so, without the wrongful acquisition and use of AbbVie’s Trade Secrets.” (*Id.* at ¶ 89 (emphasis added).) AbbVie does not allege facts to support these allegations or even make the allegations plausible.<sup>2</sup>

## ARGUMENT

### I. ABBVIE’S COMPLAINT SHOULD BE DISMISSED UNDER RULE 12(B)(2) FOR LACK OF PERSONAL JURISDICTION

“Under the Constitutions of the United States and Illinois, the ability to exercise personal

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<sup>1</sup> AbbVie’s actions related to its patent portfolio on Humira<sup>®</sup> are currently subject to antitrust litigation in the Seventh Circuit. *See In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811 (N.D. Ill. 2020) (7th Cir. heard oral argument on Feb. 25, 2021).

<sup>2</sup> To be clear, in this motion, Alvotech has not addressed all of the unsupported and factually incorrect accusations in AbbVie’s complaint. If this case proceeds—which it should not—Alvotech hf. will demonstrate that AbbVie’s allegations about Alvotech hf. are false.

jurisdiction over a non-resident defendant is extremely limited.” *Liam Lefebvre v. Washington Univ.*, 2021 WL 197388, at \*1 (N.D. Ill. Jan. 20, 2021) (dismissing for lack of personal jurisdiction where relevant acts happened in Missouri). When a defendant moves for dismissal based on lack of personal jurisdiction, the plaintiff has the burden of proving jurisdiction. *Matlin v. Spin Master Corp.*, 921 F.3d 701, 705 (7th Cir. 2019). The Court should dismiss this case because AbbVie cannot prove that this Court has personal jurisdiction over Alvotech hf.

**General Jurisdiction.** AbbVie does not appear to plead that Alvotech hf. is subject to general jurisdiction in Illinois. And for good reason. General jurisdiction exists over a foreign defendant only “when their affiliations with the State are so continuous and systematic as to render them essentially at home in the forum State.” *See Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014). In most cases, the only forums that a corporation is subject to general personal jurisdiction are “the place of incorporation and principal place of business . . . .” *See id.* at 137. Alvotech hf. is neither; it is an Icelandic company, headquartered in Iceland. (Compl., ¶ 12.) And AbbVie does not allege that Alvotech hf. has any offices, employees, property, or assets in Illinois. In short, Alvotech hf. is not even a visitor in Illinois, much less “at home.”

**Specific Jurisdiction.** AbbVie also cannot establish specific personal jurisdiction over Alvotech hf. Specific jurisdiction “focuses on the relationship among the defendant, the forum, *and the litigation.*” *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (emphasis added). To establish specific personal jurisdiction, AbbVie must show that “(1) the defendant has purposefully directed his activities at the forum state or purposefully availed himself of the privilege of conducting business in that state, and (2) the alleged injury arises out of the defendant’s forum-related activities.” *Matlin*, 921 F.3d at 705–06. AbbVie cannot make this showing.

Alvotech hf. has not directed any activities to Illinois, much less activities related to

AbbVie's misappropriation claims. According to AbbVie's own complaint, Alvotech hf. allegedly recruited Mr. Ho when he worked at a facility in Singapore. (Compl., ¶¶ 54-62.) Mr. Ho then went to work for Alvotech hf. in Iceland. (*Id.* at ¶ 63.) And to the extent AbbVie's complaint identifies any use of AbbVie's "trade secrets" by Alvotech hf., those allegations are focused on Iceland. (*Id.* at ¶¶ 63-64, 78, 84.) Alvotech hf.'s biologic product (called AVT02) was developed outside the U.S., primarily in Iceland, and Mr. Ho worked at the Iceland facility for his entire tenure with Alvotech hf. (*See id.* at ¶¶ 16, 84-85, 89.) Alvotech hf. also has not marketed or sold, and indeed is not authorized to market or sell, its AVT02 product anywhere, let alone in Illinois. (*See id.* at ¶ 93.)

Ignoring these facts, AbbVie incorrectly contends that there is personal jurisdiction over Alvotech hf. because (1) AbbVie's supposed trade secrets were "developed under the leadership of AbbVie's management in Illinois"; (2) Alvotech hf. filed a Biologics License Application ("BLA") on AVT02, sent notice of its BLA to AbbVie in Illinois and plans to market AVT02, if approved, in the U.S., including Illinois; and (3) AbbVie will suffer foreseeable harm throughout the U.S., including in Illinois.<sup>3</sup> (*See* Compl., ¶ 16.) None of AbbVie's allegations (even if they were factually correct) establishes personal jurisdiction over Alvotech hf.

First, that AbbVie's supposed trade secrets were "developed under the leadership of AbbVie's management in Illinois" does not confer jurisdiction over Alvotech hf. Those allegations focus on *AbbVie's* contacts with the forum, but personal jurisdiction is concerned with

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<sup>3</sup> AbbVie also alleges that Mr. Ho accessed AbbVie's secrets through servers "hosted in Alpharetta, Georgia" (*see* Compl., ¶ 16), but even if server location were relevant, activity in Georgia cannot support jurisdiction in Illinois; and Mr. Ho's actions are also irrelevant to jurisdiction over Alvotech. *See J.S.T. Corp.*, 965 F.3d at 577 (affirming dismissal for lack of personal jurisdiction, in part, "[b]ecause the defendants themselves did not acquire, disclose, or use J.S.T.'s trade secrets in Illinois").

Alvotech hf.'s contacts, which are non-existent. *See Walden*, 571 U.S. at 285 (“the plaintiff cannot be the only link between the defendant and the forum” because the minimum contacts analysis “looks to the defendant’s contact with the forum State itself”); *see also Ariel Invs., LLC v. Ariel Cap. Advisors LLC*, 881 F.3d 520, 522 (7th Cir. 2018) (“The connection [to the forum] must be of the defendant’s creation, not of the plaintiff’s.”).

Even if it mattered, AbbVie does not plead facts to suggest that the alleged trade secrets originated in Illinois or that AbbVie Inc. owns them. Instead, according to AbbVie, they originated in Puerto Rico and Massachusetts. (Compl., ¶ 25.) And the unexplained inclusion of co-plaintiff AbbVie Biotechnology Ltd., a Bermuda company with facilities in Puerto Rico, suggests AbbVie Inc. does not own the so-called trade secrets. (Compl., ¶ 11.) As such, the alleged trade secrets did not originate in Illinois (*see id.* at ¶ 45), may not be owned by an Illinois company (*see id.* at ¶¶ 11, 25), and either way, cannot support jurisdiction in Illinois.

Second, AbbVie’s allegations related to “Alvotech’s” BLA cannot help. As a preliminary matter, the complaint states “Alvotech” (which AbbVie defines as Alvotech hf.) “has submitted its BLA for AVT02 ... to the FDA” and “sent its aBLA to AbbVie Inc. at its corporate headquarters in North Chicago, Illinois.” (Compl., Preamble, ¶¶ 16, 93.) AbbVie’s cited support reveals that it was ***Alvotech USA***, not Alvotech hf., that filed the BLA. (*Id.* at ¶ 86 n.40 (citing to Alvotech press release stating “its U.S. subsidiary Alvotech USA Inc. has filed a Biologics License Application (BLA) for AVT02 to the U.S. Food and Drug Administration (FDA), which has been accepted for review”).) And under the statutory process, ***Alvotech USA*** had to—and did—mail its notice of BLA filing to AbbVie Inc. *See* 42 U.S.C. § 262(l)(2)(A). AbbVie does not even acknowledge Alvotech USA (which is incorporated and sits in Virginia) in its complaint. Regardless, these actions relate to a subsidiary and are irrelevant to personal jurisdiction over Alvotech hf. in the

absence of extraordinary facts, which AbbVie has not pled. *See Central States, Se. and Sw. Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 943 (7th Cir. 2000); *Forde v. Arburg GmbH + Co KG*, 2021 WL 148877, at \*4, 6–7 (N.D. Ill. Jan. 15, 2021).

Even if the BLA activities were attributable to Alvotech hf.—and they are not—they are still insufficient to establish personal jurisdiction. The BLA was filed with the FDA in Maryland, and the BLA itself has no connection to Illinois. (*See, e.g.*, Compl., ¶ 82.) Moreover, the BLA notification did not give rise to AbbVie’s claims alleged in its complaint, which relate to Mr. Ho allegedly misappropriating AbbVie’s secrets and Alvotech hf. allegedly using them. *See J.S.T. Corp.*, 965 F.3d at 578 (affirming dismissal for lack of personal jurisdiction where later Illinois acts “have virtually nothing to do with” actions that provide “foundation” for trade secret claim).

Further insufficient is AbbVie’s allegation that Alvotech hf. plans to market AVT02, once approved, in the U.S., including Illinois. Alvotech USA’s BLA is not approved and neither Alvotech hf. nor Alvotech USA sells any product, let alone AVT02, anywhere in the U.S. (*See* Compl., ¶¶ 81, 93, 109.) Jurisdiction in this District cannot be based on potential future activities. *See Ariel Invs.*, 881 F.3d at 521 (holding no personal jurisdiction over Florida company that “would like to have a national presence but so far does not”). And even if Alvotech hf. someday does import the AVT02 product into the U.S. for distribution (which it has yet to do, and would do through a third-party), the eventual downstream sales to Illinois consumers have an attenuated relationship at best to this litigation. *See J.S.T. Corp.*, 965 F.3d at 578 (holding “downstream sales to Illinois consumers have only an attenuated relationship” to “foundation of [plaintiff’s] trade secret claim” and thus “do not entitle Illinois courts” to adjudicate trade secret misappropriation suit).

Third and finally, AbbVie cannot establish personal jurisdiction through its allegation that

the alleged trade secret misappropriation “has led to foreseeable harm and injury to AbbVie throughout the United States, especially in Illinois where AbbVie Inc. resides.” (*See* Compl., ¶ 16.) The Supreme Court has held that the location of the alleged harm suffered by a plaintiff is by itself inadequate to establish personal jurisdiction. *See Walden*, 571 U.S. at 289 (“Petitioner’s actions in Georgia did not create sufficient contacts with Nevada simply because he allegedly directed his conduct at plaintiffs whom he knew had Nevada connections.”); *see also Ariel*, 881 F.3d at 522 (“Knowing about a potential for harm in a particular state is not the same as acting in that state—and it takes the latter to permit personal jurisdiction under [Illinois] state law.”); *Tower Commc’ns Expert, LLC v. TSC Constr., LLC*, 2018 WL 5624268, at \*7 (N.D. Ill. Oct. 30, 2018) (“Standing alone, the fact that Plaintiff suffered injury in Illinois, however, is insufficient to demonstrate minimum contacts.”).

The recent *J.S.T. Corp. v. Foxconn Interconnect Tech. Ltd.* case is on point. 965 F.3d 571, 576 (7th Cir. 2020). In that case, the Seventh Circuit affirmed a dismissal for lack of personal jurisdiction over foreign defendants accused of misappropriating trade secrets of an Illinois company. *Id.* at 573. There, according to the complaint, the foreign defendants improperly acquired trade secrets (that were actually developed *in Illinois*, unlike those here) from a Michigan company and used them to make automobile parts outside of the U.S. The defendants then sold the parts to a company in Texas, knowing the parts would be incorporated into a larger product and sold to General Motors for distribution nationwide, including in Illinois. *Id.* at 574–75. The court held these facts insufficient for personal jurisdiction because “if the defendants knowingly acquired, disclosed, or used J.S.T.’s trade secrets anywhere, it was not in Illinois.” *Id.* at 577. In particular, the court highlighted that (1) defendants did not receive the stolen designs and drawings in Illinois; (2) defendants neither designed nor manufactured the parts in Illinois; and (3) assuming

that the defendants' sales of their parts counted as a "use" of a trade secret, the sales were too attenuated to the trade secret claims to establish jurisdiction. *Id.* In dismissing the plaintiff's argument that jurisdiction was proper because "downstream consumer sales in Illinois damaged its bottom line," the Seventh Circuit explained that "our core focus is always on the defendants' conduct, not the plaintiff's damages." *Id.* at 578.

The case for personal jurisdiction here is even weaker than in *J.S.T. Corp.* As in that case, AbbVie does not allege that Alvotech hf. received the alleged trade secrets in Illinois, developed the AVT02 product in Illinois, or had any contacts related to this litigation with any Illinois company besides AbbVie (and even then, only through its subsidiary, unnamed as a defendant). And here, Alvotech hf. has not sold any products in Illinois, much less one incorporating the alleged trade secrets. All AbbVie can point to is the alleged source of the trade secrets (which is not even Illinois) and the alleged harm suffered in Illinois, neither of which were sufficient in *J.S.T. Corp.*

At bottom, it is easy to describe the relation between Illinois and Alvotech hf.: *none*. Under Seventh Circuit law, "[t]hat resolves this litigation." *See Ariel Investments*, 881 F.3d at 522 (holding alleged trademark misappropriation from forum-state plaintiff alone insufficient to establish personal jurisdiction over foreign defendant).

## **II. ABBVIE'S COMPLAINT SHOULD BE DISMISSED UNDER RULE 12(B)(6)**

### **A. AbbVie's ITSA Claim Should be Dismissed Because AbbVie Does Not Plead that Alleged Misappropriation "Occurred Primarily and Substantially in Illinois"**

"[T]he ITSA does not have extraterritorial reach." *See Motorola Solutions, Inc. v. Hytera Commc'ns Corp. Ltd.*, 436 F. Supp. 3d 1150, 1170 (N.D. Ill. 2020). AbbVie can thus only pursue a claim under the ITSA if doing so would not "in fact require extraterritorial application of the statute." *Armada (Singapore) Pte Ltd. v. Amcol Int'l Corp.*, 244 F. Supp. 3d 750, 757 (N.D. Ill.

2017). “To determine whether a particular claim requires a statute to be applied extraterritorially, Illinois courts consider whether the circumstances relevant to the claim are alleged to have occurred ‘primarily and substantially’ in Illinois.” *Id.* (citing *Avery v. State Farm Mut. Auto. Ins. Co.*, 835 N.E.2d 801, 853 (Ill. 2005)). For the reasons discussed below, AbbVie’s allegations do not meet that standard, and its ITSA claim must be dismissed.

Taking all of AbbVie’s false allegations as true, according to AbbVie, the circumstances relevant to its claims occurred primarily and substantially outside of the U.S., not in Illinois. As detailed above (at pg. 3), AbbVie allegations revolve around activities that allegedly occurred primarily in Iceland and Singapore.

As with personal jurisdiction, the only real connection this case has to Illinois is the location of one of the two Plaintiffs. Indeed, the only Illinois “activity” AbbVie alleges is that “Alvotech” submitted a BLA seeking approval for commercial marketing of its “biosimilar product throughout the United States, including in Illinois” and sent notice of that BLA to AbbVie in Illinois. (Compl., ¶ 16.) But again, this allegation is demonstrably false. *Alvotech USA* (not Alvotech hf.) filed the BLA for AVT02 and corresponded with AbbVie Inc. about it. Those actions are not attributable to Alvotech hf. and, in any event, do not show that the relevant circumstances related to AbbVie’s trade secret claim occurred “primarily and substantially in Illinois.” *See Armada*, 244 F. Supp. 3d at 758 (dismissing claims where “relevant circumstances” did not take place “primarily and substantially in Illinois” but involved “transfer of assets between and among a number of foreign entities,” largely in India).

**B. AbbVie’s DTSA Claim Should be Dismissed Because AbbVie Does Not Plead an Act in Furtherance of the Alleged Misappropriation in the United States**

Generally, there is a presumption<sup>4</sup> that “United States law governs domestically but does not rule the world.” *RJR Nabisco, Inc. v. Eur. Cmty.*, 136 S. Ct. 2090, 2100 (2016). The DTSA’s extraterritorial reach is explicitly limited to situations where (1) the alleged offender is a United States citizen or organization, or (2) “an act in furtherance of the offense was committed in the United States.” *See* 18 U.S.C. § 1837. Neither of these two circumstances is present in this case. AbbVie does not allege that Alvotech hf. is a “United States citizen or organization.” And for the reasons discussed below, AbbVie has not pled facts showing that an act in furtherance of the alleged offense was committed in the U.S. by Alvotech hf.

First, AbbVie cannot establish the requisite U.S. activity through its allegation that the trade secrets “originated in the United States.” (Compl., ¶ 100.) Whether AbbVie developed the trade secrets in question in the U.S. is irrelevant to the extraterritoriality question, which focuses on the acts “in furtherance of the offense” committed in the U.S. *See* 18 U.S.C. § 1837.

Second, AbbVie’s complaint provides no explanation to support its allegation that Alvotech hf. acted “through means located in the United States.” (Compl., ¶ 100.) Alvotech hf. is located in Iceland and has taken no action in the U.S. *See Escamilla v. City of Chicago*, 575 F. App’x 688, 689 (7th Cir. 2014) (“To state a claim for relief—even under the liberal system of notice pleading—a complaint must contain enough details about the subject-matter of the case to present a story that holds together, along with allegations plausibly suggesting (not merely consistent with) an entitlement to relief.” (internal quotations and citation omitted)).

Finally, AbbVie incorrectly points to the “filing the aforementioned aBLA in the United

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<sup>4</sup> No circuit court has held that the DTSA can overcome this presumption and apply to alleged misappropriation that occurs outside the U.S. Based on applicable Supreme Court precedent, the Court should decline any invitation to extend the reach of the DTSA to the foreign events complained of by AbbVie. *See RJR Nabisco*, 136 S. Ct. at 2100 (“When a statute gives no clear indication of an extraterritorial application, it has none.”).

States to produce products to be sold throughout the United States” as a basis for the requisite U.S. activity. (*See* Compl., ¶ 100.) But again, **Alvotech USA** (not Alvotech hf.) took those actions, and AbbVie has not pled any facts to suggest such actions are attributable to Alvotech hf. In any event, the BLA activity is not an “act in furtherance” of the alleged misappropriation. As pled by AbbVie, the acts in furtherance of the alleged misappropriation took place years ago in Singapore and Iceland. *See Morrison v. Nat’l Australia Bank Ltd.*, 561 U.S. 247, 255 (2010) (affirming dismissal for failure to state a claim under § 10(b) of where “case involves no securities listed on a domestic exchange, and all aspects of the purchases complained of by those petitioners who still have live claims occurred outside the United States.”).

**C. The Complaint Should Be Dismissed On the Separate Ground That AbbVie Fails To Sufficiently Plead Trade Secret Misappropriation By Alvotech hf.**

Even if the Court were to conclude that it has jurisdiction over Alvotech hf. and the statutes can reach the extraterritorial actions pled, AbbVie has not pled facts to support misappropriation of any trade secret by Alvotech hf., because none exists. The DTSA and ITSA define “misappropriation” as either the “acquisition of a trade secret of another ... by improper means” or the “disclosure or use of a trade secret of another without express or implied consent ... .” *See Packaging Corp. of Am., Inc. v. Croner*, 419 F. Supp. 3d 1059, 1071 (N.D. Ill. 2020). AbbVie’s allegations of improper acquisition, use or disclosure by Alvotech hf.—based on nothing more than unsupported, meritless, and conclusory statements—cannot be enough, especially when as here, AbbVie has waited three years to bring this claim. *See Reapers Hockey Ass’n, Inc. v. Amateur Hockey Ass’n Illinois, Inc.*, 412 F. Supp. 3d 941, 946 (N.D. Ill. 2019) (“plaintiff must provide ‘more than labels’ or ‘a formulaic recitation of a cause of action’s elements,’” and “the complaint must ‘contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory’”).

First, AbbVie offers nothing but pure speculation to allege that Alvotech hf. had a “plan” or “scheme” to get Mr. Ho to misappropriate AbbVie’s trade secrets. (*See* Compl., ¶¶ 4, 6, 54, 95, 111.) AbbVie has not alleged a single fact to support this alleged scheme. Indeed, contradicting its own allegations, AbbVie elsewhere alleges merely that Alvotech hf. “knew or had reason to know” that Mr. Ho took AbbVie’s trade secrets. (*See id.* at ¶¶ 64, 70, 99.) AbbVie does not allege plausible facts to support its allegations of theft. AbbVie only point to the hiring of Mr. Ho. At the pleadings stage, AbbVie must allege facts sufficient to make plausible its conclusion that Alvotech hf. directed Mr. Ho to take AbbVie trade secrets. *See Indus. Packaging Supplies, Inc. v. Channell*, 2018 WL 2560993, at \*2 (N.D. Ill. June 4, 2018) (holding allegations that defendants, former employees with access to trade secrets, left for competitor offering same services, to same clientele was “not enough to justify [plaintiff’s] otherwise unsupported suspicions that the defendants used or disclosed the information they had access to”).

Second, AbbVie also fails to allege facts to support its threadbare conclusion that Alvotech hf. used AbbVie’s alleged trade secrets. Instead, AbbVie’s allegations largely focus on the timing of Alvotech hf.’s development of its biosimilar, without providing any reason why the development milestones achieved by Alvotech hf. lead to the conclusion that Alvotech hf. “must have” used AbbVie’s trade secrets.<sup>5</sup> Notably absent from AbbVie’s complaint is any allegation tying Alvotech hf.’s technology to any AbbVie trade secret. For instance, AbbVie does not allege that Alvotech hf.’s manufacturing process or biosimilar product incorporates AbbVie’s unspecified trade secrets. Nor does AbbVie specifically allege that Alvotech hf. used particular

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<sup>5</sup> While not needed to decide this motion, Alvotech hf. was not “behind” other companies in developing its biosimilar (Compl., ¶¶ 66-67); instead Alvotech USA is the first company to apply for FDA licensure of the 100 mg/mL formulation, as AbbVie acknowledges (*id.* at ¶ 86) and, if necessary, Alvotech hf. will show that it had already initiated the first at-scale (2000L) batch of AVT02 in Iceland before Mr. Ho’s arrival at Alvotech hf.

AbbVie trade secrets to develop its manufacturing process, set up its manufacturing facility, or otherwise. Simply put, AbbVie provides nothing but rank speculation that the timing of Alvotech hf.'s biosimilar development must mean Alvotech hf. misappropriated AbbVie trade secrets. At this point, more than three years after Mr. Ho left AbbVie, and almost a year since he left *Alvotech hf.*, AbbVie must do more than make unsupported allegations that Alvotech hf., given its success, must have used AbbVie's trade secrets solely because of Mr. Ho's job responsibilities as self-described on his LinkedIn profile. *See Packaging Corp.*, 419 F. Supp. 3d at 1070 (granting motion to dismiss trade secret misappropriation claims, explaining "plaintiffs must allege more than the mere fact that a person assumed a similar position at a competitor to state a claim for inevitable disclosure" (omitting internal quotations)).

At bottom, AbbVie's complaint rests on the lone fact that Alvotech hf. hired an employee from a competitor. That alone cannot be the basis for assuming—even at the pleadings stage—that Alvotech hf. told Mr. Ho to steal from AbbVie or that Alvotech hf. used unidentified trade secrets. *See Teradyne, Inc. v. Clear Commc'ns Corp.*, 707 F. Supp. 353, 357 (N.D. Ill. 1989) (dismissing ITSA claims finding "[t]he defendants' claimed acts, working for Teradyne, knowing its business, leaving its business, hiring employees from Teradyne and entering the same field (though in a market not yet serviced by Teradyne) do not state a claim of threatened misappropriation"); *see also Triumph Packaging Grp. v. Ward*, 834 F. Supp. 2d 796, 809 (N.D. Ill. 2011). "All that is alleged, at bottom, is that defendants could misuse plaintiff's secrets, and plaintiffs fear they will. This is not enough." *Teradyne*, 707 F. Supp. at 357.

### **CONCLUSION**

For the foregoing reasons, Alvotech hf. asks this Court to dismiss this case for lack of personal jurisdiction. Should the Court proceed past jurisdiction, Alvotech hf. respectfully requests the Court dismiss the complaint for failure to state a claim.

Date: May 14, 2021

Respectfully Submitted,

ALVOTECH HF.

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