

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 9, 2021

Arbutus Biopharma Corporation

(Exact name of registrant as specified in charter)

British Columbia, Canada

(State or other jurisdiction
of incorporation)

001-34949

(Commission
File Number)

98-0597776

(IRS Employer
Identification No.)

**701 Veterans Circle
Warminster, Pennsylvania**

(Address of principal executive offices)

18974

(Zip Code)

(267) 469-0914

Registrant's telephone number, including area code

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communication pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communication pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Shares, without par value	ABUS	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.

On December 9, 2021, Arbutus Biopharma Corporation (“Arbutus”) entered into a third amendment (“Amendment”) to the Cross License Agreement, dated April 11, 2018, by and between Arbutus and Genevant Sciences GmbH, an indirect wholly owned subsidiary of Genevant Sciences Ltd. (collectively “Genevant”), as amended on June 27, 2018 (the “Cross License”). As of December 9, 2021, Arbutus owned approximately 16% of the outstanding common equity of Genevant.

The Amendment, among other things, clarifies the treatment of proceeds received by Genevant from an action for infringement by any third parties of Arbutus’s intellectual property licensed to Genevant. In such an infringement action, Arbutus would be entitled to receive, after deduction of litigation costs, 20% of the proceeds received by Genevant or, if less, tiered low single-digit royalties on net sales of the infringing product (inclusive of the proceeds from litigation or settlement, which would be treated as net sales). The Amendment also clarifies that, if a third party sublicensee of intellectual property licensed by Genevant from Arbutus commercializes a sublicensed product, Arbutus becomes entitled to receive a specified percentage of certain revenue that may be received by Genevant for such sublicense, including royalties, commercial milestones and other sales-related revenue, or, if less, tiered low single-digit royalties on net sales of the sublicensed product. The specified percentage is 20% in the case of a mere sublicense (i.e., naked sublicense) by Genevant without additional contribution and 14% in the case of a bona fide collaboration with Genevant.

The foregoing description contains only a brief description of the material terms and does not purport to be a complete description of the rights and obligations of the parties to the Amendment, and such description is qualified in its entirety by reference to the full text of the Amendment, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1*	<u>Third Amendment to Cross License Agreement, dated December 9, 2021, by and between Genevant Sciences GmbH and Arbutus Biopharma Corporation</u>
104	Cover page interactive data file (formatted as inline XBRL).

*Certain confidential portions of the agreement were omitted by means of marking such portions with brackets (due to the registrant customarily and actually treating such information as private or confidential and such omitted information being not material) pursuant to Item 601 of Regulation S-K promulgated by the SEC. Arbutus agrees to supplementally furnish a copy of any confidential portions to the SEC upon request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: December 10, 2021

ARBUTUS BIOPHARMA CORPORATION

By: /s/ David C. Hastings
Name: David C. Hastings
Title: Chief Financial Officer

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY “[***]”, HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

THIRD AMENDMENT TO CROSS LICENSE AGREEMENT

This Third Amendment (this “**Amendment**”) to the Cross License Agreement dated as of April 11, 2018 by and between Genevant Sciences GmbH, a limited liability company organized and existing under the laws of Switzerland (“**Company**”), a Subsidiary of Genevant Sciences Ltd. (“**Genevant**”), as assignee of Genevant, and Arbutus Biopharma Corporation, a British Columbia corporation (“**Arbutus**”), as previously amended by two separate amendments each dated as of June 27, 2018 (the “**Agreement**”), is entered into and made effective as of the date of signature of the later of Company and Arbutus to sign below (the “**Third Amendment Effective Date**”). Arbutus and Company are sometimes referred to in this Amendment collectively as the “**Parties**” and individually as a “**Party**.” Capitalized terms used but not otherwise defined herein have the respective meanings ascribed to such terms in the Agreement.

WHEREAS each of the Parties believes it to be in its interest and desires to amend certain portions of the Agreement as set forth below pursuant to Section 9.10 of the Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and Arbutus hereby agree as follows:

1. Section 1.1 of the Agreement shall be and hereby is amended by: (a) deleting the definitions of “Excluded Fields,” “Gritstone Agreement,” “Gritstone Product,” and “Infringement Action” in their entirety and replacing them with the corresponding definitions set forth below; and (b) adding the definition of “annual” set forth below immediately following the definition of “Agreement” and the definition of “Infringement” set forth below immediately before the definition of “Infringement Action”:

“annual” means the twelve-month period beginning January 1 and ending December 31 each year.”

“Excluded Fields” means: (i) Arbutus Field; (ii) the Agricultural Field (as defined in the PadCo License Agreement); and (iii) Research, Development, Manufacture and Commercialization of Marqibo.”

“Gritstone Agreement” means that certain License Agreement by and among Gritstone Oncology, Inc. (“Gritstone”), Arbutus and Protiva dated October 16, 2017, assigned in part pursuant to that certain Bill of Sale and Assignment and Assumption Agreement by and among Arbutus and the Company dated as of the date hereof, as amended July 20, 2018.”

“Gritstone Product” means a product containing at least one RNA that encodes one or more TSNA(s) that is formulated using LNP Technology Covered by one or more Arbutus Patents, provided that such RNA is part of a self-replicating RNA system and is not a non-replicating messenger RNA (“mRNA”) consistent with the Gritstone Agreement.”

“Infringement” has the meaning set forth in Section 5.3(a).”

“Infringement Action” means the initiation of an infringement or other appropriate suit or action with respect to an Infringement.”

2. Section 3.2 of the Agreement shall be and hereby is amended by deleting it in its entirety and replacing it with the following:

“3.2 Royalty Payments. As additional consideration of the grant of the license in Section 2.1, during the Royalty Payment Term for any approved and commercialized Product Covered by one or more Valid Claims of an Arbutus Patent, the Company shall pay to Arbutus (x) if the Product is neither a Naked Sublicense Product nor a Bona Fide Collaboration Product, the amount set forth in Section 3.2(a), or (y) if the Product is a Naked Sublicense Product or a Bona Fide Collaboration Product, the lesser of the amount set forth in Section 3.2(a) and the amount set forth in Section 3.2(b)(i) or 3.2(b)(ii) (whichever one is applicable):

(a) a royalty (“Royalty”) as follows:

- (i) an amount equal to [***] [(***)] of aggregate annual Net Sales of such Product in the Territory up to [***];
- (ii) an amount equal to [***] [(***)] of aggregate annual Net Sales of such Product in the Territory to the extent greater than [***] and less than [***]; and
- (iii) an amount equal to [***] [(***)] of aggregate annual Net Sales of such Product in the Territory to the extent equal to or greater than [***]; or

(b) a percentage of Royalty-Related Receipts in respect of such Product as follows:

- (i) in the case of a Naked Sublicense Product, twenty percent (20%) of Royalty-Related Receipts; or
- (ii) in the case of a Bona Fide Collaboration Product, fourteen percent (14%) of Royalty-Related Receipts.

For clarity, any particular Royalty-Related Receipts shall be taken into account in determining the lesser of the amount set forth in Section 3.2(a) and the amount set forth in Section 3.2(b)(i) or 3.2(b)(ii) (whichever one is applicable) once only, for the Calendar Quarter in which such Royalty-Related Receipts are received by Genevant and its Subsidiaries, collectively.

The Company agrees that it will not structure any agreement for a sublicense of Arbutus Patents with the purpose to minimize Royalty-Related Receipts so as to minimize amounts payable to Arbutus hereunder.

(iii) For purposes of this Section 3.2(b):

“Bona Fide Collaboration” means a collaboration between Genevant or any of its Subsidiaries and one or more Third Parties involving Research, Development, Manufacture and/or Commercialization of one or more Products and established under a written agreement in which (a) the scope of the

licenses granted, and financial or other commitments of value, are of material value to Genevant and its Subsidiaries, collectively, and (b) Genevant or any of its Subsidiaries undertakes and performs substantial, mutual Research, Development, Manufacturing and/or Commercialization activity in collaboration with such Third Party. For purposes of clarity, it is understood and agreed that no collaboration in which all or substantially all of Genevant's and its Subsidiaries' collective contributions or anticipated contributions are or will be in the form of the grant by the Company of sublicenses to the Licensed Intellectual Property will be considered a Bona Fide Collaboration.

“Bona Fide Collaboration Products” means Products that are Researched, Developed, Manufactured, and/or Commercialized pursuant to a Bona Fide Collaboration.

“Naked Sublicense” means a transaction in which all or substantially all of Genevant's and its Subsidiaries' collective contributions or anticipated contributions are or will be in the form of the grant by the Company of sublicenses to the Licensed Intellectual Property.

“Naked Sublicense Products” means Products that are Researched, Developed, Manufactured, and/or Commercialized by a Third Party pursuant to a Naked Sublicense.

“Royalty-Related Receipts” means the amounts received by Genevant and its Subsidiaries, collectively, from a Sublicensee and its Affiliates, collectively, pursuant to a Naked Sublicense or Bona Fide Collaboration in the form of:

- (i) royalties, payments upon the achievement of sales milestones, and any other payment determined based on sales (or other sales-like final dispositions) of a Naked Sublicense Product or a Bona Fide Collaboration Product; or
- (ii) Lump Sum Proceeds (as defined in Section 5.3(f)(ii)).

Royalty-Related Receipts shall be considered Royalties for all purposes of this Agreement other than Section 3.2(a) and this Section 3.2(b).

- a. Following expiry of the Royalty Payment Term in respect of any Product or country (i) the licenses granted to the Company with respect to such Product and country become fully paid-up, sublicensable (subject to Section 2.3), royalty-free, exclusive, transferable, perpetual and irrevocable licenses and (ii) the obligation of the Company to pay any Royalty with respect to sales of Products in such country shall terminate. Without limiting the definition of the Royalty Payment Term, it shall be deemed to expire upon the expiration of all Valid Claims of Patents within the Licensed Intellectual Property that exist in such country. Except as specifically provided in this Section 3.2, the Royalties due and payable under this Section 3.2 shall not be subject to any reduction or offset.”

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3. Section 4.1(a) of the Agreement shall be and hereby is amended by deleting the text thereof in its entirety and replacing it with “Reserved.”

4. Sections 5.3(a), 5.3(b) and 5.3(c) of the Agreement shall be and hereby are amended by deleting them in their entirety and replacing them with the following:

“(a) Each Party shall use reasonable efforts to promptly report in writing to the other Party during the Term any known or suspected commercially relevant infringement by a Third Party of any of the Arbutus Patents and/or Joint IP Patents by a Third Party as such known or suspected infringement relates to the Research, Development, Manufacture or Commercialization of a Product or an Arbutus Licensed Product (an “Infringement”) of which such Party becomes aware and provide the other Party with all evidence in its possession supporting or relating to such Infringement.

(b) The Company shall have the right to initiate and maintain an Infringement Action with respect to each Infringement of a Joint IP Patent or Arbutus Patent (including the Royalty Patents) by a Third Party as such Infringement relates to the Research, Development, Manufacture, or Commercialization of a Product, or to take such other action as the Company, in its sole discretion, deems appropriate with respect to such Infringement, all at the Company’s sole cost and expense, as applicable.

(c) Arbutus shall have the right to initiate and maintain an Infringement Action with respect to each Infringement of an Arbutus Patent (including the Royalty Patents) or Arbutus Controlled Patent by a Third Party as such Infringement relates to the Research, Development, Manufacture, or Commercialization of an Arbutus Licensed Product, or to take such other action as Arbutus, in its sole discretion, deems appropriate with respect to such Infringement, all at Arbutus’ sole cost and expense, as applicable.”

5. Section 5.3(f) of the Agreement shall be and hereby is amended by deleting the text thereof in its entirety and replacing it with the following:

“(f) Arbutus shall be entitled to retain any proceeds from any Infringement Action that it initiates pursuant to Section 5.3(c). The Parties shall share in the proceeds from any Infringement Action that the Company initiates pursuant to Section 5.3(b), including settlements thereof (the “Proceeds”), as follows:

- (i) first, for the costs and expenses, including legal fees, that are incurred by either Party (including, in the case of the Company, collectively, (A) Genevant or any of its Subsidiaries and (B) Roivant Sciences Ltd. or any of its Affiliates) as part of, or in preparation for, the Infringement Action; and
- (ii) then, the remainder of such Proceeds (the “Remaining Proceeds”) shall be treated (A) as additional Net Sales, and (B) if such Proceeds are received by the Company or its assignee in the form of a lump sum payment (or in installments of a lump sum payment), whether characterized as a settlement payment, license or upfront fee (limited, in the case of a Bona Fide Collaboration, to the portion of such license or upfront fee fairly and equitably retroactively allocable to a license for the Infringement Period (as defined below)), litigation award, or otherwise (“Lump Sum Proceeds”), as Royalty-

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Related Receipts for a Naked Sublicense Product, in each case (clauses (A) and (B)) for the Calendar Quarter in which such Remaining Proceeds are received by the Company. Arbutus shall receive the portion of the Remaining Proceeds determined pursuant to Section 3.2 (and otherwise in accordance with Sections 3.3 through 3.5), and the Company (or Genevant or its Subsidiaries, collectively) shall receive or retain the rest of the Remaining Proceeds. Without limiting the foregoing, if the Proceeds are Lump Sum Proceeds, then, solely for purposes of determining the lesser of the amounts pursuant to (1) Section 3.2(a) and (2) Section 3.2(b), Net Sales of such Product for the Calendar Quarter in which such Proceeds are received by the Company shall be deemed to include all Net Sales for the infringing Product during the period beginning with the first such infringing sale and ending on the date of the Company's receipt (or, in the case of installments, first receipt) of Lump Sum Proceeds (the "**Infringement Period**").

For clarity, this Section 5.3(f) does not apply to any proceeds from settlement or other resolution (including a judgment or award at the conclusion of a litigation) of any infringement or suspected infringement relating solely to Company Intellectual Property."

6. The provisions of Sections 9.6, 9.11, and 9.15 of the Agreement shall apply to this Amendment *mutatis mutandis*.
7. Except as expressly set forth in this Amendment, the Agreement shall continue unchanged and in full force and effect.

[signature page follows]

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IN WITNESS WHEREOF, each of the Parties has caused this Third Amendment to be executed by its duly authorized representative as of date set forth below, effective as of the Third Amendment Effective Date.

GENEVANT SCIENCES GMBH ARBUTUS BIOPHARMA CORPORATION

By: /s/Markus Rohrwild By: /s/ William Collier
Name: Markus Rohrwild Name: William Collier
Title: Managing Director Title: President and CEO

Date: December 9, 2021 Date: December 9, 2021

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