

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION**

ABBOTT LABORATORIES, ABBOTT
BIORESEARCH CENTER, INC., and
ABBOTT BIOTECHNOLOGY LTD.,

Plaintiffs,

v.

BAYER HEALTHCARE LLC,

Defendant.

CIVIL ACTION NO. _____

DEMAND FOR JURY TRIAL

COMPLAINT FOR DECLARATORY JUDGMENT

INTRODUCTION

1. On December 24, 2008, Defendant Bayer HealthCare LLC (“Bayer” or “Defendant”) filed a Complaint against Plaintiffs Abbott Laboratories (“Abbott Labs”), Abbott Bioresearch Center, Inc. (“ABC”), and Abbott Biotechnology Ltd. (“ABL”) (collectively “Abbott” or “Plaintiffs”) in the United States District Court for the Eastern District of Texas, Tyler Division (“the Texas Lawsuit”). A true and correct copy of the Complaint in the Texas Lawsuit is attached hereto as Exhibit 1.

2. In the Texas Lawsuit, Bayer alleges that Abbott’s activities with respect to the pharmaceutical product HUMIRA[®] infringe one or more claims of United States Patent No. 5,654,407 (“the ‘407 patent”). A true and correct copy of the ‘407 patent is attached hereto as Exhibit A to Exhibit 1 hereto.

3. Abbott files this Complaint seeking a declaratory judgment that the ‘407 patent is not infringed by Abbott, is invalid, and is unenforceable under the equitable doctrines of laches, estoppel, and/or waiver.

THE PARTIES

4. Plaintiff Abbott Labs is a corporation organized under the laws of the State of Illinois with a place of business located at 100 Abbott Park Road, Abbott Park, Illinois 60064.

5. Plaintiff ABC is a wholly owned subsidiary corporation of Abbott Labs that is organized and existing under the laws of the State of Delaware with a place of business located at 100 Research Drive, Worcester, Massachusetts 01605.

6. Plaintiff ABL is a wholly owned subsidiary corporation of Abbott Labs that is organized and existing under the laws of Bermuda with a place of business located at Carr #2 Km. 59.2, Segundo Piso, Barceloneta, Puerto Rico 00617.

7. Defendant Bayer is a limited liability corporation organized under the laws of the State of Delaware, with a place of business at 555 White Plains Road, Tarrytown, New York 10591.

JURISDICTION AND VENUE

8. This is a declaratory judgment action seeking a declaration of noninfringement, invalidity, and unenforceability of the claims of the '407 patent. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202. In light of Bayer's assertion of the '407 patent against Abbott in the Texas Lawsuit, an actual case or controversy exists between the parties.

9. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. §§ 1391. At all times relevant to this complaint, ABC has engaged in research, development, and/or manufacturing activities relating to HUMIRA at its Worcester facility. Furthermore, this Court

has personal jurisdiction over Bayer. Bayer has continuous and systematic contacts with this forum, including the marketing and sale of animal health products, non-prescription medicines, blood glucose monitoring systems, and prescription medicines.

COUNT I

(Non-Infringement of the '407 patent)

10. Abbott repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

11. Abbott does not infringe any valid and enforceable claim of the '407 patent.

12. To resolve the legal and factual questions raised by Abbott and to afford relief from the uncertainty and controversy which Bayer's accusations have precipitated, Abbott is entitled to a declaratory judgment that Abbott does not infringe any valid and enforceable claim of the '407 patent.

COUNT II

(Invalidity of the '407 patent)

13. Abbott repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

14. One or more claims of the '407 patent are invalid under 35 U.S.C. § 101 *et seq.*

15. To resolve the legal and factual questions raised by Abbott and to afford relief from the uncertainty and controversy which Bayer's accusations have precipitated, Abbott is entitled to a declaratory judgment that one or more of the claims of the '407 patent are invalid.

COUNT III

(Unenforceability of the '407 patent: Laches/Estoppel/Waiver)

16. Abbott repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

17. The '407 patent was issued in August 1997. HUMIRA has been on the market in the United States since at least as early as 2003.

18. One or more claims of the '407 patent are unenforceable under the equitable doctrines of laches, estoppel, and/or waiver.

19. To resolve the legal and factual questions raised by Abbott and to afford relief from the uncertainty and controversy which Bayer's accusations have precipitated, Abbott is entitled to a declaratory judgment that one or more of the claims of the '407 patent are unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Abbott requests entry of judgment in its favor and against Bayer as follows:

- A. Declaring that Abbott does not infringe any of the claims of the '407 patent;
- B. Declaring that all of the claims of the '407 patent are invalid;
- C. Declaring that all of the claims of the '407 patent are unenforceable because of laches, estoppel, and/or waiver;
- D. Finding that this is an exceptional case under 35 U.S.C. § 285 and awarding Abbott the costs and expenses of this litigation, including reasonable attorneys' fees and disbursements; and

E. Awarding Abbott other such relief as is just and proper.

DEMAND FOR JURY TRIAL

Abbott demands a trial by jury on all issues so triable.

Dated: January 5, 2009

Respectfully submitted,

/s/ Anne M. McLaughlin
William F. Lee (BBO# 291960)
william.lee@wilmerhale.com
Anne M. McLaughlin (BBO# 666081)
anne.mclaughlin@wilmerhale.com
Wilmer Cutler Pickering Hale and
Dorr, LLP
60 State Street
Boston, MA 02109
(617) 526-6000

William G. McElwain (BBO# 332510)
william.mcelwain@wilmerhale.com
Wilmer Cutler Pickering Hale and
Dorr, LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
(202) 663-6000

**ATTORNEYS FOR PLAINTIFFS ABBOTT
LABORATORIES, ABBOTT BIORESEARCH CENTER,
INC., AND ABBOTT BIOTECHNOLOGY LTD.**