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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ABBOTT LABORATORIES and LABORATOIRES FOURNIER S.A.,	)	
Plaintiffs,	)	**Civil Action No. _____**
v.	)	
TEVA PHARMACEUTICALS USA, INC.,	)	
Defendant.	)	

COMPLAINT FOR PATENT INFRINGEMENT

Abbott Laboratories ("Abbott") and Laboratoires Fournier S.A. ("Fournier") for their Complaint against Teva Pharmaceuticals USA, Inc. ("Teva") allege as follows:

NATURE OF THE ACTION

1. This is an action for infringement of U.S. Patent Nos. 6,277,405 ("the '405 patent"), 7,037,529 ("the '529 patent"), and 7,041,319 ("the '319 patent"). The '405, '529, and '319 patents are collectively referred to herein as the "Patents-in-Suit." This action arises out of Teva's filing of an Abbreviated New Drug Application ("ANDA") seeking approval to sell

generic copies of Plaintiffs' highly successful TRICOR® 48 mg product prior to the expiration of the Patents-in-Suit.

THE PARTIES

2. Plaintiff Abbott Laboratories is a corporation organized under the laws of the State of Illinois, having its headquarters and principal place of business at 100 Abbott Park Road, Abbott Park, Illinois 60064.

3. Plaintiff Laboratoires Fournier S.A. is a French corporation having its principal place of business at 28 Boulevard Clemenceau, 21000 Dijon, France.

4. On information and belief, Defendant Teva Pharmaceuticals USA, Inc. is a Delaware corporation having a principal place of business at 1090 Horsham Road, North Wales, Pennsylvania 19454. On information and belief, Teva is in the business of, among other things, developing, manufacturing, and selling generic copies of branded pharmaceutical products for the U.S. market.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. On information and belief, this Court has personal jurisdiction over Teva because it has purposely availed itself of the benefits and protections of New Jersey's laws such that it should reasonably anticipate being haled into court here. On information and belief, Teva has had persistent and continuous contacts with this judicial district, including developing or manufacturing pharmaceutical products that are sold in this judicial district.

7. On information and belief, Teva maintains a place of business at 10 Gloria Lane, Fairfield, New Jersey 07004.

8. On information and belief, Teva is registered to do business in New Jersey.

9. Teva admitted in previous patent litigation involving the same parties that it is subject to personal jurisdiction in this Court. *See* Mem. Supp. Mot. to Transfer at 9, *Abbott Labs. v. Teva Pharma. USA, Inc.*, No. 08-1243 (N.D. Ill.) (Mar. 31, 2008).

10. This case is related to a previous lawsuit in this Court involving the same parties. On February 29, 2008, Abbott and Fournier filed suit against Teva in the U.S. District Court for the Northern District of Illinois seeking a judgment that each of the Patents-in-Suit was infringed by Teva's filing of its ANDA No. 90-069, which sought approval to sell generic copies of the TRICOR® 145 mg product prior to the expiration of the Patents-in-Suit. *Abbott Labs. v. Teva Pharma. USA, Inc.*, No. 08-1243 (N.D. Ill.). On November 12, 2008, the Illinois court transferred the lawsuit to this Court. On December 2, 2008, this Court acknowledged the transfer. *See Abbott Labs. v. Teva Pharma. USA, Inc.*, No. 08-5869 (D.N.J.), D.I. 43. That action was dismissed by stipulation of the parties on December 1, 2009. No. 08-5869 (D.N.J.), D.I. 102.

11. Four related lawsuits are currently pending in this Court. On November 3, 2008, Abbott and Fournier filed suit in the U.S. District Court for the Northern District of Illinois against Biovail Laboratories International SRL and Biovail Corporation (collectively "Biovail") seeking a judgment that each of the Patents-in-Suit is infringed by Biovail's filing of its ANDA No. 90-715. *See Abbott Labs. v. Biovail Labs. Int'l SRL*, No. 08-6274 (N.D. Ill.). On December 10, 2008, the Illinois court transferred the lawsuit to this Court. On January 5, 2009, this Court acknowledged the transfer. *See Abbott Labs. v. Biovail Labs. Int'l SRL*, No. 09-0005 (D.N.J.). On March 6, 2009, Abbott and Fournier filed suit in this Court against Lupin Limited and Lupin

Pharmaceuticals, Inc. (collectively "Lupin") seeking a judgment that each of the Patents-in-Suit is infringed by Lupin's filing of its ANDA No. 90-856. *See Abbott Labs. v. Lupin Ltd.*, No. 09-1007 (D.N.J.). On October 29, 2009, Abbott and Fournier filed suit in this Court against Impax Laboratories, Inc. ("Impax"), seeking a judgment that each of the Patents-in-Suit is infringed by Impax's filing of its ANDA No. 91-548. *See Abbott Labs. v. Impax Labs., Inc.*, No. 09-5517 (D.N.J.). On June 4, 2010, Abbott and Fournier filed suit in this Court against Ranbaxy Laboratories, Ltd., Ranbaxy Pharmaceuticals, Inc. and Ranbaxy Inc. (collectively "Ranbaxy") seeking a judgment that each of the Patents-in-Suit is infringed by Ranbaxy's filing of its ANDA No. 200884. *See Abbott Labs. v. Ranbaxy Labs. Ltd.*, No. 10-2869 (D.N.J.).

12. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

BACKGROUND

13. Fournier is the owner by assignment of: (a) the '405 patent (attached hereto as Exhibit A); (b) the '529 patent (attached hereto as Exhibit B); and (c) the '319 patent (attached hereto as Exhibit C).

14. The '405 and '529 patents are titled "Fenofibrate Pharmaceutical Composition Having High Bioavailability and Method for Preparing It." The '319 patent is titled "Fenofibrate Pharmaceutical Composition Having High Bioavailability."

15. Abbott is the exclusive licensee of the Patents-in-Suit.

16. The Patents-in-Suit, which currently expire on January 9, 2018, each claim novel fenofibrate compositions that exhibit a particular dissolution profile.

17. Fenofibrate is useful as a lipid and cholesterol lowering agent for treatment of adults with increased triglyceride levels.

18. Abbott has approval from the FDA to market fenofibrate tablets under the name TRICOR®.

19. TRICOR® (fenofibrate) is included in the FDA's list of "Approved Drug Products With Therapeutic Equivalence Evaluations" also known as the "Orange Book." Approved drugs may be used as the basis of a later applicant's ANDA to obtain approval of the ANDA applicant's drug product under provisions of 21 U.S.C. § 355(j).

20. The FDA's "Orange Book" also lists patents associated with approved drugs. The Patents-In-Suit are listed in the "Orange Book" in association with TRICOR® (fenofibrate).

21. On information and belief, Teva submitted ANDA No. 200182 to the FDA under § 505(j) of the Federal Food, Drug and Cosmetic Act, 21, U.S.C. § 355(j), seeking approval to engage in the commercial manufacture, use, and sale of fenofibrate tablets in 48 mg dosage ("Teva's Tablets, 48 mg"), as generic versions of the TRICOR® 48 mg tablets. Upon information and belief, Teva will market and/or distribute Teva's Tablets, 48 mg, if ANDA No. 200182 is approved by the FDA.

22. By letter dated May 25, 2010, Teva advised Abbott and Fournier that it had submitted ANDA No. 200182 seeking approval to manufacture, use, or sell Teva's Tablets, 48 mg, prior to the expiration of the Patents-in-Suit.

COUNT I

23. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 22 hereof, as if fully set forth herein.

24. 35 U.S.C. § 271(e)(2) provides that the submission of an application under 21 U.S.C. § 355(j) for a drug claimed in a patent or for a drug use claimed in a patent is an act of

infringement if the applicant seeks FDA marketing approval effective prior to the expiration of the patent. Teva's submission of an ANDA for approval to sell Teva's Tablets, 48 mg prior to the expiration of the Patents-in-Suit constitutes an act of infringement of one or more claims of each of the Patents-in-Suit under 35 U.S.C. § 271(e)(2). In addition, Teva's Tablets, 48 mg infringe one or more claims of each of the Patents-in-Suit under 35 U.S.C. § 271.

25. On information and belief, Teva acted without a reasonable basis or a good faith belief that it would not be liable for infringing the Patents-in-Suit.

26. Plaintiffs have no adequate remedy at law to redress Teva's infringement.

27. Teva's conduct renders this case "exceptional" as described in 35 U.S.C. § 285.

28. Plaintiffs will be irreparably harmed if Teva is not enjoined from infringing the Patents-in-Suit.

PRAYER

WHEREFORE, Plaintiffs respectfully request relief and judgment as follows:

(a) a judgment that each of the Patents-in-Suit is valid and enforceable, and each of the Patents-in-Suit is infringed under 35 U.S.C. § 271(e)(2) by Teva's filing of its ANDA No. 200182;

(b) an order pursuant to 35 U.S.C. § 271(e)(4)(A) that the effective date of any approval of ANDA No. 200182 under § 505(j) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 355(j) be subsequent to the expiration date of each of the Patents-in-Suit;

(c) an injunction pursuant to 35 U.S.C. § 271(e)(4)(B) prohibiting Teva from commercially manufacturing, selling or offering for sale, using, or importing the fenofibrate

compositions claimed in the Patents-in-Suit or otherwise infringing one or more claims of the Patents-in-Suit;

(d) damages and/or other monetary relief pursuant to 35 U.S.C. § 284 in the event of any commercial manufacture, use or sale of fenofibrate compositions falling within the scope of one or more claims of the Patents-in-Suit by Teva;

(e) an award of Plaintiffs' interest, costs, reasonable attorneys' fees and such other relief as the Court deems just and proper pursuant to 35 U.S.C. § 271(e)(4) and 35 U.S.C. § 285; and,

(f) such other and further relief as the Court may deem just and proper.

CERTIFICATION PURSUANT TO L. CIV. R. 11.2

Plaintiffs, by their undersigned counsel, hereby certify pursuant to L. Civ. R. 11.2 that the matters in controversy are not the subject of any other action pending in any other court or of any pending arbitration or administrative proceeding, with the exception of the related lawsuits identified in Paragraph 8 of this Complaint involving different defendants but the same Patents-in-Suit.

Respectfully submitted,

s/ Thomas R. Curtin

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