

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

10/22/13 10:13

U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

ACELLA PHARMACEUTICALS, LLC,

Plaintiff,

v.

CHEMO S.A. FRANCE,

SERVE:

To be determined by Court, pursuant to
35 U.S.C. § 293

Defendant.

Civil Action No. 2-13 CV 573
JURY TRIAL DEMANDED HCM/DEM

COMPLAINT

Plaintiff Acella Pharmaceuticals, LLC ("Acella"), by counsel, pursuant to Fed. R. Civ. P. 8, files the following Complaint against Defendant Chemo S.A. France ("Chemo"):

PARTIES, JURISDICTION, AND VENUE

1. Acella is a limited liability company formed under the laws of the State of Delaware, with its principal office in Alpharetta, Georgia. Acella manufactures and markets pharmaceutical products.

2. Upon information and belief, Chemo is a corporate entity organized and existing under the laws of the French Republic, commonly known as France. It has an office located in Paris, France.

3. This is an action for a declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, and related to U.S. Patent No. 8,183,227 ("the '227 patent"),

which is, upon information and belief, owned by Chemo. A copy of the '227 patent issued by the United States Patent and Trademark Office is attached as Exhibit A.

4. This Court has personal jurisdiction over Chemo pursuant to 35 U.S.C. § 293 because Chemo is the patentee of the '227 patent and does not reside in the United States and, upon information and belief, has not filed with the United States Patent and Trademark Office a written designation stating the name and address of a person residing within the United States on whom process or notice of proceedings affecting the '227 patent may be served.

5. Pursuant to 35 U.S.C. § 293, the Summons in this case must be served by publication or otherwise as the Court directs, and this Court has jurisdiction to take any action respecting the patent or rights thereunder just as it would if Chemo were personally within the jurisdiction of the Court. Acella will be seeking an order from the Court directing service in a suitable manner pursuant to 35 U.S.C. § 293.

6. This action arises under the Patent Laws of the United States, 35 U.S.C. § 100, *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.* Subject matter jurisdiction over this case is founded on 28 U.S.C §§ 1331, 1338(a) and 2201(a).

7. Venue is proper in this District pursuant to 35 U.S.C. § 293 and 28 U.S.C. § 1391(b)(3).

DECLARATORY JUDGMENT OF INVALIDITY

8. Acella incorporates by reference and re-alleges the allegations of the preceding paragraphs of the Complaint as if fully set forth herein.

9. Upon information and belief, Chemo has licensed the '227 patent to its wholly-owned U.S. subsidiary, Everett Laboratories, Inc. ("Everett").

10. Everett has brought an action for patent infringement against Acella for infringement of, *inter alia*, the '227 patent in the United States District Court for the District of New Jersey (the "New Jersey Action").

11. Upon information and belief, based on representations of counsel for Everett, Chemo has refused to agree to be bound by any judgment entered in the New Jersey Action with respect to the '227 patent or any of the other patents at issue there.

12. Accordingly, by virtue of Chemo's licensee's filing an action for patent infringement against Acella in New Jersey and by Chemo refusing to agree to be bound by any judgment in the New Jersey Action, Acella has a reasonable apprehension of a patent infringement action being filed by Chemo elsewhere. As such an actual, substantial, continuing, and justiciable controversy exists between Chemo and Acella concerning the validity of the '227 patent.

13. Upon information and belief, the claims of the '227 patent are invalid under one or more of the following provisions: 35 U.S.C. §§ 101, 102, 103 and 112.

14. Acella is entitled to a declaration that the claims of the '227 patent are invalid under 35 U.S.C. § 101, *et seq.* and fail to meet the patentability standards of one or more of 35 U.S.C. §§ 101, 102, 103 and 112.

REQUESTED RELIEF

WHEREFORE, Plaintiff Acella requests that the Court enter judgment in its favor and grant the following relief:

- A. A declaration that the '227 patent is invalid;
- B. A declaration that this case is exceptional and an award of Acella's costs and reasonable attorneys' fees under 28 U.S.C. § 285; and

C. Such other and further relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Plaintiff Acella Pharmaceuticals, LLC hereby demands a jury trial on all issues triable of right by a jury.

ACELLA PHARMACEUTICALS, LLC
By Counsel

Dated: October 22, 2013

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