IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ALLERGAN, INC., Plaintiff, v. BARR LABORATORIES, INC., Defendant.	C.A. No. _____ **JURY TRIAL DEMANDED**

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Allergan, Inc. ("Allergan" or "Plaintiff"), by its attorneys, Fish & Richardson P.C. and Gibson Dunn & Crutcher LLP, for its complaint against Defendant Barr Laboratories, Inc. ("Barr" or "Defendant") alleges as follows:

The Nature of the Action

1. This is an action for infringement of United States Patent Nos. 5,688,819 (the "'819 patent") and 6,403,649 (the "'649 patent") under 35 U.S.C. § 271(e)(2).

The Parties

2. Plaintiff Allergan, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 2525 Dupont Drive, Irvine, California 92612.

3. On information and belief, defendant Barr Laboratories, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 225 Summit Avenue, Montvale, New Jersey 07645.

4. On information and belief, Barr Laboratories, Inc. sells numerous generic drugs throughout the United States, including this judicial district.

Jurisdiction and Venue

5. This action arises under the patent laws of the United States of America, United States Code, Title 35, Section 1, *et seq*. This Court has subject matter jurisdiction over the action under 28 U.S.C. §§ 1331 and 1338.

6. Based on the facts and causes alleged herein, this Court has personal jurisdiction over Defendant.

7. Venue is proper in this Court under 28 U.S.C. § 1391 and 1400(b).

Background

8. The '819 patent, entitled "Non-Acidic Cyclopentane Heptanoic Acid, 2-Cycloalkyl or Arylalkyl Derivatives as Therapeutic Agents," issued to David F. Woodward, Steven W. Andrews, Robert M. Burk, and Michael E. Garst on November 18, 1997. A copy of the '819 patent is attached to this complaint as Exhibit A.

9. Allergan, as the assignee, owns the entire right, title, and interest in the '819 patent.

10. The '649 patent, entitled "Non-Acidic Cyclopentane Heptanoic Acid, 2-Cycloalkyl or Arylalkyl Derivatives as Therapeutic Agents," issued to David F. Woodward, Steven W. Andrews, Robert M. Burk, and Michael E. Garst on June 11, 2002. A copy of the '649 patent is attached to this complaint as Exhibit B.

11. Allergan, as the assignee, owns the entire right, title, and interest in the '649 patent.

12. Allergan is the holder of approved New Drug Application ("NDA") 02-1275 for 0.03% bimatoprost ophthalmic solution, sold under the LUMIGAN® trademark.

13. In conjunction with NDA 02-1275, Allergan listed the '819 and '649 patents with the U.S. Food and Drug Administration ("FDA") as patents "with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug." 21 U.S.C. § 355(b)(1).

14. On or about March 26, 2009, Allergan received a letter, dated March 25, 2009, signed on behalf of Barr Laboratories, Inc. The letter stated that Barr had filed an Abbreviated New Drug Application ("ANDA") (No. 91-194) with the FDA under § 505(j) of the Federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. § 355(j), seeking approval to market a generic version of Allergan's LUMIGAN® product before the expiration of the '819 and '649 patents.

15. The purpose of the March 25, 2009 letter was to notify Allergan that Barr had filed a certification with the FDA under section 505(j)(2)(A)(vii)(IV) of the FDCA, 21 U.S.C. § 355(j)(2)(A)(vii)(IV), ("Paragraph IV certification") in conjunction with its ANDA. The letter alleged (1) that all claims of the '649 patent and some claims of the '819 patent were invalid and (2) that the remaining claims of the '819 patent would not be infringed by Barr's generic version of Allergan's LUMIGAN® product.

Count I

(Infringement of the '819 Patent Under 35 U.S.C. § 271(e)(2))

16. Paragraphs 1 to 15 are incorporated herein as set forth above.

17. Barr submitted an ANDA to the FDA under section 505(j) of the FDCA, 21 U.S.C. § 355(j), to obtain approval to engage in the commercial manufacture, use, or sale of its proposed generic 0.03% bimatoprost ophthalmic solution product throughout the United States. By submitting the application, Barr has committed an act of infringement under 35 U.S.C. § 271(e)(2)(A).

18. The commercial manufacture, use, offer for sale, sale, and/or importation of Barr's proposed generic 0.03% bimatoprost ophthalmic solution product will constitute direct and/or contributory infringement of the '819 patent and/or active inducement of infringement of the '819 patent.

Count II

(Infringement of the '649 Patent Under 35 U.S.C. § 271(e)(2))

19. Paragraphs 1 to 18 are incorporated herein as set forth above.

20. Barr submitted an ANDA to the FDA under section 505(j) of the FDCA, 21 U.S.C. § 355(j), to obtain approval to engage in the commercial manufacture, use, or sale of its proposed generic 0.03% bimatoprost ophthalmic solution product throughout the United States. By submitting the application, Barr has committed an act of infringement under 35 U.S.C. § 271(e)(2)(A).

21. The commercial manufacture, use, offer for sale, sale, and/or importation of Barr's proposed generic 0.03% bimatoprost ophthalmic solution product will constitute direct

and/or contributory infringement of the '649 patent and/or active inducement of infringement of the '819 patent.

Prayer for Relief

a. That judgment be entered that Barr and all those acting in concert with it have infringed the '819 and '649 patents under 35 U.S.C. § 271(e)(2)(A) by submitting an ANDA under section 505(j) of the FDCA, 21 U.S.C. § 355(j), and that the commercial manufacture, use, offer for sale, sale and/or importation of Barr's proposed generic 0.03% bimatoprost ophthalmic solution product will constitute an act of infringement of the '819 and '649 patents as pled;

b. That an order be issued under 35 U.S.C. § 271(e)(4)(A) that the effective date of any FDA approval of Barr's ANDA shall be a date which is not earlier than the expiration date of the '819 and '649 patents and any relevant exclusivity and term extension attaching to those patents;

c. That an injunction be issued under 35 U.S.C. § 271(e)(4)(B) permanently enjoining Barr, its officers, agents, servants, employees, licensees, representatives, and attorneys, and all other persons acting or attempting to act in active concert or participation with it or acting on its behalf, from engaging in the commercial manufacture, use, offer for sale, or sale within the United States, or importation into the United States, of any drug product covered by the '819 and '649 patents;

d. That damages or other monetary relief be awarded to Allergan under 35 U.S.C. § 271(e)(4)(C) as appropriate;

e. That this is an exceptional case under 35 U.S.C. § 285, and that Allergan be awarded reasonable attorneys' fees and costs; and

f. That this Court award such other and further relief as it may deem just and proper.

Demand For Jury Trial

Allergan demands a trial by jury on all issues appropriately tried to a jury.

By: _____

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Dated: May 7, 2009

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