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13 Attorneys for Plaintiff
14 BAYER PHARMA AG

15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF NEVADA**

17 BAYER PHARMA AG
18 Plaintiff,

19 vs.

20 WARNER CHILCOTT COMPANY, LLC
21 and WARNER CHILCOTT (US), LLC
22 Defendants.

COMPLAINT
(JURY DEMAND)

23 Plaintiff Bayer Pharma AG (“Bayer”) brings this Complaint for patent infringement
24 against Defendants Warner Chilcott Company, LLC and Warner Chilcott (US), LLC (collectively
25 “Warner Chilcott”) and alleges the following:

26 **NATURE OF THE ACTION**

27 1. This is an action for patent infringement arising under the patent laws of the United
28 States, including 35 U.S.C. §§ 271, 281-285.

1 2. This lawsuit pertains to Warner Chilcott's infringement of U.S. Patent Number
2 43,916 (the "'916 Patent").

3 3. The '916 patent issued on January 8, 2013 and is a reissue of U.S. Patent Number
4 5,824,667. Inventors Jürgen Spona, Bernd Düsterberg, and Frank Ludicke filed their application
5 for this patent on March 24, 2006. Bayer Pharma AG is the current owner of the '916 Patent. A
6 true and correct copy of the '916 Patent is attached as Exhibit A.

7 PARTIES

8 4. Plaintiff Bayer Pharma AG is a corporation organized and existing under the laws
9 of the Federal Republic of Germany, having a principal place of business in Müllerstrase 178,
10 13353 Berlin, Germany.

11 5. On information and belief, Defendant Warner Chilcott Company, LLC is a limited
12 liability company organized and existing under the laws of Puerto Rico, having a principal place
13 of business at Union Street, Road 195, Km1.1, Fajardo, PR 00738-1005. On information and
14 belief, Warner Chilcott Company, LLC is in the business of, among other things, developing,
15 manufacturing, marketing and selling branded prescription pharmaceutical products in women's
16 healthcare and dermatology in the U.S.

17 6. On information and belief, Defendant Warner Chilcott (US), LLC is a limited
18 liability company organized and existing under the laws of Delaware, having a principal place of
19 business at 100 Enterprise Drive, Suite 280, Rockaway, NJ 07866. On information and belief,
20 Warner Chilcott (US), LLC is in the business of, among other things, developing, manufacturing,
21 marketing and selling branded prescription pharmaceutical products in women's healthcare and
22 dermatology in the U.S.

23 JURISDICTION AND VENUE

24 7. This action arises under the Patent Laws of the United States, 35 U.S.C. § 101 *et*
25 *seq.*, including 35 U.S.C. § 271. This Court has subject matter jurisdiction over this matter
26 pursuant to 28 U.S.C. §§ 1331, 1338(a).

27 8. This Court has personal jurisdiction over Warner Chilcott. Warner Chilcott (US),
28 LLC maintains substantial, continuous, and systematic contacts in Nevada, including infringing

1 sales of Loestrin 24 FE. Warner Chilcott (US), LLC has thus purposefully availed itself of the
2 benefits and protections of Nevada's laws such that it should reasonably anticipate being sued in
3 this jurisdiction. Warner Chilcott Company, LLC is subject to personal jurisdiction in Nevada
4 because Warner Chilcott Company, LLC manufactures pharmaceutical drugs with the knowledge
5 and intent that Warner Chilcott Company, LLC's drugs will be sold in the United States, including
6 within Nevada, by Warner Chilcott (US), LLC. Warner Chilcott Company, LLC has thus engaged
7 in systematic and continuous business contacts within Nevada, and has therefore purposefully
8 availed itself of the benefits and protections of Nevada's laws such that it should reasonably
9 anticipate being sued in this jurisdiction.

10 9. Venue is proper in the District of Nevada pursuant to 28 U.S.C. §§ 1391, 1400(b)

11 **FACTUAL BACKGROUND**

12 10. Plaintiff Bayer Pharma AG is the assignee of the '916 Patent.

13 11. Without limitation, the '916 Patent claims a method of inducing contraception in a
14 female of reproductive age by administering a monophasic composition comprising 15 µg to 20
15 µg of ethinylestradiol and a contraceptively effective amount of a gestagen wherein the
16 composition is administered for 23 or 24 days followed by 5 or 4 pill-free or non-hormonal pill
17 days.

18 12. Defendant Warner Chilcott sells Loestrin 24 FE tablets in the United States as a 28-
19 day oral contraceptive regimen. Loestrin 24 FE's regimen contains 24 tablets comprising a
20 contraceptively effective amount of norethindrone acetate and 20 µg ethinyl estradiol; and 4 non-
21 hormonal placebo tablets.

22
23 **COUNT I - INFRINGEMENT**
OF UNITED STATES REISSUE PATENT NO. 43,916

24 13. Bayer restates and realleges each of the assertions set forth in Paragraphs 1 through
25 12.

26 14. The administration of the oral contraceptive Loestrin 24 FE infringes one or more
27 claims of the '916 Patent under 35 U.S.C. § 271 either literally or under the doctrine of
28 equivalents.

1 15. Defendant Warner Chilcott has knowledge of the '916 Patent. By letter dated
2 February 18, 2013, Bayer informed Warner Chilcott that that it induced infringement of the '916
3 Patent through sales of Loestrin 24 FE. Warner Chilcott also has knowledge of the '916 Patent
4 based on the filing of this lawsuit.

5 16. On information and belief, Warner Chilcott has knowledge that its sales of Loestrin
6 24 FE will result in the infringement of the '916 Patent. On information and belief, Warner
7 Chilcott is aware or should be aware of the widespread prescription of Loestrin 24 FE by doctors
8 or other healthcare practitioners. The label for Loestrin 24 FE instructs doctors or other healthcare
9 practitioners as well as patients to administer Loestrin 24 FE with a regimen of 24 tablets
10 containing 20 µg of estrogen and a contraceptively effective amount of a gestagen; followed by 4
11 pill-free or sugar pill days.

12 17. On information and belief, Warner Chilcott has the specific intent to encourage
13 infringement by others of the '916 Patent based on its distribution of Loestrin 24 FE for purposes
14 of its administration as an oral contraceptive.

15 WHEREFORE, Bayer is entitled to recover from Warner Chilcott the damages sustained
16 by Bayer as a result of Warner Chilcott's wrongful acts in an amount subject to proof at trial,
17 including an amount not less than a reasonable royalty together with interest and costs as fixed by
18 this Court under 35 U.S.C. § 284.

19 **JURY DEMAND**

20 Bayer hereby demands a trial by jury on all issues so triable.

21 Dated: this 19th day of February, 2013.

22 Respectfully submitted,

23 LEWIS AND ROCA LLP

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