

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CEPHALON, INC.,

Plaintiff,

v.

WATSON PHARMACEUTICALS, INC.,
WATSON LABORATORIES, INC., and
WATSON PHARMA, INC.,

Defendants.

Civil Action No. 09-

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Cephalon, Inc. (“Cephalon” or “Plaintiff”) for its complaint against Watson Pharmaceuticals, Inc., Watson Laboratories, Inc., and Watson Pharma, Inc. (collectively “Defendants” or “Watson”), to the best of its knowledge, information and belief, hereby alleges as follows:

THE PARTIES

1. Plaintiff Cephalon, Inc. is a Delaware corporation having a principal place of business at 41 Moores Road, Frazer, Pennsylvania 19355.
2. Defendant Watson Pharmaceuticals, Inc. (“Watson Pharmaceuticals”) is a Nevada corporation having a principal place of business at 311 Bonnie Circle, Corona, California 92880.
3. Defendant Watson Laboratories, Inc. (“Watson Laboratories”) is a Nevada corporation having a principal place of business at 311 Bonnie Circle, Corona, California 92880.
4. Defendant Watson Laboratories is a wholly-owned subsidiary of Defendant Watson Pharmaceuticals, and the two have common officers and directors.

5. Defendant Watson Pharma, Inc. (“Watson Pharma”) is a Delaware corporation having a principal place of business at 360 Mount Kemble Avenue, Morristown, New Jersey 07962.

6. Defendant Watson Pharma is a wholly-owned subsidiary of Defendant Watson Pharmaceuticals, and the two have common officers and directors.

7. Defendant Watson Pharmaceuticals develops, manufactures, and/or markets pharmaceutical products throughout the United States, including in this judicial district, through its own actions and through the actions of its agents and operating subsidiaries, including Watson Laboratories and Watson Pharma.

JURISDICTION AND VENUE

8. This is an action for a declaratory judgment of infringement of United States Patent No. 6,264,981 B1 (“the ’981 patent”) under 28 U.S.C. §§ 2201 and 2202. A copy of the ’981 patent is attached as Exhibit A.

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338, 2201 and 2202.

10. This Court has personal jurisdiction over Defendant Watson Pharma because Watson Pharma is a Delaware corporation.

11. In addition, this Court has personal jurisdiction over Defendants Watson Pharmaceuticals, Watson Laboratories, and Watson Pharma because they, either directly or through an agent, including each other, regularly do or solicit business in Delaware, engage in other persistent courses of conduct in Delaware, and derive substantial revenue from services, or things used or consumed in Delaware.

12. Watson Pharmaceuticals, Watson Laboratories and Watson Pharma are agents of each other with respect to the development, regulatory approval, marketing, sale and distribution of pharmaceutical products, including the generic fentanyl citrate buccal tablets described in Defendants' Abbreviated New Drug Application. More specifically, each of Watson Pharmaceuticals, Watson Laboratories, and Watson Pharma, will manufacture, market, and/or sell the generic fentanyl citrate buccal tablets, should regulatory approval be granted.

13. If Defendants' Abbreviated New Drug Application for generic fentanyl citrate buccal tablets is approved, the tablets would, among other things, be marketed and distributed in Delaware, prescribed by physicians practicing in Delaware and dispensed by pharmacies located within Delaware, all of which would have a substantial effect on Delaware.

14. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

THE PATENT IN SUIT

15. On July 24, 2001, the '981 patent titled "Oral Transmucosal Drug Dosage Using Solid Solution," was duly and legally issued by the United States Patent and Trademark Office.

16. Plaintiff Cephalon is the lawful owner by assignment of all right, title and interest in and to the '981 patent, including all right to sue and recover for infringement thereof.

COUNT I **Declaratory Judgment of Infringement of the '981 Patent** **Under 35 U.S.C. § 271**

17. Paragraphs 1 through 16 are incorporated herein as set forth above.

18. These claims arise under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

19. There is an actual case or controversy such that the Court may entertain Cephalon's request for declaratory relief consistent with Article III of the United States Constitution, and this actual case or controversy requires a declaration of rights by this Court.

20. On or before August 7, 2009, Plaintiff notified Defendants of the existence of the '981 patent and of Plaintiff's belief that any manufacture, sale, offer of sale, and/or importation of the generic fentanyl citrate buccal tablets specified in Defendants' Abbreviated New Drug Application prior to patent expiry would constitute infringement of the '981 patent.

21. Defendants have made, and continue to make, substantial preparation in the United States to manufacture, offer to sell, sell and/or import generic fentanyl citrate buccal tablets prior to patent expiry.

22. Defendants' actions, including, but not limited to, the development of generic fentanyl citrate buccal tablets and the filing of an Abbreviated New Drug Application with a Paragraph IV certification, indicate a refusal to change the course of their action in the face of acts by Cephalon.

23. Any commercial manufacture, use, offer for sale, sale, and/or importation of the generic fentanyl citrate buccal tablets specified in Defendants' Abbreviated New Drug Application prior to patent expiry will constitute direct and/or contributory infringement and/or active inducement of infringement of the '981 patent.

24. Plaintiff is entitled to a declaratory judgment that the future commercial manufacture, use, offer for sale, sale, and/or importation of the generic fentanyl citrate buccal tablets specified in Defendants' Abbreviated New Drug Application prior to patent expiry by Watson Pharmaceuticals, Watson Laboratories, and/or Watson Pharma will constitute direct and/or contributory infringement and/or active inducement of infringement of the '981 patent.

EXCEPTIONAL CASE

25. Paragraphs 1 through 24 are incorporated herein by reference.

26. Watson Laboratories was aware of the '981 patent prior to the filing of an Abbreviated New Drug Application for generic fentanyl citrate buccal tablets.

27. Watson Pharmaceuticals was aware of the '981 patent prior to the filing of an Abbreviated New Drug Application for generic fentanyl citrate buccal tablets.

28. Watson Pharma was aware of the '981 patent prior to the filing of an Abbreviated New Drug Application for generic fentanyl citrate buccal tablets.

29. The actions of Watson Pharmaceuticals, Watson Laboratories, and Watson Pharma, individually and collectively, render this an exceptional case under 35 U.S.C. § 285.

PRAYER FOR RELIEF

Plaintiff respectfully prays for the following relief:

a. That a declaration be issued under 28 U.S.C. § 2201 that the future commercial manufacture, use, offer for sale, sale, and/or importation of the generic fentanyl citrate buccal tablets specified in Defendants' Abbreviated New Drug Application prior to patent expiry by Watson Pharmaceuticals, Watson Laboratories, Watson Pharma, their officers, agents, servants, employees, licensees, representatives, attorneys, and/or all other persons acting or attempting to act in active concert or participation with them or acting on their behalf, will constitute an act of direct and/or indirect infringement of the '981 patent under § 271;

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

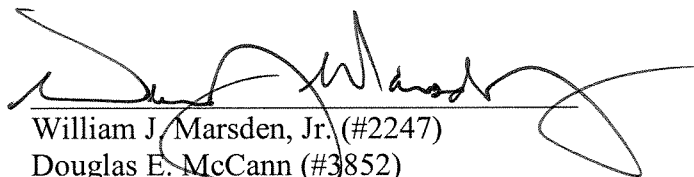
c. That this Court award such other and further relief as it may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues appropriately tried by a jury.

Dated: 9/25/09

FISH & RICHARDSON P.C.



William J. Marsden, Jr. (#2247)
Douglas E. McCann (#3852)
222 Delaware Avenue, 17th Floor
P.O. Box 1114
Wilmington, DE 19899-1114
(302) 652-5070
marsden@fr.com
dmccann@fr.com

Michael A. Siem
FISH & RICHARDSON P.C.
601 Lexington Avenue, 52nd Floor
New York, NY 10022-4611
(212) 765-5070

Jonathan E. Singer
FISH & RICHARDSON P.C.
60 South Sixth Street
3200 RBC Plaza
Minneapolis, MN 55402
(612) 335-5070

Attorneys for Plaintiff
CEPHALON, INC.