Robert J. Schoenberg
RIKER DANZIG SCHERER HYLAND
& PERRETTI LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, New Jersey 07962-1981
Tel: (973) 451-8511
Email: rschoenberg@riker.com

M. Roy Goldberg (*Pro Hac Vice pending)*
Nathaniel Bruno (*Pro Hac Vice pending*)
SHEPPARD MULLIN RICHTER
& HAMPTON LLP
1300 I Street, N.W., Suite 1100 East
Washington, D.C. 20005-3314
Tel: (202) 218-0000
Email: rgoldberg@sheppardmullin.com
Email: nbruno@sheppardmullin.com

Attorneys for Plaintiff
Everett Laboratories, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EVERETT LABORATORIES, INC., Plaintiff, v. ACELLA PHARMACEUTICALS, LLC, Defendant.	Civil Action No. _____ Hon. _____ U.S.D.J. **COMPLAINT FOR PATENT INFRINGEMENT AND JURY DEMAND** (Document Filed Electronically)

Plaintiff Everett Laboratories, Inc. ("Everett"), by its undersigned attorneys, for its Complaint against Defendant Acella Pharmaceuticals, LLC ("Acella" or "Defendant"), alleges as follows:

INTRODUCTION AND SUMMARY

1. This action seeks redress for Acella's deliberate and willful infringement of U.S. Patent No. 8,183,227 (the "'227 Patent") (a copy of which is attached as **Exhibit A** hereto) through Acella's manufacture, use, marketing, offering for sale, selling, and/or importing of its prescription-only, prenatal nutritional supplement called "PNV-First," which is a willful exact copy of Everett's "Vitafol®-One" prescription-only, prenatal nutritional supplement, on which the claims of the '227 Patent are based.

2. According to its product insert, PNV-First contains the same vitamins and minerals, in the same amounts, as Everett's Vitafol®-One. PNV-First hence directly infringes Claims 1-7 of the '227 Patent. Additionally, because Acella sells and distributes PNV-First with a product insert that instructs the method of using PNV-First to provide nutritional supplementation to the patient, Acella is also inducing direct infringement of method claims 8-10 of the '227 Patent by patients.

3. Because, on information and belief, leading computerized drug databases (such as First DataBank and/or Medi-Span) have "linked" PNV-First to Vitafol®-One, which causes wholesalers that utilize information from the drug databases to offer the lower-priced copy product PNV-First for the branded Vitafol®-One product and causes pharmacies that utilize information from the drug databases to substitute the lower-priced copy product PNV-First for the branded Vitafol®-One product when presented with a prescription for Vitafol®-One, Everett is being and will continue to rapidly and increasingly be irreparably harmed as a result of the existence of the infringing PNV-First product in the market. It can be expected that, within less than one year of PNV-First being "linked" to Vitafol®-One, PNV-First will have displaced 90 percent of the sales that otherwise would have been made by Everett of its Vitafol®-One product by virtue of the "linking."

4. The presence of the PNV-First product in the market creates a huge dilemma – a "Hobson's Choice" for Everett. Either Everett stops marketing its Vitafol®-One product or continues to spend money to market it to the advantage of its infringing competitor, Acella. Yet, if Everett stops marketing Vitafol®-One, Everett will forfeit sales to other nutritional supplement companies which, unlike Everett, will still have an incentive to market and promote their products to doctors.

JURISDICTION AND VENUE

5. This Court has original and exclusive jurisdiction of this action, pursuant to 28 U.S.C. §§ 1331 and 1338(a), because the action arises under the Patent Laws of the United States, Title 35, United States Code. The Court also has original jurisdiction over the copyright infringement claim stated herein, pursuant to 28 U.S.C. § 1338(b), because that claim arises under Section 501(a) of the Copyright Act, 17 U.S.C. § 501(a).

6. The Court has personal jurisdiction over Defendant Acella in this action because Defendant regularly conducts business in New Jersey, has engaged in infringing acts in New Jersey, and specifically has offered to sell, offers to sell, has sold, and/or sells the product that is the subject of this Complaint in New Jersey and in this judicial district.

7. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this Complaint occurred in this judicial district.

THE PARTIES

8. Everett is a corporation organized and existing under the laws of the State of New Jersey, having its headquarters and principal place of business at One Main Street, Suite 203, Chatham, New Jersey, 07928.

9. Upon information and belief, Acella is a Delaware limited liability company, having its principal place of business at 11675 Great Oaks Way, Suite 144, Alpharetta, GA 30022.

STATEMENT OF FACTS

Plaintiff Everett Laboratories, Inc. And Its Vitafol®-One Product

10. Plaintiff Everett is a pharmaceutical company that has been marketing and selling and continues to market and sell various prescription-only nutritional supplement products

throughout the United States. Everett's reputation has been and continues to be enviable both in the trade and to the general consuming public in the United States. Everett is well known to prescribers of prescription-only nutritional supplements and medicines as well as to retailers, wholesalers, physicians, pharmacists, patients, and distributors in the industry in the United States.

The Vitafol®-One Product

11. At least since June 2011, Everett has continuously and actively engaged in selling a nutritional supplement called Vitafol®-One which was formulated to deliver essential vitamins and minerals to the mother and her developing fetus. It consists of a soft gel capsule that contains specified quantities of vitamins A, B_1, B_2, B_6, B_{12}, C, D_3, E, folic acid and niacin; minerals iron, iodine, magnesium, copper and zinc; and Docosahexaenoic Acid ("DHA") from algae (*crypthecodinium*). *See* Vitafol®-One 05/11 product insert attached hereto as **Exhibit B**.

12. Vitafol®-One is a "branded product." The U.S. Food and Drug Administration ("FDA") regulates "branded" drugs. Although prescription-only prenatal vitamins are not regulated like drugs are by the FDA, the parallels are similar and hence this Complaint uses the term "branded" to refer to Everett's innovator products.

13. On May 22, 2012, the U.S. Patent and Trademark Office issued the '227 Patent (**Exhibit A** hereto) for the product formulation of Vitafol®-One and related methods of use.

14. Claim 1 of the '227 Patent recites the following:

> 1. A composition consisting of vitamin D in an amount of about 1000 I.U., iodine in an amount of about 150 µg, vitamin B1 in an amount of about 1.6 mg, vitamin B6 in an amount of about 2.5 mg, vitamin B12 in an amount of about 12 µg, vitamin B2 in an amount of about 1.8 mg, vitamin B9 in an amount of about 1.0 mg, vitamin E in an amount of about 20 I.U., vitamin A in an amount of about 1100 I.U., vitamin C in an amount of about 30 mg, vitamin B3 in an amount of about 15 mg, iron in an amount of about 29 mg, zinc in an amount of about 25 mg, copper in an

> amount of about 2.0 mg, magnesium in an amount of about 20 mg, omega 3 fatty acids comprising DHA in an amount of about 200 mg, and one or more pharmaceutically acceptable carriers.

15. The named inventors of the '227 Patent are Philippe Perrin and Guilliaume Herry, who have assigned their rights in the '227 Patent to Chemo France, SA (an affiliate of Everett), which, in turn, has granted Everett an exclusive license to the '227 Patent that includes the grant of all substantial rights necessary for Everett to bring suit in its own name for infringement of the '227 Patent in the United States.

16. Everett has engaged in extensive advertising and promotion of Vitafol®-One to gain goodwill and public recognition of its product. To that end, Everett has spent substantial sums of money and resources to develop, advertise, patent, and market Vitafol®-One.

17. Everett has caused Vitafol®-One to be listed in online drug databases that pharmacies use in filling prescriptions for prenatal nutritional supplements, including the leading drug database, First DataBank, as well as Medi-Span, and Gold Standard.

Defendant Acella And Its PNV-First Product

18. Acella is a Delaware limited liability company with offices in Alpharetta, Georgia. On information and belief, its business model includes formulating alternatives or substitutes for existing branded vitamin products and offering them for sale at lower prices.

19. Acella directly competes with Everett in the market for prescription-only, prenatal supplements containing DHA.

The PNV-First Product

20. Upon information and belief, Acella uses, manufactures, markets, offers for sale, imports, and/or sells PNV-First, which is a copy of, and hence competes directly with, Everett's Vitafol®-One product. A copy of the label and product insert for PNV-First is attached as **Exhibit C** hereto. Acella sells its PNV-First copy of Everett's Vitafol®-One product at a

significantly lower price than Everett's Vitafol®-One product. Upon information and belief, Acella offers for sale and has sold its lower-cost PNV-First copy product at pharmacies in this judicial district.

21. According to the PNV-First product insert, and as shown in the following Chart 1, PNV-First directly infringes Claim 1 of the '227 Patent, as it contains the same vitamins and minerals in identical amounts as Vitafol®-One, and as recited in Claim 1 of the '227 Patent:

CHART 1

Ingredient	'227 Patent, Claim 1	Vitafol®-One Product Insert	PNV-First Product Insert
Vitamin A	about 1100 I.U.	1100 I.U.	1100 I.U.
Vitamin C	about 30 mg	30 mg	30 mg
Vitamin D	about 1000 I.U.	1000 I.U.	1000 I.U.
Vitamin E	about 20 I.U.	20 I.U.	20 I.U.
Vitamin B_1	about 1.6 mg	1.6 mg	1.6 mg
Vitamin B_2	about 1.8 mg	1.8 mg	1.8 mg
Niacin (Vitamin B_3)	about 15 mg	15 mg	15 mg
Vitamin B_6	about 2.5 mg	2.5 mg	2.5 mg
Folic Acid (Vitamin B_9)	about 1.0 mg	1.0 mg	1.0 mg
Vitamin B_{12}	about 12 µg	12 µg	12 µg
Iron	about 29 mg	29 mg	29 mg
Iodine	about 150 µg	150 µg	150 µg
Magnesium	about 20 mg	20 mg	20 mg
Zinc	about 25 mg	25 mg	25 mg
Copper	about 2.0 mg	2.0 mg	2.0 mg
DHA	about 200 mg	200 mg	200 mg
Pharmaceutically acceptable carriers	One or more	Other carriers or Excipients	Other carriers or Excipients
Other added minerals or vitamins	None	None	None

22. PNV-First also directly infringes Claims 2-7 of the '227 Patent.

23. Additionally, because Acella sells and distributes PNV-First with a product insert that instructs the method of using PNV-First to provide nutritional supplementation to the patient, Acella is also inducing direct infringement of method Claims 8-10 of the '227 Patent by the patients.

Linking And Automatic Substitution By Drug And Nutritional Supplement Databases

24. Computerized drug databases (also known as compendia) – such as First DataBank, Medi-Span, and Gold Standard – link non-branded copy products to branded products by comparing the key active ingredients of each product. If the products match in terms of type, content, and amount of the key ingredients considered by the database, the products will be linked. If products are linked, there is typically automatic substitution by the pharmacies that are asked to fill the prescription by the copy product with the lower price. Indeed, many insurance companies and other third-party payers insist that the cheaper, copy product be substituted for the branded product.

25. First DataBank and Medi-Span categorize products for purposes of determining substitutability based upon labeling provided to them by manufacturers. Their customers include retail pharmacy chains, drug wholesalers, health management organizations, insurance companies, and Medicaid state agencies. These customers purchase data from First DataBank and Medi-Span for use in their own computer database systems (such as databases utilized by pharmacists at retail pharmacies). These data support pharmacy dispensing, formulary management, drug pricing analysis, and electronic prescribing. Most major retail pharmacies and pharmacy chains rely on data provided by First DataBank or Medi-Span to assist the pharmacist in making dispensing decisions about prescription products. Specifically, First DataBank data is utilized by Rite Aid®, CVS®, CVS Caremark®, Safeway®, Publix®, and Costco® pharmacy chains, and Medi-Span data is utilized by Walgreens® and Wal-Mart® pharmacy chains.

26. First DataBank and Medi-Span obtain data about new pharmaceutical products directly from the products' manufacturers and/or distributors. Prior to the launch of a new product, manufacturers and/or distributors submit new product information to First DataBank

and Medi-Span. This information includes labels, product inserts or package inserts, and other promotional materials that describe the product's ingredients, strength, dosage form, route of administration, and price.

27. Neither First DataBank nor Medi-Span performs or sponsors any independent testing of pharmaceutical products. Both databases rely strictly on information provided to them by product manufacturers and/or distributors concerning their products.

28. When First Databank first receives information about a new pharmaceutical product, it is reviewed by a research associate in the Editorial Services Department. The research associate will identify the product's key active ingredients and their strength, the dosage form, and the route of administration. If an existing product with the same key active ingredients in the same strengths, in the same dosage form, and with the same route of administration is found within the First DataBank database, the research associate will assign the new product to the same clinical formulation ID (also known as the "Generic Code Number" or "GCN code") as that assigned to the existing product in the database. The clinical formulation ID is the newly-formed identifier name for what was previously known as the Generic Code Number. Products which have the same GCN code are considered pharmaceutically equivalent to each other. Products having the same GCN code are also described as being "linked." If more than one product is assigned to the same GCN code, those products are described as "multiple source" products, *i.e.*, they are pharmaceutically equivalent products that are available from multiple sources.

29. Medi-Span has an analog to First DataBank's GCN code, which Medi-Span refers to as the "Generic Product Identifier" or "GPI code." Products assigned to the same GPI code in the Medi-Span database have the same key active ingredients in the same strengths, in the same dosage form, with the same route of administration, and are also considered pharmaceutically

equivalent to each other. Products having the same GPI code are also said to be "linked."

30. When pharmacists at the retail pharmacies that utilize First DataBank and Medi-Span data process prescriptions written by doctors for Everett's Vitafol®-One prenatal vitamin supplement product, they will substitute defendant Acella's PNV-First prenatal vitamin supplement product for Everett's Vitafol®-One prenatal vitamin supplement product due to the linking of those products in the First DataBank and Medi-Span databases.

31. Pharmacists will make substitutions in order to capitalize upon the advantage of the lower price of Defendant Acella's PNV-First generic copy product that may inure to the benefit of the patients for whom the prescriptions are being filled and/or their insurance companies (based on lower co-payment rates typically set by insurance companies for lower-priced generic copy products in order to encourage their substitution for higher-priced brand-name products), and/or the pharmacy chain from which the patient is purchasing the product and potentially the pharmacy chain's wholesaler (based on incentives created by contracts in various potential combinations between the pharmacy chain, the wholesaler, and the generic copy manufacturer such as Acella that proliferate distribution and sales of lower-priced generic copy products). Everett's sales of its Vitafol®-One product will therefore immediately and rapidly be displaced by sales of Defendant Acella's PNV-First product, respectively, due to the linking of PNV-First to Vitafol®-One in the databases of First DataBank and/or Medi-Span as described hereinabove.

32. The practice of substitution is so common that displacement of sales and erosion of the market for a branded product begins to take place immediately upon a copy product being linked to it in the databases, and that sales displacement and market erosion continues to grow quickly over time, such that, in the case of Everett's innovative branded Vitafol®-One product and Acella's PNV-First copy product, sales of Everett's Vitafol®-One product will be 90 percent

displaced by Acella's PNV-First generic copy product, respectively, within one year.

Drug Databases Are Linking PNV-First To Vitafol®-One

33. On information and belief, including based on certain "screen shots" obtained by Everett, wholesalers are listing and offering PNV-First as a substitute for Vitafol®-One and pharmacies are substituting PNV-First for Vitafol®-One, based on the "linking" of PNV-First to Vitafol®-One in one or more of the leading drug databases. Accordingly, for instance, when pharmacists at the retail pharmacies that show PNV-First as being linked to Vitafol®-One based on the "linking" of PNV-First to Vitafol®-One in the drug databases utilized by those pharmacies fill a prescription for a customer with a prescription for Vitafol®-One, the pharmacists will substitute PNV-First for customers with a prescription for Vitafol®-One. Pharmacists will make those substitutions in order to capitalize upon the advantage of the significantly lower price of the Acella copy product, PNV-First. Everett's sales of its branded Vitafol®-One product will therefore be displaced by sales of Acella's PNV-First product due to the linking of the products.

Everett's Irreparable Harm From Acella's Infringing PNV-First Product

34. Everett faces substantial and irreparable harm as a result of Acella's infringing sales of its PNV-First product. Each time that a pharmacy substitutes PNV-First despite the physician's prescription having specified Vitafol®-One, Everett directly loses that sale to Acella. Additionally, in the health care industry, there is significant (if not absolute) pressure on pharmacists (by, for example, insurance companies) to substitute the lower-cost copy version of a prescription drug or supplement for a higher-cost brand-name version.

35. Acella is currently selling and/or distributing its PNV-First product to ultimately be sold through retail pharmacies, which, on information and belief, are selling PNV-First as a substitute for Vitafol®-One. Acella will rapidly gain increasing market share with its PNV-First product, which is causing and will continue to increasingly cause direct harm to Everett.

36. It can be expected that, within less than one year of PNV-First being "linked" to Vitafol®-One, PNV-First will have displaced 90 percent of the sales that otherwise would have been made by Everett of its Vitafol®-One product.

37. Many patients who have been prescribed prenatal nutritional supplements will not even realize that the pharmacy has substituted the lower-cost supplement for the branded product that their doctor prescribed. This has been and will continue to be the case with PNV-First being substituted for Vitafol®-One. On other occasions, patients will be informed of the intended substitution and advised that if they insist on the prescribed, branded product, their "co-pay" will be significantly higher.

38. After a pharmacy has stocked up on the copy product, the pharmacy will naturally want to use up its inventory rather than see it go to waste. The critical harm to Everett in the present circumstances is evident: It is virtually impossible to "put the genie back in the bottle" once a copyist competitor (such as Acella and its infringing PNV-First product) is able to get a foothold in the marketplace. The realities of the marketplace will in this manner make it impossible for Everett to overcome Acella's infringing activities.

39. Vitafol®-One and PNV-First are not the only prescription-only nutritional supplements in the U.S. market. By having an innovative product and visiting thousands of doctors and spending significant sums in marketing and promotional efforts, Everett has created a brand awareness and excellent reputation for Vitafol®-One. However, to remain effective it is necessary that Everett continue to market and promote Vitafol®-One to prescribing doctors, so that they do not pass over Vitafol®-One in favor of some other nutritional supplement when writing prescriptions for their patients.

40. The presence of the PNV-First product in the market creates a huge dilemma – a "Hobson's Choice" for Everett. Either Everett stops marketing the Vitafol®-One product or continues to spend money to market Vitafol®-One to the advantage of its infringing competitor, Acella. Yet, if Everett stops marketing Vitafol®-One Everett will forfeit sales to other nutritional supplement companies which, unlike Everett, will still have an incentive to market and promote their products to doctors. Moreover, it will not be possible to calculate how many such sales Everett will have lost to other sellers of prescription-only prenatal nutritional supplements.

41. As a result of Acella's infringement Everett will also suffer irreparable harm to its goodwill and reputation respecting its entire line of prenatal products (including Vitafol®-OB+DHA, Vitafol®-PN, Vitafol®-OB, and Select-OB®+DHA), especially as pharmacists become accustomed to using PNV-First products as substitutes for Vitafol®-One and Everett's other nutritional supplement products. Vitafol®-One is not a retail product, but a product prescribed by doctors and dispensed by pharmacists. Over time, habits develop, and pharmacists associate Vitafol®-One and Everett's other products with cheaper copy versions. It is critical to Everett's business that pharmacists and doctors do not associate Everett's products with cheaper copy versions, and that pharmacists do not routinely substitute PNV-First for Vitafol®-One.

Copyright Registration of Everett's Product Insert for Vitafol®-One

42. Everett's Vitafol®-One product is sold with a product insert authored by Everett that provides information about the product's vitamins and minerals, as well as substantial other information pertaining to the use of the product. Everett has registered its copyright in the product insert for Vitafol®-One, specifically by registering the 05/11 version. A true and correct copy of the certificate of registration is attached hereto as **Exhibit D** (United States Copyright Office Registration No. TX 7-512-681).

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Infringement Of The '227 Patent)

43. To the extent not inconsistent with the allegations herein, or in the alternative, Everett refers to and incorporates herein the allegations of the foregoing Paragraphs, the same as if set forth at length.

44. Everett is the exclusive licensee of the '227 Patent (which patent was duly and legally issued by the PTO on May 22, 2012), pursuant to an exclusive license that includes the grant of all substantial rights necessary for Everett to bring suit in its own name for infringement of the '227 Patent in the United States.

45. Upon information and belief, Defendant has through the conduct described above, engaged in the manufacture, use, sale, offer for sale, and/or importation of products that infringed and continue to infringe, directly and/or indirectly by contributorily infringing and/or inducing to infringe, one or more of the claims of the '227 Patent, in violation of 35 U.S.C. § 271 and without Everett's authority. The infringing product embodying the claimed invention(s) is Defendant's PNV-First prescription prenatal multivitamin product.

46. Defendant's willful acts of infringement are causing damages and irreparable harm to Everett and will continue to cause damages and irreparable harm unless enjoined by this Court.

SECOND CLAIM FOR RELIEF

(Copyright Infringement)

47. To the extent not inconsistent with the allegations herein, or in the alternative, Everett refers to and incorporates herein the allegations of the foregoing Paragraphs, the same as if set forth at length.

48. This cause of action arises under the federal Copyright Act, 17 U.S.C. §§ 101, *et seq.*

49. The Court has original jurisdiction over this matter pursuant to Everett's filing of, and the federal Copyright Office's subsequent issuance of, a copyright registration certificate covering Everett's Vitafol®-One product insert. A true and correct copy of the certificate (specifically registering the 05/11 version of Everett's Vitafol®-One product insert) is attached hereto as **Exhibit D** (United States Copyright Office Registration No. TX 7-512-681).

50. Everett is the sole owner of all copyrights in the Vitafol®-One product insert and all corresponding text, layout, and other elements of expression encompassed therein, including the selection and arrangement of text and other elements of expression. The Vitafol®-One product insert is original. Further, the U.S. Copyright Office issued a Certificate of Registration identifying Everett as the copyright author and, therefore, owner. *See* **Exhibit D**.

51. Defendant has infringed Everett's copyrights in the Vitafol®-One product insert. Defendant has, among other things, copied, distributed, used, sold, displayed, and distributed virtually all of the Vitafol-One® product insert without approval or authorization from Everett.

52. Defendant had access to and copied copyright-protected elements of the Vitafol®-One product insert to create Defendant's infringing PNV-First product insert.

53. Defendant's acts as alleged herein constitute copyright infringement under the U.S. Copyright Act, 17 U.S.C. §§ 101, *et seq.* By its actions alleged above, Defendant has intentionally and willfully infringed, and will continue to intentionally and willfully infringe, Everett's copyrights in the Vitafol®-One product insert.

54. As a direct and proximate result of Defendant's unlawful acts of copyright infringement as set forth above, Everett has suffered and will continue to suffer injury to its business, goodwill, and property in an amount not presently known. Everett is entitled to recover

from Defendant the damages it has sustained and will sustain as a result of Defendant's unlawful acts of copyright infringement as alleged herein, pursuant to 17 U.S.C. § 504. Everett is further entitled to recover from Defendant the gains, profits, and advantages that Defendant has obtained as a result of the wrongful conduct alleged herein, pursuant to 17 U.S.C. § 504. Everett at present is unable to ascertain the full extent of its damage, or the gains, profits and advantages that Defendant has obtained by reason of the wrongful conduct described herein.

55. Alternatively, as Everett's copyright registration was issued before the infringement occurred, Everett may elect to seek statutory damages under 17 U.S.C. § 504(c) for Defendant's unlawful and willful acts of copyright infringement as set forth above.

56. Everett is also entitled, pursuant to 17 U.S.C. § 502, to an order for injunctive relief that prevents and restrains Defendant from continuing to infringe on the Vitafol®-One product insert and, pursuant to 17 U.S.C. § 503, to an order impounding any and all of Defendant's products that contain the infringing PNV-First product insert. Everett is further entitled to an order compelling Defendant to recall and retrieve and all of Defendant's products that contain the infringing PNV-First product insert that are in the marketplace. Everett has no adequate remedy at law for Defendant's wrongful and unlawful conduct because, among other things: (a) Everett's copyrights in its Vitafol®-One product insert are unique and valuable property which have no readily determinable market value; (b) Defendant's infringement harms Everett such that Everett could not be made whole by any monetary award for such infringement; and (c) Defendant's wrongful and unlawful conduct, and the resulting damage and harm to Everett, is continuing and irreparable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Everett Laboratories, Inc. asks that this Court enter judgment against Defendant Acella Pharmaceuticals, LLC, granting the following relief:

A. Judgment that Defendant has directly infringed U.S. Patent No. 8,183,227.

B. Judgment that Defendant has indirectly infringed U.S. Patent No. 8,183,227 by inducing the direct infringement of the '227 Patent.

C. Judgment that Defendant has indirectly infringed U.S. Patent No. 8,183,227 by contributing to the direct infringement of the '227 Patent.

D. That Defendant be held to have willfully engaged in copyright infringement in violation of Section 501 of the Copyright Act, 17 U.S.C. § 501.

E. That a preliminary and permanent injunction issue prohibiting Defendant and its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, from further direct and/or indirect copyright infringement of the Vitafol®-One product insert.

F. That Defendant be required to:

1. Deliver upon oath, to be impounded during the pendency of this action, and for destruction pursuant to judgment herein, all PNV-First products;

2. Seek and obtain a full recall of all PNV-First products that have been sold, consigned, or placed into inventory of a wholesaler or retailer;

3. Place all revenues generated from the sale of PNV-First, as well as all future payments from the sale of PNV-First, in a trust account during the pendency of this action;

4. Issue a recall and retrieve all PNV-First products and/or any nutritional supplements or any other of Defendant's products that bear or contain the infringing PNV-First product insert, or any other material that infringes on Everett's Vitafol®-One product insert, that are being or have been used, advertised, marketed, offered, distributed, or sold in the marketplace; and

5. Deliver upon oath, to be impounded during the pendency of this action, and for destruction pursuant to judgment herein, any and all PNV-First product inserts and any other of Defendant's materials that infringe on Everett's copyrights.

G. That Defendant be required to file with the Court and serve on Everett, within 30 days after service of the Court's Order as herein prayed, a report in writing under oath stating in detail the manner and form in which Defendant has complied with the Court's Order.

H. That Defendant be required to account for and pay over to Everett all profits obtained by Defendant from its violations of law complained of herein.

I. That the Court grant a preliminary and permanent injunction enjoining Acella from manufacturing, marketing or selling, importing, or offering for sale, PNV-First.

J. That the Court grant a preliminary and permanent injunction enjoining Acella from making claims that would cause PNV-First to be listed as interchangeable with, or a substitute for, Vitafol®-One.

K. That the Court order Acella to pay compensatory damages to Everett in an amount to be determined at trial.

L. That the Court order Defendant to pay Everett's damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for Defendant's willful infringement of Everett's copyrights or, alternatively, if Everett elects, statutory damages pursuant to 17 U.S.C. § 504(c).

M. That Defendant pay Everett additional damages for willful infringement of the '227 Patent in an amount to be determined at trial pursuant to 35 U.S.C. § 284.

N. Judgment that this is an exceptional case under 35 U.S.C. § 285 and awarding Everett its costs, expenses and reasonable attorneys' fees incurred in this action.

O. Judgment awarding Everett its full costs and reasonable attorneys' fees incurred in this action under Section 505 of the Copyright Act, 15 U.S.C. § 505.

P. That Defendant be ordered to pay prejudgment interest to Everett.

Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38, Fed. R. Civ. P., Plaintiff Everett Laboratories, Inc. hereby demands a jury trial on all issues triable of right by a jury.

Respectfully submitted,

RIKER DANZIG SCHERER HYLAND
& PERRETTI LLP

By s/ Robert J. Schoenberg

Headquarters Plaza
One Speedwell Avenue
Morristown, New Jersey 07962-1981
Telephone: (973) 451-8511
Email: rschoenberg@riker.com

M. Roy Goldberg (*Pro Hac Vice pending*)
SHEPPARD MULLIN RICHTER
& HAMPTON LLP
1300 I Street, N.W., Suite 1100 East
Washington, D.C. 20005-3314
Tel: (202) 218-0007
Email: rgoldberg@sheppardmullin.com

Attorneys for Plaintiff
Everett Laboratories, Inc.

Dated: June 4, 2013.

CERTIFICATION OF NON-ARBITRABILITY

Pursuant to Local Civil Rule 201.1(d)(2), the undersigned attorneys for Plaintiff, Everett Laboratories, Inc., certify that this action is not eligible for arbitration under Local Civil Rule 201.1 because the relief sought in the Complaint primarily consists of a demand for preliminary and permanent injunctive relief, as well as damages believed to be in excess of $150,000.00, exclusive of interest, costs, and any claim for punitive damages, and involves complex issues of patent and copyright law.

LOCAL CIVIL RULE 11.2 CERTIFICATION

Pursuant to Local Civil Rule 11.2, the undersigned attorney for Plaintiff, Everett Laboratories, Inc., certifies that, to the best of his knowledge, the matter in controversy is not the subject of another action pending in any court or of any arbitration or administrative proceeding.

RIKER DANZIG SCHERER HYLAND
& PERRETTI LLP
Attorneys for Plaintiff
Everett Laboratories, Inc.

By s/ Robert J. Schoenberg

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