

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

\_\_\_\_\_  
 GENZYME CORPORATION )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MEDICIS PHARMACEUTICAL )  
 CORPORATION and MEDICIS )  
 AESTHETICS, INC., )  
 Defendants. )  
 \_\_\_\_\_

C.A. NO.: \_\_\_\_\_

**DEMAND FOR JURY TRIAL**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Genzyme Corporation (“Genzyme”), by and through undersigned counsel, files this Complaint against Defendants Medicis Pharmaceutical Corporation and Medicis Aesthetics, Inc. (collectively, “Defendants”) and alleges as follows:

**The Parties**

1. Plaintiff Genzyme Corporation is a corporation existing under the laws of the Commonwealth of Massachusetts, having its principal place of business at 500 Kendall Street, Cambridge, Massachusetts.
2. Upon information and belief, Defendant Medicis Pharmaceutical Corporation is a corporation existing under the laws of the State of Delaware, having its principal place of business at 7720 North Dobson Road, Scottsdale, Arizona.
3. Upon information and belief, Defendant Medicis Aesthetics, Inc. is a wholly-owned subsidiary of Medicis Pharmaceutical Corporation, and is a corporation existing under the laws of the State of Delaware, having its principal place of business at 7720 North Dobson Road, Scottsdale, Arizona.

4. Upon information and belief, the acts of Medicis Aesthetics, Inc. are done at the direction and/or authorization of, and/or with the cooperation and/or assistance of Medicis Pharmaceutical Corporation, and are done at least in part for the benefit of Medicis Pharmaceutical Corporation.

**Jurisdiction And Venue**

5. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. The Court has personal jurisdiction over the Defendants. Upon information and belief, Defendants have engaged, and currently engage, in continuous and systematic contacts with the Commonwealth of Massachusetts. Specifically, and upon information and belief, Defendants have marketed, placed, and continue to place, medical products into the stream of commerce via an established distribution channel, with the knowledge and/or understanding that such products are marketed and/or sold within this District. These acts have caused, and continue to cause, injury to Genzyme by infringing, contributorily infringing, and/or actively inducing the infringement of Genzyme's patent within this District.

8. Venue is proper in this District under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b).

**The Patent-In-Suit**

9. Genzyme is a global biotechnology company with products and services focused on rare inherited disorders, kidney disease, orthopedics, cancer, transplant and immune disease, and diagnostic testing. Genzyme protects these products and services through, *inter alia*, its

intellectual property portfolio, including patents. Genzyme has expended significant resources to develop and acquire this intellectual property.

10. Genzyme is the record assignee of U.S. Patent 5,399,351 (the “‘351 patent”), entitled “Biocompatible Viscoelastic Gel Slurries, Their Preparation and Use”. The inventors of the ‘351 patent are Edward Leshchiner, Endre A. Balazs, Nancy E. Larsen and Adelya Leshchiner.

11. The ‘351 patent claims, among other things, a method for soft tissue augmentation which comprises implanting a drug with a biocompatible viscoelastic gel slurry comprising a two-phase mixture, the first phase being a particulate biocompatible gel phase and the second phase being a polymer solution of a water-soluble biocompatible polymer, into a part of a living body where such augmentation is desired. The ‘351 patent also claims a method of viscosupplementation for medical purposes which comprises implanting a biocompatible viscoelastic gel slurry comprising a two-phase mixture, the first phase being a particulate biocompatible gel phase and the second phase being a polymer solution of a water-soluble biocompatible polymer, into a space of a living body where rheological control is desired. The United States Patent and Trademark Office duly and legally issued the ‘351 patent on March 21, 1995. A true and correct copy of the ‘351 patent is attached to this Complaint as Exhibit A.

### **Factual Background**

12. Upon information and belief, Defendants are the exclusive U.S. marketing and sales agents for certain injectable products known as Restylane<sup>®</sup>, Perlane<sup>®</sup>, Restylane-L<sup>™</sup> and Perlane-L<sup>™</sup>.

13. Upon information and belief, the United States Food and Drug Administration (the “FDA”) approved Restylane<sup>®</sup> on December 12, 2003.

14. Upon information and belief, Defendants began importing, using, selling and offering to sell Restylane<sup>®</sup> throughout the United States as early as January 6, 2004.

15. Upon information and belief, the FDA approved Perlane<sup>®</sup> on May 2, 2007.

16. Upon information and belief, Defendants began importing, using, selling and offering to sell Perlane<sup>®</sup> throughout the United States as early as May 21, 2007.

17. Upon information and belief, the FDA approved Restylane-L<sup>™</sup> and Perlane-L<sup>™</sup> on January 29, 2010.

18. Upon information and belief, Defendants began importing, using, selling and offering to sell Restylane-L<sup>™</sup> and Perlane-L<sup>™</sup> throughout the United States as early as February 18, 2010.

**COUNT I**  
**(INFRINGEMENT OF U.S. PATENT 5,399,351**  
**UNDER 35 U.S.C. § 271 BY DEFENDANTS)**

19. Genzyme realleges and incorporates by reference paragraphs 1 through 18, inclusive, as if fully set forth in this paragraph.

20. Upon information and belief, the Defendants have infringed, contributorily infringed, and/or actively induced the infringement by others under 35 U.S.C. § 271, either literally or under the doctrine of equivalents, and will continue to so infringe, one or more claims of the '351 patent, by activities including, but not limited to, using, selling, offering to sell and/or importing Restylane<sup>®</sup>, Perlane<sup>®</sup>, Restylane-L<sup>™</sup> and/or Perlane-L<sup>™</sup> in the United States for soft tissue augmentation and/or viscosupplementation, together with instructing, directing, and/or advising others how to carry out such infringement using Restylane<sup>®</sup>, Perlane<sup>®</sup>, Restylane-L<sup>™</sup> and/or Perlane-L<sup>™</sup>.

21. Upon information and belief, the Defendants sell Restylane<sup>®</sup> and Restylane-L<sup>™</sup> with a package insert that includes instructions for a method of mid-to-deep dermal implantation of Restylane<sup>®</sup> and Restylane-L<sup>™</sup> for the correction of moderate to severe facial wrinkles and folds, such as nasolabial folds.

22. Upon information and belief, the Defendants sell Perlane<sup>®</sup> and Perlane-L<sup>™</sup> with a package insert that includes instructions for a method of implanting Perlane<sup>®</sup> and Perlane-L<sup>™</sup> into the deep dermis to superficial subcutis for the correction of moderate to severe facial folds and wrinkles, such as nasolabial folds.

23. Upon information and belief, the Defendants have actively induced the infringement of one or more claims of the '351 patent, either literally or under the doctrine of equivalents, and continue to induce such infringement, by importing, selling and/or offering for sale Restylane<sup>®</sup> and Restylane-L<sup>™</sup> in the United States, together with a package insert setting forth instructions for a method of mid-to-deep dermal implantation of Restylane<sup>®</sup> and Restylane-L<sup>™</sup> for the correction of moderate to severe facial wrinkles and folds, such as nasolabial folds.

24. Upon information and belief, the Defendants have actively induced the infringement of one or more claims of the '351 patent, either literally or under the doctrine of equivalents, and continue to induce such infringement, by importing, selling and/or offering for sale Perlane<sup>®</sup> and Perlane-L<sup>™</sup> in the United States, together with a package insert setting forth instructions for a method of implanting Perlane<sup>®</sup> and Perlane-L<sup>™</sup> into the deep dermis to superficial subcutis for the correction of moderate to severe facial folds and wrinkles, such as nasolabial folds.

25. Upon information and belief, when physicians or others use Restylane<sup>®</sup>, Perlane<sup>®</sup>, Restylane-L<sup>™</sup> and/or Perlane-L<sup>™</sup>, according to the methods described in the package inserts

provided by Defendants, those acts constitute direct infringement of one or more claims of the '351 patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

26. Upon information and belief, the Defendants have contributorily infringed, either literally or under the doctrine of equivalents, and will continue to contributorily infringe, one or more claims of the '351 patent by selling and/or offering for sale Restylane<sup>®</sup>, Perlane<sup>®</sup>, Restylane-L<sup>™</sup> and Perlane-L<sup>™</sup> in the United States, while knowing that Restylane<sup>®</sup>, Perlane<sup>®</sup>, Restylane-L<sup>™</sup> and Perlane-L<sup>™</sup> are especially made or especially adapted for use in the infringement of the '351 patent, and are not staple articles suitable for substantial non-infringing use.

27. Defendants' activities are, and have been, without express or implied license from Genzyme.

28. Defendants' infringements were committed with knowledge of the '351 patent and were willful and deliberate.

29. As a result of the Defendants' infringement of the '351 patent, Genzyme has been damaged and will be further damaged, and is entitled to be compensated for such damages, pursuant to 35 U.S.C. § 284, in an amount to be determined at trial.

30. As a result of the Defendants' infringement of the '351 patent, Genzyme has suffered and will continue to suffer irreparable harm, for which Genzyme has no adequate remedy at law, unless the Court enjoins such infringing activities pursuant to 35 U.S.C. § 283.

**Prayer For Relief**

WHEREFORE, Genzyme requests the Court to enter judgment in its favor and grant the following relief:

(a) A judgment that the Defendants have infringed, contributed to and/or actively induced the infringement of the '351 patent by using, selling, importing and/or offering to sell Restylane<sup>®</sup>, Perlane<sup>®</sup>, Restylane-L<sup>™</sup> and Perlane-L<sup>™</sup> in the United States;

(b) A judgment and order permanently enjoining the Defendants and their officers, agents, servants, employees, attorneys and all persons in active concert, participation or privity with them, from further infringement of the '351 patent by using, selling, importing and/or offering to sell Restylane<sup>®</sup>, Perlane<sup>®</sup>, Restylane-L<sup>™</sup> and Perlane-L<sup>™</sup> in the United States;

(c) A judgment and order requiring the Defendants to pay all available and legally permissible damages to compensate Genzyme for the Defendants' infringing acts, but in no event less than a reasonable royalty in accordance with 28 U.S.C. § 284;

(d) A finding that Defendants' complained-of conduct has been willful, warranting an award of treble damages under 35 U.S.C. § 284;

(e) A finding that this case is exceptional under 35 U.S.C. § 285, warranting an award to Genzyme of its costs, including attorney fees, and other expenses incurred in connection with this action;

(f) A judgment and order requiring that the Defendants pay Genzyme pre-judgment interest and post-judgment interest on all damages awarded; and

(g) Such further relief as this Court deems just and appropriate.

**Demand For Jury Trial**

Pursuant to Fed. R. Civ. P. 38, Genzyme demands a trial by jury of all issues so triable.

Respectfully submitted,

Dated: October 15, 2010

By: /s/ Alison E.H. McLaughlin

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