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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BENTLEY A. HOLLANDER  
220 West Rittenhouse Square  
Apt. 18B  
Philadelphia, PA 19103

Plaintiff/Relator,

v.

RANBAXY LABORATORIES INC.  
600 College Road East  
Princeton, NJ 08540

Defendant.

CIVIL ACTION

10 793

No. \_\_\_\_\_

FILED

FEB 23 2010

by \_\_\_\_\_ Dep. Cler.

Plaintiff Bentley Hollander ("Hollander"), by his undersigned counsel and for his Complaint against Defendant Ranbaxy Laboratories Inc. ("RLI"), avers as follows:

NATURE OF ACTION

1. This is an action for false patent marking under Title 35, Section 292, of the United States Code.
2. As set forth in detail below, RLI has violated 35 U.S.C. § 292(a) by, *inter alia*, falsely marking articles with expired patents, as well as using these expired patents in advertising in connection with such articles, all for the purpose of deceiving the public into believing that such articles are covered by these expired patents.
3. Hollander seeks the imposition of a fine against RLI, one half of which shall be for the use of the United States of America, and the other half of which shall go to Hollander pursuant to 35 U.S.C. § 292(b).

11/12-24-10

**THE PARTIES**

4. Hollander is an adult individual who resides at 220 West Rittenhouse Square, Apartment 18B, Philadelphia, Pennsylvania 19103.

5. Defendant RLI is a Delaware corporation with its principal place of business located at 600 College Road East, Princeton, New Jersey 08540.

**JURISDICTION AND VENUE**

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

7. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b), (c) and 1395(a), because RLI has conducted and continues to conduct business in this judicial district through, *inter alia*, the sale of products which are the subject matter of this Complaint to consumers throughout this judicial district.

8. Hollander has standing to bring this action as plaintiff under 35 U.S.C. § 292(b), which provides that “any person” may sue for civil monetary penalties for false patent marking.

**FACTUAL BACKGROUND**

**I. RLI’s Acquisition of Ultravate**

9. RLI is a wholly owned subsidiary of Ranbaxy Laboratories Limited (“RLL”), India's largest pharmaceutical company by sales and a one of the world’s top 10 generic drug companies.

10. RLI was established in 2004 to operate as RLL’s branded prescription division in the United States.

11. RLI is engaged in the sale and distribution of branded prescription products in the U.S. healthcare system.

12. In or about May 28, 2007, RLI acquired from from Bristol-Myers Squibb Company the U.S. rights to manufacture and sell a group of 13 dermatology products (“the Acquisition”).

13. Among these products is a medication called Ultravate<sup>®</sup> (halobetasol propionate).

14. Ultravate<sup>®</sup> is is a high-potency steroid medication that relieves the itching and inflammation caused by a wide variety of skin disorders.

15. Ultravate<sup>®</sup> is manufactured and sold in cream formulation in 15 gram and 50 gram tubes.

16. Ultravate<sup>®</sup> is also manufactured and sold in ointment formulation in 15 gram and 50 gram tubes.

## **II. RLI’s False Marking of Patent 4,619,921**

17. Ciba-Geigy Corporation acquired Bristol-Myers Squibb’s over-the-counter business in or about July of 2005.

18. Ciba-Geigy Corporation, now called Novartis, is the most recent assignee of U.S. Patent No. 4,619,921 (“the ’921 Patent”), entitled POLYHALOGENO-STEROIDS. A true and correct copy of the the ’921 Patent is attached hereto as Exhibit “A.”

19. The ’921 Patent was filed on April 20, 1984, and issued on October 28, 1986.

20. Due to a patent term extension of 415 days granted by the United States Patent and Trademark Office, the '921 Patent expired on June 9, 2005.

21. Nevertheless, since the Acquisition in May of 2007, RLI has marked or caused to be marked, and continues to mark or causes to be marked, every unit of Ultravate<sup>®</sup> with the legend "U.S. Patent No. 4,619,921."

22. RLI and its affiliates are highly sophisticated business entities with ample experience in the field of obtaining patents and litigating patent claims.

23. RLI knew and knows that patents, including the '921 Patent, have a finite duration.

24. Upon information and belief, RLI knew or reasonably should have known that the units of Ultravate<sup>®</sup> it marked and continues to mark with the '921 Patent since the Acquisition were marked with an expired patent.

25. RLI could never have had any reason to believe that any of the units of Ultravate<sup>®</sup> it marked with the '921 Patent were covered by the '921 Patent.

26. Despite the expiration of the '921 Patent, RLI has continued and continues to mark every unit of Ultravate<sup>®</sup> with the '921 Patent since the Acquisition.

27. Upon information and belief, RLI has marked, and continues to mark, every unit of Ultravate<sup>®</sup> with the '921 Patent after its date of expiration for the purpose of deceiving the public into believing that Ultravate<sup>®</sup> is covered by the '921 Patent.

28. Upon information and belief, notwithstanding its expiration, RLI has used, and continue to use, the '921 Patent in Ultravate<sup>®</sup> advertising for the purpose of deceiving the public into believing that Ultravate<sup>®</sup> is covered by the '921 Patent.

29. By marking and continuing to mark articles with the '921 Patent since the Acquisition, which took place nearly 2 years after the expiration of the '921 Patent on June 9, 2005, without a reasonable belief that Ultravate<sup>®</sup> could have been covered by the '921 Patent, and by using the '921 Patent in advertising in connection with such articles, RLI has injured the sovereign interests of the United States of America as well as the public interest, and has discouraged or deterred honest competition and innovation in competing products.

**COUNT I  
THE '921 PATENT**

**FALSE MARKING OF ULTRAVATE<sup>®</sup>  
(HALOBETASOL PROPIONATE CREAM) (15g TUBE)**

30. Plaintiff/Relator incorporates the allegations of the foregoing paragraphs as though set forth at length herein.

31. RLI manufactures, or causes to be manufactured, and sells a drug named Ultravate<sup>®</sup> (halobetasol propionate cream)(15g tube).

32. Since the Acquisition, RLI has marked, and continues to mark each unit of Ultravate<sup>®</sup> (halobetasol propionate cream)(15g tube) with the '921 Patent.

33. Because the '921 Patent expired on June 9, 2005, nearly two years before the Acquisition, none of RLI's units of Ultravate<sup>®</sup> (halobetasol propionate cream)(15g tube) has ever been covered by the '921 Patent.

34. RLI knew or reasonably should have known that each unit of Ultravate<sup>®</sup> (halobetasol propionate cream)(15g tube) it has ever manufactured, or caused to be manufactured, and sold has never been covered by the '921 Patent.

35. RLI has violated 35 U.S.C. § 292(a) by marking or causing to be marked each unit of Ultravate<sup>®</sup> (halobetasol propionate cream)(15g tube) with the '921 Patent for the purpose of deceiving the public.

**COUNT II  
THE '921 PATENT**

**FALSE MARKING OF ULTRAVATE<sup>®</sup>  
(HALOBETASOL PROPIONATE CREAM) (50g TUBE)**

36. Plaintiff/Relator incorporates the allegations of the foregoing paragraphs as though set forth at length herein.

37. RLI manufactures, or causes to be manufactured, and sells a drug named Ultravate<sup>®</sup> (halobetasol propionate cream)(50g tube).

38. Since the Acquisition, RLI has marked, and continues to mark each unit of Ultravate<sup>®</sup> (halobetasol propionate cream)(50g tube) with the '921 Patent.

39. Because the '921 Patent expired on June 9, 2005, nearly two years before the Acquisition, none of RLI's units of Ultravate<sup>®</sup> (halobetasol propionate cream)(50g tube) has ever been covered by the '921 Patent.

40. RLI knew or reasonably should have known that each unit of Ultravate<sup>®</sup> (halobetasol propionate cream)(50g tube) it has ever manufactured, or caused to be manufactured, and sold has never been covered by the '921 Patent.

41. RLI has violated 35 U.S.C. § 292(a) by marking or causing to be marked each unit of Ultravate<sup>®</sup> (halobetasol propionate cream)(50g tube) with the '921 Patent for the purpose of deceiving the public.

**COUNT III  
THE '921 PATENT**

**FALSE MARKING OF ULTRAVATE<sup>®</sup>  
(HALOBETASOL PROPIONATE OINTMENT) (15g TUBE)**

42. Plaintiff/Relator incorporates the allegations of the foregoing paragraphs as though set forth at length herein.

43. RLI manufactures, or causes to be manufactured, and sells a drug named Ultravate<sup>®</sup> (halobetasol propionate ointment)(15g tube).

44. Since the Acquisition, RLI has marked, and continues to mark each unit of Ultravate<sup>®</sup> (halobetasol propionate ointment)(15g tube) with the '921 Patent.

45. Because the '921 Patent expired on June 9, 2005, nearly two years before the Acquisition, none of RLI's units of Ultravate<sup>®</sup> (halobetasol propionate ointment)(15g tube) has ever been covered by the '921 Patent.

46. RLI knew or reasonably should have known that each unit of Ultravate<sup>®</sup> (halobetasol propionate ointment)(15g tube) it has ever manufactured, or caused to be manufactured, and sold has never been covered by the '921 Patent.

47. RLI has violated 35 U.S.C. § 292(a) by marking or causing to be marked each unit of Ultravate<sup>®</sup> (halobetasol propionate ointment)(15g tube) with the '921 Patent for the purpose of deceiving the public.

**COUNT IV  
THE '921 PATENT**

**FALSE MARKING OF ULTRAVATE®  
(HALOBETASOL PROPIONATE OINTMENT) (50g TUBE)**

48. Plaintiff/Relator incorporates the allegations of the foregoing paragraphs as though set forth at length herein.

49. RLI manufactures, or causes to be manufactured, and sells a drug named Ultravate® (halobetasol propionate ointment)(50g tube).

50. Since the Acquisition, RLI has marked, and continues to mark each unit of Ultravate® (halobetasol propionate ointment)(50g tube) with the '921 Patent.

51. Because the '921 Patent expired on June 9, 2005, nearly two years before the Acquisition, none of RLI's units of Ultravate® (halobetasol propionate ointment)(50g tube) has ever been covered by the '921 Patent.

52. RLI knew or reasonably should have known that each unit of Ultravate® (halobetasol propionate ointment)(50g tube) it has ever manufactured, or caused to be manufactured, and sold has never been covered by the '921 Patent.

53. RLI has violated 35 U.S.C. § 292(a) by marking or causing to be marked each unit of Ultravate® (halobetasol propionate ointment)(50g tube) with the '921 Patent for the purpose of deceiving the public.



**PENALTY**

54. Each marking by RLI of the '921 Patent on each unit of Ultravate<sup>®</sup> constitutes an individual false marking offense that has injured and continues to injure the sovereign interests of the United States of America as well as the public interest, and has discouraged or deterred and continues to discourage or deter honest competition and innovation in competing products.

55. Each use in advertising by RLI of the '921 Patent in connection with each article of Ultravate<sup>®</sup> constitutes a false marking offense that has injured and continues to injure the sovereign interest of the United States of America as well as the public interest, and has discouraged or deterred and continues to discourage or deter honest competition and innovation in competing products.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff/Relator Hollander respectfully requests that this Court:

- a. Find that RLI's manufacture, advertising, and sale of products with false patent markings or false patent assertions violate 35 U.S.C. § 292(a);
- b. Enter judgment against RLI and in favor of Hollander;
- c. Determine an appropriate fine, of not more than \$500 per offense but sufficient to penalize RLI's violations of § 292(a) and to deter RLI and others similarly situated from violating § 292(a) in the future, for each offense of false marking, one-half of which shall be for the use of the United States of America and the other half of which shall go to Hollander;
- d. Award Hollander the costs incurred in this litigation;

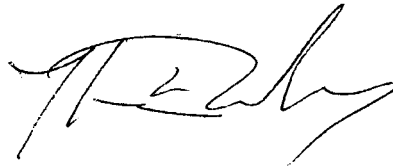
- e. Determine that the present case is exceptional under 35 U.S.C. § 285 and, based on such determination, award Hollander reasonable attorney fees; and
- f. Grant Hollander such other and further relief as this Honorable Court shall deem just and equitable.

**REQUEST FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b)(1), Hollander hereby demands a jury trial on all issues so triable.

Dated: February 23, 2010

Respectfully submitted,



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