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9 UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11 IMPRIMIS PHARMACEUTICALS,
12 INC., a Delaware corporation,

13 Plaintiff,

14 v.

15 ALCON PHARMACEUTICALS LTD.,
a Swiss corporation; ALCON
16 RESEARCH, LTD., a Delaware
corporation,

17 Defendants.
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Case No. '16CV1794 AJB BLM

COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-
INFRINGEMENT OF PATENT

1 Plaintiff Imprimis Pharmaceuticals, Inc. (“Imprimis” or “plaintiff”), for its
2 complaint against defendants Alcon Pharmaceuticals Ltd. and Alcon Research,
3 Ltd. (collectively “Alcon” or “defendants”), alleges as follows:

4 **THE PARTIES**

5 1. Plaintiff Imprimis is a corporation organized and existing under the
6 laws of the State of Delaware and has as its principal place of business and is
7 doing business in the County of San Diego, State of California.

8 2. Defendant Alcon Pharmaceuticals Ltd. is a corporation organized
9 and existing under the laws of Switzerland and has as its principal place of
10 business Fribourg, Switzerland.

11 3. Defendant Alcon Research, Ltd. is a corporation organized and
12 existing under the laws of the State of Delaware and has as its principal place of
13 business Fort Worth, Texas.

14 **JURISDICTION AND VENUE**

15 4. This is an action for declaratory judgment of patent non-
16 infringement. This Court has subject matter jurisdiction of this action pursuant to
17 28 U.S.C. §§ 1331 and 1338(a), because this action involves a claim arising under
18 the patent laws of the United States, 35 U.S.C. §§ 101, *et seq.*, and under the
19 Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

20 5. This Court has personal jurisdiction over defendants by virtue of
21 their activities within this District. Upon information and belief, defendants,
22 including through its principal operating subsidiary in the United States, Alcon
23 Research, Ltd., offers products and services within this District, and specifically
24 targets its activities to residents of this District.

25 6. Furthermore, the claims herein arise from defendants’ intentional
26 sending of correspondence to Imprimis in this District. Because defendants have
27 availed themselves of the privileges of conducting activities in this District, they
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1 are subject to personal jurisdiction in this District. Given that Imprimis is
2 headquartered in San Diego, this District and the State of California clearly have
3 a sufficient interest in resolving this dispute.

4 7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§
5 1391(b), (c), and/or (d) because, *inter alia*, defendants are subject to personal
6 jurisdiction in this District, the plaintiff Imprimis is headquartered in this District,
7 a substantial part of the alleged events or omissions giving rise to the claim
8 occurred in this District, and key witnesses reside in this District.

9 **FACTUAL BACKGROUND**

10 8. San Diego-based Imprimis is a pharmaceutical company whose stock
11 is publicly traded. Imprimis is dedicated to delivering high-quality and
12 innovative medicines to physicians and patients at affordable prices. It is
13 pioneering a new commercial pathway in the pharmaceutical industry, using
14 compounding pharmacies for the formulation and distribution of high-quality
15 formulations that are supported by the clinical experience of physicians and their
16 patients.

17 9. Defendant Alcon Pharmaceuticals Ltd. has asserted that it is the
18 owner of U.S. Patent Nos. 6,716,830 and 7,671,070, and that it has granted an
19 exclusive license for those patents to defendant Alcon Research, Ltd.

20 10. U.S. Patent No. 6,716,830 (“the ’830 Patent”) is entitled
21 “Ophthalmic Antibiotic Compositions Containing Moxifloxacin.” According to
22 the face of the ’830 Patent, it issued on April 6, 2004. A copy of the ’830 Patent
23 is attached hereto as **Exhibit 1**.

24 11. U.S. Patent No. 7,671,070 (“the ’070 Patent”) is entitled “Method of
25 Treating Ophthalmic Infections with Moxifloxacin Compositions.” According to
26 the face of the ’070 Patent, it issued on March 2, 2010. A copy of the ’070 Patent
27 is attached hereto as **Exhibit 2**.

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1 12. Through correspondence to Imprimis dated June 30, 2016 (“June 30,
2 2016 letter”), defendants’ litigation counsel asserted, without giving any specific
3 details, that defendants believe that Imprimis is “selling several ophthalmic
4 products” covered by “one or more claims” of both the ’830 Patent and the ’070
5 Patent, and thus Imprimis is infringing those patents. A copy of the June 30,
6 2016 letter is attached hereto as **Exhibit 3**.

7 13. On July 11, 2016, counsel for Imprimis responded to defendants’
8 June 30, 2016 letter, asking defendants to respond to a series of questions:

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10 In light of this, my client asks that you furnish specific
11 contentions of infringement. My client also asks that
12 your office answer a few questions. They are: What
13 products, exactly, does your client believe infringe the
14 ’830 and ’070 patents? What claims of those patents,
15 exactly, does your client believe Imprimis infringes?
16 What aspects of Imprimis’s products, exactly, does it
17 believe infringe? What pre-suit investigation has your
18 client done? What, exactly, has that investigation
19 shown?

20 A copy of the July 8, 2016 letter is attached hereto as **Exhibit 4**.

21 14. Imprimis does not agree with defendants’ assertions that Imprimis’
22 products or services infringe the ’830 Patent or the ’070 Patent. Indeed,
23 Imprimis’ products or services do not infringe any valid claim of the ’830 Patent
24 or the ’070 Patent.

25 15. By reason of the foregoing, an actual controversy exists between
26 Imprimis and Alcon regarding whether Imprimis’ products and services infringe
27 any valid claim of the ’830 Patent or the ’070 Patent.

28 **FIRST CLAIM FOR RELIEF**

(Declaratory Judgment of Non-infringement of U.S. Patent No. 6,716,830)

 16. Imprimis repeats and realleges the allegations of all of the foregoing
paragraphs of this complaint as though fully set forth herein.

 17. Imprimis has a reasonable apprehension that Alcon will serve it with

1 a summons and complaint alleging infringement of the '830 Patent.

2 18. Imprimis has not infringed, has not willfully infringed, is not now
3 infringing, has not contributorily infringed, and has not induced infringement of
4 any valid claim of the '830 Patent.

5 19. Accordingly, a valid and justiciable controversy has arisen and exists
6 between Imprimis and Alcon. Imprimis desires a judicial determination and
7 declaration of the respective rights and duties of the parties herein. Such a
8 determination and declaration is necessary and appropriate at this time in order
9 that the parties may ascertain their respective rights and duties.

10 **SECOND CLAIM FOR RELIEF**

11 **(Declaratory Judgment of Non-infringement of U.S. Patent No. 7,671,070)**

12 20. Imprimis repeats and realleges the allegations of all of the foregoing
13 paragraphs of this complaint as though fully set forth herein.

14 21. Imprimis has a reasonable apprehension that Alcon will serve it with
15 a summons and complaint alleging infringement of the '070 Patent.

16 22. Imprimis has not infringed, has not willfully infringed, is not now
17 infringing, has not contributorily infringed, and has not induced infringement of
18 any valid claim of the '070 Patent.

19 23. Accordingly, a valid and justiciable controversy has arisen and exists
20 between Imprimis and Alcon. Imprimis desires a judicial determination and
21 declaration of the respective rights and duties of the parties herein. Such a
22 determination and declaration is necessary and appropriate at this time in order
23 that the parties may ascertain their respective rights and duties.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, plaintiff Imprimis requests entry of judgment in its favor
26 and against defendants as follows:

27 A. Declaring that Imprimis has not infringed, willfully infringed,
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1 induced others to infringe, or contributed to the infringement of any valid claims
2 of the '830 Patent or the '070 Patent;

3 B. Enjoining defendants, and their officers, partners, employees, agents,
4 parents, subsidiaries, attorneys, and anyone acting in concert or participation with
5 any of them, from representing or implying that Imprimis has unlawfully
6 infringed or is unlawfully infringing the '830 Patent or the '070 Patent;

7 C. Enjoining defendants, and their officers, partners, employees, agents,
8 parents, subsidiaries, attorneys, and anyone acting in concert or participation with
9 any of them, from instituting or prosecuting any lawsuit or proceeding, placing in
10 issue the right of Imprimis to make, use, or sell the products that allegedly
11 infringe the '830 Patent or the '070 Patent; and

12 D. Granting such other and further relief as this Court may deem just
13 and proper.

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DATED: July 11, 2016

LAWTON LAW FIRM

By: s/Dan Lawton
DAN LAWTON
Attorneys for Plaintiff Imprimis
Pharmaceuticals, Inc.