



Charles M. Lizza
Phone: (973) 286-6715
Fax: (973) 286-6815
clizza@saul.com
www.saul.com

August 6, 2010

VIA ECF & FEDEX

The Honorable Dennis M. Cavanaugh, U.S.D.J.
United States District Court
U.S.P.O. & Courthouse Bldg., Room 451
One Federal Square
Newark, New Jersey 07101-0999

Re: *Sepracor Inc. v. Teva Pharmaceuticals USA, Inc., et al.*
 Civil Action No. 09-1302 (DMC)(MF)

Dear Judge Cavanaugh:

This firm, together with Paul, Hastings, Janofsky & Walker LLP, represents Plaintiff Sepracor Inc. in the above-captioned action. We are pleased to inform the Court that Plaintiff and Defendants Glenmark Generics Inc., USA, Glenmark Generics, Ltd., and Glenmark Pharmaceuticals, Ltd. (collectively, the "Glenmark Defendants") have reached an amicable resolution of this matter.

Therefore, enclosed for Your Honor's consideration is a stipulated Consent Judgment and Order of Permanent Injunction, which, subject to Your Honor's approval, would dismiss the Glenmark Defendants from this case. If the enclosed Consent Judgment and Order meets with Your Honor's approval, we respectfully request that it be so Ordered and entered on the docket.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Charles M. Lizza", written in a cursive style.

Charles M. Lizza

Enclosure

cc: All counsel (via e-mail)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE: ESZOPICLONE PATENT
LITIGATION

SEPRACOR INC.,

Plaintiff,

v.

TEVA PHARMACEUTICALS USA, INC., TEVA
PHARMACEUTICAL INDUSTRIES, LTD.,
WOCKHARDT USA, INC., WOCKHARDT LTD.,
DR. REDDY'S LABORATORIES, INC., DR.
REDDY'S LABORATORIES, LTD., ROXANE
LABORATORIES, INC., COBALT
LABORATORIES INC., COBALT
PHARMACEUTICALS INC., GLENMARK
GENERICS INC., USA, GLENMARK
GENERICS, LTD., GLENMARK
PHARMACEUTICALS, LTD., ORCHID
CHEMICALS & PHARMACEUTICALS, LTD.,
ORCHID HEALTHCARE (a Division of ORCHID
CHEMICALS & PHARMACEUTICALS LTD.),
ORGENUS PHARMA INC., LUPIN
PHARMACEUTICALS, INC., LUPIN LTD., SUN
PHARMA GLOBAL INC., SUN
PHARMACEUTICAL INDUSTRIES INC., SUN
PHARMACEUTICAL INDUSTRIES LIMITED,
ALPHAPHARM PTY. LTD., MYLAN, INC.

Defendants.

**Civil Action No. 09-CV-01302
(DMC) (MF)**

CONSENT JUDGMENT AND ORDER OF PERMANENT INJUNCTION

This action for patent infringement (the "Litigation") has been brought by Plaintiff Sepracor Inc. ("Sepracor") against Glenmark Generics, Inc., USA, Glenmark Laboratories Inc. and Glenmark Pharmaceuticals Inc. (collectively "Glenmark") for infringement of United States Patent Nos. 6,444,273, 6,319,926, 6,864,257, and 7,381,724 (collectively the "Sepracor Patents"). Sepracor's commencement of the Litigation was based on its receipt of notice from Glenmark that Glenmark had filed ANDA No. 91-166 with the United States Food and Drug Administration containing a certification pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(IV) directed to the Sepracor Patents and seeking approval to market generic versions of 1, 2, and 3 mg tablets of eszopiclone.

Sepracor and Glenmark have agreed to enter into a good faith final settlement agreement regarding this Litigation on the expectation and belief that this would eliminate the substantial litigation costs that would otherwise be incurred by both Sepracor and Glenmark during the Litigation, while also serving the public interest by saving judicial resources and avoiding the risks to each of the parties associated with infringement. This reasonable final settlement will afford Sepracor and Glenmark the procompetitive opportunity to more productively use money and other resources that would have been spent in the continued prosecution and defense of this Litigation, to the benefit of the parties and consumers alike, such as by investing more money in pharmaceutical research and development.

Each of Sepracor and Glenmark acknowledge there is significant risk to each of them associated with the continued prosecution of this Litigation and have consented to judgment through a final settlement as reflected in the consent judgment set forth herein. The Court, upon the consent and request of Sepracor and Glenmark, hereby acknowledges the following Consent Judgment and, upon due consideration, issues the following Order.

Sepracor and Glenmark now consent to this Consent Judgment and Order of Permanent Injunction and

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Subject matter jurisdiction, personal jurisdiction, and venue are all proper in this Court.
2. In this Litigation, Sepracor has charged Glenmark with infringement of the Sepracor Patents in connection with Glenmark's submission of Abbreviated New Drug Application ("ANDA") No. 91-166 directed to generic tablets containing 1, 2, and 3 milligrams of eszopiclone per tablet to the U.S. Food and Drug Administration ("FDA").
3. In response to Sepracor's charges of patent infringement, Glenmark has alleged certain defenses and counterclaims, including that Sepracor Patents are invalid. No decision has been obtained by the parties from this Court regarding these charges of infringement or these defenses and counterclaims.
4. Glenmark has not rebutted the statutory presumption that the Sepracor Patents are valid and enforceable in the Litigation. This admission is without prejudice to Glenmark's defenses and counterclaims that the Sepracor Patents are invalid.
5. Glenmark admits that the submission of ANDA No. 91-166 containing a certification pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(IV) to the FDA for the purpose of obtaining regulatory approval to engage in the commercial manufacture, use and/or sale of generic tablets containing 1, 2, and 3 milligrams of eszopiclone per tablet within the United States before the expiration of the Sepracor Patents was a technical act of infringement of the Sepracor Patents under 35 U.S.C. § 271 (e)(2)(A). This admission is without prejudice to Glenmark's defenses and counterclaims that the Sepracor Patents are invalid.

6. Glenmark has agreed that each of the defenses and counterclaims set forth in its Answer, Affirmative Defenses and Counterclaims, including the allegations and averments contained therein, should be dismissed, without prejudice.

7. Glenmark, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby enjoined from manufacturing, using, offering to sell or selling within the United States, or importing into the United States, any generic tablet product containing 1, 2, and/or 3 milligrams of eszopiclone per tablet that is the subject of ANDA No. 91-166 until:

(a) The expiration of date of U.S. Patent 6,444,673 (“the ’673 patent”) including a patent term extension pursuant to 35 U.S.C. § 156, minus two and one half months (i.e., November 30, 2013);

(b) in the event that prior to November 30, 2013, the FDA grants pediatric exclusivity for Lunesta®, the expiration date of the ’673 patent, including a patent term extension pursuant to 35 U.S.C. § 156, and extended by six months by pediatric exclusivity pursuant to 21 U.S.C. § 355a, minus two and one half months (i.e., May 31, 2014); or

(c) at such earlier date as may be permitted by the Settlement and License Agreement that the Parties have entered into.

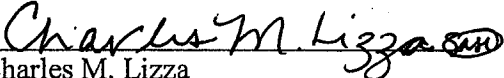
8. Sepracor and Glenmark each expressly waives any right to appeal or otherwise move for relief from this Final Judgment And Order.

9. This court retains jurisdiction over Sepracor and Glenmark for purposes of enforcing this Final Judgment And Order.

10. The Clerk of the Court is directed to enter this Final Judgment And Order

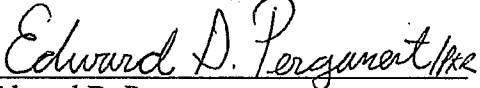
forthwith.

IT IS SO STIPULATED:

Charles M. Lizza 

Charles M. Lizza
William C. Baton
SAUL EWING LLP
One Riverfront Plaza, Suite 1520
Newark, NJ 07102-5426
(973) 286-6700

*Attorneys for Plaintiff
Sepracor Inc.*

Edward D. Pergament 

Edward D. Pergament
KAPLAN GILMAN & PERGAMENT LLP
1480 Route 9 North, Suite 204
Woodbridge, NJ 07095
(732) 636-4500

*Attorneys for Defendants
Glenmark Generics Inc., USA
Glenmark Generics, Ltd.
Glenmark Pharmaceuticals, Ltd.*

Of Counsel:

Joseph M. O'Malley, Jr.
Bruce M. Wexler
David M. Conca
Eric W. Dittmann
PAUL, HASTINGS, JANOFSKY & WALKER LLP
75 East 55th Street
New York, NY 10022
(212) 318-6000

SO ORDERED:

This _____ day of _____, 2010

HONORABLE DENNIS M. CAVANAUGH
UNITED STATES DISTRICT JUDGE