

ROBINSON, WETTRE & MILLER, LLC

Leda Dunn Wettre, Esq.
Michael J. Gesualdo, Esq.
One Newark Center
19th Floor
Newark, New Jersey 07102
(973) 690-5400
lwettre@rwmlegal.com
mgesualdo@rwmlegal.com

COVINGTON & BURLING LLP

Jeffrey Elikan, Esq.
Andrea Reister, Esq.
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
(202) 662-6000

Attorneys for Nycomed US Inc.

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

NYCOMED US INC.,)
)
Plaintiff,)
)
- v -)
)
GLYCOBIOSCIENCES INC.,)
A Canadian Corporation)
)
Defendant.)

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY JUDGMENT**

Plaintiff Nycomed US Inc. (“Nycomed”), upon personal knowledge as to its own acts and upon information and belief formed after reasonable inquiry as to the acts of third parties, for its Complaint against Defendant GlycoBioSciences Inc. (“Glyco”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for declaratory judgment of noninfringement of U.S. Patent No. 5,897,880 (the “Patent-in-Suit” or the “880 Patent”) pursuant to the Declaratory Judgment Act,

28 U.S.C. §§ 2201-02, and the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, and for such other relief as the Court deems just and proper.

PARTIES

2. Nycomed is a company organized and existing under the laws of the State of New York, having a place of business at 210 Park Avenue, Florham Park, New Jersey 07932.

PharmaDerm, an unincorporated division of Nycomed, also has its place of business at that address. PharmaDerm markets and sells SOLARAZE[®] Gel in New Jersey and other states.

3. Upon information and belief, Glyco is a Canadian corporation having its principal place of business at 7 Timber Court, Georgetown, Ontario L7G 4S4. Upon information and belief, Kevin Drizen is a principal or executive of Glyco.

SUBJECT MATTER JURISDICTION

4. Nycomed brings this action under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338 (action arising under any act of Congress relating to patents), and 28 U.S.C. § 2201 (Declaratory Judgment Act).

5. Beginning on or around November 2010, Kevin Drizen, both in his individual capacity and as a principal or executive of Glyco, has sent e-mails to Nycomed, threatening Nycomed with various actions relating to its SOLARAZE[®] product, including filing a lawsuit accusing Nycomed of patent infringement through its sale of SOLARAZE[®].

6. On March 7, 2011, Mr. Drizen sent an e-mail to Nycomed's Vice President of Business Development in New Jersey attaching a "Claim Chart on Infringement of Solaraze

Product on our LAM Patent 5,897,880.” The next day, he sent another e-mail, explicitly threatening to sue Nycomed for infringement of the ’880 Patent.

7. Glyco’s communications with Nycomed on March 7 and 8, 2011, threatening to sue Nycomed for patent infringement and sending a claim chart identifying specific claims, demonstrate its intent to enforce the ’880 Patent against Nycomed.

8. Nycomed contends that it does not infringe the ’880 Patent.

9. As a result of Glyco’s conduct, there is a “case or actual controversy” between the parties under the Declaratory Judgment Act, 28 U.S.C. § 2201, and jurisdiction is proper in this Court.

PERSONAL JURISDICTION AND VENUE

10. Glyco is subject to jurisdiction in New Jersey because the events giving rise to this action, as detailed above, occurred in the State of New Jersey. Additionally, upon information and belief, Glyco has purposely availed itself of the laws of the State of New Jersey by entering into agreements to sell its products throughout the United States, including in the State of New Jersey, resulting in continuous and systematic contacts with this forum.

11. To the extent Glyco’s contacts with this forum are alone insufficient to give rise to personal jurisdiction in this forum, Glyco would be subject to personal jurisdiction by operation of Fed. R. Civ. P. 4(k)(2).

12. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(d) and 1400.

THE PATENT-IN-SUIT

13. The '880 Patent was issued by the United States Patent and Trademark Office on April 27, 1999 to inventors Alan Drizen et al. The '880 Patent is titled "Topical Drug Preparations."

14. A copy of the '880 Patent is attached as **Exhibit A**.

15. Upon information and belief, Glyco purports to own all of the rights and interests in the '880 Patent.

FACTUAL BACKGROUND

16. As recounted in the foregoing paragraphs, Glyco has engaged in conduct that can reasonably be inferred as demonstrating its intent to enforce the '880 Patent against Nycomed by sending communications to Nycomed threatening to file an infringement action and by identifying specific claims alleged to be infringed.

17. As recounted in the foregoing paragraphs, Glyco has confirmed its ability and willingness to file suit against Nycomed for infringement of the '880 Patent and has threatened to sue Nycomed for infringement of the '880 Patent.

18. As recounted in the foregoing paragraphs, Nycomed has not infringed, and does not infringe, any claims of the '880 Patent.

19. As recounted in the foregoing paragraphs, Glyco's infringement accusations against Nycomed implicate Nycomed's SOLARAZE[®] product and a case or controversy exists as to whether Nycomed infringes one or more claims of the '880 Patent. Accordingly, a substantial controversy exists between the parties which is of sufficient immediacy and reality to warrant declaratory relief.

COUNT I

(Declaratory Judgment Of Noninfringement Of The '880 Patent)

20. Nycomed restates, realleges, and incorporates by reference all foregoing paragraphs of this Complaint as if set forth here in their entirety.

21. Nycomed does not infringe, whether directly or indirectly, any valid and enforceable claim of the '880 Patent.

22. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

23. A judicial declaration is necessary and appropriate at this time so that Nycomed may ascertain its rights and duties regarding the '880 Patent. Absent such a declaration, Glyco will continue to threaten Nycomed with assertion of the '880 Patent against Nycomed and thereby cause Nycomed irreparable injury and damage. Nycomed has no other adequate remedy at law.

24. This is an exceptional case under 35 U.S.C. § 285, entitling Nycomed to an award of its attorneys' fees incurred in connection with this action.

PRAYER FOR RELIEF

WHEREFORE, Nycomed prays for an Order and Judgment from this Honorable Court:

- a) declaring that Nycomed has not infringed, directly or indirectly, any valid or enforceable claim of the '880 Patent;
- b) declaring that Nycomed is a prevailing party and that this is an "exceptional" case within the meaning of 35 U.S.C. § 285, entitling Nycomed to an award of its reasonable attorneys' fees, expenses and costs; and
- c) granting such other and further equitable or legal relief as the Court deems proper.

Respectfully Submitted,

ROBINSON, WETTRE & MILLER LLC

By: /s/ Leda Dunn Wettre

Leda Dunn Wettre, Esq.
Michael J. Gesualdo, Esq.
One Newark Center
19th Floor
Newark, New Jersey 07102
Tel: 973-690-5400

COVINGTON & BURLING LLP

Jeffrey Elikan, Esq.
Andrea Reister, Esq.
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
Tel: 202-662-6000

Attorneys for Nycomed US Inc.

DATED: March 11, 2011

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

I hereby certify that the matter in controversy may be deemed related to the following action presently pending before this Court:

Nycomed US Inc. and Jagotec AG v. Tolmar, Inc.,
Civil Action No. 2:10-cv-02635 (KSH)(PS)

Dated: March 11, 2011

By: /s/Leda Dunn Wettre
Leda Dunn Wettre

ROBINSON, WETTRE & MILLER LLC
Leda Dunn Wettre, Esq.
Michael J. Gesualdo, Esq.
One Newark Center
19th Floor
Newark, New Jersey 07102
(973) 690-5400

COVINGTON & BURLING LLP
Jeffrey Elikan, Esq.
Andrea Reister, Esq.
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
(202) 662-6000

Attorneys for Plaintiff Nycomed US Inc.