

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

PURDUE PHARMA L.P.  
and GRÜNENTHAL GMBH,

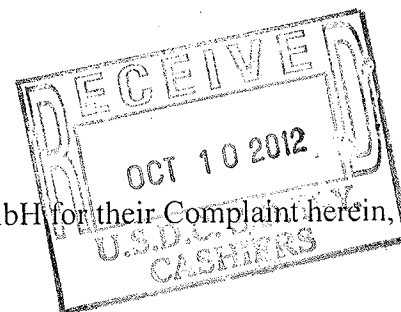
Plaintiffs,

v.

SANDOZ INC.,

Defendant.

CV 7582  
C.A. No. \_\_\_\_\_



**COMPLAINT**

Plaintiffs Purdue Pharma L.P. and Grünenthal GmbH for their Complaint herein,

aver as follows:

**NATURE OF THE ACTION:**

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

**THE PARTIES: PLAINTIFFS**

2. Plaintiff Purdue Pharma L.P. (“Purdue Pharma”) is a limited partnership organized and existing under the laws of the State of Delaware, having a place of business at One Stamford Forum, 201 Tresser Boulevard, Stamford, CT 06901-3431. Purdue Pharma is an exclusive licensee of United States Patent No. 8,114,383 identified in paragraph 10 below. Purdue Pharma is also the holder of New Drug Application (“NDA”) No. 022272 for the controlled-release oxycodone pain-relief medication OxyContin®, and is involved in the sales of OxyContin® in the United States.

3. Plaintiff Grünenthal GmbH (“Grünenthal”) is a corporation organized and existing under the laws of Germany, having an address at 52078 Aachen, Zieglerstrasse 6, Germany. Grünenthal is the owner of United States Patent No. 8,114,383 identified in paragraph 10 below.

**THE PARTIES: DEFENDANT**

4. Upon information and belief, Defendant Sandoz Inc. (“Sandoz”) is a corporation organized and existing under the laws of the State of Colorado, having a principal place of business at 506 Carnegie Center, Suite 400, Princeton, NJ 08540.

5. Upon information and belief, Sandoz is registered as a Pharmacy Establishment in the State of New York by the New York State Department of Education, Office of the Professions. (Registration Nos. 025939 and 031428). The Registration No. 025939 has an active status and is valid through October 31, 2012. The Registration No. 031428 has an active status and is valid through June 30, 2015.

6. Upon information and belief, Sandoz is registered as a Foreign Business Corporation by the New York State Department of State, Division of Corporations and lists Corporation Service Company, 80 State Street, Albany, NY 12207-2543 as its registered agent.

**JURISDICTION AND VENUE**

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

8. This Court has personal jurisdiction over Sandoz because, *inter alia*, Sandoz has purposefully availed itself of the rights and benefits of the laws of this State and this Judicial District. Upon information and belief, Sandoz does business in this State and this Judicial District, has engaged in continuous and systematic contact with this State and this Judicial District, and derives substantial revenue from things used or consumed in this State and

this Judicial District. Upon information and belief, Sandoz engages in the manufacture and sale of a range of pharmaceutical products within and directed to the United States, this State, and this Judicial District specifically. Sandoz did not contest personal jurisdiction in this Judicial District in patent litigation concerning United States Patent Nos. 6,488,963, 7,674,799, 7,674,800, 7,683,072, and 7,776,314, which suit was based on the same Abbreviated New Drug Application (“ANDA”) No. 202762 described in paragraph 11 below that Sandoz submitted to the FDA based on Purdue Pharma’s OxyContin<sup>®</sup> NDA No. 022272. *See Purdue Pharma L.P. et al. v. Sandoz Inc.*, Nos. 11-civ-4694, 12-civ-0897, 12-civ-5082 (SHS)(JLC) (S.D.N.Y.). Further, this Court has personal jurisdiction over Sandoz because Sandoz is registered as a Pharmacy Establishment in the State of New York by the New York State Department of Education, Office of the Professions. This Court also has personal jurisdiction over Sandoz because Sandoz is registered as a Foreign Business Corporation by the New York State Department of State, Division of Corporations. In addition, upon information and belief, Sandoz is actively preparing to make the proposed generic copies of OxyContin<sup>®</sup> that are the subject of ANDA No. 202762, and to use, sell and offer for sale such generic copies in this State and this Judicial District.

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

#### **THE PATENT IN SUIT**

10. Grünenthal is the lawful owner of all right, title and interest in United States Patent No. 8,114,383 entitled “ABUSE-PROOFED DOSAGE FORM” (“the ‘383 patent”), including the right to sue and to recover for past infringement thereof. Purdue Pharma is an exclusive licensee of the ‘383 patent from Grünenthal, with the right to enforce the ‘383 patent. The ‘383 patent is listed in the FDA’s Orange Book as covering certain dosage strengths of the drug OxyContin<sup>®</sup>, which is the subject of approved NDA No. 022272. A copy of the ‘383

patent is attached hereto as Exhibit A, which was duly and legally issued on February 14, 2012, naming Johannes Bartholomäus, Heinrich Kugelmann, and Elisabeth Arkenau-Marić as the inventors.

**DEFENDANT'S ANDA**

11. Upon information and belief, Sandoz submitted ANDA No. 202762 to the FDA, under § 505(j) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 355(j)), seeking approval to engage in the commercial manufacture, use, sale, offer for sale or importation of generic oxycodone hydrochloride extended release tablets (“proposed generic copies of OxyContin<sup>®</sup>”), 10 mg, 15 mg, 20 mg, 30 mg, 40 mg, 60 mg and 80 mg, based on the Reference Listed Drug (“RLD”) OxyContin<sup>®</sup>, which is the subject of approved NDA No. 022272, before the expiration of the ‘383 patent.

12. Upon information and belief, Sandoz’s ANDA No. 202762 contains a “Paragraph IV” certification under 21 U.S.C. § 355(j)(2)(A)(vii)(IV) alleging that the ‘383 patent, listed in the FDA’s Orange Book as covering the drug OxyContin<sup>®</sup>, which is the subject of approved NDA No. 022272, is “invalid, unenforceable and/or not infringed by the manufacture, use, sale or offer for sale of [the proposed generic copies of OxyContin<sup>®</sup>].”

13. In a letter dated August 24, 2012 addressed to Plaintiffs and received by Purdue Pharma on August 27, 2012, Sandoz provided “Notice” with respect to its proposed generic copies of OxyContin<sup>®</sup>, 10 mg, 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, and 80 mg and the ‘383 patent under 21 U.S.C. § 355(j)(2)(B), and thereby demonstrated an actual and justiciable controversy.

**CLAIM FOR RELIEF**

14. Sandoz’s submission of its ANDA was an act of infringement of the ‘383 patent under the United States Patent Law, 35 U.S.C. § 271(e)(2)(A), with respect to Sandoz’s

proposed generic copies of OxyContin<sup>®</sup>, 10 mg, 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, and 80 mg.

15. Upon information and belief, Sandoz's proposed generic copies of OxyContin<sup>®</sup>, 10 mg, 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, and 80 mg, are covered by one or more claims of the '383 patent.

16. Upon information and belief, Sandoz's commercial manufacture, use, sale, and/or offer for sale of the proposed generic copies of OxyContin<sup>®</sup>, 10 mg, 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, and 80 mg, would infringe, contribute to the infringement of, and/or induce the infringement of one or more claims of the '383 patent.

17. Upon information and belief, Sandoz has been aware of the existence of the '383 patent, and has no reasonable basis for believing that its proposed generic copies of OxyContin<sup>®</sup>, 10 mg, 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, and 80 mg, will not infringe the '383 patent, thus rendering the case "exceptional," as that term is used in 35 U.S.C. § 285.

18. The acts of infringement by Sandoz set forth above will cause Plaintiffs irreparable harm for which they have no adequate remedy at law, and will continue unless enjoined by this Court.

WHEREFORE, Plaintiffs pray for judgment:

A. Adjudging that Sandoz has infringed the '383 patent, and that the commercial sale, offer for sale, use, and/or manufacture of the proposed generic copies of OxyContin<sup>®</sup>, 10 mg, 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, and 80 mg, described in ANDA No. 202762 would infringe, induce infringement of, and/or contribute to the infringement of the '383 patent;

B. Adjudging, pursuant to 35 U.S.C. § 271(e)(4)(A), the effective date of any approval of ANDA No. 202762, 10 mg, 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, and 80 mg, under

§ 505(j) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 355(j)), to be a date not earlier than the date of expiration of the '383 patent plus any additional periods of exclusivity;

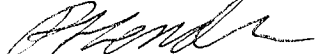
C. Preliminarily and permanently enjoining, pursuant to 35 U.S.C. §§ 271(e)(4)(B) and 283 and Rule 65, Fed. R. Civ. P., Sandoz, its officers, partners, agents, servants, employees, parents, subsidiaries, divisions, affiliate corporations, other related business entities and all other persons acting in concert, participation, or in privity with them, and their successors and assigns, from any commercial manufacture, use, offer to sell, or sale within the United States, or importation into the United States, of any drug product that infringes the '383 patent;

D. Declaring this an exceptional case and awarding Plaintiffs their attorneys' fees, as provided by 35 U.S.C. §§ 271(e)(4) and 285; and

E. Awarding Plaintiffs such other and further relief as this Court may deem just and proper.

Dated: October 9, 2012

**ROPES & GRAY LLP**



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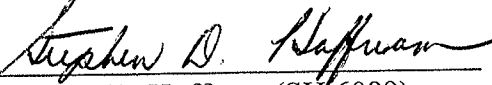
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Dated: October 10, 2012

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