

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ALCON PHARMACEUTICALS LTD. and)
ALCON RESEARCH, LTD.,)
)
Plaintiffs,)
)
v.) C.A. No. _____
)
IMPRIMIS PHARMACEUTICALS, INC.,)
)
Defendant.)

COMPLAINT

Plaintiffs Alcon Pharmaceuticals Ltd. and Alcon Research, Ltd. (collectively “Alcon”), by their attorneys, for their Complaint, allege as follows:

1. This is an action for patent infringement under the patent laws of the United States, Title 35, United States Code, that arises out of Imprimis Pharmaceuticals, Inc.’s (“Imprimis”) manufacture and sale of ophthalmic drug products containing moxifloxacin hydrochloride, which infringes two Alcon U.S. patents.

PARTIES

2. Plaintiff Alcon Pharmaceuticals Ltd. is a corporation organized and existing under the laws of Switzerland, having its principal place of business at Rue Louis d’Affry 6, Case Postale, 1701 Fribourg, Switzerland.

3. Plaintiff Alcon Research, Ltd. is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 6201 South Freeway, Fort Worth, Texas 76134.

4. Upon information and belief, defendant Imprimis is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 12264 El Camino Real, Suite 350, San Diego, California 92130.

JURISDICTION AND VENUE

5. Jurisdiction and venue are proper in this district pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1391 and 1400(b).

6. This Court has personal jurisdiction over Imprimis because Imprimis has availed itself of the legal protections of the State of Delaware by, among other things, incorporating in Delaware. By incorporating in Delaware, Imprimis is “at home” in Delaware for purposes of personal jurisdiction. In addition, upon information and belief, Imprimis manufactures, markets and/or sells drug products throughout the United States and within the State of Delaware and therefore transacts business within the State of Delaware related to Plaintiffs’ claims, and/or has engaged in systematic and continuous business contacts within the State of Delaware.

7. Venue is proper in this District because Imprimis resides in this District and because Imprimis is subject to personal jurisdiction in this District.

COUNT I-INFRINGEMENT OF THE '830 PATENT

8. Alcon incorporates each of the preceding paragraphs 1-7 as if fully set forth herein.

9. United States Patent No. 6,716,830 (“the ’830 patent”), titled “Ophthalmic Antibiotic Compositions Containing Moxifloxacin” (Exhibit A hereto), was duly and legally issued on April 6, 2004 to Alcon, Inc., as assignee of Gerald Cagle, Robert L. Abshire, David W. Stroman, and John M. Yanni.

10. Alcon, Inc.'s interest in the '830 patent has been subsequently assigned to Alcon Pharmaceuticals Ltd. Alcon Pharmaceuticals Ltd. owns the '830 patent and has been and will be substantially and irreparably damaged by infringement of the '830 patent.

11. Alcon Research, Ltd. has been granted an exclusive license under the '830 patent. Alcon Research, Ltd. has been and will be substantially and irreparably damaged by infringement of the '830 patent.

12. The '830 patent claims, *inter alia*, topical ophthalmic pharmaceutical compositions comprising moxifloxacin or a pharmaceutically useful hydrate or salt thereof in a concentration of 0.1 to 1.0 wt. % of moxifloxacin and a pharmaceutically acceptable vehicle therefor. The '830 patent also claims such compositions that further comprise a glucocorticoid, or a prostaglandin H synthetase inhibitor.

13. Alcon manufactures and sells VIGAMOX® ophthalmic solution, an antibiotic eye drop containing moxifloxacin hydrochloride. VIGAMOX® is covered by the '830 patent. Since its launch in 2003, doctors have prescribed VIGAMOX® more than 30 million times, and VIGAMOX® has established and maintained strong branded market share in the ophthalmic anti-infective drug category. VIGAMOX® is indicated for treatment of bacterial conjunctivitis, and is also prescribed by physicians for use in conjunction with cataract, LASIK, and other ocular surgeries.

14. Upon information and belief, Imprimis manufactures, markets, offers for sale, and sells topical ophthalmic pharmaceutical compositions comprising moxifloxacin hydrochloride in a concentration of 0.1 to 1.0 wt %, and a pharmaceutically acceptable vehicle therefor ("Imprimis's moxifloxacin ophthalmic products"), including Imprimis's Pred-Moxi, Pred-Moxi-Ketor, Pred-Moxi-Nepaf, and Tri-Moxi products. Ex. C.

15. Upon information and belief, Imprimis's Pred-Moxi, Pred-Moxi-Ketor, and Pred-Moxi-Nepaf products further contain prednisolone, a glucocorticoid compound.

16. Upon information and belief, Imprimis's Pred-Moxi-Ketor product further contains ketorolac, a prostaglandin H synthetase inhibitor.

17. Upon information and belief, Imprimis's Pred-Moxi-Nepaf product further contains nepafenac, a prostaglandin H synthetase inhibitor.

18. Upon information and belief, Imprimis's Tri-Moxi product further contains triamcinolone, a glucocorticoid compound.

19. Imprimis's marketing literature states that Imprimis's Pred-Moxi, Pred-Moxi-Ketor, Pred-Moxi-Nepafenac, and Tri-Moxi products are each "topical eye drop formulations." Ex. C.

20. According to a June 7, 2016 Imprimis investor presentation, Imprimis's goal is to "disrupt[]" the ">\$1B[illion] Eye Drop Market," specifically targeting Alcon's sales of VIGAMOX®. Ex. D at 11-12. According to that same presentation, Imprimis intends to undercut the cost of certain treatment regimens utilizing VIGAMOX® by up to 92%, and claims to have captured more than "10% market share related to pre[-] and post[-]operative eye drops for cataract surgery." *Id.* at 13.

21. Imprimis's moxifloxacin ophthalmic compositions are covered by one or more claims of the '830 patent.

22. Upon information and belief, Imprimis has knowledge of the claims of the '830 patent. Upon information and belief, Imprimis has cited the '830 patent in submissions to the United States Patent and Trademark Office in conjunction with the prosecution of Imprimis's own patent applications. Upon information and belief, Imprimis has notice of this Court's

October 19, 2009, opinion affirming the validity of claim 1 of the '830 patent, which covers Imprimis's moxifloxacin ophthalmic products. Notwithstanding this knowledge, Imprimis has continued to manufacture, offer for sale, sell, and distribute its moxifloxacin ophthalmic compositions during the term of the '830 patent, and intends to continue doing so. Accordingly, Imprimis has willfully, wantonly, and deliberately engaged in acts of infringement of the '830 patent.

23. The manufacture, use, sale, offer for sale, or importation of Imprimis's moxifloxacin ophthalmic compositions infringes one or more claims of the '830 patent.

24. The foregoing actions by Imprimis constitute and/or will constitute infringement, and active inducement of infringement, of the '830 patent.

25. Upon information and belief, Imprimis has acted with full knowledge of the '830 patent and without a reasonable basis for believing that it would not be liable for infringement of the '830 patent and/or active inducement of infringement of the '830 patent.

26. As a result of Imprimis's wrongful acts, Alcon has suffered irreparable injury. Unless Imprimis is enjoined from infringing and inducing infringement of the '830 patent, Alcon will suffer additional irreparable injury. Alcon has no adequate remedy at law.

27. Imprimis's infringement has damaged Alcon, which is entitled to recover from Imprimis the damages resulting from Imprimis's wrongful acts in an amount to be determined at trial, and in any event no less than a reasonable royalty.

28. Imprimis's willful, wanton, and deliberate infringement of the '830 patent justifies an award to Alcon of increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

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