

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

UNIVERSITY OF MASSACHUSETTS )  
MEDICAL SCHOOL and CARMEL )  
LABORATORIES, LLC, )  
 )  
Plaintiffs, )  
 ) C.A. No. 17-868-JFB-SRF  
v. )  
 )  
L'ORÉAL S.A. and L'ORÉAL USA, INC., )  
 )  
Defendants. )

**DEFENDANT L'ORÉAL USA, INC.'S  
REPLY BRIEF IN SUPPORT OF L'ORÉAL USA, INC.'S  
MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT**

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## I. INTRODUCTION

Plaintiffs University of Massachusetts Medical School's ("UMass") and Carmel Laboratories, LLC's ("Carmel Labs") (collectively "Plaintiffs") Opposition (D.I. 19) to L'Oréal USA's Motion to Dismiss (D.I. 16) highlights the numerous inadequacies of the First Amended Complaint ("FAC") and the implausibility of Plaintiffs' infringement pleadings.<sup>1</sup> Unable to substantively address L'Oréal USA's arguments for dismissal, Plaintiffs resort to inundating the Court with case law, including opinions that have been called into question, if not outright rejected, under the *Iqbal/Twombly* pleading standards, and decisions inapposite to the facts here.

The asserted claims of U.S. Patent Nos. 6,423,327 (the "'327 patent") and 6,645,513 (the "'513 patent") (collectively, the "patents-in-suit") have claim elements that require more than merely applying adenosine-containing compositions to the skin. (*See* D.I. 16 at 9-11.) For example, both patents require specific concentrations of adenosine and the absence of "dermal cell proliferation" upon application of a composition. (*See* D.I. 13, ¶ 12; D.I. 13-1 at 10:18-26; D.I. 13-2 at 10:18-26.) By only stating generally that L'Oréal USA sells and markets the Accused Adenosine Products (*see, e.g.*, D.I. 19 at 4-5), Plaintiffs remain unable to adequately allege direct, induced, contributory, or willful infringement of the patents-in-suit. Because Plaintiffs remain unable to address these deficiencies in their pleadings despite previous notice (*see* D.I. 8 at 5-6; D.I. 17, ¶¶ 3-6, Exs. A, B), L'Oréal USA respectfully urges the Court to dismiss the FAC with prejudice, and relieve L'Oréal USA of the burden of contesting Plaintiffs' futile pleadings. (D.I. 16 at 14-15.)

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<sup>1</sup> On September 6, 2017, the Parties filed a stipulation, so ordered on September 8, 2017, extending the deadline for L'Oréal USA, Inc. to file its reply brief in support of its Motion to Dismiss (D.I. 15) through and including October 2, 2017 (from September 12, 2017). (D.I. 21.)

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