

**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-cv-00868-VAC-SRF
v.)	
)	
L'ORÉAL S.A. and L'ORÉAL USA, INC.,)	
)	
Defendants.)	

**DEFENDANT L'ORÉAL USA, INC.'S OPENING BRIEF
IN SUPPORT OF L'ORÉAL USA, INC.'S MOTION TO DISMISS**

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I. STATEMENT OF NATURE AND STAGE OF THE PROCEEDINGS

On June 30, 2017, plaintiffs University of Massachusetts Medical School (“UMass”) and Carmel Laboratories, LLC (“Carmel Labs”) (collectively “Plaintiffs”) filed a complaint against L’Oréal USA, Inc. (“L’Oréal USA”) and L’Oréal S.A. alleging that L’Oréal USA and L’Oréal S.A. infringe two patents covering methods of applying topical compositions containing adenosine to skin (the “Complaint”). On July 19, 2017, the Parties filed a stipulation, so ordered on July 21, 2017, that the deadline for L’Oréal USA to move, answer, or otherwise respond to the Complaint is extended through and including August 4, 2017. (D.I. 4.)

L’Oréal USA now moves to dismiss Plaintiffs’ Complaint under Fed. R. Civ. P. (“Rule”) 8(a)(2) and 12(b)(6).¹

II. SUMMARY OF ARGUMENT

Each claim asserted in the Complaint is inadequately pled and should be dismissed pursuant to Rule 12(b)(6). Rule 8 requires “a short and plain statement of [each] claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This standard “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Complaints must allege sufficient facts to “raise a right to relief above the speculative level” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Plaintiffs fall far short of meeting this burden for any of the asserted claims.

Plaintiffs have not adequately pled direct infringement for either of the patents-in-suit. Instead, the Complaint recites conclusory allegations that by “making, using, selling, and/or offering to sell” mostly unspecified products (the “Accused Adenosine Products”), L’Oréal USA

¹ L’Oréal S.A. separately plans to move, answer, or otherwise respond to the Complaint on or by October 16, 2017, the stipulated deadline for L’Oréal S.A.’s response to the Complaint. (D.I. 4.)

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