

EXHIBIT 2

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

BAXTER HEALTHCARE CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 18-303-RGA
)	
HOSPIRA, INC. and ORION CORP.,)	
)	
Defendants.)	

(PROPOSED) FIRST AMENDED COMPLAINT

Plaintiff Baxter Healthcare Corporation (“Baxter”), through counsel, hereby ~~brings~~ files its First Amended Complaint ~~for Declaratory Judgment~~ against Hospira, Inc. (“Hospira”) and Orion Corp. (“Orion”) (collectively, “Defendants”), and alleges as follows:

I. NATURE OF THE SUIT

~~1. This is a declaratory judgment action seeking a declaration of non infringement of United States Patent Nos. 6,716,867 (the “867 Patent”), 8,242,158 (the “158 Patent”), 8,338,470 (the “470 Patent”), and 8,455,527 (the “527 Patent”) (collectively, “the Patents in Suit”) to enable Baxter to bring its generic dexmedetomidine hydrochloride in 0.9% sodium chloride injection 200 mcg/50 mL and 400 mcg/100mL (the “Baxter ANDA Product”) to market at the earliest possible date under the applicable statutory and Food and Drug Administration (“FDA”) regulatory provisions, and to allow the public to enjoy the benefits of generic competition for these products.~~

1. This is a civil action brought by Baxter against Defendants seeking declaratory judgment, treble damages, and other relief for harms arising out of Defendants’ unlawful misuse of an invalid patent. United States Patent No. 6,716,867 (the “867 Patent”) is invalid as obvious, as originally determined by the United States District Court for the District of New Jersey in Civil

Action No. 3:09-cv-04591 (2012). Despite the invalidity of the '867 Patent, Defendants have misused the '867 Patent to unlawfully exclude generic competition from the market for dexmedetomidine hydrochloride injection, 200 mcg base/50mL and 400 mcg base/100mL, a drug manufactured and marketed by Defendants under the brand name Precedex. As alleged below, Defendants devised a scheme using a variety of illegal and deceptive acts to unlawfully preclude or delay generic competition for Precedex. Through these acts, Defendants have unlawfully monopolized and attempted to monopolize the dexmedetomidine hydrochloride market in violation of numerous antitrust laws, including but not limited to the Sherman Act, 15 U.S.C. § 2, and the Clayton Act, 15 U.S.C. §§ 15 and 26.

2. Specifically, Defendants have engaged in a pattern and scheme to abuse the patent system and have engaged in sham litigation to restrain competition from Baxter and other generic manufacturers of premix dexmedetomidine hydrochloride. Defendants' unlawful conduct includes, *inter alia*:

(a) Conspiring to monopolize and restrain trade by entering into a settlement agreement with Sandoz in Case No. 3:09-cv-04591 (D.N.J.) to vacate the district court's judgment declaring the '867 Patent invalid. Vacatur of this judgment through settlement enabled Defendants to improperly manipulate the use codes for the '867 Patent and to continue monopolizing the dexmedetomidine hydrochloride market by asserting against Baxter and other generic manufacturers a patent that they knew was invalid. The vacatur occurred after a full bench trial on the merits and while the case was awaiting oral argument at the United States Court of Appeals for the Federal Circuit;

(b) Continuing to list the '867 Patent in the Orange Book despite knowledge of the patent's fraudulent procurement and invalidity;

(c) Misrepresenting and improperly altering the use code for the '867 Patent to preclude generic competition despite knowing that the claims in the '867 Patent do not extend to the new use code;

(d) Asserting the '867 Patent against Baxter despite knowing that this patent is unenforceable and invalid as obvious, and that the patent was obtained through fraudulent misrepresentations; and

(e) Filing a sham counterclaim against Baxter for infringement of the '867 Patent, despite knowing that such claim is objectively baseless, asserted in bad faith, and brought for an anti-competitive purpose in violation of § 2 of the Sherman Act (as interpreted in *Handgards Inc. v. Ethicon Inc.*, 743 F.2d 1282 (9th Cir. 1984)) to unlawfully restrain competition in a relevant market causing antitrust injury to Baxter and other generic premix dexmedetomidine hydrochloride manufacturers.

3. Baxter seeks judgment, damages, injunctive, and other relief for Defendants' unlawful conduct with respect to the '867 Patent and monopolization of the market for premix dexmedetomidine hydrochloride injection.

II. ~~THE PARTIES~~

4. ~~2.~~ Baxter Healthcare Corporation is a corporation incorporated in Delaware with its principal place of business at One Baxter Parkway, Deerfield, IL 60015.

5. ~~3.~~ Upon information and belief, Hospira, Inc. is a Delaware corporation with its principal place of business at 275 North Field Drive, Lake Forest, Illinois 60045.

6. ~~4.~~ Upon information and belief, Orion Corp. is a corporation organized under the laws of Finland with its principal place of business at Orionintie 1, FIN-02200 Espoo, Finland.

III. JURISDICTION, AND VENUE AND JOINDER

7. ~~5.~~ This First Amended Complaint arises under the Patent Laws of the United States, 35 U.S.C. §§ 100 *et seq.*; the antitrust laws of the United States, 15 U.S.C. § 2, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 ~~and 2202~~; 02, and the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*, as amended ~~by the Drug Price Competition and Patent Term Restoration Act of 1984, Pub. L. No. 98-417, 98 Stat. 1585 (1984 (codified as amended at 21 U.S.C. § 355)) (the “Hatch-Waxman Amendments”), and the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. No. 108-173, 17 Stat. 2066 (2003) (the “MMA”)~~, based upon an actual controversy between the parties ~~to declare that Baxter is free, upon approval by the FDA, to manufacture, use, market, sell, offer to sell, and/or import its proposed product as described in Abbreviated New Drug Application (“ANDA”) No. 208532.~~

8. ~~6.~~ This Court has ~~original~~ subject matter jurisdiction over Baxter’s claims under 28 U.S.C. §§ 1331 ~~and 1338~~, 1337(a), and 1338, and 15 U.S.C. § 15.

9. ~~7.~~ Venue is proper in this District pursuant to 28 U.S.C. § 1391 ~~and 1400(b)~~ and 15 U.S.C. § 22, at least because Hospira resides in this District ~~within the meaning of 28 U.S.C. § 1400(b)~~ and the Court may exercise personal jurisdiction over Hospira.

10. ~~8.~~ This Court has personal jurisdiction over Hospira because, among other things, Hospira is a Delaware corporation; that, having availed itself of Delaware’s corporate laws, is subject to personal jurisdiction in Delaware.

11. Hospira is also engaged in the sale of Precedex in interstate commerce and in this judicial District.

12. ~~9.~~ This Court has personal jurisdiction over Orion because, among other things, on information and belief, Orion does business in this District by co-owning a patent covering

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