

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

UCB, INC., UCB BIOPHARAMA SPRL, :
RESEARCH CORPORATION :
TECHNOLOGIES, INC. and :
HARRIS FRC CORPORATION, :

UNSEALED ON
AUGUST 15, 2016

Plaintiffs, :

v. :

Civil Action No. 13-1206-LPS
CONSOLIDATED

ACCORD HEATLHCARE, INC., et al., :

Defendants. :

Jack B. Blumenfeld, Maryellen Noreika, and Derek J. Fahnestock, MORRIS, NICHOLS,
ARSHT & TUNNELL, LLP, Wilmington, DE

George F. Pappas, Jeffrey B. Elikan, and Alexa Hansen, COVINGTON & BURLING LLP,
Washington, DC

Attorneys for Plaintiffs UCB Inc., Research Corporation Technologies Inc., Harris FRC
Corporation, and UCB Biopharma SPRL

John C. Phillips, Jr., David A. Bilson, and Megan C. Haney, PHILLIPS, GOLDMAN, &
SPENCE, P.A., Wilmington, DE

George C. Lombardi, Maureen L. Rurka, Samuel S. Park, John R. McNair, and Lesley M.
Hamming WINSTON & STRAWN LLP, Chicago, IL.
Charles B. Klein and Eimeric Reig-Plessis, WINSTON & STRAWN, Washington, DC.

Attorneys for Defendants Amneal Pharmaceuticals LLC, Amneal Pharmaceuticals of
New York LLC, Aurobindo Pharma Ltd., Aurobindo Pharma USA Inc., Breckenridge
Pharmaceutical Inc., MSN Laboratories Pvt. Ltd., Sun Pharma Global FZE, Sun
Pharmaceuticals Industries Ltd., Watson Laboratories Inc. - Florida, Watson Pharma Inc.,
and Actavis, Inc.

John W. Shaw, SHAW KELLER LLP, Wilmington, DE

Karen Bromberg and Gurpreet S. Walia, COHEN & GRESSER LLP, New York, NY

Attorneys for Defendants Accord Healthcare Inc. and Intas Pharmaceuticals Ltd.

Richard D. Kirk, Stephen B. Brauerman, and Vanessa R. Tiradentes, BAYARD, P.A.,
Wilmington, DE

Jeffer Ali & Sarah M. Stensland, CARLSON, CASPERS, VANDENBURGH, LINDQUIST &
SCHUMAN, PA, Minneapolis, MN

Attorneys for Defendant Alembic Pharmaceuticals Ltd.

Kenneth L. Dorsney, MORRIS JAMES LLP, Wilmington, DE

Richard T. Ruzich, Stephen R. Auten, and Ian Scott, TAFT STETTINIUS & HOLLISTER LLP,
Chicago, IL

Attorneys for Defendant Apotex Corp. and Apotex Inc.

Adam W. Poff and Pilar G. Kraman, YOUNG, CONAWAY, STARGATT & TAYLOR LLP,
Wilmington, DE

Nicole W. Stafford, Eric C. Arnell, and Aden M. Allen, WILSON SONSINI GOODRICH &
ROSATI, Austin, TX

David S. Steuer, WILSON SONSINI GOODRICH & ROSATI, Palo Alto, CA
Yongdan Li, WILSON SONSINI GOODRICH & ROSATI, Los Angeles, CA

Attorneys for Defendants Mylan Pharmaceuticals Inc. and Mylan, Inc.

Francis J. Murphy, Jr., MURPHY, SPADARO & LANDON, Wilmington, DE

Michael J. Gaertner, David B. Abromowitz, and Timothy F. Petersen, LOCKE LORD LLP,
Chicago, IL

Andrea L. Wayda, LOCKE LORD LLP, New York, NY

Attorney for Defendants Zydus Pharmaceuticals (USA) Inc. and Cadila Healthcare Ltd.

OPINION

August 12, 2016
Wilmington, Delaware


STARK, U.S. District Judge:

Plaintiffs – UCB, Inc., UCB BioPharma SPRL, Research Corporation Technologies, Inc., and Harris FRC Corporation (collectively, “Plaintiffs”) – allege that Defendants – Accord Healthcare, Inc., Intas Pharmaceuticals Ltd., Alembic Pharmaceuticals, Ltd., Amneal Pharmaceuticals LLC, Amneal Pharmaceuticals of New York, LLC, Aurobindo Pharma Ltd., Aurobindo Pharma USA, Inc., Breckenridge Pharmaceutical, Inc., MSN Laboratories Pvt. Ltd., Sun Pharma Global FZE, Sun Pharmaceutical Industries, Ltd., Watson Laboratories, Inc. - Florida (n/k/a Actavis Laboratories FL, Inc.), Watson Pharma, Inc. (n/k/a Actavis Pharma, Inc), Actavis, Inc., Apotex Corp., Apotex, Inc., Mylan Pharmaceuticals Inc., Mylan, Inc., Zydus Pharmaceuticals (USA) Inc., and Cadila Healthcare Limited (collectively, “Defendants”) – infringe United States patent No. RE38,551 (JTX-1 (“the ’551 patent” or “the patent-in-suit”)). (D.I. 1)

The ’551 patent generally relates to “anticonvulsant drugs,” which “control and prevent[] seizures associated with epilepsy or related central nervous system disorders.” (’551 patent at 1:26-29) Each of the Defendants has filed an Abbreviated New Drug Application (“ANDA”) with the U.S. Food and Drug Administration (“FDA”) seeking approval to market generic versions of Plaintiffs’ pharmaceutical product Vimpat®, which is an embodiment of claims of the patent-in-suit.

The Court construed the disputed claim terms in May 2015. (D.I. 240) In December 2015, the Court conducted a bench trial. (See D.I. 264-267 (“Tr.”)) The parties completed post-trial briefing on February 8, 2016. (D.I. 263, 271, 274, 277) In connection with the briefing, the parties submitted proposed findings of fact (D.I. 262, 270, 273) as well as a Stipulation of Uncontested Facts (“SUF”) (D.I. 272).

On May 23, 2016, the Patent Trial and Appeal Board (“PTAB”) instituted an *inter partes* review of the validity of claims 1-13 of the ’551 patent. (See D.I. 294, 294-1) On June 16, 2016, the U.S. Patent and Trademark Office (“PTO”) instituted an *ex parte* reexamination of the same claims. (See D.I. 300, 300-1)

Pursuant to Federal Rule of Civil Procedure 52(a), and after having considered the entire record in this case and the applicable law, the Court concludes that: (1) Defendants have stipulated that their proposed products infringe claims 9, 10, and 13 of the ’551 patent, and (2) Defendants have failed to prove that any of claims 9, 10, and 13 of the ’551 patent are invalid for obviousness-type double patenting, obviousness, anticipation, indefiniteness, or improper reissue. The Court’s findings of fact and conclusions of law are set forth in detail below.

I. FINDINGS OF FACT

This section contains the Court’s findings of fact for issues raised by the parties during trial. Certain findings of fact are also provided in connection with the Court’s conclusions of law.

A. The Parties

1. Plaintiff UCB, Inc. is a corporation organized and existing under the laws of Delaware, having a principal place of business at 1950 Lake Park Drive, Smyrna, Georgia 30080. (SUF ¶ 1)

2. Plaintiff UCB BioPharma SPRL (together with UCB, Inc., “UCB”), is a corporation organized and existing under the laws of Belgium, having a principal place of business at Allée de la Recherche 60, Brussels, 1070, Belgium. (SUF ¶ 2)

3. Plaintiff Research Corporation Technologies, Inc. (“RCT”) is a corporation organized and existing under the laws of Delaware, having a principal place of business at 5210 East Williams Circle, Suite 240, Tucson, Arizona 85711-4410. (SUF ¶ 3)

4. Plaintiff Harris FRC Corporation (“Harris”) is a corporation organized and existing under the laws of New Jersey, having a principal place of business at 2137 State Highway 35, Holmdel, New Jersey 07733. (SUF ¶ 4)

5. Defendant Accord Healthcare, Inc. is a corporation organized and existing under the laws of North Carolina, having a principal place of business at 1009 Slater Road, Ste. 210-B, Durham, North Carolina 27703. (SUF ¶ 5)

6. Defendant Intas Pharmaceuticals Ltd. is a corporation organized and existing under the laws of India, having a principal place of business at Chinubhai Centre, off Nehru Bridge, Ashram Road, Ahmedabad 380009, Gujarat, India. (SUF ¶ 6)

7. Defendant Alembic Pharmaceuticals Ltd. is a corporation organized and existing under the laws of India, having a principal place of business at Alembic Road, Vadodara-390 003, Gujarat, India. (SUF ¶ 7)

8. Defendant Amneal Pharmaceuticals, LLC is a corporation organized and existing under the laws of Delaware, having a principal place of business at 400 Crossing Boulevard, 3rd Floor, Bridgewater, New Jersey 08807. (SUF ¶ 8)

9. Defendant Amneal Pharmaceuticals of New York, LLC is a corporation organized and existing under the laws of Delaware, having a principal place of business at 85 Adams Avenue, Hauppauge, New York 11788. (SUF ¶ 9)

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.