

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ALLERGAN, INC.,

Plaintiff,

v.

**TEVA PHARMACEUTICALS USA, INC.,
AKORN, INC., MYLAN
PHARMACEUTICALS, INC., and MYLAN,
INC.,**

Defendants.

Civil Action No. 2:15-cv-1455-WCB

LEAD CASE

JURY TRIAL DEMANDED

ALLERGAN, INC.,

Plaintiff,

v.

INNOPHARMA, INC.,

Defendant.

Civil Action No. 2:15-cv-1504-WCB

MEMBER CASE

AMENDED COMPLAINT

For their Amended Complaint against Defendants Teva Pharmaceuticals USA, Inc. (“Teva”); Akorn, Inc. (“Akorn”); Mylan Pharmaceuticals, Inc. and Mylan, Inc. (collectively “Mylan”); and InnoPharma, Inc. (“InnoPharma”), by its attorneys, alleges as follows:

The Nature of the Action

1. This is an action for infringement of United States Patent Nos. 8,629,111 (“the ‘111 Patent”), 8,633,162 (“the ‘162 Patent”), 8,642,556 (“the ‘556 Patent”), 8,648,048 (“the ‘048 Patent”), 8,685,930 (“the ‘930 Patent”), and 9,248,191 (“the ‘191 Patent”) under the Patent Laws

of the United States, 35 U.S.C. § 1 *et seq.*, relating to Allergan's treatment for chronic dry eye, Restasis®.

2. This is also an action under 35 U.S.C. §§ 2201-02 for a declaratory judgment of infringement of the '111, '556, and '930 Patents under 35 U.S.C. § 271 (a), (b), and (c), and for a declaratory judgment of infringement of the '162, '048, '191 Patents under 35 U.S.C. § 271 (b) and (c).

The Parties

3. Allergan is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 2525 Dupont Drive, Irvine, California 92612.

4. Allergan operates a facility in Waco, Texas where it manufactures and distributes numerous pharmaceutical products, including RESTASIS® (cyclosporine ophthalmic emulsion, 0.05%). Allergan coordinates the nationwide distribution of RESTASIS® from Texas. Allergan employs over 800 individuals in Texas, more than in any other state except California.

5. On information and belief, defendant Teva is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 1090 Horsham Road, North Wales, Pennsylvania, 19454-1090.

6. On information and belief, Teva is a wholly owned subsidiary of Teva Pharmaceutical Industries Ltd. ("Teva Pharmaceutical")

7. On information and belief, Teva and Teva Pharmaceutical are agents of each other and/or work in active concert with respect to the development, regulatory approval, marketing, sale, and distribution of pharmaceutical products.

8. On information and belief, Akorn is a corporation organized and existing under the laws of the State of Louisiana with its principal place of business located at 1925 West Field

Court, Suite 300, Lake Forest, Illinois 60045, and a registered agent located at 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

9. On information and belief, Mylan Pharmaceuticals, Inc. is a corporation organized and existing under the laws of the State of West Virginia with its principal place of business located at 781 Chestnut Ridge Road, Morgantown, West Virginia 26505, and a registered agent located at 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

10. On information and belief, Mylan, Inc. is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal place of business located at 1500 Corporate Drive, Canonsburg, Pennsylvania 15317.

11. On information and belief, Mylan Pharmaceuticals, Inc. is a wholly-owned subsidiary of Mylan, Inc.

12. On information and belief, Mylan Pharmaceuticals, Inc. and Mylan, Inc. are agents of each other and/or work in active concert with respect to the development, regulatory approval, marketing, sale and distribution of pharmaceutical products.

13. On information and belief, InnoPharma is a corporation organized and existing under the laws of Delaware, having a principal place of business at 10 Knightsbridge Road, Piscataway, New Jersey 008854.

Venue and Jurisdiction

14. This action arises under the patent laws of the United States of America, 35 U.S.C. § 1, *et seq.* This Court has subject matter jurisdiction over the action under 28 U.S.C. §§ 1331 and 1338.

15. This Court has personal jurisdiction over each of the Defendants by virtue of the fact that, *inter alia*, each Defendant has committed, or aided, abetted, induced, contributed to,

and/or participated in the commission of, a tortious act of patent infringement that has led to foreseeable harm and injury to Plaintiffs in Texas. This Court has personal jurisdiction over each of the Defendants for the additional reasons set forth below and for other reasons that will be presented to the Court if such personal jurisdiction is challenged.

A. Personal Jurisdiction over Teva

16. This Court has personal jurisdiction over Teva by virtue of its systematic and continuous contact with this jurisdiction, as alleged herein, and because of the injury to Allergan in this forum arising from Teva's ANDA filing and the causes of action Allergan alleges. *See Allergan, Inc. v. Actavis, Inc. et al.*, No 2:14-cv-0063, 2014 WL 7336692, at *5-8 (E.D. Tex. December 23, 2014).

17. On information and belief, Teva submitted ANDA No. 203880 under section 505(j) of the FDCA, 21 U.S.C. § 355(j), seeking FDA approval to engage in the commercial manufacture, use, importation, sale, or offer for sale of Cyclosporine Ophthalmic Emulsion, 0.05%, a generic version of Allergan's RESTASIS® product.

18. On information and belief, Teva and Teva Pharmaceutical are agents of each other and/or work in active concert with respect to the development, regulatory approval, marketing, sale and distribution of pharmaceutical products, including the generic Cyclosporine Ophthalmic Emulsion, 0.05% described in ANDA No. 203880.

19. On information and belief, Teva is a licensed drug distributor of prescription drugs sold in the State of Texas.

20. On information and belief, Teva is actively registered with the Texas Secretary of State to conduct business in Texas.

21. On information and belief, various Teva drug products appear in the Texas prescription drug formulary.

22. On information and belief, Teva Pharmaceutical markets and sells numerous generic drugs, manufactured and supplied by Teva. On information and belief, since 2014 Teva Pharmaceutical has sold nearly \$1.8 billion worth of Teva's products in Texas, over \$330 million of which were sold in this judicial district.

23. Teva has previously been sued in this judicial district without objecting on the basis of lack of personal jurisdiction. *Pozen, Inc. v. Teva Pharmaceuticals USA, Inc.*, 6:08-cv-437, D.I. 83 at 2 (E.D. Tex.); *Aventis Pharmaceuticals, Inc. v. Teva Pharmaceuticals USA, Inc. et al.*, 2:06-cv-469, D.I. 27 at 2 (E.D. Tex.). Teva has also availed itself to this judicial district through the assertion of counterclaims. *Pozen, Inc. v. Teva Pharmaceuticals USA, Inc.*, 6:09-cv-182, D.I. 11 at 2 (E.D. Tex.).

24. On information and belief, Teva knows and intends that its proposed Cyclosporine Ophthalmic Emulsion, 0.05% product described in ANDA No. 203880 will be distributed and sold in Texas.

25. On information and belief, Teva knows and intends that sales of its proposed Cyclosporine Ophthalmic Emulsion, 0.05% product described in ANDA No. 203880 will displace sales of Allergan's RESTASIS® product causing injury to Allergan in Texas.

26. On information and belief, Teva intends to take advantage of its established channels of distribution in Texas for the sale of its proposed Cyclosporine Ophthalmic Emulsion, 0.05% product described in ANDA No. 203880. On information and belief, Teva arranged these distribution channels to take advantage of the second largest market for prescription drugs in the United States.

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