

FILED

AUG 25 2015

U.S. DISTRICT COURT-WVND
WHEELING, WV 26003

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

BOEHRINGER INGELHEIM)
PHARMACEUTICALS INC., BOEHRINGER)
INGELHEIM INTERNATIONAL GMBH,)
BOEHRINGER INGELHEIM CORPORATION,)
and BOEHRINGER INGELHEIM PHARMA)
GMBH & CO. KG,)

Plaintiffs,

v.

MYLAN PHARMACEUTICALS INC., MYLAN)
INC., and MYLAN LABORATORIES LIMITED,)

Defendants.

Civil Action No. 1:15-cv-145

COMPLAINT

Plaintiffs, Boehringer Ingelheim Pharmaceuticals Inc.; Boehringer Ingelheim International GmbH; Boehringer Ingelheim Corporation; and Boehringer Ingelheim Pharma GmbH & Co. KG (collectively, “Boehringer” or “Plaintiffs”), by their undersigned attorneys, for their Complaint against Defendants Mylan Pharmaceuticals Inc.; Mylan Inc.; and Mylan Laboratories Limited hereby allege as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Food and Drug Laws and Patent Laws of the United States, Titles 21 and 35 of the United States Code, respectively, arising from Defendants’ submissions of Abbreviated New Drug Applications (“ANDAs”) to the Food and Drug Administration (“FDA”) seeking approval to manufacture and sell generic versions of Plaintiffs’ TRADJENTA® (linagliptin) and JENTADUETO® (linagliptin and metformin hydrochloride) tablets prior to the expiration of United States Patent Nos. 8,673,927, 8,846,695, and 8,853,156.

THE PARTIES

2. Plaintiff Boehringer Ingelheim Pharmaceuticals Inc. (“BIPI”) is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 900 Ridgebury Rd., Ridgefield, CT 06877.

3. Plaintiff, Boehringer Ingelheim International GmbH (“BII”) is a private limited liability company organized and existing under the laws of Germany, having a principal place of business at Binger Strasse 173, 55216 Ingelheim, Germany.

4. Plaintiff Boehringer Ingelheim Pharma GmbH & Co. KG (“BIPKG”) is a limited liability partnership organized and existing under the laws of Germany, having a principal place of business at Binger Strasse 173, 55216 Ingelheim, Germany.

5. Plaintiff Boehringer Ingelheim Corporation (“BIC”) is a corporation organized and existing under the laws of Delaware, having a principal place of business at 900 Ridgebury Road, Ridgefield, CT, 06877.

6. BIPI, BII, BIPKG and BIC are collectively referred to hereinafter as “Boehringer.”

7. On information and belief, Defendant Mylan Pharmaceuticals Inc. (“Mylan Pharms”) is a corporation organized and existing under the laws of the State of West Virginia, having a principal place of business at 781 Chestnut Ridge Road, Morgantown, West Virginia 26505.

8. On information and belief, Mylan Pharms is in the business of, among other things, developing, preparing, manufacturing, selling, marketing, and distributing generic pharmaceutical products throughout the United States, including in the State of West Virginia.

9. On information and belief, Defendant Mylan Inc. is a corporation organized and existing under the laws of the State of Pennsylvania, having a principal place of business at Robert J. Coury Global Center, 1000 Mylan Blvd., Canonsburg, Pennsylvania 15317.

10. On information and belief, Defendant Mylan Laboratories Limited (“Mylan Labs”) is a corporation organized and existing under the laws of India and has a principal place of business at Plot No. 564/A/22, Road No. 92, Jubilee Hills 500034, Hyderabad, India.

11. On information and belief, Mylan Pharms is a wholly owned subsidiary of Mylan Labs, which, in turn is a wholly-owned subsidiary of Mylan Inc.

12. On information and belief, the acts of Mylan Pharms complained of herein were done with the cooperation, participation, and assistance of Mylan Inc. and Mylan Labs.

13. Mylan Pharms, Mylan Labs, and Mylan Inc. are collectively referred to herein as “Mylan.”

14. A complaint against Mylan, among other defendants, containing the same allegations as set forth herein was filed in the United States District Court for the District of New Jersey on August 4, 2015. Boehringer timely files the instant complaint in order to preserve its rights under 21 U.S.C. § 355(c)(3)(C) in the event that Mylan challenges the personal jurisdiction of the United States District Court for the District of New Jersey.

JURISDICTION AND VENUE

15. This action arises under the patent laws of the United States, 35 U.S.C. §§ 100 *et seq.*, generally, and 35 U.S.C. § 271(e)(2), specifically, and this Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

16. Venue is proper in this Court under 28 U.S.C. §§ 1391 and/or 1400(b).

PERSONAL JURISDICTION OVER MYLAN PHARMS.

17. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

18. On information and belief, Mylan Pharms develops, manufactures, and/or distributes generic drugs for sale and use throughout the United States, including in this judicial district.

19. This Court has personal jurisdiction over Mylan Pharms because, *inter alia*, Mylan Pharms, on information and belief: (1) has substantial, continuous, and systematic contacts with this judicial district; (2) is incorporated in the State of West Virginia and maintains a principal place of business in this judicial district; (3) makes its generic drug products available in this judicial district; (4) intends to market, sell, or distribute Mylan's ANDA Products to residents of this judicial district; (5) maintains a broad distributorship network within this judicial district; and (6) enjoys substantial income from sales of its generic pharmaceutical products in this judicial district.

20. Additionally, on information and belief, Mylan Pharms has previously been sued in this judicial district without objecting on the basis of lack of personal jurisdiction and has availed itself of this judicial district through the assertion of counterclaims and by filing suit in the Northern District of West Virginia.

PERSONAL JURISDICTION OVER MYLAN INC.

21. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

22. On information and belief, Mylan Inc. develops, manufactures, and/or distributes generic drugs for sale and use throughout the United States, including in this judicial district.

23. This Court has personal jurisdiction over Mylan Inc. because, *inter alia*, Mylan Inc., on information and belief: (1) intends to market, sell, or distribute Mylan's ANDA Products to residents of this State; (2) controls Defendant Mylan Pharms, which is incorporated in the State of West Virginia and maintains a principal place of business in this judicial district; (3) makes its generic drug products available in this State through Mylan Pharm, which is incorporated in the State of West Virginia and maintains a principal place of business in this judicial district; (4) maintains a broad distributorship network within this State; and (5) enjoys substantial income from sales of its generic pharmaceutical products in this State.

24. Additionally, on information and belief, Mylan Inc. has previously been sued in this judicial district without objecting on the basis of lack of personal jurisdiction and has availed itself of this judicial district through the assertion of counterclaims.

PERSONAL JURISDICTION OVER MYLAN LABS

25. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

26. On information and belief, Mylan Labs develops, manufactures, and/or distributes generic drugs for sale and use throughout the United States, including in this judicial district.

27. This Court has personal jurisdiction over Mylan Labs because, *inter alia*, Mylan Labs, on information and belief: (1) intends to market, sell, or distribute Mylan's ANDA Products to residents of this judicial district; (2) controls Defendant Mylan Pharm., which is incorporated in the State of West Virginia and maintains a principal place of business in this judicial district;

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