

UCB, INC., UCB PHARMA GMBH,  
RESEARCH CORPORATION  
TECHNOLOGIES, INC. and HARRIS FRC  
CORPORATION,

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ZYDUS PHARMACEUTICALS (USA) INC.  
and CADILA HEALTHCARE LTD. dba  
ZYDUS CADILA.

C.A. No. \_\_\_\_\_

Plaintiffs UCB, Inc., UCB Pharma GmbH, Research Corporation Technologies, Inc., and Harris FRC Corporation, (collectively, "Plaintiffs"), by their undersigned attorneys, for their Complaint against defendants Zydus Pharmaceuticals (USA) Inc. ("Zydus USA") and Zydus Cadila (collectively, "Zydus"), hereby allege as follows:

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

2. Plaintiff UCB Pharma GmbH (“UCB Pharma”) is a corporation organized and existing under the laws of the Federal Republic of Germany, having an office and place of business at Alfred Nobel Strasse 10, 40789 Monheim, Germany. UCB Pharma was formerly known as Schwarz Pharma AG (“Schwarz”).

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

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

5. On information and belief, defendant Zydus USA is a corporation organized and existing under the laws of the State of New Jersey, having its principal place of business at 73 Route 31 North, Pennington, New Jersey 08534.

6. On information and belief, Zydus USA is a wholly owned subsidiary of Cadila Healthcare Ltd. dba Zydus Cadila (“Zydus Cadila”). On information and belief, defendant Zydus Cadila is a corporation organized and existing under the laws of India, having its principal place of business at Zydus Tower, Satellite Cross Roads, Ahmedabad, 380015, Gujarat, India.

#### **JURISDICTION AND VENUE**

7. This is an action for patent infringement of United States Reissued Patent No. RE 38,551 (“the ‘551 patent”), arising under the United States patent laws, Title 35, United States Code. This action relates to Zydus USA’s filing of an Abbreviated New Drug Application (“ANDA”) under Section 505(j) of the Federal Food, Drug and Cosmetic Act (“the Act”), 21 U.S.C. § 355(j), seeking United States Food and Drug Administration (“FDA”) approval to market generic pharmaceutical products. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has jurisdiction over Zydus USA. On information and belief, Zydus USA, directly or through its affiliates and agents, develops, formulates, manufactures, markets and sells pharmaceutical drug products, including generic drug products, throughout the United States and in this judicial district. On information and belief, Zydus USA has purposely availed itself of the rights and benefits of the laws of the State of Delaware, having previously submitted to personal jurisdiction in this Court, and having availed itself of the jurisdiction of this Court by asserting counterclaims in lawsuits filed in the United States District Court for the District of Delaware.

9. This Court has jurisdiction over Zydus Cadila. On information and belief, Zydus Cadila, directly or through its affiliates and agents including its wholly owned subsidiary Zydus USA,, develops, formulates, manufactures, markets and sells pharmaceutical drug products, including generic drug products, throughout the United States and in this judicial district. On information and belief, Zydus Cadila and Zydus USA are agents of each other with respect to the development, regulatory approval, marketing, sale and distribution of generic pharmaceutical products throughout the United States including in this judicial district. Zydus Cadila has previously submitted to personal jurisdiction in this Court, and has availed itself of the jurisdiction of this Court by asserting counterclaims in lawsuits filed in the United States District Court for the District of Delaware.

10. This Court has personal jurisdiction over Zydus by virtue of, *inter alia*, the above-mentioned facts.

11. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 28 U.S.C. § 1400(b).

### **CLAIM FOR RELIEF – PATENT INFRINGEMENT**

12. UCB, Inc. holds approved New Drug Application (“NDA”) No. 022253 for Vimpat<sup>®</sup> tablets (50 mg, 100 mg, 150 mg, and 200 mg dosage strengths), which tablets contain the active ingredient lacosamide. The FDA approved NDA No. 022253 on October 28, 2008. UCB, Inc. lists the ’551 patent in Approved Drug Products with Therapeutic Equivalence Evaluations (“the Orange Book”) for NDA No. 022253.

13. UCB, Inc. holds approved NDA No. 022254 for Vimpat<sup>®</sup> intravenous solution (200 mg/20 mL dosage strength), which solution contains the active ingredient lacosamide. The FDA approved NDA No. 022254 on October 28, 2008. UCB, Inc. lists the ’551 patent in the Orange Book for NDA No. 022254.

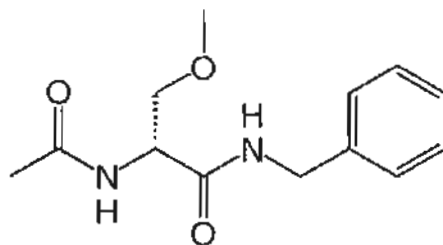
14. UCB, Inc. holds approved NDA No. 022255 for Vimpat<sup>®</sup> oral solution (10 mg/ mL dosage strength), which oral solution contains the active ingredient lacosamide. The FDA approved NDA No. 022255 on April 20, 2010. UCB, Inc. lists the ’551 patent in the Orange Book for NDA No. 022255.

15. Vimpat<sup>®</sup> tablets and oral solution are indicated as adjunctive therapy in the treatment of partial-onset seizures in people with epilepsy aged 17 years and older. Vimpat<sup>®</sup> intravenous solution is indicated as adjunctive therapy in the treatment of partial-onset seizures in people with epilepsy aged 17 years and older when oral administration is temporarily not feasible.

16. The United States Patent and Trademark Office (“PTO”) legally issued the ’551 patent, entitled “Anticonvulsant Enantiomeric Amino Acid Derivatives” on July 6, 2004. A copy of the ’551 patent is attached as Exhibit A.

17. The '551 patent is a reissue of United States Patent No. 5,773,475, which the PTO legally issued on June 30, 1998.

18. The '551 patent claims, *inter alia*, lacosamide, which is known chemically as (R)-2-acetamido-N-benzyl-3-methoxypropionamide (under IUPAC nomenclature), and as (R)-N-benzyl-2-acetamido-3-methoxypropionamide. The chemical structure of lacosamide is:



19. The '551 patent also claims a therapeutic composition comprising lacosamide, and a method of treating central nervous system disorders in a human.

20. The PTO issued a Certificate Extending Patent Term Under 35 U.S.C. § 156. With the patent term extension, the '551 patent expires on March 17, 2022. A of the Certificate Extending Patent Term for the '551 patent is attached as Exhibit B.

21. The '551 patent is assigned to RCT, and RCT is the owner of the '551 patent as recorded by the PTO at Reel 008538, Frame 0093.

22. RCT granted an exclusive patent license, subsequently amended, to Harris under, *inter alia*, the '551 patent to make and have made, use, sell, offer to sell and import lacosamide in a territory co-extensive with Harris' patent rights. Under the amended license agreement, RCT granted Harris the right to sublicense its rights under the licensed patents, including the '551 patent.

23. Harris exclusively sublicensed to Schwarz, under know how and licensed patents, including the '551 patent, the right to make, have made, use, sell and import lacosamide

for the purpose of Schwarz's making, having made, using importing or selling products containing lacosamide, worldwide, excluding Japan, for the treatment of diseases in humans.

24. UCB S.A. acquired Schwarz and all its rights in lacosamide. The license agreement entered into by and between Harris and Schwarz was restated, amended, and effective for all countries of the world, by and among Harris, UCB Pharma GmbH, formerly acting under its name Schwarz, and UCB S.A.

25. UCB, Inc. markets and sells Vimpat<sup>®</sup> tablets and oral and intravenous solution in the United States.

26. On information and belief, Zydus USA submitted to the FDA ANDA No. 204947 under Section 505(j) of the Act, 21 U.S.C. § 355(j), seeking FDA approval to engage in the commercial manufacture, use, offer for sale, sale and/or import of generic lacosamide tablets containing 50 mg, 100 mg, 150 mg, and 200 mg of lacosamide in a tablet dosage form.

27. The subjects of ANDA No. 204947 are referred to as "Zydus USA's ANDA Products."

28. Zydus USA submitted its ANDA to the FDA for the purpose of obtaining approval to engage in the commercial manufacture, use, offer for sale, sale and/or import of Zydus USA's ANDA Products before the expiration of the '551 patent.

29. By filing its ANDA under 21 U.S.C. § 355(j) for the purpose of obtaining FDA approval to engage in the commercial manufacture, use, offer for sale, sale and/or import of Zydus USA's ANDA Products before the expiration of the '551 patent, Zydus has committed an act of infringement under 35 U.S.C. § 271(e)(2).

30. On information and belief, when Zydus USA filed its ANDA, it was aware of the '551 patent and that the filing of its ANDA with the request for its approval prior to the expiration of the '551 patent was an act of infringement of that patent.

31. On information and belief, Zydus USA made and included in its ANDA a certification under 21 U.S.C. § 355(j)(2)(A)(vii)(IV) that, in its opinion and to the best of its knowledge, the '551 patent is invalid and/or will not be infringed.

32. On June 14, 2013, RCT received a letter from Zydus USA dated June 13, 2013, purporting to be a Notice of Certification for ANDA No. 204947 under Section 505(j)(2)(B) of the Act, 21 U.S.C. § 355(j)(2)(B), and 21 C.F.R. § 314.95(c)(1).

33. Zydus USA's letter alleges that the active ingredient in Zydus USA's ANDA Products for which it seeks approval is lacosamide.

34. The commercial manufacture, use, offer for sale, sale and/or import of Zydus' ANDA Products will infringe one or more claims of the '551 patent.

35. Plaintiffs are entitled to the relief provided by 35 U.S.C. § 271(e)(4), including an order of this Court that the effective date of any approval of ANDA No. 204947 be a date that is not earlier than March 17, 2022, the expiration date of the '551 patent, including any extensions.

36. Plaintiffs are entitled to an award of damages for any commercial manufacture, use, offer for sale, sale and/or import of Zydus USA's ANDA Products and any act committed by Zydus with respect to the subject matter claimed in the '551 patent, which act is not within the limited exclusions of 35 U.S.C. § 271(e)(1).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs UCB, Inc., UCB Pharma, RCT and Harris, pray for a judgment in their favor and against defendants Zydus USA and Zydus Cadila, and respectfully request the following relief:

A. A judgment that, under 35 U.S.C. § 271(e)(2)(A), Zydus has infringed one or more claims of the '551 patent by the filing of ANDA No. 204947 seeking FDA approval for the commercial manufacture, use, offer for sale, sale and/or import of Zydus USA's ANDA Products before the expiration of the '551 patent;

B. A judgment that the manufacture, use, offer for sale, sale and/or import of Zydus USA's ANDA Products will infringe the '551 patent;

C. A judgment declaring that the '551 patent remains valid and enforceable;

D. A permanent injunction restraining and enjoining Zydus and its officers, agents, attorneys and employees, and those acting in privity or concert with it, from engaging in the commercial manufacture, use, offer for sale, sale and/or import, of Zydus USA's ANDA Products, as claimed in the '551 patent, until the expiration of the '551 patent or any later date of exclusivity to which Plaintiffs are or become entitled;

E. An order that the effective date of any approval of ANDA No. 204947 be a date that is not earlier than the expiration of the right of exclusivity under the '551 patent, or any later date of exclusivity to which Plaintiffs are or become entitled;

F. To the extent that Zydus has committed any acts with respect to the subject matter claimed in the '551 patent, other than those acts expressly exempted by 35 U.S.C. § 271(e)(1), an award of damages for such acts;



G. A determination that this case is “exceptional” under 35 U.S.C. § 285, and an award of attorneys’ fees;

H. Costs and expenses in this action; and

I. Such other and further relief as the Court may deem just and proper.

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July 10, 2013