

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

ACELLA PHARMACEUTICALS, LLC,

Plaintiff,

v.

CHEMO S.A. FRANCE,

Defendant.

Civil Action No. 2:13-cv-573-HCM-DEM

JURY TRIAL DEMANDED

**AMENDED COMPLAINT**

Plaintiff Acella Pharmaceuticals, LLC ("Acella"), by counsel, pursuant to Fed. R. Civ. P. 8 & 15, files the following Amended Complaint against Defendant Chemo S.A. France ("Chemo"):

**PARTIES, JURISDICTION, AND VENUE**

1. Acella is a limited liability company formed under the laws of the State of Delaware, with its principal office in Alpharetta, Georgia. Acella manufactures and markets pharmaceutical products.

2. Upon information and belief, Chemo is a corporate entity organized and existing under the laws of the French Republic, commonly known as France. It has an office located in Paris, France.

3. This is an action for a declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, and related to U.S. Patent No. 8,183,227 ("the '227 patent"), which is, upon information and belief, owned by Chemo. A copy of the '227 patent issued by the United States Patent and Trademark Office is attached as Exhibit A.

4. This Court has personal jurisdiction over Chemo pursuant to 35 U.S.C. § 293 because Chemo is the patentee of the '227 patent and does not reside in the United States and, upon information and belief, has not filed with the United States Patent and Trademark Office a written designation stating the name and address of a person residing within the United States on whom process or notice of proceedings affecting the '227 patent may be served.

5. This action arises under the Patent Laws of the United States, 35 U.S.C. § 100, *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.* Subject matter jurisdiction over this case is founded on 28 U.S.C §§ 1331, 1338(a) and 2201(a).

7. Venue is proper in this District pursuant to 35 U.S.C. § 293 and 28 U.S.C. § 1391(b)(3).

#### **DECLARATORY JUDGMENT OF INVALIDITY**

8. Acella incorporates by reference and re-alleges the allegations of the preceding paragraphs of the Amended Complaint as if fully set forth herein.

9. Chemo's wholly-owned U.S. subsidiary, Everett Laboratories, Inc. ("Everett"), has brought an action for patent infringement against Acella for infringement of, *inter alia*, the '227 patent in the United States District Court for the District of New Jersey (the "New Jersey Action").

10. In the New Jersey Action, Everett alleges that Chemo is the owner of the '227 patent, that Everett is the exclusive licensee of the '227 patent and that Everett has the exclusive right to sue for patent infringement.

11. Acella requested, through counsel for Everett, that Chemo agree to be bound by any judgment entered in the New Jersey Action with respect to the '227 patent, but Chemo refused.

12. Prior to November 25, 2013, Everett had not provided Acella with any document purporting to be a fully executed exclusive license between Chemo and Everett related to the '227 patent.

13. The only document Everett provided to Acella prior to November 25, 2013 that was purported to be a license for the '227 patent was a document that was not executed by Everett, the purported licensee.

14. A purported "Amendment to License Agreement" between Chemo and Everett was provided to Acella that purportedly prevents Chemo from bringing suit for infringement of the '227 patent.

15. The purported Amendment to License Agreement between Chemo and Everett lacks consideration and is thus not an enforceable and valid agreement.

16. On November 20, 2013, Acella took the deposition of Lucas Sigman, the Chief Executive Officer of Everett, and showed him a copy of the unexecuted purported license agreement between Chemo and Everett for the '227 patent.

17. Upon information and belief, Everett realized for the first time, at the Sigman deposition, that it had not provided evidentiary support for the alleged exclusive license agreement between Chemo and Everett as required by the Local Rules in the New Jersey Action.

18. On November 25, 2013, Acella finally received from Everett what purports to be a fully executed exclusive license between Chemo and Everett related to the '227 patent.

19. The fact that what purports to be a fully executed exclusive license between Chemo and Everett was only provided to Acella after Acella raised the issue calls into question the entire existence of an exclusive license between Chemo and Everett.

20. The fact that Everett failed to provide Acella with an enforceable, valid agreement that prevents Chemo from bringing suit over the '227 patent raises a disputed issue as to whether Chemo has the ability to bring an action for infringement of the '227 patent.

21. At the time Acella filed the original Complaint in the present action and at the time of filing of this Amended Complaint, Everett has not presented sufficient evidentiary support to Acella, as required by the Local Rules in the New Jersey Action, to show that it had an enforceable, fully executed, agreement providing Everett the exclusive right to bring suit over the '227 patent without including Chemo in such an action.

22. However, whether an exclusive license between Chemo and Everett with respect to the '227 patent exists is not determinative as to whether a declaratory judgment action may be brought in this District against a foreign defendant such as Chemo.

23. Accordingly, for at least the separate reasons of Chemo's licensee's filing an action for patent infringement of the '227 patent against Acella in New Jersey, Chemo refusing to agree to be bound by any judgment in the New Jersey Action, Everett failing to provide to Acella a clearly authentic, fully executed, exclusive license to the '227 patent, and the lack of adequate consideration for certain purported agreements between Chemo and Everett, Chemo alone, and through its wholly-owned subsidiary, has taken several affirmative acts relating to the enforcement of its patent rights.

24. As Chemo is the purported owner of the '227 patent which Acella has been accused of infringing, Acella has the right to challenge the validity of the '227 patent in this District under 35 U.S.C. § 293 and, thus, an actual dispute is present between Chemo, as the purported patent owner, and Acella, as the party that has been accused of infringing the '227 patent.

25. Therefore, under all the circumstances, and for at least all of the reasons set forth above, there is a substantial controversy between parties having adverse legal interests, of sufficient immediacy and reality, to warrant the issuance of a declaratory judgment. As such an actual, substantial, continuing, and justiciable controversy exists between Chemo and Acella concerning the validity of the '227 patent.

26. Upon information and belief, the claims of the '227 patent are invalid under one or more of the following provisions: 35 U.S.C. §§ 101, 102, 103 and 112.

27. Acella is entitled to a declaration that the claims of the '227 patent are invalid under 35 U.S.C. § 101, *et seq.* and fail to meet the patentability standards of one or more of 35 U.S.C. §§ 101, 102, 103 and 112.

#### **REQUESTED RELIEF**

WHEREFORE, Plaintiff Acella requests that the Court enter judgment in its favor and grant the following relief:

- A. A declaration that the '227 patent is invalid;
- B. A declaration that this case is exceptional and an award of Acella's costs and reasonable attorneys' fees under 28 U.S.C. § 285; and
- C. Such other and further relief as the Court deems appropriate.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38, Plaintiff Acella Pharmaceuticals, LLC hereby demands a jury trial on all issues triable of right by a jury.

ACELLA PHARMACEUTICALS, LLC  
By Counsel

Dated: November 29, 2013

NELSON MULLINS RILEY & SCARBOROUGH, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2013, a copy of the foregoing Amended Complaint was filed with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to:

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