Melissa A. Chuderewicz
PEPPER HAMILTON LLP
(A Pennsylvania Limited Liability Partnership)
Suite 400
301 Carnegie Center
Princeton, New Jersey 08543-5276
Phone: (609) 452-0808
Fax: (609) 452-1147
chuderem@pepperlaw.com

Attorney for Plaintiff
Otsuka Pharmaceutical Co., Ltd.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

OTSUKA PHARMACEUTICAL CO., LTD., Plaintiff, v. ZYDUS PHARMACEUTICALS USA INC. and CADILA HEALTHCARE LIMITED, Defendants.	Civil Action No.: 14-cv-3168-JBS-KMW **REDACTED – FULL VERSION FILED UNDER SEAL**

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Otsuka Pharmaceutical Co., Ltd. ("Otsuka"), by way of Complaint against Defendants Zydus Pharmaceuticals USA Inc. ("Zydus USA") and Cadila Healthcare Limited (collectively, "Zydus" or "Defendants"), alleges as follows:

THE PARTIES

1. Otsuka is a corporation organized and existing under the laws of Japan with its corporate headquarters at 2-9 Kanda Tsukasa-machi, Chiyoda-ku, Tokyo, 101-8535, Japan. Otsuka is engaged in the research, development, manufacture and sale of pharmaceutical products.

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

3. Upon information and belief, Zydus USA is a wholly-owned subsidiary of Cadila Healthcare Limited (d/b/a "Zydus Cadila"). Upon information and belief, Cadila Healthcare Limited 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.

NATURE OF THE ACTION

4. This is an action for infringement of U.S. Patent No. 8,017,615 ("the '615 patent"), U.S. Patent No. 8,580,796 ("the '796 patent"), U.S. Patent No. 8,642,760 ("the '760 patent"), U.S. Patent No. 8,518,421 ("the '421 patent") and U.S. Patent No. 8,759,350 ("the '350 patent"), arising under the United States patent laws, Title 35, United States Code, §100 *et seq*., including 35 U.S.C. §§ 271 and 281, and for a declaratory judgment of infringement of the '350 patent under 28 U.S.C. §§ 2201 and 2202. This action relates to Zydus USA's filing of two Abbreviated New Drug Applications ("ANDAs") under Section 505(j) of the Federal Food, Drug and Cosmetic Act ("the Act"), 21 U.S.C. § 355(j), seeking U.S. Food and Drug Administration ("FDA") approval to manufacture, use, sale, offer to sell and import generic pharmaceutical products ("Zydus USA's generic products") prior to the expirations of the asserted patents.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

6. Upon information and belief, this Court has jurisdiction over Zydus USA. Upon information and belief, Zydus USA was incorporated in New Jersey and has its principal place of

business in New Jersey. Upon information and belief, Zydus USA is in the business of manufacturing, marketing, importing and selling pharmaceutical drug products, including generic drug products. Upon information and belief, Zydus USA, directly or indirectly, manufactures, markets, imports and sells generic drugs throughout the United States and in this judicial district. Upon information and belief, Zydus USA purposefully has conducted and continues to conduct business, directly or indirectly, in this judicial district, and this judicial district is a likely destination of Zydus USA's generic products. Upon information and belief, Zydus USA has previously submitted to the jurisdiction of this Court and has further previously availed itself of this Court by asserting counterclaims in other civil action initiated in this jurisdiction.

7. Upon information and belief, this Court additionally has jurisdiction over Zydus USA because it has availed itself of the rights and benefits of this judicial district, having stated in two purported Offers of Confidential Access, dated April 3, 2014, that "[t]his Agreement shall be governed in accordance with the laws of the state of New Jersey without regard to its conflict-of-law rules."

8. Upon information and belief, this Court has jurisdiction over Cadila Healthcare Limited. Upon information and belief, Cadila Healthcare Limited is in the business of manufacturing, marketing, importing and selling pharmaceutical drug products, including generic drug products. Upon information and belief, Cadila Healthcare Limited, directly or through its subsidiary Zydus USA, manufactures, markets, imports and sells generic drugs throughout the United States and in this judicial district.

9. Upon information and belief, Zydus USA and Cadila Healthcare Limited work in concert with each other with respect to the regulatory approval, manufacturing, marketing, sale

and distribution of generic pharmaceutical products throughout the United States, including in this judicial district.

10. Upon information and belief, venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c), and § 1400(b).

FIRST COUNT FOR PATENT INFRINGEMENT

11. The U.S. Patent and Trademark Office ("PTO") issued the '615 patent on September 13, 2011, entitled "Low Hygroscopic Aripiprazole Drug Substance and Processes for the Preparation Thereof." A copy of the '615 patent is attached as Exhibit A.

12. Otsuka is the owner of the '615 patent by virtue of assignment.

13. The '615 patent expires on December 16, 2024 (including pediatric exclusivity).

14. The '615 patent is directed to and claims, *inter alia,* pharmaceutical solid oral preparations and processes for preparing pharmaceutical solid oral preparations.

15. Otsuka is the holder of New Drug Application ("NDA") No. 21-436 for aripiprazole tablets, which the FDA approved on November 15, 2002.

16. Otsuka lists the '615 patent in Approved Drug Products with Therapeutic Equivalence Evaluations ("the Orange Book") for NDA No. 21-436.

17. Otsuka markets aripiprazole tablets in the United States under the trademark Abilify®.

18. Upon information and belief, Zydus USA submitted ANDA No. 90-472 to the FDA, under Section 505(j) of the Act, 21 U.S.C. § 355(j), seeking approval to manufacture, use, sale, offer to sell and import generic products containing 5, 10, 15, 20 and 30 mg of aripiprazole ("Zydus USA's tablet generic products") in the United States.

19. Otsuka received a letter from Zydus USA dated April 3, 2014, purporting to include a Notice of Certification for ANDA No. 90-472 under 21 U.S.C. § 355(j)(2)(B)(ii) as to the '615 patent. Otsuka also received a letter from Zydus USA dated April 3, 2014, purporting to include a Notice of Certification for ANDA No. 90-165 under 21 U.S.C. § 355(j)(2)(B)(ii) as to the '615 patent. Both letters are referred to collectively herein as "Zydus USA's letter."

20. Zydus USA's letter alleges that Zydus USA's tablet generic products are "Aripiprazole Oral Tablets."

21. Upon information and belief, Zydus USA's tablet generic products will, if approved and marketed, infringe at least one claim of the '615 patent.

22. Upon information and belief, under 35 U.S.C. § 271(e)(2)(A), Zydus USA has infringed at least one claim of the '615 patent by submitting, or causing to be submitted to the FDA, ANDA No. 90-472 seeking approval to manufacture, use, sale, offer to sell and import Zydus USA's tablet generic products before the expiration date of the '615 patent.

23. Upon information and belief, Zydus USA's actions relating to Zydus USA's ANDA No. 90-472 complained of herein were done with the cooperation, participation and assistance, and for the benefit, of Zydus USA and Cadila Healthcare Limited.

SECOND COUNT FOR PATENT INFRINGEMENT

24. Otsuka realleges, and incorporates in full herein, paragraphs 11-14.

25. Otsuka is the holder of NDA No. 21-729 for orally disintegrating tablets ("ODT") containing aripiprazole, which the FDA approved on June 7, 2006.

26. Otsuka lists the '615 patent in the Orange Book for NDA No. 21-729.

27. Otsuka markets ODT containing aripiprazole in the United States under the trademark Abilify®.

28. Upon information and belief, Zydus USA submitted ANDA No. 90-165 to the FDA, under Section 505(j) of the Act, 21 U.S.C. § 355(j), seeking approval to manufacture, use, sale, offer to sell and import generic products containing 10, 15, 20 and 30 mg of aripiprazole ("Zydus USA's ODT generic products") in the United States.

29. Zydus USA's letter purports to include a Notice of Certification for ANDA No. 90-165 under 21 U.S.C. § 355(j)(2)(B)(ii) as to the '615 patent.

30. Zydus USA's letter alleges that Zydus USA's ODT generic products are "Aripiprazole Orally Disintegrating Tablets."

31. Upon information and belief, Zydus USA's ODT generic products will, if approved and marketed, infringe at least one claim of the '615 patent.

32. Upon information and belief, under 35 U.S.C. § 271(e)(2)(A), Zydus USA has infringed at least one claim of the '615 patent by submitting, or causing to be submitted to the FDA, ANDA No. 90-165 seeking approval to manufacture, use, sale, offer to sell and import Zydus USA's ODT generic products before the expiration date of the '615 patent.

33. Upon information and belief, Zydus USA's actions relating to Zydus USA's ANDA No. 90-165 complained of herein were done with the cooperation, participation and assistance, and for the benefit, of Zydus USA and Cadila Healthcare Limited.

THIRD COUNT FOR PATENT INFRINGEMENT

34. Otsuka realleges, and incorporates in full herein, paragraphs 15, 17, 18 and 20.

35. The PTO issued the '796 patent on November 12, 2013, entitled "Low Hygroscopic Aripiprazole Drug Substance and Processes for the Preparation Thereof." A copy of the '796 patent is attached as Exhibit B.

36. Otsuka is the owner of the '796 patent by virtue of assignment.

37. The ’796 patent expires on March 25, 2023 (including pediatric exclusivity).

38. The ’796 patent is directed to and claims, *inter alia*, aripiprazole crystals.

39. Otsuka lists the ’796 patent in the Orange Book for NDA No. 21-436.

40. Zydus USA’s letter purports to include a Notice of Certification for ANDA No. 90-472 under 21 U.S.C. § 355(j)(2)(B)(ii) as to the ’796 patent.

41. Upon information and belief, Zydus USA’s tablet generic products will, if approved and marketed, infringe at least one claim of the ’796 patent.

42. Upon information and belief, under 35 U.S.C. § 271(e)(2)(A), Zydus USA has infringed at least one claim of the ’796 patent by submitting, or causing to be submitted to the FDA, ANDA No. 90-472 seeking approval to manufacture, use, sale, offer to sell and import Zydus USA’s tablet generic products before the expiration date of the ’796 patent.

43. Upon information and belief, Zydus USA’s actions relating to Zydus USA’s ANDA No. 90-472 complained of herein were done with the cooperation, participation and assistance, and for the benefit, of Zydus USA and Cadila Healthcare Limited.

FOURTH COUNT FOR PATENT INFRINGEMENT

44. Otsuka realleges, and incorporates in full herein, paragraphs 25, 27, 28, 30 and 35-38.

45. Otsuka lists the ’796 patent in the Orange Book for NDA No. 21-729.

46. Zydus USA’s letter purports to include a Notice of Certification for ANDA No. 90-165 under 21 U.S.C. § 355(j)(2)(B)(ii) as to the ’796 patent.

47. Upon information and belief, Zydus USA’s ODT generic products will, if approved and marketed, infringe at least one claim of the ’796 patent.

48. Upon information and belief, under 35 U.S.C. § 271(e)(2)(A), Zydus USA has infringed at least one claim of the '796 patent by submitting, or causing to be submitted to the FDA, ANDA No. 90-165 seeking approval to manufacture, use, sale, offer to sell and import Zydus USA's ODT generic products before the expiration date of the '796 patent.

49. Upon information and belief, Zydus USA's actions relating to Zydus USA's ANDA No. 90-165 complained of herein were done with the cooperation, participation and assistance, and for the benefit, of Zydus USA and Cadila Healthcare Limited.

FIFTH COUNT FOR PATENT INFRINGEMENT

50. Otsuka realleges, and incorporates in full herein, paragraphs 15, 17, 18 and 20.

51. The PTO issued the '760 patent on February 4, 2014, entitled "Low Hygroscopic Aripiprazole Drug Substance and Processes for the Preparation Thereof." A copy of the '760 patent is attached as Exhibit C.

52. Otsuka is the owner of the '760 patent by virtue of assignment.

53. The '760 patent expires on March 25, 2023 (including pediatric exclusivity).

54. The '760 patent is directed to and claims, *inter alia*, aripiprazole drug substance.

55. Otsuka lists the '760 patent in the Orange Book for NDA No. 21-436.

56. Zydus USA's letter purports to include a Notice of Certification for ANDA No. 90-472 under 21 U.S.C. § 355(j)(2)(B)(ii) as to the '760 patent.

57. Upon information and belief, Zydus USA's tablet generic products will, if approved and marketed, infringe at least one claim of the '760 patent.

58. Upon information and belief, under 35 U.S.C. § 271(e)(2)(A), Zydus USA has infringed at least one claim of the '760 patent by submitting, or causing to be submitted to the

FDA, ANDA No. 90-472 seeking approval to manufacture, use, sale, offer to sell and import Zydus USA's tablet generic products before the expiration date of the '760 patent.

59. Upon information and belief, Zydus USA's actions relating to Zydus USA's ANDA No. 90-472 complained of herein were done with the cooperation, participation and assistance, and for the benefit, of Zydus USA and Cadila Healthcare Limited.

SIXTH COUNT FOR PATENT INFRINGEMENT

60. Otsuka realleges, and incorporates in full herein, paragraphs 25, 27, 28, 30 and 51-54.

61. Otsuka lists the '760 patent in the Orange Book for NDA No. 21-729.

62. Zydus USA's letter purports to include a Notice of Certification for ANDA No. 90-165 under 21 U.S.C. § 355(j)(2)(B)(ii) as to the '760 patent.

63. Upon information and belief, Zydus USA's ODT generic products will, if approved and marketed, infringe at least one claim of the '760 patent.

64. Upon information and belief, under 35 U.S.C. § 271(e)(2)(A), Zydus USA has infringed at least one claim of the '760 patent by submitting, or causing to be submitted to the FDA, ANDA No. 90-165 seeking approval to manufacture, use, sale, offer to sell and import Zydus USA's ODT generic products before the expiration date of the '760 patent.

65. Upon information and belief, Zydus USA's actions relating to Zydus USA's ANDA No. 90-165 complained of herein were done with the cooperation, participation and assistance, and for the benefit, of Zydus USA and Cadila Healthcare Limited.

SEVENTH COUNT FOR PATENT INFRINGEMENT

66. Otsuka realleges, and incorporates in full herein, paragraphs 25, 27, 28 and 30.

67. The PTO issued the '421 patent on August 27, 2013, entitled "Flashmelt Oral Dosage Formulation." A copy of the '421 patent is attached as Exhibit D.

68. Otsuka is the owner of the ’421 patent by virtue of assignment.

69. The ’421 patent expires on July 24, 2021 (including pediatric exclusivity).

70. The ’421 patent is directed to and claims, *inter alia*, flashmelt pharmaceutical dosage forms.

71. Otsuka lists the ’421 patent in the Orange Book for NDA No. 21-729.

72. Zydus USA’s letter purports to include a Notice of Certification for ANDA No. 90-165 under 21 U.S.C. § 355(j)(2)(B)(ii) as to the ’421 patent.

73. Upon information and belief, Zydus USA’s ODT generic products will, if approved and marketed, infringe at least one claim of the ’421 patent.

74. Upon information and belief, under 35 U.S.C. § 271(e)(2)(A), Zydus USA has infringed at least one claim of the ’421 patent by submitting, or causing to be submitted to the FDA, ANDA No. 90-165 seeking approval to manufacture, use, sale, offer to sell and import Zydus USA’s ODT generic products before the expiration date of the ’421 patent.

75. Upon information and belief, Zydus USA’s actions relating to Zydus USA’s ANDA No. 90-165 complained of herein were done with the cooperation, participation and assistance, and for the benefit, of Zydus USA and Cadila Healthcare Limited.

EIGHTH COUNT FOR PATENT INFRINGEMENT

76. Otsuka realleges, and incorporates in full herein, paragraphs 15, 17, 18 and 20.

77. The PTO issued the ’350 patent on June 24, 2014, entitled “Carbostyril Derivatives and Serotonin Reuptake Inhibitors for Treatment of Mood Disorders.” A copy of the ’350 patent is attached as Exhibit E.

78. Otsuka is the owner of the ’350 patent by virtue of assignment.

79. The ’350 patent expires on March 2, 2027, subject to any supplemental patent term adjustment.

80. Otsuka lists the ’350 patent in the Orange Book for NDA No. 21-436.

81. Zydus has actual knowledge of the ’350 patent.

82. The ’350 patent is directed to and claims, *inter alia,* novel pharmaceutical compositions comprising aripiprazole in combination with at least one of the antidepressant drugs citalopram or escitalopram, as well as methods of treating certain mood disorders comprising administering novel pharmaceutical compositions comprising aripiprazole in combination with at least one of citalopram or escitalopram.

83. Based on the knowledge of a person of ordinary skill in the art and the disclosures of the ’350 patent and its prosecution history, a person of ordinary skill in the art would have understood the scope of the claims of the ’350 patent to cover situations where, for example, the claimed pharmaceutical composition may comprise aripiprazole and an antidepressant in either a single or separate dosage forms. (See Declaration of Dr. Christoph U. Correll, M.D. (“Exhibit F”) at ¶ 10.)

84. During this Court’s Markman Hearing on October 19, 2015, Dr. Ira S. Halper, an expert for defendants in this and other related litigations, also confirmed that the inventive pharmaceutical composition of the ’350 patent may comprise aripiprazole and an antidepressant in either a single or separate dosage forms. *See* Markman Transcript at 105:8-106:8 (“**Q**. So this passage means that the administration forms of the pharmaceutical composition of the present invention can be any type where Aripiprazole and an SRI are in the body at the same time. **A**. Yes. **Q**. And this passage indicates that the aripiprazole and the SRI may be in separate dosage forms. **A**. Yes.”)

85. Upon information and belief, physicians, pharmacists and/or patients are directly infringing the '350 patent by the sale and use of Zydus USA's tablet generic products in combination with citalopram or escitalopram in accordance with the claims of the '350 patent. (Exhibit F at ¶ 10.)

86. Upon information and belief, Zydus USA has taken active steps to encourage the sale and use of Zydus USA's tablet generic products by physicians, pharmacists and/or patients in accordance with the combination claimed in the '350 patent by providing information and instructions in its tablet package insert ("Exhibit G") encouraging the use of aripiprazole in combination with an antidepressant, including escitalopram. (Exhibit F at ¶¶ 12-13.)

87. Abilify® received approval for Adjunctive Treatment of Major Depressive Disorder ("MDD") in adults in November 2007. (Exhibit F at ¶ 14.)

88. At that time, revisions to the package insert for Abilify® were also approved by the FDA, which introduced new prescribing information specifically related to the use of Abilify® as an adjunct for treatment along with an antidepressant, such as escitalopram or citalopram, in accordance with the new indication. (Exhibit F at ¶¶ 14-15.)

89. Prior to the introduction of the new prescribing information related to the use of Abilify® for Adjunctive Treatment for Major Depressive Disorder, the package insert for Abilify® did not contain any information concerning prescribing and safety information regarding antidepressants, the use of Abilify® as an adjunct for treatment along with an antidepressant, any "Black Box" warning concerning antidepressants (i.e., suicidality), any information regarding MDD, any information regarding clinically important interactions between Abilify® and antidepressant drugs, for example escitalopram, or a "Medication Guide" for

patients conveying the risk of Abilify® and antidepressant medications, nor did the package insert even mention the word "antidepressant." (Exhibit F at ¶ 15.)

[redacted]

[redacted]

[redacted]

93. Taken together, this information included in Zydus USA's tablet package insert specifically informs the reader that aripiprazole may be used in treating depression as an adjunctive treatment and instructs the reader how aripiprazole may be safely coadministered with escitalopram, thus encouraging health care providers and others to use Zydus USA's tablet generic aripiprazole products as an adjunct treatment for depression in combination with antidepressants, including escitalopram, in accordance with the claims of the '350 patent. (Exhibit F at ¶ 17.)

94. These same cited portions of the package insert were all originally added to the package insert for Abilify® specifically for the purpose of informing prescribers and patients about the use of Abilify® for Adjunctive Treatment of Major Depressive Disorder. (Exhibit F at ¶ 25.)

95. There would be no reason to include these portions of the tablet package insert by Zydus USA other than to likewise have these portions considered by the reader for the purpose of providing information and instructions regarding the use of Zydus USA's tablet generic aripiprazole products as an adjunct treatment with antidepressants in accordance with the '350 patent. (Exhibit F at ¶ 26.)

96. Upon information and belief, these portions of the tablet package insert have intentionally been included by Zydus USA for that purpose. (Exhibit F at ¶ 25.)

97. Upon information and belief, Zydus additionally uses marketing materials to actively encourage the sale and use of Zydus USA's tablet generic products as a substitute for Abilify® for all purposes, including the combination in accordance with the '350 patent.

98. Zydus's marketing materials provide at least the following instructions to physicians, pharmacists and/or patients regarding the therapeutic equivalency of Zydus USA's tablet generic products to Abilify® and encouragement to substitute Zydus USA's tablet generic products for Abilify® for all uses, including use as an adjunct to treatment with citalopram or escitalopram in accordance with the '350 patent:

- Zydus's marketing materials instruct that its generic products "have the same function of the brand product, but come at a lower cost" (Exhibit H);
- Zydus's marketing materials emphasize that, in order to gain FDA approval, it was required to prove that its generic product "contains the same active ingredients as the brand," "is bioequivalent to the brand," and has "*the same indication* as the brand" (*id*.) (emphasis added);
- Zydus's marketing materials instruct that its generic products "maintain the same safety and efficacy as the brand" (*id.*);
- Zydus's marketing materials further link directly to information from the FDA, explaining that a generic drug "is identical -- or bioequivalent -- to a brand name drug in dosage form, safety, strength, route of administration, quality, performance characteristics and intended use" and has "*the same use indications*" (see *id.* at n.1, linking to FDA Exhibit I) (emphasis added);
- Zydus's marketing materials further emphasizes that its generic products cost less than their brand name equivalents because "[b]y the time a generic comes to market, the

product is already known by physicians and the general public so that level of advertising is not needed" (*id*.).

99. Upon information and belief, physicians, pharmacists and patients reading Zydus's marketing materials would be informed that Zydus USA's tablet generic aripiprazole products are therapeutically equivalent to Abilify® and may be used for the same indications as Abilify®, and would be encouraged to substitute Zydus USA's tablet generic aripiprazole products for Abilify® for all purposes, including as an adjunct to treatment with citalopram or escitalopram in accordance with the '350 patent.

100. Upon information and belief, Zydus sells its own generic version of escitalopram in connection with its ANDA No. 077734.

101. Upon information and belief, Zydus's sale of its own generic versions of both aripiprazole and escitalopram further actively facilitates and encourages the use of Zydus USA's tablet generic products by physicians, pharmacists and/or patients in accordance with the combination claimed in the '350 patent.

102. Abilify® is one of the largest selling drugs in the United States, with gross sales exceeding $7.5 billion in 2014.

103. Based on administrative claims data obtained from OptumHealth Reporting and Insights, approximately 16.5 to 21% of the total sales of aripiprazole are attributable to sales of aripiprazole as an adjunct to treatment with citalopram or escitalopram in accordance with the combination claimed in the '350 patent.

104. Zydus has knowledge of the high number of sales of aripiprazole as an adjunct to treatment with citalopram or escitalopram in accordance with the combination claimed in the '350 patent.

105. Upon information and belief, the active steps taken by Zydus as set forth above in paragraphs 77-104 to encourage the sale and use of Zydus USA's tablet generic products in accordance with the combination claimed in the '350 patent by physicians, pharmacists and/or patients have been done with a specific intent to encourage infringement of the '350 patent in order to take advantage of these sales.

106. Upon information and belief, under 35 U.S.C. § 271(e)(2)(A), Zydus USA has infringed at least one claim of the '350 patent by submitting, or causing to be submitted to the FDA, ANDA No. 90-472 seeking approval to manufacture, use, sale, offer to sell and import Zydus USA's tablet generic products before the expiration date of the '350 patent, and by taking active steps to encourage the sale and use of Zydus USA's tablet generic products in accordance with the combination claimed in the '350 patent by physicians, pharmacists and/or patients with the specific intent to encourage infringement of the '350 patent in order to take advantage of the large commercial market for such sales.

107. Upon information and belief, Zydus USA's actions relating to Zydus USA's ANDA No. 90-472 complained of herein were done with the cooperation, participation and assistance, and for the benefit, of Zydus USA and Cadila Healthcare Limited.

NINTH COUNT FOR PATENT INFRINGEMENT

108. Otsuka realleges, and incorporates in full herein, paragraphs 25, 27, 28, 30, 77-84, 87-89, 100, 102, 103 and 104.

109. Otsuka lists the '350 patent in the Orange Book for NDA No. 21-729.

110. Upon information and belief, physicians, pharmacists and/or patients are directly infringing the '350 patent by the sale and use Zydus USA's ODT generic products in

combination with citalopram or escitalopram in accordance with the claims of the '350 patent. (Exhibit F at ¶ 10.)

111. Upon information and belief, Zydus USA has taken active steps to encourage the sale and use of Zydus USA's ODT generic products by physicians, pharmacists and/or patients in accordance with the combination claimed in the '350 patent by providing information and instructions in its OTD package insert ("Exhibit J") encouraging the use of aripiprazole in combination with an antidepressant, including escitalopram. (Exhibit F at ¶¶ 12-13.)

[redacted]

[redacted]

[redacted]

115. Taken together, this information included in Zydus USA's ODT package insert specifically informs the reader that aripiprazole may be used in treating depression as an adjunctive treatment and instructs the reader how aripiprazole may be safely coadministered with escitalopram, thus encouraging health care providers and others to use Zydus USA's ODT generic aripiprazole products as an adjunct treatment for depression in combination with antidepressants, including escitalopram, in accordance with the claims of the '350 patent. (Exhibit F at ¶ 17.)

116. These same cited portions of the package insert were all originally added to the package insert for Abilify® specifically for the purpose of informing prescribers and patients about the use of Abilify® for Adjunctive Treatment of Major Depressive Disorder. (Exhibit F at ¶ 25.)

117. There would be no reason to include these portions of the ODT package insert by Zydus USA other than to likewise have these portions considered by the reader for the purpose of providing information and instructions regarding the use of Zydus USA's ODT generic aripiprazole products as an adjunct treatment with antidepressants in accordance with the '350 patent. (Exhibit F at ¶ 26.)

118. Upon information and belief, these portions of the ODT package insert have intentionally been included by Zydus USA for that purpose. (Exhibit F at ¶ 25.)

119. Upon information and belief, Zydus additionally uses marketing materials to actively encourage the sale and use of Zydus USA's ODT generic products as a substitute for Abilify® for all purposes, including the combination in accordance with the '350 patent.

120. Zydus's marketing materials provide at least the following instructions to physicians, pharmacists and/or patients regarding the therapeutic equivalency of Zydus USA's ODT generic products to Abilify® and encouragement to substitute Zydus USA's ODT generic products for Abilify® for all uses, including use as an adjunct to treatment with citalopram or escitalopram in accordance with the '350 patent:

- Zydus's marketing materials instruct that its generic products "have the same function of the brand product, but come at a lower cost" (Exhibit H);
- Zydus's marketing materials emphasize that, in order to gain FDA approval, it was required to prove that its generic product "contains the same active ingredients as the brand," "is bioequivalent to the brand," and has "*the same indication* as the brand" (*id.*) (emphasis added);
- Zydus's marketing materials instruct that its generic products "maintain the same safety and efficacy as the brand" (*id.*);

— Zydus's marketing materials further link directly to information from the FDA, explaining that a generic drug "is identical -- or bioequivalent -- to a brand name drug in dosage form, safety, strength, route of administration, quality, performance characteristics and intended use" and has "*the same use indications*" (see *id.* at n.1, linking to FDA Exhibit I) (emphasis added);

— Zydus's marketing materials further emphasizes that its generic products cost less than their brand name equivalents because "[b]y the time a generic comes to market, the product is already known by physicians and the general public so that level of advertising is not needed" (*id.*).

121. Upon information and belief, physicians, pharmacists and patients reading Zydus's marketing materials would be informed that Zydus USA's ODT generic aripiprazole products are therapeutically equivalent to Abilify® and may be used for the same indications as Abilify®, and would be encouraged to substitute Zydus USA's ODT generic aripiprazole products for Abilify® for all purposes, including as an adjunct to treatment with citalopram or escitalopram in accordance with the '350 patent.

122. Upon information and belief, Zydus's sale of its own generic versions of both aripiprazole and escitalopram further actively facilitates and encourages the use of Zydus USA's ODT generic products by physicians, pharmacists and/or patients in accordance with the combination claimed in the '350 patent.

123. Upon information and belief, the active steps taken by Zydus as set forth above in paragraphs 109-122 to encourage the sale and use of Zydus USA's ODT generic products in accordance with the combination claimed in the '350 patent by physicians, pharmacists and/or

patients have been done with a specific intent to encourage infringement of the '350 patent in order to take advantage of these sales.

124. Upon information and belief, under 35 U.S.C. § 271(e)(2)(A), Zydus USA has infringed at least one claim of the '350 patent by submitting, or causing to be submitted to the FDA, ANDA No. 90-165 seeking approval to manufacture, use, sale, offer to sell and import Zydus USA's ODT generic products before the expiration date of the '350 patent, and by taking active steps to encourage the sale and use of Zydus USA's ODT generic products in accordance with the combination claimed in the '350 patent by physicians, pharmacists and/or patients with the specific intent to encourage infringement of the '350 patent in order to take advantage of the large commercial market for such sales.

125. Upon information and belief, Zydus USA's actions relating to Zydus USA's ANDA No. 90-165 complained of herein were done with the cooperation, participation and assistance, and for the benefit, of Zydus USA and Cadila Healthcare Limited.

TENTH COUNT FOR DECLARATORY JUDGMENT OF PATENT INFRINGEMENT

126. Otsuka realleges, and incorporates in full herein, paragraphs 15, 17, 18 and 20 and 77-107.

127. This count arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

128. There is an actual and justiciable controversy between Otsuka and Zydus concerning infringement of the '350 patent of sufficient immediacy and reality such that the Court may entertain Otsuka's request for declaratory relief consistent with Article III of the United States Constitution, and this actual case or controversy requires a declaration of rights by this Court.

129. Zydus has made, and continues to make, substantial preparation in the United States to manufacture, offer to sell, sell and/or import Zydus USA's tablet generic products prior to expiration of the '350 patent.

130. Defendant's actions, including, but not limited to, submitting, or causing to be submitted to the FDA, ANDA No. 90-472 seeking approval to manufacture, use, import, offer to sell and sell Zydus USA's tablet generic products before the expiration date of the '350 patent and engaging in litigation, indicate a refusal to change the course of their actions in the face of knowledge of the '350 patent and acts by Otsuka.

131. Upon information and belief, the FDA may approve Zydus USA's ANDA No. 90-472 in the imminent future.

132. Upon information and belief, Zydus intends to manufacture, use, offer for sale, sell and/or import Zydus USA's tablet generic products upon FDA approval of ANDA No. 90-472.

133. Any commercial manufacture, use, offer for sale, sale and/or importation of Zydus USA's tablet generic products prior to the expiration of the '350 patent will constitute induced infringement of the '350 patent under 35 U.S.C. §§ 271(b).

134. Otsuka will be irreparably harmed by Zydus' infringing activities unless those activities are enjoined by this Court.

135. Otsuka does not have an adequate remedy at law.

136. Otsuka is entitled to a declaratory judgment that future commercial manufacture, use, offer for sale, sale and/or importation of Zydus USA's tablet generic products prior to expiration of the '350 patent by Zydus will constitute induced infringement of the '350 patent.

ELEVENTH COUNT FOR DECLARATORY JUDGMENT OF PATENT INFRINGEMENT

137. Otsuka realleges, and incorporates in full herein, paragraphs paragraphs 25, 27, 28, 30 and 109-125.

138. This count arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

139. There is an actual and justiciable controversy between Otsuka and Zydus concerning infringement of the '350 patent of sufficient immediacy and reality such that the Court may entertain Otsuka's request for declaratory relief consistent with Article III of the United States Constitution, and this actual case or controversy requires a declaration of rights by this Court.

140. Zydus has made, and continues to make, substantial preparation in the United States to manufacture, offer to sell, sell and/or import Zydus USA's ODT generic products prior to expiration of the '350 patent.

141. Defendant's actions, including, but not limited to, submitting, or causing to be submitted to the FDA, ANDA No. 90-165 seeking approval to manufacture, use, import, offer to sell and sell Zydus USA's ODT generic products before the expiration date of the '350 patent and engaging in litigation, indicate a refusal to change the course of their actions in the face of knowledge of the '350 patent and acts by Otsuka.

142. Upon information and belief, the FDA may approve Zydus USA's ANDA No. 90-165 in the imminent future.

143. Upon information and belief, Zydus intends to manufacture, use, offer for sale, sell and/or import Zydus USA's ODT generic products upon FDA approval of ANDA No. 90-165.

144. Any commercial manufacture, use, offer for sale, sale and/or importation of Zydus USA's ODT generic products prior to the expiration of the '350 patent will constitute induced infringement of the '350 patent under 35 U.S.C. §§ 271(b).

145. Otsuka will be irreparably harmed by Zydus' infringing activities unless those activities are enjoined by this Court.

146. Otsuka does not have an adequate remedy at law.

147. Otsuka is entitled to a declaratory judgment that future commercial manufacture, use, offer for sale, sale and/or importation of Zydus USA's ODT generic products prior to expiration of the '350 patent by Zydus will constitute induced infringement of the '350 patent.

WHEREFORE, Plaintiff Otsuka respectfully requests that the Court enter judgment in its favor and against Defendants Zydus USA and Cadila Healthcare Limited on the patent infringement claims set forth above and respectfully requests that this Court:

1) enter judgment that, under 35 U.S.C. § 271(e)(2)(A), Zydus has infringed at least one claim of the '615 patent through Zydus USA's submission of ANDA No. 90-472 to the FDA to obtain approval to manufacture, use, sale, offer to sell and import Zydus USA's tablet generic products in the United States before the expiration of the '615 patent;

2) order that the effective date of any approval by the FDA of Zydus USA's tablet generic products be a date that is not earlier than the expiration of the '615 patent, or such later date as the Court may determine;

3) enjoin Zydus from the manufacture, use, sale, offer to sell and import of Zydus USA's tablet generic products until the expiration of the '615 patent, or such later date as the Court may determine;

4) enjoin Zydus and all persons acting in concert with Zydus, from seeking, obtaining or maintaining approval of Zydus USA's ANDA No. 90-472 until the expiration of the '615 patent;

5) enter judgment that, under 35 U.S.C. § 271(e)(2)(A), Zydus has infringed at least one claim of the '615 patent through Zydus USA's submission of ANDA No. 90-165 to the FDA to obtain approval to manufacture, use, sale, offer to sell and import Zydus USA's ODT generic products in the United States before the expiration of the '615 patent;

6) order that the effective date of any approval by the FDA of Zydus USA's ODT generic products be a date that is not earlier than the expiration of the '615 patent, or such later date as the Court may determine;

7) enjoin Zydus from the manufacture, use, sale, offer to sell and import of Zydus USA's ODT generic products until the expiration of the '615 patent, or such later date as the Court may determine;

8) enjoin Zydus and all persons acting in concert with Zydus, from seeking, obtaining or maintaining approval of Zydus USA's ANDA No. 90-165 until the expiration of the '615 patent;

9) enter judgment that, under 35 U.S.C. § 271(e)(2)(A), Zydus has infringed at least one claim of the '796 patent through Zydus USA's submission of ANDA No. 90-472 to the FDA to obtain approval to manufacture, use, sale, offer to sell and import Zydus USA's tablet generic products in the United States before the expiration of the '796 patent;

10) order that the effective date of any approval by the FDA of Zydus USA's tablet generic products be a date that is not earlier than the expiration of the '796 patent, or such later date as the Court may determine;

11) enjoin Zydus from the manufacture, use, sale, offer to sell and import of Zydus USA's tablet generic products until the expiration of the '796 patent, or such later date as the Court may determine;

12) enjoin Zydus and all persons acting in concert with Zydus, from seeking, obtaining or maintaining approval of Zydus USA's ANDA No. 90-472 until the expiration of the '796 patent;

13) enter judgment that, under 35 U.S.C. § 271(e)(2)(A), Zydus has infringed at least one claim of the '796 patent through Zydus USA's submission of ANDA No. 90-165 to the FDA to obtain approval to manufacture, use, sale, offer to sell and import Zydus USA's ODT generic products in the United States before the expiration of the '796 patent;

14) order that the effective date of any approval by the FDA of Zydus USA's ODT generic products be a date that is not earlier than the expiration of the '796 patent, or such later date as the Court may determine;

15) enjoin Zydus from the manufacture, use, sale, offer to sell and import of Zydus USA's ODT generic products until the expiration of the '796 patent, or such later date as the Court may determine;

16) enjoin Zydus and all persons acting in concert with Zydus, from seeking, obtaining or maintaining approval of Zydus USA's ANDA No. 90-165 until the expiration of the '796 patent;

17) enter judgment that, under 35 U.S.C. § 271(e)(2)(A), Zydus has infringed at least one claim of the '760 patent through Zydus USA's submission of ANDA No. 90-472 to the FDA to obtain approval to manufacture, use, sale, offer to sell and import Zydus USA's tablet generic products in the United States before the expiration of the '760 patent;

18) order that the effective date of any approval by the FDA of Zydus USA's tablet generic products be a date that is not earlier than the expiration of the '760 patent, or such later date as the Court may determine;

19) enjoin Zydus from the manufacture, use, sale, offer to sell and import of Zydus USA's tablet generic products until the expiration of the '760 patent, or such later date as the Court may determine;

20) enjoin Zydus and all persons acting in concert with Zydus, from seeking, obtaining or maintaining approval of Zydus USA's ANDA No. 90-472 until the expiration of the '760 patent;

21) enter judgment that, under 35 U.S.C. § 271(e)(2)(A), Zydus has infringed at least one claim of the '760 patent through Zydus USA's submission of ANDA No. 90-165 to the FDA to obtain approval to manufacture, use, sale, offer to sell and import Zydus USA's ODT generic products in the United States before the expiration of the '760 patent;

22) order that the effective date of any approval by the FDA of Zydus USA's ODT generic products be a date that is not earlier than the expiration of the '760 patent, or such later date as the Court may determine;

23) enjoin Zydus from the manufacture, use, sale, offer to sell and import of Zydus USA's ODT generic products until the expiration of the '760 patent, or such later date as the Court may determine;

24) enjoin Zydus and all persons acting in concert with Zydus, from seeking, obtaining or maintaining approval of Zydus USA's ANDA No. 90-165 until the expiration of the '760 patent;

25) enter judgment that, under 35 U.S.C. § 271(e)(2)(A), Zydus has infringed at least one claim of the '421 patent through Zydus USA's submission of ANDA No. 90-165 to the FDA to obtain approval to manufacture, use, sale, offer to sell and import Zydus USA's ODT generic products in the United States before the expiration of the '421 patent;

26) order that the effective date of any approval by the FDA of Zydus USA's ODT generic products be a date that is not earlier than the expiration of the '421 patent, or such later date as the Court may determine;

27) enjoin Zydus from the manufacture, use, sale, offer to sell and import of Zydus USA's ODT generic products until the expiration of the '421 patent, or such later date as the Court may determine;

28) enjoin Zydus and all persons acting in concert with Zydus, from seeking, obtaining or maintaining approval of Zydus USA's ANDA No. 90-165 until the expiration of the '421 patent;

29) enter judgment that, under 35 U.S.C. § 271(e)(2)(A), Zydus has infringed at least one claim of the '350 patent through Zydus USA's submission of ANDA No. 90-472 to the FDA to obtain approval to manufacture, use, sale, offer to sell and import

Zydus USA's tablet generic products in the United States before the expiration of the '350 patent;

30) order that the effective date of any approval by the FDA of Zydus USA's tablet generic products be a date that is not earlier than the expiration of the '350 patent, or such later date as the Court may determine;

31) enjoin Zydus from the manufacture, use, sale, offer to sell and import of Zydus USA's tablet generic products until the expiration of the '350 patent, or such later date as the Court may determine;

32) enjoin Zydus and all persons acting in concert with Zydus, from seeking, obtaining or maintaining approval of Zydus USA's ANDA No. 90-472 until the expiration of the '350 patent;

33) enter judgment that, under 35 U.S.C. § 271(e)(2)(A), Zydus has infringed at least one claim of the '350 patent through Zydus USA's submission of ANDA No. 90-165 to the FDA to obtain approval to manufacture, use, sale, offer to sell and import Zydus USA's ODT generic products in the United States before the expiration of the '350 patent;

34) order that the effective date of any approval by the FDA of Zydus USA's ODT generic products be a date that is not earlier than the expiration of the '350 patent, or such later date as the Court may determine;

35) enjoin Zydus from the manufacture, use, sale, offer to sell and import of Zydus USA's ODT generic products until the expiration of the '350 patent, or such later date as the Court may determine;

36) enjoin Zydus and all persons acting in concert with Zydus, from seeking, obtaining or maintaining approval of Zydus USA's ANDA No. 90-165 until the expiration of the '350 patent;

37) declare and enter judgment under 28 U.S.C. §§ 2201 and 2202 that any future commercial manufacture, use, offer for sale, sale and/or importation of Zydus USA's tablet generic products prior to expiration of the '350 patent by Zydus will constitute induced infringement of the '350 patent under 35 U.S.C. §§ 271(b);

38) order that, if Zydus engages in the commercial manufacture, use, sale, offer for sale or importation of Zydus USA's tablet generic products before the expiration of the '350 patent, a judgment be awarded to Otsuka for damages resulting from such infringement, together with interest, in an amount to be determined at trial;

39) declare and enter judgment under 28 U.S.C. §§ 2201 and 2202 that any future commercial manufacture, use, offer for sale, sale and/or importation of Zydus USA's ODT generic products prior to expiration of the '350 patent by Zydus will constitute induced infringement of the '350 patent under 35 U.S.C. §§ 271(b);

40) order that, if Zydus engages in the commercial manufacture, use, sale, offer for sale or importation of Zydus USA's ODT generic products before the expiration of the '350 patent, a judgment be awarded to Otsuka for damages resulting from such infringement, together with interest, in an amount to be determined at trial;

41) declare this to be an exceptional case under 35 U.S.C. §§ 285 and 271(e)(4) and award Otsuka costs, expenses and disbursements in this action, including reasonable attorney fees; and

42) award Otsuka such further and additional relief as this Court deems just and proper.

Date: October 20, 2015

Respectfully submitted,

/s Melissa A. Chuderewicz
Melissa A. Chuderewicz
PEPPER HAMILTON LLP
(A Pennsylvania Limited Liability Partnership)
Suite 400
301 Carnegie Center
Princeton, New Jersey 08543-5276
Phone: (609) 452-4808
chuderem@pepperlaw.com

Attorney for Plaintiff
Otsuka Pharmaceutical Co., Ltd.

Of counsel:

James B. Monroe
Paul W. Browning
Denise Main
FINNEGAN, HENDERSON,
FARABOW, GARRETT & DUNNER, LLP
901 New York Avenue, N.W.
Washington, DC 20001-4413
(202) 408-4000

Attorneys for Plaintiff
Otsuka Pharmaceutical Co., Ltd.