

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELAN CORPORATION, PLC and)	
ELAN PHARMA INTERNATIONAL LTD.,)	
)	
Plaintiffs,)	
v.)	C.A. No. 11-480-SLR
)	
PAR PHARMACEUTICAL, INC.,)	
)	
Defendant.)	

AMENDED COMPLAINT

Plaintiffs Elan Corporation, plc and Elan Pharma International Ltd. (collectively “Elan”), for their Amended Complaint against Defendant Par Pharmaceutical, Inc. (“Par”), allege as follows:

PARTIES

1. Elan Corporation, plc is an Irish corporation having its principal place of business at Treasury Building, Lower Grand Canal St., Dublin 2, Ireland.
2. Elan Pharma International Ltd. is an Irish corporation having its principal place of business at Monksland, Athlone County, Westmeath, Ireland. Elan Pharma International Ltd. is a subsidiary of Elan Corporation, plc.
3. On information and belief, Par is a Delaware corporation having its principal place of business at 300 Tice Boulevard, Woodcliff Lake, New Jersey 07677.
4. On information and belief, Par is in the business of, among other things, manufacturing, marketing, distributing, and selling generic pharmaceutical products throughout the United States, including in the State of Delaware.

NATURE OF ACTION

5. This is an action for infringement of United States Patent Nos. 6,228,398 (“the ’398 patent”) and 6,730,325 (“the ’325 patent”). This action is based upon the Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Par because, *inter alia*, Par is a Delaware corporation and because of its continuous and systematic contacts within this judicial district.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b).

FACTUAL BACKGROUND

9. On May 8, 2001, the ’398 patent, entitled “Multiparticulate Modified Release Composition,” was duly and legally issued to Elan as assignee. Elan owns all rights to the ’398 patent, including the right to sue for infringement thereof. A true and correct copy of the ’398 patent is attached as Exhibit A.

10. On May 4, 2004, the ’325 patent, entitled “Multiparticulate Modified Release Composition,” was duly and legally issued to Elan as assignee. Elan owns all rights to the ’325 patent, including the right to sue for infringement thereof. A true and correct copy of the ’325 patent is attached as Exhibit B.

11. On May 26, 2005, the United States Food And Drug Administration (“FDA”) approved new drug application No. 21-802 for FOCALIN® XR capsules, which

contain dexamethylphenidate hydrochloride, under § 505(a) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 355(a), for the treatment of Attention Deficit Hyperactivity Disorder. The '398 and '325 patents are listed in *Approved Drug Products with Therapeutic Equivalence Evaluations* (the "Orange Book") for FOCALIN® XR capsules.

12. On information and belief, Par submitted to the FDA abbreviated new drug application ("ANDA") No. 202842 under § 505(j) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 355(j), seeking approval to engage in the commercial manufacture, use, and sale of dexamethylphenidate hydrochloride extended release capsules in the 40 mg strength as generic versions of the FOCALIN® XR 40 mg capsules.

13. By letter dated April 15, 2011 (the "Par Letter"), Par advised Elan that it had submitted ANDA No. 202842 seeking approval to manufacture, use, or sell generic dexamethylphenidate hydrochloride extended release capsules in the 40 mg strength prior to the expiration of the '398 and '325 patents.

14. Elan and Par previously litigated the '398 and '325 patents with respect to ANDA No. 78-992 seeking approval to manufacture, use, or sell generic dexamethylphenidate hydrochloride extended release capsules in the 5, 10, 15 and 20 mg strengths. That litigation was settled pursuant to a settlement agreement.

15. Elan and Par are currently litigating the '398 and '325 patents with respect to ANDA No. 78-992 seeking approval to manufacture, use, or sell generic dexamethylphenidate hydrochloride extended release capsules in the 30 mg strength. Elan's complaint in that action was filed on March 25, 2011. *See Elan Corp., plc v. IntelliPharmaCeutics Corp.*, C.A. No. 11-255-SLR (D. Del.).

16. Elan and Par have not previously litigated the '398 and '325 patents with respect to Par's ANDA seeking approval to manufacture, use, or sell generic dexamethylphenidate hydrochloride extended release capsules in the 40 mg strength.

17. The Par Letter also advised Elan that Par's ANDA included a certification under 21 U.S.C. § 355(j)(2)(A)(vii)(IV) that, in Par's opinion, the claims of the '398 and '325 patents are invalid.

COUNT I

18. Plaintiffs incorporate each of the preceding paragraphs 1 to 17 as if fully set forth herein.

19. Par's submission of ANDA No. 202842 to the FDA for dexamethylphenidate hydrochloride extended release capsules in the 40 mg strength, including the § 505(j)(2)(A)(vii)(IV) allegations, constitutes infringement of the '398 patent under 35 U.S.C. § 271(e)(2)(A). Par's commercial manufacture, offer for sale, or sale of the proposed generic for dexamethylphenidate hydrochloride extended release capsules in the 40 mg strength would infringe the '398 patent.

20. On information and belief, Par was aware of the existence of the '398 patent and was aware that the filing of ANDA No. 202842 and certification with respect to the '398 patent constituted infringement of that patent. This is an exceptional case.

COUNT II

21. Plaintiffs incorporate each of the preceding paragraphs 1 to 20 as if fully set forth herein.

22. Par's submission of ANDA No. 202842 to the FDA for dexamethylphenidate hydrochloride extended release capsules in the 40 mg strength, including the

§ 505(j)(2)(A)(vii)(IV) allegations, constitutes infringement of the '325 patent under 35 U.S.C. § 271(e)(2)(A). Par's commercial manufacture, offer for sale, or sale of the proposed generic for dexamethylphenidate hydrochloride extended release capsules in the 40 mg strength would infringe the '325 patent.

23. On information and belief, Par was aware of the existence of the '325 patent and was aware that the filing of ANDA No. 202842 and certification with respect to the '325 patent constituted infringement of that patent. This is an exceptional case.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

- A. A judgment that Par has infringed the '398 and '325 patents;
- B. An order, pursuant to 35 U.S.C. § 271(e)(4)(A), that the effective date of any approval of ANDA No. 202842 for dexamethylphenidate hydrochloride extended release capsules in the 40 mg strength under § 505(j) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 355(j), shall not be earlier than the expiration dates of the '398 patent and '325 patent, including any extensions;
- C. A permanent injunction, pursuant to 35 U.S.C. § 271(e)(4)(B), restraining and enjoining Par, its officers, agents, servants and employees, and those persons in active concert or participation with any of them, from infringement of the '398 and '325 patents for the full terms thereof, including any extensions;
- D. A declaration that this is an exceptional case and an award of reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- E. Costs and expenses in this action; and
- F. Such other and further relief as the Court may deem just and proper.

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