IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CEPHALON, INC., Plaintiff, v. BARR PHARMACEUTICALS, INC., BARR PHARMACEUTICALS, LLC, as successor-in-interest to Barr Pharmaceuticals, Inc. and BARR LABORATORIES, INC., Defendants.	Civil Action No. 09- **JURY TRIAL DEMANDED**

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Cephalon, Inc. ("Cephalon" or "Plaintiff") for its complaint against Barr Pharmaceuticals, Inc., Barr Pharmaceuticals, LLC, and Barr Laboratories, Inc. (collectively "Defendants" or "Barr"), to the best of its knowledge, information and belief, hereby alleges as follows:

THE PARTIES

1. Plaintiff Cephalon, Inc. is a Delaware corporation having a principal place of business at 41 Moores Road, Frazer, Pennsylvania 19355.

2. At all times relevant to this complaint, Defendant Barr Pharmaceuticals, Inc. is a Delaware corporation, having a principal place of business at 223 Quaker Road, Pomona, New York, 10970.

3. Defendant Barr Pharmaceuticals, LLC is a Delaware limited liability company.

4. Pursuant to an Agreement and Plan of Merger by and among Barr Pharmaceuticals, Inc., Teva Pharmaceutical Industries Ltd. and Boron Acquisition Corp. dated July 17, 2008 ("Merger Agreement"), Barr Pharmaceuticals, Inc. merged into Boron Acquisition

Corp. on December 23, 2008. Boron Acquisition Corp. was the surviving entity and was renamed Barr Pharmaceuticals, LLC. Pursuant to the Merger Agreement, Barr Pharmaceuticals, LLC is responsible for all debts, liabilities and duties of Barr Pharmaceuticals, Inc.

5. Barr Pharmaceuticals, LLC is a wholly-owned subsidiary of Teva Pharmaceuticals, Inc. Barr Pharmaceuticals, LLC as successor-in-interest to Barr Pharmaceuticals, Inc. and Barr Pharmaceuticals, Inc. are referred to collectively hereinafter as "Barr Pharmaceuticals."

6. Defendant Barr Laboratories, Inc. ("Barr Laboratories") is a Delaware corporation, having a principal place of business at 223 Quaker Road, Pomona, New York, 10970.

7. Defendant Barr Laboratories is a wholly-owned subsidiary of Defendant Barr Pharmaceuticals, and Barr Laboratories is controlled and/or dominated by Barr Pharmaceuticals.

8. At all times relevant to this complaint, Barr Pharmaceuticals conducts its North American operations, in part, through Barr Laboratories, and the Defendants collaborate in the manufacture, marketing, and sale of many pharmaceutical products (including generic drug products manufactured and sold pursuant to approved Abbreviated New Drug Applications) within the United States generally and the State of Delaware specifically.

JURISDICTION AND VENUE

9. This is an action for a declaratory judgment of infringement of United States Patent No. 6,264,981 B1 ("the '981 patent") under 28 U.S.C. §§ 2201 and 2202. A copy of the '981 patent is attached as Exhibit A.

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338, 2201 and 2202.

11. This Court has personal jurisdiction over the Defendants by virtue of their incorporation or organization under the laws of Delaware.

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

THE PATENT IN SUIT

13. On July 24, 2001, the '981 patent titled "Oral Transmucosal Drug Dosage Using Solid Solution," was duly and legally issued by the United States Patent and Trademark Office.

14. Plaintiff Cephalon is the lawful owner by assignment of all right, title and interest in and to the '981 patent, including all right to sue and recover for infringement thereof.

COUNT I
Declaratory Judgment of Infringement of the '981 Patent Under 35 U.S.C. § 271

15. Paragraphs 1 through 14 are incorporated herein as set forth above.

16. These claims arise under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

17. There is an actual case or controversy such that the Court may entertain Cephalon'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.

18. On June 19, 2009, Plaintiff notified Defendants of Plaintiff's belief that any manufacture, sale, offer of sale, and/or importation of the generic fentanyl citrate buccal tablets specified in Defendants' Abbreviated New Drug Application prior to patent expiry would constitute infringement of the '981 patent.

19. Defendants have made, and continue to make, substantial preparation in the United States to manufacture, offer to sell, sell and/or import generic fentanyl citrate buccal tablets prior to patent expiry.

20. Defendants' actions, including, but not limited to, the development of generic fentanyl citrate buccal tablets and the filing of an Abbreviated New Drug Application with a Paragraph IV certification, indicate a refusal to change the course of their action in the face of acts by Cephalon.

21. Defendants are a limited licensee of the '981 patent. Under the license, Defendants have certain rights with respect to a certain fentanyl citrate product that is manufactured and sold by or on behalf of Defendants pursuant to an Abbreviated New Drug Application filed by Defendants for which ACTIQ® is the reference listed drug, and/or a license and supply agreement that permits Defendants to sell an authorized generic of ACTIQ®. Defendants, therefore, were aware of the '981 patent before filing an Abbreviated New Drug Application for generic fentanyl citrate buccal tablets.

22. Any commercial manufacture, use, offer for sale, sale, and/or importation of the generic fentanyl citrate buccal tablets specified in Defendants' Abbreviated New Drug Application prior to patent expiry will constitute direct and/or contributory infringement and/or active inducement of infringement of the '981 patent.

23. Plaintiff is entitled to a declaratory judgment that the future commercial manufacture, use, offer for sale, sale, and/or importation of the generic fentanyl citrate buccal tablets specified in Defendants' Abbreviated New Drug Application prior to patent expiry by Barr Pharmaceuticals and/or Barr Laboratories will constitute direct and/or contributory infringement and/or active inducement of infringement of the '981 patent.

EXCEPTIONAL CASE

24. Paragraphs 1 through 23 are incorporated herein by reference.

25. Barr Laboratories was aware of the '981 patent prior to the filing of an Abbreviated New Drug Application for generic fentanyl citrate buccal tablets.

26. Barr Pharmaceuticals was aware of the '981 patent prior to the filing of an Abbreviated New Drug Application for generic fentanyl citrate buccal tablets.

27. The actions of Barr Pharmaceuticals and Barr Laboratories, individually and collectively, render this an exceptional case under 35 U.S.C. § 285.

PRAYER FOR RELIEF

Plaintiff respectfully prays for the following relief:

a. That a declaration be issued under 28 U.S.C. § 2201 that the future commercial manufacture, use, offer for sale, sale, and/or importation of the generic fentanyl citrate buccal tablets specified in Defendants' Abbreviated New Drug Application prior to patent expiry by Barr Pharmaceuticals, Barr Laboratories, their officers, agents, servants, employees, licensees, representatives, attorneys, and/or all other persons acting or attempting to act in active concert or participation with them or acting on their behalf, will constitute an act of direct and/or indirect infringement of the '981 patent under § 271;

b. That this is an exceptional case under 35 U.S.C. § 285, and that Plaintiff be awarded reasonable attorneys' fees and costs; and

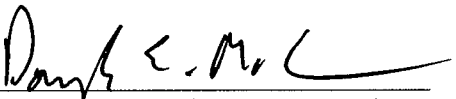
c. That this Court award such other and further relief as it may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues appropriately tried by jury.

Dated: October 22, 2009

FISH & RICHARDSON P.C.

By: 

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