

U.S. DISTRICT COURT  
FILED AT WHEELING, WV

APR 30 2009

NORTHERN DISTRICT OF WV  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

PFIZER INC., WARNER-LAMBERT	)
COMPANY LLC, and	)
C.P. PHARMACEUTICALS	)
INTERNATIONAL C.V.,	)
	)
Plaintiffs,	)
	)
v.	)
	)
	)
ALPHAPHARM PTY. LTD. and	)
MYLAN PHARMACEUTICALS INC.,	)
	)
Defendants.	)
	)

Civil Action No. 1:09-CV-56

**COMPLAINT**

Plaintiffs Pfizer Inc., Warner-Lambert Company LLC, and C.P. Pharmaceuticals International C.V. (collectively, "Pfizer"), by their undersigned attorneys, for their Complaint against Defendants Alphapharm Pty. Ltd. and Mylan Pharmaceuticals Inc. (collectively, "Alphapharm") herein allege:

**NATURE OF THE ACTION**

1. This is an action for patent infringement under the patent laws of the United States, Title 35 of the United States Code, arising from Alphapharm's filing of an Abbreviated New Drug Application ("ANDA") with the United States Food and Drug Administration ("FDA") seeking approval to market a generic version of Pfizer's pharmaceutical product Lyrica® prior to the expiration of United States Patent No. 6,001,876 ("the '876 patent") which covers the use of Lyrica®.

**THE PARTIES**

2. Plaintiff Pfizer Inc. is a corporation organized and existing under the laws of the State of Delaware, having a place of business at 235 East 42nd Street, New York, New York.

3. Plaintiff Warner-Lambert Company LLC is a limited liability company organized and existing under the laws of the State of Delaware, having a place of business at 235 East 42nd Street, New York, New York. Pfizer Inc. is the ultimate parent of Warner-Lambert Company LLC.

4. Plaintiff C.P. Pharmaceuticals International C.V. is a limited partnership organized and existing under the laws of the Netherlands, having a place of business at 235 East 42nd Street, New York, New York. Pfizer Inc. is the ultimate parent of C.P. Pharmaceuticals International C.V.

5. On information and belief, Alphapharm Pty. Ltd. is a corporation organized and existing under the laws of Australia, having a principal place of business at Chase Building 2, Wentworth Park Road, Glebe, NSW 2037, Australia. On information and belief, Alphapharm Pty. Ltd. designated Mylan Pharmaceuticals Inc. as its U.S. agent for ANDA No. 91-228. On information and belief, Alphapharm Pty. Ltd. is in the business of making and selling generic pharmaceutical products, which it distributes in the State of West Virginia and throughout the United States.

6. On information and belief, Mylan Pharmaceuticals Inc. is a corporation organized and existing under the laws of the State of West Virginia, having a principal place of business at 781 Chestnut Ridge Rd., Morgantown, WV 26505. On information and belief, Mylan Pharmaceuticals Inc. is designated as the U.S. agent for Alphapharm Pty. Ltd. for ANDA

No. 91-228.

**JURISDICTION AND VENUE**

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

8. This Court has personal jurisdiction over Alphapharm by virtue of, inter alia, its presence in West Virginia, having conducted business in West Virginia, having availed itself of the rights and benefits of West Virginia law, previously consenting to personal jurisdiction in this Court, availing itself of the jurisdiction of this Court, and having engaged in systematic and continuous contacts with the State of West Virginia.

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

**THE PATENT-IN-SUIT**

10. On December 14, 1999, the United States Patent and Trademark Office issued the '876 patent, entitled "Isobutyl GABA and Its Derivatives for the Treatment of Pain." At the time of its issue, the '876 patent was assigned to Warner-Lambert Company, which subsequently became Warner-Lambert Company LLC. Warner-Lambert Company LLC currently holds title to the '876 patent. A copy of the '876 patent is attached hereto as Exhibit A.

**LYRICA®**

11. Pfizer Inc., itself and through its wholly owned subsidiary C.P. Pharmaceuticals International C.V., holds approved New Drug Application Nos. 21-446, 21-723 and 21-724 ("the Lyrica NDAs") for pregabalin capsules in 25, 50, 75, 100, 150, 200, 225 and 300 mg dosage strengths, which are sold by Pfizer under the trade name Lyrica®.

12. Pursuant to 21 U.S.C. § 355(b)(1), and attendant FDA regulations, the

'876 patent is listed in the FDA publication, "Approved Drug Products with Therapeutic Equivalence Evaluations" (the "Orange Book"), with respect to Lyrica®.

**ALPHAPHARM'S ANDA**

13. On information and belief, Alphapharm submitted ANDA No. 91-228 (the "Alphapharm ANDA") to the FDA, pursuant to 21 U.S.C. §§ 355(j), seeking approval to market pregabalin capsules, in 25, 50, 75, 100, 150, 200, 225 and 300 mg dosage strengths. The pregabalin capsules described in the Alphapharm ANDA are herein referred to as the "Alphapharm Products." On information and belief, the Alphapharm ANDA designates Mylan Pharmaceuticals Inc. as the U.S. agent for Alphapharm Pty. Ltd.

14. The Alphapharm ANDA refers to and relies upon the Lyrica NDAs and contains data that, according to Alphapharm, demonstrate the bioequivalence of the Alphapharm Products and Lyrica®.

15. Pfizer received from Alphapharm a letter, dated March 17, 2009, and attached memoranda (collectively, the "Alphapharm Notification"), stating that Alphapharm had included a certification in the Alphapharm ANDA, pursuant to 21 U.S.C. §355(j)(2)(A)(vii)(IV), that the '876 patent is invalid, unenforceable, or will not be infringed by the commercial manufacture, use, or sale of the Alphapharm Products ("the Paragraph IV Certification"). The Alphapharm Notification states that Mylan Pharmaceuticals Inc. is the U.S. agent for Alphapharm Pty. Ltd.

**COUNT FOR INFRINGEMENT OF U.S. PATENT NO. 6,001,876**

16. Pfizer realleges and incorporates by reference the allegations of paragraphs 1-15 of this Complaint.

17. Alphapharm has infringed the '876 patent, pursuant to 35 U.S.C. §

271(e)(2)(A), by submitting the Alphapharm ANDA, by which Alphapharm seeks approval from the FDA to engage in the commercial manufacture, use, offer to sell, sale, or importation of the Alphapharm Products prior to the expiration of the '876 patent.

18. Alphapharm's commercial manufacture, use, offer to sell, or sale of the Alphapharm Products within the United States, or importation of the Alphapharm Products into the United States during the term of the '876 patent would further infringe the '876 patent under 35 U.S.C. §§ 271(a), (b), and/or (c).

19. Pfizer will be substantially and irreparably harmed if Alphapharm is not enjoined from infringing the '876 patent.

20. Pfizer has no adequate remedy at law.

21. This case is an exceptional one, and Pfizer is entitled to an award of attorneys' fees under 35 U.S.C. § 285.

**PRAYER FOR RELIEF**

WHEREFORE, Pfizer prays for a judgment in its favor and against Defendants Alphapharm Pty. Ltd. and Mylan Pharmaceuticals Inc., and respectfully requests the following relief:

A. A judgment declaring that Alphapharm has infringed U.S. Patent No. 6,001,876;

B. A judgment pursuant to 35 U.S.C. § 271(e)(4)(B) preliminarily and permanently enjoining Alphapharm, its officers, agents, servants, and employees, and those persons in active concert or participation with any of them, from manufacturing, using, offering to sell, or selling the Alphapharm Products within the United States, or importing the Alphapharm Products into the United States, prior to the expiration of the '876 patent;

C. A judgment ordering that pursuant to 35 U.S.C. § 271(e)(4)(A), the effective date of any approval of ANDA No. 91-228 under § 505(j) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 355(j)) shall not be earlier than the expiration date of the '876 patent, including any extensions;

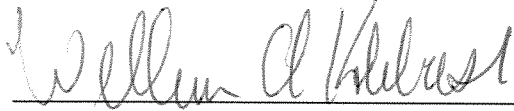
D. If Alphapharm commercially manufactures, uses, offers to sell, or sells the Alphapharm Products within the United States, or imports the Alphapharm Products into the United States, prior to the expiration of the '876 patent, including any extensions, a judgment awarding Pfizer monetary relief together with interest;

E. Attorneys' fees in this action as an exceptional case pursuant to 35 U.S.C. § 285;

F. Costs and expenses in this action; and

G. Such other relief as the Court deems just and proper.

PHILLIPS, GARDILL, KAISER & ALTMAYER PLLC



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William A. Kolibash  
61 Fourteenth St.  
Wheeling, WV 26003  
(304) 232-6810  
williamkobilash@pgka.com

*Attorneys for Pfizer Inc., Warner-Lambert  
Company LLC, and C.P. Pharmaceuticals  
International C.V.*

*Of Counsel:*

Dimitrios T. Drivas  
Jeffrey J. Oelke  
Adam Gahtan  
Brendan G. Woodard  
WHITE & CASE LLP  
1155 Avenue of the Americas  
New York, NY 10036  
(212) 819-8200

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