

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ALLERGAN, INC. and DUKE
UNIVERSITY,

Plaintiffs,

v.

APOTEX INC. and APOTEX CORP.,

Defendants.

Case No. 1:10-CV-681

ALLERGAN, INC. and DUKE
UNIVERSITY,

Plaintiffs,

v.

SANDOZ INC.,

Defendant.

Case No. 1:11-CV-298

ALLERGAN, INC. and DUKE
UNIVERSITY,

Plaintiffs,

v.

HI-TECH PHARMACAL CO., INC.,

Defendant.

Case No. 1:11-CV-650

NOTICE OF APPEAL

Notice is hereby given that Apotex Inc. and Apotex Corp. (collectively, "Apotex"), Sandoz Inc. ("Sandoz") and Hi-Tech Pharmacal Co., Inc. ("Hi-Tech"), Defendants in the above-captioned consolidated actions, hereby appeal to the United States Court of Appeals for the Federal Circuit from the Court's Judgment of January 25, 2013 (Doc. 209), and from all decisions, opinions, orders, and rulings subsumed therein and/or made prior to entry of the January 25, 2013 Judgment in this action, including, but not limited to, the following

- From the Court's January 25, 2013 Judgment (Doc. 209), denying *inter alia* Defendants' claims, submitted at trial, of patent non-infringement and patent invalidity for lack of enablement and written description, anticipation, and obviousness pursuant to 35 U.S.C. §§ 102, 103 and 112.
- From the Court's January 24, 2013 Memorandum Opinion and Order (Doc. 208), including the portion thereof denying Defendants' Rule 52(c) motion on conception;
- From the Court's January 24, 2013 Order (Doc. 207) denying Defendants' motion to strike testimony from Plaintiffs' expert Dr. Robert Noecker (Doc. 183);
- From the Court's November 27, 2012 Claim Construction Order (Doc. 180);
- From the Court's November 27, 2012 Order regarding evidentiary objections (Doc. 181);
- From the Court's November 8, 2012 ruling, denying Defendants' Rule 52(c) motion on non-infringement (*see* 11/8/2012 Tr. at 67:25-68:1);

- From the Court's November 4, 2012 Order, denying Defendants' motion in *limine* on the alleged invention dates for the patents-in-suit (Doc. 118);
- From the Court's September 22, 2012 Order, granting Plaintiffs' motion to compel Apotex to produce FDA correspondence (Doc. 125);
- From the Court's November 5, 2012 Order (Doc. 170), denying Apotex's motion for a protective order regarding FDA correspondence (Doc. 147);
- From the Court's August 2, 2012 Claim Construction Order (Doc. 88);

Included herewith is payment of the filing fee (\$5.00) and the docketing fee (\$450.00) as required by 28 U.S.C. § 1917 and Federal Circuit Rule 52(a)(3)(A), respectively, and Federal Rule of Appellate Procedure 3(e).

Respectfully Submitted,

Dated: February 19, 2013

/s/ F. Hill Allen

F. Hill Allen (# 18884)
THARRINGTON SMITH, L.L.P.
P.O. Box 1151
Raleigh, NC 27602-1151
Telephone: (919) 821-4711
Email: hallen@tharringtonsmith.com

/s/ Darrell A. Fruth

Darrell A. Fruth (# 33418)
Jim W. Phillips, Jr.
N.C. State Bar No. 12516
BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD LLP
P.O. Box 26000
Greensboro, NC 27420
Telephone: 336-373-8850
Email: dfruth@brookspierce.com
Email: jphillips@brookspierce.com

-and-

-and-

Thomas Filarski
Meredith Martin Addy
Brandon C. Helms
Thomas A. Rammer
Randal S. Alexander
STEPTOE & JOHNSON LLP
115 S. LaSalle Street, Suite 3100
Chicago, IL 60603

William A. Rakoczy
Paul J. Molino
Deanne M. Mazzochi
Andrew M. Alul

Telephone: (312) 577-1300
Email: tfilarski@steptoe.com
Email: maddy@steptoe.com
Email: bhelms@steptoe.com
Email: trammer@steptoe.com
Email: ralexander@steptoe.com

Attorneys for Defendant Sandoz Inc.

/s/ Lyn K. Broom

Lyn K. Broom (# 17674)
TEAGUE ROTENSTREICH STANALAND
FOX & HOLT, P.L.L.C.
101 S. Elm Street, Suite 350 (27401)
Greensboro, NC 27402-1898
Telephone: (336) 272-4810
E-mail: lkb@trslaw.com

-and-

Steven Roth
HI-TECH PHARMACAL CO., INC.
369 Bayview Avenue
Amityville, NY 11701
E-mail: sroth@hitechpharm.com

*Attorneys for Defendant Hi-Tech Pharmacal
Co., Inc.*

Luke Shannon
Tim Peterson
RAKOCZY MOLINO MAZZOCHI SIWIK LLP
6 West Hubbard Street, Suite 500
Chicago, IL 60654
Telephone: 312-527-2157
Email: wrakoczy@rmmslegal.com
Email: paul@rmmslegal.com
Email: dmazzochi@rmmslegal.com
Email: aalul@rmmslegal.com
Email: lshannon@rmmslegal.com
Email: tpeterson@rmmslegal.com

*Attorneys for Defendant Apotex Inc. and Apotex
Corp.*

CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2013, I caused a copy of the foregoing Notice of Appeal to be electronically filed with the Clerk of the Court using the ECF system in case number **1:10-CV-681**, which will send notification of such filing to the following attorneys of record:

Larry McDevitt
David Wilkerson
Melissa L. English
THE VAN WINKLE LAW FIRM
11 North Market Street
Asheville, NC 28801
Telephone: (828) 258-2991
Email: lmcdevitt@vwlawfirm.com
Email: dwilkerson@vwlawfirm.com
Email: menglish@vwlawfirm.com

Juanita R. Brooks
Roger A. Denning
FISH & RICHARDSON, P.C.
12390 El Camino Real
San Diego, CA 92130
Telephone: (858) 678-5070
Email: brooks@fr.com
Email: denning@fr.com

Jonathan E. Singer
Deanna J. Reichel
FISH & RICHARDSON, P.C.
60 South Sixth St., #3200
Minneapolis, MN 55402
Telephone: (612) 335-5070
Email: singer@fr.com
Email: reichel@fr.com

Douglas E. McCann
A. Martina Tyreus Hufnal
Robert M. Oakes
Elizabeth M. Flanagan
FISH & RICHARDSON, P.C.
222 Delaware Avenue, 17th Floor
Wilmington, DE 19801
Telephone: (302) 652-5070
Email: dmccann@fr.com
Email: tyreus@fr.com
Email: oakes@fr.com
Email: eflanagan@fr.com

Jeffrey T. Thomas
GIBSON DUNN & CRUTCHER
3161 Michelson Drive
Irvine, CA 92612
Telephone: (949) 451-3800
Email: jtthomas@gibsondunn.com

/s/ Darrell A. Fruth
Darrell A. Fruth
N.C. State Bar No. 33418
BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD LLP
P.O. Box 26000
Greensboro, NC 27420
Telephone: 336-373-8850
Email: dfruth@brookspierce.com
*Attorney for Defendant Apotex Inc. and
Apotex Corp.*

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2013, a copy of the Notice of Appeal was served by operation of the Court's Electronic Case Filing System, on counsel of record in case number 1:11-CV-650 and as follows:

Larry McDevitt
David Wilkerson
Melissa L. English
THE VAN WINKLE FIRM
11 North Market Street
Asheville, NC 28801
Telephone: (828) 258-2991
Facsimile: (828) 257-2767
Email: lmcdevitt@vwlawfirm.com; dwilkerson@vwlawfirm.com
menglish@vwlawfirm.com

Juanita R. Brooks
Roger A. Denning
Fish & Richardson, P.C.
12390 El Camino Real
San Diego, CA 92130
Telephone: (858) 678-5070
e-mail: brooks@fr.com; denning@fr.com; countryman@fr.com

Jonathan E. Singer
Deanna J. Reichel
Elizabeth M. Flanagan
Fish & Richardson, P.C.
60 S. 6th Street, Suite 3200
Minneapolis, MN 55402
e-mail: singer@fr.com; reichel@fr.com; eflanagan@fr.com

Douglas E. McCann
A. Martina Hufnal
Robert M. Oakes
222 Delaware Avenue, 17th Floor
Wilmington, DE 19801
Telephone: (302) 652-5070
Email: dmccann@fr.com; hufnal@fr.com; oakes@fr.com

Jeffrey T. Thomas
GIBSON, DUNN & CRUTCHER
3161 Michelson Drive
Irvine, CA 92612
Telephone: 949-451-3800
e-mail: jtthomas@gibsondunn.com

This the 25th day of February, 2013.

/s/ Lyn K. Broom
Lyn K. Broom (N.C. State Bar No. 17674)
Teague Rotenstreich Stanaland Fox & Holt,
P.L.L.C.
101 S. Elm Street, Suite 350 (27401)
P.O. Box 1898
Greensboro, NC 27402-1898
Phone: (336) 272-4810
Fax: (336) 272-2448
E-mail: lkb@trslaw.com