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ATTORNEYS FOR PLAINTIFF MCNEIL-PPC, INC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MCNEIL-PPC, INC.,)	
)	Civil Action No. _____
Plaintiff,)	
)	
v.)	
)	
PERRIGO COMPANY, L. PERRIGO COMPANY, and PERRIGO RESEARCH & DEVELOPMENT COMPANY,)	
)	
Defendants.)	Filed Electronically
)	
)	

COMPLAINT

Plaintiff McNeil-PPC, Inc. ("McNeil-PPC"), for its complaint for patent infringement against Defendants Perrigo Company, L. Perrigo Company, and Perrigo Research & Development Company, alleges as follows:

PARTIES

1. Plaintiff McNeil-PPC is a New Jersey Corporation with its principal place of business at 199 Grandview Road, Skillman, New Jersey 08558-9418.
2. Upon information and belief, defendant Perrigo Company is a corporation organized under the laws of the State of Michigan, having a principal place of business at 515

Eastern Ave., Allegan, Michigan 49010. Upon information and belief, Perrigo Company is registered to do business in New Jersey and conducts business in New Jersey.

3. Upon information and belief, defendant L. Perrigo Company is a corporation organized under the laws of the State of Michigan, having a place of business at 1267 S River Road, Cranbury, New Jersey 08512.

4. Upon information and belief, defendant Perrigo Research & Development Company is a corporation organized under the laws of the State of Michigan, having a place of business at 515 Eastern Ave., Allegan, Michigan 49010.

5. Upon information and belief, defendants L. Perrigo Company and Perrigo Research & Development Company are wholly owned subsidiary companies of defendant Perrigo Company.

6. Upon information and belief, the acts of Perrigo Research & Development Company complained of herein were aided by and done with the authorization, cooperation, participation, or assistance of Perrigo Company and L. Perrigo Company.

7. Defendants Perrigo Company, L. Perrigo Company, and Perrigo Research & Development Company are hereinafter referred to collectively as "Perrigo."

8. Upon information and belief, Perrigo is in the business, inter alia, of manufacturing generic drug products for sale and use throughout the United States, including in this judicial district.

JURISDICTION AND VENUE

9. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 271.

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

11. Upon information and belief, Perrigo Company, L. Perrigo Company, and Perrigo Research & Development Company, directly or through related companies, have continuous and systematic contacts within this judicial district, sell a substantial amount of products in New Jersey, and regularly conduct business in New Jersey.

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

COUNT FOR PATENT INFRINGEMENT

13. McNeil-PPC is the owner of United States Patent No. 6,153,635 (the “635 Patent”) entitled “Methods and Kits for Treating Vulvovaginal Candidiasis with Miconazole Nitrate.” The 635 Patent duly and legally issued on November 28, 2000. A true and correct copy of the 635 Patent is attached as Exhibit A to this Complaint.

14. Pursuant to 21 U.S.C. § 355(b)(1), the 635 Patent is identified in the Food and Drug Administration publication entitled “Approved Drug Products with Therapeutic Equivalence Evaluations” (the “Orange Book”) in association with Miconazole Nitrate Vaginal Cream (2%) and Suppository (1.2g).

15. McNeil-PPC received a letter from Perrigo Research & Development Company, dated March 6, 2008 and received on March 7, 2008, that gave notice that Perrigo had filed an Abbreviated New Drug Application (“ANDA”) No. 79-114 with the Food and Drug Administration (“FDA”) pursuant to 21 U.S.C. § 355(j) to obtain FDA approval to engage in the commercial manufacture, use or sale of Miconazole Nitrate Vaginal Cream (2%) and Suppository (1.2g) prior to the expiration of the 635 Patent.

16. Perrigo's ANDA No. 79-114 contained a certification under 21 U.S.C. § 355(j)(2)(A)(vii)(IV) ("paragraph IV certification") in which Perrigo alleges that its ANDA product will not infringe claims 1-7 and 11 of the 635 Patent and that all claims of the 635 Patent are invalid.

17. Perrigo's commercial manufacture, use, offer for sale, or sale of its proposed generic Miconazole Nitrate Vaginal Cream (2%) and Suppository (1.2g) would infringe the 635 Patent.

18. Because Perrigo submitted an ANDA to obtain FDA approval to engage in the commercial manufacture, use or sale of Miconazole Nitrate Vaginal Cream (2%) and Suppository (1.2g) prior to the expiration of the 635 Patent, Perrigo has infringed the 635 Patent pursuant to 35 U.S.C. § 271(e)(2)(A).

19. McNeil-PPC will be irreparably harmed if Perrigo is not enjoined from infringing the 635 Patent, and McNeil-PPC is entitled to equitable relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff McNeil-PPC respectfully demands the following relief:

(a) entry of a final judgment that Defendants have infringed the 635 Patent by submitting ANDA No. 79-114;

(b) entry of a final judgment that this is an exceptional case pursuant to 35 U.S.C. § 285, and that Plaintiff is entitled to reasonable attorneys' fees;

(c) to the extent that Defendants have committed any acts with respect to what is claimed in the 635 Patent, other than those acts expressly exempted under 35 U.S.C. § 271(e)(1), an award of damages sufficient to compensate Plaintiff for such acts, which this Court should treble pursuant to 35 U.S.C. § 284;

(d) a permanent injunction, issued pursuant to 35 U.S.C. § 271(e)(4)(B), restraining and enjoining Defendants, their officers, agents, attorneys, and employees, and those acting in privity or concert with them, from engaging in the commercial manufacture, use, offer to sell, or sale within the United States, or importation into the United States of products the use of which would infringe the 635 Patent;

(e) an order pursuant to 35 U.S.C. § 271(e)(4)(A) that the effective date of any approval of ANDA No. 79-114 be a date which is not earlier than the expiration of the 635 Patent, or any later expiration of exclusivity to which the 635 Patent is or becomes entitled;

(f) an award of Plaintiff's costs and expenses in this action; and

(g) such other relief as the Court may deem just and proper.

s/Thomas E. Hastings
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**ATTORNEYS FOR PLAINTIFF
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Dated: April 18, 2008