

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

OCULAR RESEARCH OF	§	
BOSTON, INC.	§	
PLAINTIFF	§	
	§	
vs.	§	CIVIL ACTION NO. 2:07cv385 TJW
	§	JURY
	§	
ALLERGAN, INC.	§	
DEFENDANT	§	

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Ocular Research of Boston, Inc. ("ORB"), files this, its Original Complaint for patent infringement. Plaintiff ORB asserts a claim for infringement of U.S. Patent No. 5,578,586 C1, (the '586 patent) a copy of which is attached hereto as Exhibit "A" against Defendant Allergan, Inc. ("Allergan") under 35 U.S.C. § 271. In support thereof, Plaintiff ORB would respectfully show the Court the following:

PARTIES

1. Plaintiff Ocular Research of Boston, Inc. ("ORB") is a Massachusetts corporation with its principal office located at 400 Commonwealth Ave., Boston, Massachusetts 02215.

2. Defendant Allergan, Inc. is a Delaware corporation with its principal office located at 2525 DuPont Drive, Irvine, California 92612. Allergan is authorized to do business in Texas and may be served with process by mailing citation and a copy of this complaint to its principal office located at 2525 DuPont Drive, Irvine, California 92612.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. § 1338(a) and 2201.

4. This Court has personal jurisdiction over Defendant Allergan. Defendant Allergan conducts business within the State of Texas. Allergan, directly or through intermediaries (including distributors, retailers, and others) ships, distributes, offers for sale, sells, and advertises its products in the United States, the State of Texas, and the Eastern District of Texas. Allergan has purposefully and voluntarily placed infringing products in the stream of commerce with the expectation that its products will be purchased by end users in the Eastern District of Texas. Allergan has also contributed to and/or induced others in the infringement of the '586 patent within the State of Texas and this District.

5. Venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391(b) and 1400.

PATENT INFRINGEMENT

6. United States Patent No. 5,578,586, entitled "DRY EYE TREATMENT PROCESS AND SOLUTION," was duly and legally issued by the United States Patent and Trademark Office on November 26, 1996, after full and fair examination. Following a full and fair re-examination of the '586 Patent, the United States Patent and Trademark Office issued an Ex Parte Reexamination Certificate, Number US 5,578,586 C1, on June 26, 2007. The '586 Patent relates generally to a method and composition for reducing evaporation of an aqueous layer from the surface of the eye to treat a condition known as

“dry eye” by administration, inter alia, of an emulsion formulation to the eye. Plaintiff ORB is the assignee of all rights, title and interest in and to the ‘586 Patent and possesses all rights of recovery under the ‘586 Patent.

7. Prior to the grant of the ‘586 Patent, pursuant to terms of a confidential disclosure agreement and in expectation of licensing its technology to Allergan, ORB disclosed to Allergan confidential information pertaining to its emulsion formulation and its use for the treatment of dry eye and Allergan declined to acquire a license to the same from ORB.

8. On information and belief, Allergan utilized confidential information disclosed to it by ORB to develop products for the treatment of dry eye, which products, when used, infringe the ‘586 Patent.

9. Defendant Allergan is actively, intentionally, and/or knowingly infringing the claims of the ‘586 Patent by making, using, selling, or offering for sale in the United States, including in the Eastern District of Texas, products, and by undertaking processes, embodying the patented inventions without authority. Allergan is also contributing to and/or inducing others to infringe the claims of the ‘586 Patent.

10. Defendant Allergan’s infringement of the ‘586 Patent is willful and deliberate.

11. Prior to the filing of this action, Plaintiff ORB has complied with 35 U.S.C. § 287(a) by marking, or having had marked, all products which Plaintiff ORB has authorized to be made under the ‘586 Patent, and/or providing notice to Defendant Allergan of its infringement of the ‘586 Patent.

RELIEF

Plaintiff Ocular Research of Boston, Inc., respectfully requests the following relief:

A. that the Court issue a permanent injunction against Defendant Allergan, Inc. enjoining Allergan from making, using, selling, or offering for sale in the United States any products, and from undertaking any processes, embodying the patented inventions or designs claimed in the '586 Patent;

B. that the Court award damages to Plaintiff Ocular Research of Boston, Inc. to which it is entitled;

C. that the Court treble the damages for willful infringement;

D. that the Court award interest on such damages;

E. that the Court award Plaintiff Ocular Research of Boston, Inc. its costs and attorneys' fees incurred in this action; and

F. that the Court award such other and further relief, at law or in equity, as the Court deems just and proper.

A JURY TRIAL IS DEMANDED BY PLAINTIFF OCULAR RESEARCH OF BOSTON, INC.

Respectfully submitted,

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