

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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**SHIRE US INC.** :  
725 Chesterbrook Blvd., Wayne, PA :  
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& :  
:  
**SHIRE PHARMACEUTICALS IRELAND** :  
**LIMITED,** :  
6 Fitzwilliam Square, Dublin 2, Ireland :  
:  
**Plaintiffs,** :  
:  
v. : **Civil Action No. \_\_\_\_\_**  
:  
**JOHNSON MATTHEY INC.,** :  
435 Devon Park Drive, Wayne, PA :  
:  
& :  
:  
**JOHNSON MATTHEY PLC,** :  
40-42 Hatton Garden, London, EC1N 8EE, :  
United Kingdom :  
:  
**Defendants.** :  
:  
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**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiffs Shire US Inc. and Shire Pharmaceuticals Ireland Limited (collectively “Shire”),  
by their attorneys, allege as follows:

**Nature of the Action**

1. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202. Shire seeks declaratory relief, i.e., a declaration that Shire does not infringe U.S. Patent No. 6,096,760 (“the ’760 patent”).

### **Jurisdiction and Venue**

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

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

### **The Parties**

4. Plaintiff Shire US Inc. is a New Jersey corporation having its principal place of business at 725 Chesterbrook Blvd., Wayne, PA.

5. Plaintiff Shire Pharmaceuticals Ireland Limited is a corporation organized and existing under the laws of Ireland, having its principal place of business at 6 Fitzwilliam Square, Dublin 2, Ireland.

6. Upon information and belief, Defendant Johnson Matthey Inc. is a corporation duly organized and existing under the laws of Pennsylvania, having a principal place of business at 435 Devon Park Drive, Wayne, Pennsylvania.

7. Upon information and belief, Johnson Matthey Inc. regularly conducts business within Pennsylvania, including but not limited to maintaining principal places of business in Wayne, PA; Downingtown, PA; West Chester, PA; and Malvern, PA.

8. Upon information and belief, Defendant Johnson Matthey plc is a corporation organized and existing under the laws of the United Kingdom, having its principal place of business at 40-42 Hatton Garden, London, EC1N 8EE, United Kingdom.

9. Upon information and belief, defendant Johnson Matthey plc is the ultimate parent company of Johnson Matthey Inc.

10. Upon information and belief, defendant Johnson Matthey plc regularly does or solicits business in Pennsylvania, has continuous and systematic contacts with Pennsylvania, and through its various entities has engaged in activities related to the subject matter of this action.

11. This Court has personal jurisdiction over Johnson Matthey Inc. and Johnson Matthey plc (collectively “Johnson Matthey”) because both parties maintain sufficient minimum contacts, both generally and specifically, with Pennsylvania. The exercise of such jurisdiction is consistent with the requirements of due process and does not offend traditional notions of fair play and substantial justice.

### **Background**

12. The '760 patent, entitled “Solid  $\alpha$ -phenyl-2-piperidine Acetate Free Base, Its Preparation and Use in Medicine,” issued in the name of Chester Sapino on August 1, 2000. A true and correct copy of the '760 patent is attached hereto as Exhibit 1.

13. Upon information and belief, Johnson Matthey plc is listed on assignment documents on file at the United States Patent and Trademark office as the assignee of the '760 patent and continues to hold all right, title, and interest therein.

14. Johnson Matthey Inc., representing itself as the assignee of the '760 patent, has affirmatively demonstrated a willingness and intention to enforce the '760 patent by, *inter alia*, suing Noven Pharmaceuticals, Inc. (“Noven”) for infringement of the '760 patent in the United States District Court for the Eastern District of Texas, Marshall Division, on June 19, 2007.

15. Johnson Matthey Inc.'s suit against Noven, the entity that manufactures Daytrana™ (methylphenidate transdermal system) for Shire, renders the legal status of Shire's activities with respect to Daytrana™ uncertain and represents a real and present threat of substantial economic injury sufficient to create a justiciable controversy.

16. Johnson Matthey has not provided Shire with a covenant not to sue for infringement of the '760 patent.

17. There is a substantial controversy between Shire and Johnson Matthey of sufficient immediacy and reality to warrant the issuance of a declaratory judgment regarding the infringement of the '760 patent.

**First Count: Declaration of Non-Infringement of the '760 Patent**

18. Shire repeats and realleges paragraphs 1-17 above.

19. This claim arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202. Shire seeks declaratory relief, i.e., a declaration that Shire does not infringe the '760 patent.

20. The making, having made, using, offering to sell, or selling of Daytrana™ did not and does not literally infringe any valid and enforceable claim of the '760 patent.

21. The making, having made, using, offering to sell, or selling of Daytrana™ did not and does not infringe any valid and enforceable claim of the '760 patent under the doctrine of equivalents.

22. Shire is entitled to a declaration that the '760 patent was not and is not infringed by the making, having made, using, offering to sell, or selling of Daytrana™.

**Prayer for Relief**

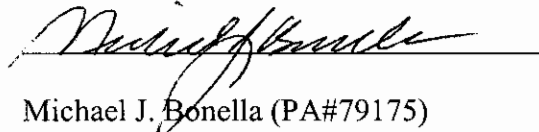
WHEREFORE, plaintiffs respectfully request the following relief:

(a) A judgment declaring that Shire's making, having made, using, offering to sell, or selling of Daytrana™ in the United States did not and does not constitute acts of infringement of U.S. Patent No. 6,096,760;

(b) A judgment awarding Shire such other and further relief as the Court deems just and proper.

WOODCOCK WASHBURN LLP

Dated: July 18, 2007



Michael J. Bonella (PA#79175)  
Woodcock Washburn LLP  
Cira Centre, 12th Floor  
2929 Arch Street  
Philadelphia, PA 19104-2891  
Telephone: (215) 568-3100  
Facsimile: (215) 568-3439

Attorneys for Plaintiffs  
Shire US Inc. and Shire Pharmaceuticals  
Ireland Limited

Of Counsel:

Edgar H. Haug  
John J. Molenda  
FROMMER LAWRENCE & HAUG LLP  
745 Fifth Avenue  
New York, New York 10151  
Telephone: (212) 588-0800  
Facsimile: (212) 588-0500