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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JUL 13 2007

JAMES N. HATTEN, Clerk
By: *J. Hatten* Deputy Clerk

UCB SOCIETE ANONYME, and
UCB, INC.,

Plaintiffs,

v.

COBALT PHARMACEUTICALS,
INC.,

Defendant.

1:07-CV-1630
Civil Action No. _____

WSD

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs UCB Societe Anonyme and UCB, Inc., for their complaint against
Defendant Cobalt Pharmaceuticals, Inc. hereby allege as follows:

THE PARTIES

1. Plaintiff UCB Societe Anonyme (hereinafter "UCB S.A.") is a
corporation organized and existing under the laws of Belgium, having its principal
place of business at Allée de la Recherche 60, B-1070 Brussels, Belgium.

2. Plaintiff UCB, Inc. (hereinafter "UCB, Inc.") is a United States
indirect wholly-owned subsidiary of UCB S.A. and a corporation incorporated

under the laws of the state of Delaware, having its principal place of business at 1950 Lake Park Drive, Smyrna, Georgia 30080.

3. UCB S.A. and UCB, Inc. are at times collectively referred to hereinafter, as "UCB."

4. UCB holds an approved New Drug Application from the United States Food and Drug Administration ("FDA") for a levetiracetam ((S)-alpha-ethyl-2-oxo-1-pyrrolidineacetamide) formulation which it sells under the name KEPPRA®.

5. On information and belief, Defendant Cobalt Pharmaceuticals, Inc. ("Cobalt") is a corporation organized and existing under the laws of Ontario, Canada and having a principal place of business at 6500 Kitimat Road, Mississauga, Ontario, Canada, L5N 2B8.

JURISDICTION AND VENUE

6. This action arises under the Patent laws of the United States and the Food and Drug laws of the United States, Titles 35 and 21, United States Code. Jurisdiction is based on 28 U.S.C. §§ 1331, and 1338(a). Venue is proper in this Court under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

7. On information and belief, Cobalt has engaged in activities related to the subject matter of this action and is subject to personal jurisdiction in this judicial district.

8. On or about June 5, 2007, Cobalt, pursuant to 21 U.S.C. § 355(j)(2)(A)(vii) and (j)(2)(B), and for the purpose of meeting requirements allowing it to file an abbreviated new drug application (“ANDA”) as prescribed by that statute, sent a notice of certification to UCB, Inc. at its offices in Smyrna, Georgia and to UCB S.A. at its offices in Brussels, Belgium. By sending such notice of certification, Cobalt required UCB to either sue Cobalt for patent infringement or forfeit UCB's rights under 21 U.S.C. §355(j)(5)(B)(iii). This suit is filed in response to that notice of certification.

9. The filing of a Paragraph IV certification in connection with an ANDA is itself an act of infringement under 35 U.S.C. § 271(e)(2)(A). By sending the notice of this injury to UCB, Inc. at its Georgia offices and UCB S.A. at its Belgium offices, Cobalt directly precipitated this suit.

10. Cobalt does business and sells its product in this District as well as throughout the United States. In particular, Cobalt markets and sells its generic pharmaceuticals in this District, and, on information and belief, would likewise

market and sell the generic product covered by the ANDA described in Paragraph 8 in this District.

11. In addition, this Court has personal jurisdiction over Cobalt by virtue of Cobalt's consent to jurisdiction in this District. Specifically, by notice referred to in Paragraph 8, Cobalt identified C. Andrew Head, Crowley Clarida & Head LLP, Suite 500, 900 Circle 75 Parkway, Atlanta, Georgia 30339, as Cobalt's agent in the United States authorized to accept service of process for Cobalt for "commencement of a patent infringement suit based on this notification of certification."

FIRST CLAIM FOR RELIEF: '639 PATENT

12. UCB realleges paragraphs 1-11 above, as if set forth specifically here.

13. UCB, Inc. filed NDA No. 021-035 by which the United States Food and Drug Administration granted approval for 250, 500, 750 and 1000 mg tablets, including the active ingredient levetiracetam, or (S)-alpha-ethyl-2-oxo-1-pyrrolidineacetamide. These tablets, described in UCB, Inc.'s NDA, are prescribed and sold in the United States under the tradename KEPPRA®.

14. United States Patent No. 4,943,639 ("the '639 patent," copy attached hereto as Exhibit "A"), entitled "(S)-alpha-ethyl-2-oxo-1-pyrrolidineacetamide," was duly and legally issued on July 24, 1990 to UCB S.A. upon assignment from

the inventors Jean Gobert, Jean-Pierre Geerts, and Guy Bodson. The '639 patent claims, *inter alia*, "(S)-alpha-ethyl-2-oxo-1-pyrrolidineacetamide," the active substance of KEPPRA®.

15. UCB S.A. has been and still is the owner of the entire right, title and interest in the '639 patent and possesses the exclusive right to sue for infringement of the '639 patent.

16. The portion of the '639 patent subsequent to May 14, 2005 was disclaimed. However, the '639 patent received a Patent Term Extension under 35 U.S.C. § 156 extending its term for a period of 1,157 days from May 14, 2005. At present, unless some additional extension is granted, the '639 patent will expire on July 14, 2008.

17. By notice referred to in Paragraph 8, entitled "Notification of Certification of Invalidity, Unenforceability and/or Noninfringement for U.S. Patent No. 4,943,639 pursuant to § 505(j)(2)(B)(iv) of the Federal Food, Drug, and Cosmetic Act," Cobalt notified UCB that it had submitted an ANDA, and has in connection with that ANDA, filed a certification with respect to the '639 patent under Section 505(j)(2)(A)(vii)(IV) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 355 (j)(2)(A)(vii)(IV)), seeking approval by the FDA to manufacture, use, and sell Cobalt's proposed product, 1000 mg levetiracetam tablet, as a generic

version of the KEPPRA® product. Plaintiff UCB, Inc. received the Notice of the Certification on June 6, 2007, and Plaintiff UCB S.A. received the Notice of Certification on June 7, 2007.

18. Cobalt seeks approval of its ANDA prior to the expiration of the '639 patent.

19. Cobalt alleged in the Notice of Certification that the '639 patent is not infringed by its proposed Cobalt levetiracetam product.

20. Cobalt alleged in the Notice of Certification that the '639 patent is not valid.

21. Cobalt alleged in the Notice of Certification that the '639 patent is not enforceable.

22. Cobalt has infringed the '639 patent under 35 U.S.C. § 271(e)(2)(A) by filing an ANDA and seeking approval by the FDA to engage in the commercial manufacture, use or sale of a drug claimed in the '639 patent before expiration of the '639 patent.

23. The proposed Cobalt levetiracetam product will, if approved and marketed, infringe the '639 patent.

24. On information and belief, Cobalt is aware that the proposed Cobalt levetiracetam product, if approved, will be made, used and/or sold in contravention of UCB's rights under the '639 patent.

25. UCB is entitled to full relief provided by 35 U.S.C. § 271(e)(4), including an order of this Court that the effective date of the approval of Cobalt's ANDA be a date that is not earlier than 1,157 days from the terminal disclaimer date for the '639 patent (currently July 14, 2008), or any other expiration of exclusivity to which UCB is or becomes entitled.

26. Cobalt was aware of the existence of the '639 patent and, upon information and belief, was aware that the filing of its ANDA and certification with respect to the '639 patent constituted an act of infringement of that patent.

27. Cobalt's statement of the factual and legal bases for its opinion regarding the validity of the '639 patent is devoid of an objective good faith basis in either the facts or the law.

28. Cobalt's infringement of the '639 patent is willful.

29. This case is an exceptional one, and UCB is entitled to an award of its reasonable attorney's fees under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

(a) A judgment declaring that the effective date of any approval of Cobalt's ANDA under Section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 355(j)) for Cobalt's proposed levetiracetam product must be no earlier than 1,157 days from the expiration date of the patent in suit to expire (currently July 14, 2008) that is infringed;

(b) A judgment declaring that the '639 patent remains valid, enforceable, and has been infringed by Defendant Cobalt Pharmaceuticals, Inc.;

(c) A permanent injunction against any infringement of the '639 patent by Defendant Cobalt Pharmaceuticals, Inc., its officers, agents, attorneys, and employees, and those acting in privity or concert with them;

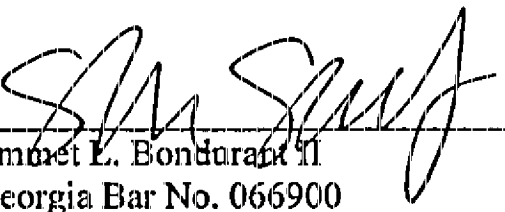
(d) Judgment be entered that Defendant's infringement of the '639 patent was and is willful, and Plaintiffs are entitled to their reasonable attorneys' fees pursuant to 35 U.S.C. § 285;

(e) To the extent Defendant has committed any acts with respect to the subject matter claimed in the '639 patent, other than those acts expressly exempted by 35 U.S.C. § 271(e)(1), Plaintiffs be awarded damages for such acts, which this Court should treble pursuant to 35 U.S.C. § 284;

(f) Costs and expenses in this action; and

(g) Such other relief as this Court may deem proper.

Dated: July 13, 2007



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