

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MAYNE PHARMA INTERNATIONAL)
PTY LTD.,)
)
Plaintiff,)
)
v.) C.A. No. _____
)
MERCK & CO., INC., MERCK SHARP &) JURY TRIAL DEMANDED
DOHME CORP. and N.V. ORGANON,)
)
Defendants.)

COMPLAINT

Plaintiff Mayne Pharma International Pty Ltd. (“Plaintiff” or “Mayne”), by its undersigned attorneys, for its Complaint herein against Defendants Merck & Co., Inc., Merck Sharp & Dohme Corp. and N.V. Organon (collectively “Defendants”) alleges upon knowledge with respect to its own acts, and upon information and belief as to other matters, as follows:

THE PARTIES

1. Plaintiff Mayne Pharma International Pty Ltd. is organized and existing under the laws of Australia having a principal place of business at 1538 Main North Road, Salisbury South, South Australia 5106. Mayne is in the business of, among other things, selling pharmaceuticals.

2. Upon information and belief, Defendant Merck & Co., Inc. is organized and existing under the law of Delaware and has its principal place of business at One Merck Drive, P.O. Box 100, Whitehouse Station, New Jersey 08889.

3. Upon information and belief, Defendant Merck Sharp & Dohme Corp. is organized and existing under the law of Delaware and has its principal place of business at One

Merck Drive, P.O. Box 100, Whitehouse Station, New Jersey 08889. Upon further information and belief, Merck Sharp & Dohme Corp. is a wholly-owned subsidiary of Defendant Merck & Co., Inc.

4. Upon information and belief, Defendant N.V. Organon is organized and existing under the laws of the Netherlands and has its principal place of business at Molenstraat 110, 5342 OCC Oss, Netherlands. Upon further information and belief, N.V. Organon is a wholly-owned subsidiary of Defendants Merck & Co., Inc. and Merck Sharp & Dohme Corp. Upon information and belief, N.V. Organon is a manufacturer of Noxafil[®] products.

5. Defendants Merck & Co., Inc., Merck Sharp & Dohme Corp. and N.V. Organon are referred to collectively as “Merck” or “Defendants.”

NATURE OF THE ACTION

6. This action arises under the patent laws of the United States, 35 U.S.C. §§ 101, *et seq.*

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the claims asserted herein pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over Defendants Merck & Co., Inc. and Merck Sharp & Dohme Corp., because, among other things, these Defendants are incorporated in this judicial district thereby availing themselves of the laws of the State of Delaware and deriving the protections and benefits thereof, and, upon information and belief, regularly transact business within this judicial district, including sales of the infringing product in Delaware, and have committed acts of patent infringement within this judicial district.

9. This Court has personal jurisdiction over N.V. Organon because, upon information and belief, N.V. Organon is a wholly-owned subsidiary of Defendants Merck & Co., Inc. and Merck Sharp & Dohme Corp. and does not have a separate corporate existence other than as a Merck entity, N.V. Organon has transacted business with Defendants Merck & Co., Inc. and Merck Sharp & Dohme Corp. with respect to the infringing Noxafil[®] products, manufactured the infringing Noxafil[®] products for the Defendants Merck & Co., Inc. and Merck Sharp & Dohme Corp., and injected the infringing Noxafil[®] products into the stream of commerce with knowledge that those products will be sold throughout the United States, including within this judicial district, for the benefit of Defendants Merck & Co., Inc. and Merck Sharp & Dohme Corp.

10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

COUNT ONE
INFRINGEMENT OF UNITED STATES PATENT NO. 6,881,745

11. Plaintiff incorporates each of the preceding paragraphs of this Complaint as if fully set forth herein.

12. United States Patent No. 6,881,745 (“the ‘745 patent”), entitled “Pharmaceutical Compositions For Poorly Soluble Drugs,” was duly and lawfully issued by the United States Patent and Trademark Office on April 18, 2005. A copy of the ‘745 patent, which is valid and enforceable, is attached hereto as Exhibit A.

13. Plaintiff is the assignee of the ‘745 patent.

14. The inventors of the ‘745 patent are David Hayes and Angelo Mario Morella.

15. In violation of 35 U.S.C. § 271(a), Defendants have infringed and continue to infringe the ‘745 patent by making, using, offering for sale or selling within the United States

and/or importing into the United States products that infringe one or more claims of the '745 patent, including but not limited to its Noxafil[®] products.

16. Upon information and belief, Defendants' infringement has been with knowledge of the '745 patent and has been willful.

17. Plaintiff has suffered and will continue to suffer damages and irreparable injuries unless Defendants' infringement of the '745 patent is enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and against Merck and grant the following relief:

- A. A judgment that Merck has infringed and is infringing the '745 patent directly in violation of 35 U.S.C. § 271;
- B. A judgment that Merck's infringement of the '745 patent has been willful;
- C. An order, pursuant to 35 U.S.C. § 283, enjoining Merck and all persons in active concert or participation with Merck from any further infringement of the '745 patent;
- D. An order, pursuant to 35 U.S.C. § 284, awarding Plaintiff damages adequate to compensate for Merck's infringement of the '745 patent;
- E. An order, pursuant to 35 U.S.C. § 284, trebling all damages awarded to Plaintiff based on Merck's willful infringement of the '745 patent;
- F. An order, pursuant to 28 U.S.C. § 1961 and 35 U.S.C. § 284, awarding to Plaintiff interest on the damages and its costs incurred from this action;
- G. A declaration that this case is exceptional and an award of Plaintiff's reasonable attorneys' fees and costs in bringing its claims, pursuant to 35 U.S.C. § 285;

H. An order directing Merck to recall from distribution and destroy its entire stock of infringing products within the United States; and

I. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

In accordance with Fed. R. Civ. P. 38 and 39, Plaintiff assert its rights under the Seventh Amendment to the United States Constitution and demands a trial by jury on all issues that may be so tried.

Respectfully submitted,

/s/ Karen E. Keller

Karen E. Keller (No. 4489)

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