

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CADENCE PHARMACEUTICALS, INC.)
and SCR PHARMATOP,)
)
Plaintiffs,)

v.)

C.A. No. 11-733 (LPS)

EXELA PHARMA SCIENCES, LLC; EXELA)
PHARMSCI, INC.; and EXELA HOLDINGS,)
INC.;)

Defendants.)



~~PROPOSED~~ **FINAL JUDGMENT AND PERMANENT INJUNCTION**

This action, having come to trial before the Court, Honorable Leonard P. Stark, District Judge presiding, the issues having been heard and a decision having been rendered:

IT IS ORDERED, ADJUDGED, and DECREED, for the reasons set forth in the Court's Memorandum Opinion dated November 14, 2013 that:

- Final Judgment shall be and hereby is entered in favor of Plaintiffs Cadence Pharmaceuticals, Inc. and SCR Pharmatop (collectively "Plaintiffs") and against Defendants Exela Pharma Sciences, LLC; Exela PharmSci, Inc.; and Exela Holdings, Inc., (collectively, "Exela" or "Defendants") on Plaintiffs' claims that by submitting Abbreviated New Drug Application ("ANDA") No. 203092, Exela has infringed, and if commercially manufactured, used, marketed, sold, or offered for sale within the U.S. or imported herein would infringe, claims 1, 3, 4, 5, 9, 10, 12, 16, 17, and 18 of U.S. Patent Number 6,028,222 ("the '222 Patent") and claims 1, 3, 4, and 19 of U.S. Patent Number 6,992,218 ("the '218 Patent").

2. Final Judgment shall be and hereby is entered in favor of Plaintiffs and against Exela on Exela's defenses and counterclaims of noninfringement and invalidity of the '222 and '218 Patents.

3. Pursuant to 35 U.S.C. § 271(e)(4)(A), the Food and Drug Administration ("FDA") is ordered to make the effective date of any approval of ANDA No. 203092 to be a date that is not earlier than the date of expiration of the '222 Patent (*i.e.*, August 5, 2017), plus any exclusivities or extension of the term of the '222 Patent.

4. Pursuant to 35 U.S.C. § 271(e)(4)(A), the Food and Drug Administration ("FDA") is ordered to make the effective date of any approval of ANDA No. 203092 to be a date that is not earlier than the date of expiration of the '218 Patent (*i.e.*, June 6, 2021), plus any exclusivities or extension of the term of the '218 Patent.

5. Pursuant to 35 U.S.C. § 271(e)(4)(B), Exela, its officers, directors, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Final Judgment and Permanent Injunction by personal service or otherwise, are hereby permanently enjoined and restrained, during the respective terms of the '222 Patent and the '218 Patent, from infringing such patents by manufacturing, using, offering to sell, or selling within the United States, or importing into the United States, the product described in ANDA No. 203092 or any mere colorable variation thereof.

6. No later than 14 days after the time for appeal has expired or 14 days after the issuance of the mandate of the appellate court, the prevailing party shall file a bill of costs under 28 U.S.C. §§ 1920-1923 and Fed. R. Civ. P. 54(d)(1), in accordance with the procedures of Local Civil Rule 54.1.

7. Any motion for an award of attorneys' fees shall be made within fourteen days after the entry of this Final Judgment and Permanent Injunction in accordance with the procedures of Fed. R. Civ. P. 54(d)(2) and Local Civil Rule 54.3.

8. Any motion or application that is pending in this action and is undecided as of the date of this final judgment shall be and hereby is dismissed as moot.

November 22, 2013

DATE

L. P. D.

UNITED STATES DISTRICT JUDGE

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