IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GENZYME CORPORATION, SOUTHERN RESEARCH INSTITUTE, and SANOFI-AVENTIS U.S. LLC, Plaintiffs, v. INGENUS PHARMACEUTICALS LLC, Defendant.	Civil Action No.

COMPLAINT FOR PATENT INFRINGEMENT AND DECLARATORY JUDGMENT

Plaintiffs Genzyme Corporation ("Genzyme"), Southern Research Institute ("Southern Research"), and sanofi-aventis U.S. LLC ("Sanofi") (collectively, "Plaintiffs") bring this action for patent infringement and for a declaratory judgment of patent infringement against Defendant Ingenus Pharmaceuticals LLC ("Ingenus").

STATEMENT OF THE CASE

1. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35, United States Code, Sections 100 *et seq*. This action relates to an Abbreviated New Drug Application ("ANDA") filed by Ingenus with the United States Food and Drug Administration ("FDA") for approval to market a generic version of Genzyme's Clolar® drug product.

THE PARTIES

2. Genzyme is a corporation organized and existing under the laws of Massachusetts, having its principal place of business at 500 Kendall Street, Cambridge, Massachusetts 02142. Genzyme sells drug products containing clofarabine in the United States under the trademark Clolar®.

3. Southern Research is a corporation organized and existing under the laws of Alabama, having its principal place of business at 2000 Ninth Avenue South, P.O. Box 55305, Birmingham, Alabama 35205-5305.

4. Sanofi is a corporation organized and existing under the laws of Delaware, having its principal place of business at 55 Corporate Drive, Bridgewater, New Jersey 08807.

5. On information and belief, Defendant Ingenus is a corporation organized and existing under the laws of Delaware, having its principal place of business at 4190 Millenia Road, Orlando, Florida 32839. On information and belief, Defendant Ingenus also has facilities at 140 New Dutch Lane, Fairfield New Jersey 07004 and 100 Ford Road, Suite 9, Denville, New Jersey 07834.

JURISDICTION AND VENUE

6. This action for patent infringement arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court therefore has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has jurisdiction over the person of Ingenus because it is incorporated in the State of Delaware and therefore subject to the jurisdiction of this Court. As a domestic

corporation, Ingenus is registered to do business with the Delaware Department of State, Division of Corporations.

8. In the alternative, and to the extent that Ingenus is not subject to the jurisdiction of this Court as a resident of Delaware, it is subject to the jurisdiction of the Court pursuant to 10 Del. C. § 3104. Specifically, on information and belief, Ingenus regularly does or solicits business, engages in a persistent course of conduct, and derives substantial revenue from things used or consumed in Delaware and this District.

9. On information and belief, Ingenus is in the business of developing, formulating, manufacturing, offering to sell, selling, commercializing, and marketing generic versions of branded pharmaceutical products for distribution in the United States, including in the State of Delaware.

10. On information and belief, Ingenus directly, or indirectly through subsidiaries and/or distributors, develops, manufactures, markets, distributes, and sells pharmaceutical products within and throughout the United States, including in the State of Delaware.

11. On information and belief, Ingenus has purposefully availed itself of the privilege of doing business in the State of Delaware by continuously and systematically placing goods into the stream of commerce for distribution throughout the United States, including in the State of Delaware, and/or by selling, directly or through its agents, pharmaceutical products in the State of Delaware.

12. On information and belief, Ingenus has generated significant revenue from purchases made by Ingenus's pharmaceutical product customers, who are located throughout the United States, including within the State of Delaware.

13. On information and belief and as stated in the letter dated April 10, 2017, purporting to be a notice pursuant to 21 U.S.C. § 355(j) and C.F.R. § 314.95 (the "Notice Letter"), Ingenus submitted ANDA No. 210270 to the FDA.

14. On information and belief and as stated in the Notice Letter, Ingenus notified Plaintiffs that Ingenus had submitted ANDA No. 210270, seeking approval to market Ingenus's generic copy of Genzyme's Clolar® drug product, and that Ingenus was providing information to Plaintiffs pursuant to Section505(j)(2)(B)(ii) of the Food, Drug and Cosmetic Act and Section 314.95 of Title 21 of the Code of Federal Regulations.

15. On information and belief, Ingenus has continuous and systematic contacts with Delaware.

16. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

THE PATENT

17. United States Patent No. 5,661,136 ("'136 patent") was duly and legally issued on August 26, 1997 to inventors Drs. John A. Montgomery and John A. Secrist, III. (A true and accurate copy of the '136 patent is attached hereto as Exhibit A.) The '136 patent was assigned to Southern Research. With patent term extension, the '136 patent will expire on July 14, 2018 (including pediatric exclusivity). At all times from the issuance of the '136 patent to the present, Southern Research has been the owner of the '136 patent. Genzyme is Southern Research's exclusive licensee under the '136 patent. Sanofi is Genzyme's exclusive sub-licensee under the '136 patent.

ACTS GIVING RISE TO THIS ACTION

18. Genzyme is the holder of the approved New Drug Application ("NDA") No. 021673 for the Clolar® (clofarabine) injection drug product ("Clolar® NDA"). Southern Research, Genzyme, and Sanofi all share in the revenue generated from the sale of Clolar®.

19. Clolar® is indicated for the treatment of pediatric patients 1 to 21 years old with relapsed or refractory acute lymphoblastic leukemia after at least two prior regimens ("Approved Indication"). Usage of Clolar® and the Approved Indication are described in the Clolar® Prescribing Information, which also states that a mechanism of action of the clofarabine in Clolar® is inhibiting DNA synthesis through an inhibitory action on ribonucleotide reductase and by competitive inhibition of DNA polymerases.

20. The '136 patent is listed in the FDA publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluation" (the Orange Book) as being applicable to Clolar®.

21. The '136 patent covers the use of Clolar® according to its Approved Indication, which occurs via a mechanism of action as described in the Clolar® Prescribing Information.

22. Defendants have knowledge of the '136 patent.

23. By the Notice Letter dated April 10, 2017, purporting to be a notice pursuant to section 505(j)(2)(B)(ii) of the Federal Food Drug and Cosmetic Act and 21 C.F.R. § 314.95, Ingenus notified Plaintiffs that Ingenus had submitted ANDA No. 210270 to the FDA under section 505(j) of the Federal Food Drug and Cosmetic Act (21 U.S.C. § 355(j)) seeking approval to engage in the commercial manufacture, importation, use, and sale of 1mg/mL, 20 mL vials, of clofarabine injection ("Clofarabine ANDA Injection") as a generic version of Genzyme's

Clolar® drug product. Southern Research, Genzyme, and Sanofi all share in the revenue generated from the sale of Genzyme's Clolar® drug product.

24. The Notice Letter was received by Plaintiffs on or about April 14, 2017.

25. On information and belief, Ingenus asserted in its ANDA that its Clofarabine ANDA Injection is bioequivalent to Genzyme's 20 mL clofarabine Clolar® drug product.

26. Ingenus's ANDA was submitted to obtain FDA approval to engage in the commercial manufacture, importation, use, offer to sell, and sale of Ingenus's Clofarabine ANDA Injection prior to the expiration of the '136 patent, which is listed in the FDA publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluation" (the "Orange Book") as being applicable to Genzyme's Clolar® drug product.

27. On information and belief, Ingenus intends to engage in the commercial manufacture, importation, use, offer to sell, and sale of its Clofarabine ANDA Injection promptly upon receiving FDA approval to do so.

28. In the Notice Letter, Ingenus notified plaintiffs that its ANDA contained a "Paragraph IV" certification that in Ingenus's opinion the '136 patent is invalid or will not be infringed by the commercial manufacture, use, sale, offer to sell, or importation of its Clofarabine ANDA Injection.

29. On information and belief, Ingenus will knowingly accompany Clofarabine ANDA Injection with prescribing information that will contain instructions for use that substantially copy the instructions for Clolar®, including instructions for administering Clofarabine ANDA Injection as claimed in the '136 patent, including but not limited to Claims 1 and 5.

30. On information and belief, Ingenus's prescribing information for Clofarabine ANDA Injection will instruct users to administer Clofarabine ANDA Injection to bring about a cytotoxic effect in a mammalian cancerous cell.

31. On information and belief, Ingenus's prescribing information for Clofarabine ANDA Injection will instruct users to administer Clofarabine ANDA Injection to inhibit ribonucleotide reductase and DNA polymerase α in a mammalian cell.

32. On information and belief, Ingenus has knowledge and/or an expectation that Clofarabine ANDA Injection will be used in accordance with its prescribing information.

33. On information and belief, Ingenus knows that the prescribing information that will accompany Clofarabine ANDA Injection will induce and/or contribute to others using Clofarabine ANDA Injection in the manner set forth in the prescribing information.

34. On information and belief, physicians, health care providers, and/or patients will directly infringe one or more claims of the '136 patent, including but not limited to Claims 1 and 5, by using Clofarabine ANDA Injection in accordance with the prescribing information provided by Ingenus after the FDA approves ANDA No. 210270.

35. On information and belief, Ingenus specifically intends that physicians, health care providers, and/or patients will use Clofarabine ANDA Injection in accordance with the prescribing information provided by Ingenus to directly infringe one or more claims of the '136 patent, including but not limited to Claims 1 and 5.

36. On information and belief, Ingenus designed Clofarabine ANDA Injection for use in a way that would infringe the '136 patent and will instruct users of Clofarabine ANDA Injection to use Clofarabine ANDA Injection in a way that would infringe one or more claims of the '136 patent.

37. On information and belief, Clofarabine ANDA Injection is not a staple article or commodity of commerce suitable for substantial non-infringing use. The use of Clofarabine ANDA Injection constitutes a material part of the invention. On information and belief, Ingenus knows that Clofarabine ANDA Injection is especially made or adapted for use in infringing at least one of the claims, including but not limited to claim 1, of the '136 patent either literally or under the doctrine of equivalents.

38. On information and belief, Ingenus knowingly has taken and intends to take active steps to induce and/or contribute to physicians, health care providers, and/or patients using Clofarabine ANDA Injection in a manner that directly infringes one or more claims of the '136 patent, including but not limited to by providing prescribing information with instructions for administering Clofarabine ANDA Injection as claimed in one or more claims of the '136 patent, including but not limited to Claims 1 and 5.

39. On information and belief, Ingenus is aware of the decision issued on August 22, 2013 in *Southern Research Institute et al. v. Abon Pharmaceuticals LLC,* 1:12-cv-04709 (D. N.J.), construing phrases from the claims of the '136 patent to include "cells in, or derived from, a mammal (such as a human)."

40. Plaintiffs commenced this action within 45 days of receiving the Notice Letter.

COUNT I
INFRINGEMENT BY INGENUS OF U.S. PATENT NO. 5,661,136

41. Plaintiffs repeat and reallege the allegations of paragraphs 1-40 as if fully set forth herein.

42. Ingenus's submission of its ANDA to obtain approval from the FDA to engage in the commercial manufacture, importation, use, offer to sell, or sale of its Clofarabine ANDA

Injection prior to the expiration of the '136 patent constitutes infringement of one or more of the claims of the '136 patent, including but not limited to Claim 1, under 35 U.S.C. § 271(e)(2)(A).

43. Ingenus had notice of the '136 patent at the time of its infringement. Ingenus's infringement has been, and continues to be, deliberate.

44. Plaintiffs will be substantially and irreparably harmed if Ingenus's infringement is not enjoined. Plaintiffs do not have an adequate remedy at law.

COUNT II
DECLARATORY JUDGMENT OF INFRINGEMENT BY INGENUS OF U.S. PATENT NO. 5,661,136

45. Plaintiffs repeat and reallege the allegations of paragraphs 1-44 as if fully set forth herein.

46. This claim arises under the Patent Laws, 35 U.S.C. § 1 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, based upon an actual controversy between the parties. Ingenus has taken immediate and active steps, through its submission of its ANDA, to obtain approval from the FDA and, after obtaining FDA approval, to engage in the commercial manufacture, importation, use, offer to sell, or sale of its Clofarabine ANDA Injection in the United States prior to the expiration date of the '136 patent. There is a real and actual controversy between the parties with respect to Ingenus's intent to engage in the commercial manufacture, importation, use, offer to sell, or sale of its Clofarabine ANDA Injection upon receiving FDA approval and infringement of the '136 patent.

47. Ingenus's commercial manufacture, importation, use, offer to sell, or sale of its Clofarabine ANDA Injection in/into the United States, prior to the expiration of the '136 patent, would constitute infringement of one or more of the claims of the '136 patent, including but not limited to Claim 1, under 35 U.S.C. §§ 271(a), (b) and/or (c).

48. Upon FDA approval of Ingenus's ANDA, Ingenus will infringe one or more of the claims of the '136 patent under 35 U.S.C. § 271(a) by making, using, selling, offering to sell, or importing its Clofarabine ANDA Injection in/into the United States, unless enjoined by this Court.

49. Upon FDA approval of Ingenus's ANDA, Ingenus will infringe one or more of the claims of the '136 patent under 35 U.S.C. § 271(b) and (c) by actively inducing and contributing to infringement by others, unless enjoined by this Court.

50. Ingenus had notice of the '136 patent at the time of its infringement. Ingenus's infringement has been, and will continue to be, deliberate.

51. Plaintiffs will be substantially and irreparably harmed if Ingenus's infringement is not enjoined. Plaintiffs do not have an adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request the following relief:

(a) A judgment declaring that Ingenus has infringed one or more claims of the '136 patent by the filing of ANDA No. 210270;

(b) A judgment declaring that Ingenus's commercial making, using, selling, offering to sell, or importing its Clofarabine ANDA Injection in/into the United States will infringe one or more claims of the '136 patent;

(c) A judgment under 35 U.S.C. § 271(e)(4)(A) providing that the effective date of any FDA approval of ANDA No. 210270 under Section 505(j) of the Federal Food, Drug, and Cosmetic Action (21 U.S.C. § 355(j)) be a date no earlier than (i) January 14, 2018, the date on which the '136 patent expires; (ii) July 14, 2018, the date on which the term of

extension of the '136 patent due to pediatric exclusivity expires; or (iii) the expiration of any other exclusivity to which Genzyme or Southern Research becomes entitled;

(d) Injunctive relief under 35 U.S.C. § 271(e)(4)(B) permanently enjoining Ingenus from making, using, selling, offering to sell, or importing its Clofarabine ANDA Injection in/into the United States until after expiration of the '136 patent or the expiration of any other exclusivity to which Genzyme or Southern Research becomes entitled;

(e) Damages under 35 U.S.C. § 271(e)(4)(C), which this Court should treble pursuant to 35 U.S.C. § 284, if Ingenus infringes the '136 patent by engaging in the commercial manufacture, importation, use, sale, offer to sell or import its Clofarabine ANDA Injection in/into the United States prior to the expiration of the '136 patent or the expiration of any other exclusivity to which Genzyme or Southern Research becomes entitled;

(f) An award of reasonable attorney fees in this action pursuant to 35 U.S.C. § 285;

(g) Costs and expenses in this action; and

(h) Such further and other relief as this Court may deem just and proper.

DATED: May 24, 2017

RATNERPRESTIA

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