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District of New Jersey Citing Litigation Tactics Orders Related Hatch–Waxman Cases to Be Tried Together

In *Corcept Therapeutics, Inc. v. Teva Pharmaceuticals USA, Inc.*, the United States District Court for the District of New Jersey recently ordered that two separate, but related, Hatch–Waxman cases must be tried together. The cases involve patents covering plaintiff Corcept Therapeutics, Inc.’s (“Corcept”) KORLYM® product for the treatment of Cushing’s syndrome. Each case involves two patents, all of which involve methods of treatment involving mifepristone.

Defendant Teva Pharmaceuticals USA, Inc. (“Teva”), citing the similarities between the patents and issues in the two matters, submitted to the district court a proposed stipulation of judgment whereby the parties agreed that the outcome in the first case would govern the outcome in the second case. Corcept would not sign the stipulation. While it agreed that the validity issues between the two matters were identical, it disagreed that the infringement issues were the same and argued that the second matter would require additional discovery.

The district court agreed with Teva, stating “Corcept’s decision to belatedly file [the second action] was of its own making and at its own peril.” (ECF No. 239 at 1.) And, the district court rejected Corcept’s argument that the case could have been resolved faster had Teva filed a declaratory judgment action when the patents in the second matter issued (the second set of patents issued after the expiration of the 30–month stay, so Teva did not need to certify as to those patents). The district court noted that it “cannot function properly if all parties before it were permitted to litigate their claims in piecemeal fashion . . . ” and ordered consolidation of both matter for trial. *Id.* The district court also warned that it would consider awarding attorneys’ fees to Teva for the additional discovery.

Although the circumstances of these cases are somewhat unique, the underlying issue of how to assert later-filed patents often occurs in Hatch-Waxman matters. A plaintiff must decide whether to amend an original complaint to include the later-filed patents or file a new complaint altogether. Either strategy is technically acceptable provided that plaintiffs work with defendants and the court to conserve time and resources and, by all means, avoid trying “to litigate their claims in piecemeal fashion.”

Gibbons will continue to monitor and report developments in Hatch-Waxman litigation in the District of New Jersey.

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