

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**BAYER HEALTHCARE LLC**

**Plaintiff,**

**v.**

**ABBOTT LABORATORIES, ABBOTT  
BIORESEARCH CENTER, INC., AND  
ABBOTT BIOTECHNOLOGY LTD.**

**Defendants.**

**Civil Action No. 6:08cv507**

**Jury Trial Requested**

**COMPLAINT**

Plaintiff Bayer HealthCare LLC (“Bayer” or “Plaintiff”) files this Complaint for patent infringement against Abbott Laboratories (“Abbott Labs”), Abbott Bioresearch Center, Inc. (“ABC”), and Abbott Biotechnology Ltd. (“ABL”) (collectively “Abbott” or “Defendants”), and alleges as follows:

**PARTIES**

1. Plaintiff Bayer is a limited liability corporation organized under the laws of the State of Delaware, with its principal place of business at 555 White Plains Road, Tarrytown, New York 10591.

2. Upon information and belief, Defendant Abbott Labs is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business at 100 Abbott Park Road, Abbott Park, Illinois 60064.

3. Upon information and belief, Defendant ABC is a wholly owned subsidiary corporation of Abbott Labs that is organized and existing under the laws of the State of Delaware and has a principal place of business at 100 Research Drive, Worcester, Massachusetts 01605.

4. Upon information and belief, Defendant ABL is a wholly owned subsidiary corporation of Abbott Labs that is organized and existing under the laws of Bermuda and has a place of business at Carr #2 Km. 59.2, Segundo Piso, Barceloneta, Puerto Rico 00617.

5. Defendants manufacture, use, offer for sale, and/or sell a treatment for, *inter alia*, rheumatoid arthritis, juvenile idiopathic arthritis, psoriatic arthritis, ankylosing spondylitis, Crohn's disease and plaque psoriasis, under the trade name HUMIRA®.

### **JURISDICTION AND VENUE**

6. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over Defendants. Defendants have conducted and do conduct business within the State of Texas. Defendants, directly or through intermediaries (including distributors, retailers, pharmacists, doctors, and others), ship, distribute, offer for sale, sell, and advertise their products in the United States, the State of Texas, and the Eastern District of Texas. Defendants have purposefully and voluntarily placed one or more of their infringing products into the stream of commerce with the expectation that consumers in the Eastern District of Texas will purchase these infringing products. Consumers in the Eastern District of Texas have purchased and continue to purchase these infringing products. Defendants

have committed the tort of patent infringement within the State of Texas and, more particularly, within the Eastern District of Texas.

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

### **COUNT FOR PATENT INFRINGEMENT**

10. Plaintiff refers to and incorporates herein the allegations of Paragraphs 1-9 above.

11. On August 5, 1997, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,654,407 (“the ‘407 patent”), entitled “Human Anti-TNF Antibodies,” after a full and fair examination. Plaintiff is the lawful owner of all right, title, and interest in and to the ‘407 patent, including all right to sue and recover for past damages. A true and correct copy of the ‘407 patent is attached as Exhibit A to this Complaint.

12. Upon information and belief, Defendants manufacture, use, offer to sell, and/or sell in the United States, including this Judicial District, human monoclonal antibodies that bind specifically to human tumor necrosis factor alpha (“TNF- $\alpha$ ”), known generally under the trade name HUMIRA<sup>®</sup> and the International Nonproprietary Name adalimumab, for use in treatment of, *inter alia*, rheumatoid arthritis, juvenile idiopathic arthritis, psoriatic arthritis, ankylosing spondylitis, Crohn’s disease and plaque psoriasis.

13. Upon information and belief, Defendants’ manufacture, use, offer for sale, and/or sale of HUMIRA<sup>®</sup> infringes, induces infringement and/or contributes to the infringement of one or more claims of the ‘407 patent under 35 U.S.C. § 271.

14. Upon information and belief, Defendants have been aware of the existence of the '407 patent, but nevertheless have been and are now infringing one or more claims of the '407 patent. This infringement by Defendants has been willful and deliberate and in disregard of Bayer's lawful rights under the '407 patent, thus rendering this case "exceptional," as that term is set forth in 35 U.S.C. § 285.

15. Plaintiff has suffered and will continue to suffer damages as a result of Defendants' infringement.

### **PRAYER FOR RELIEF**

WHEREFORE, Bayer prays for judgment against Defendants as follows:

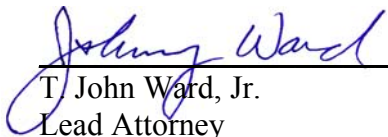
- A. Adjudging that the '407 patent is valid and enforceable;
- B. Adjudging that Defendants have infringed the '407 patent directly and/or indirectly by way of contributing to and/or inducing infringement, literally, and/or under the doctrine of equivalents;
- C. Awarding Bayer the damages to which it is entitled under 35 U.S.C. § 284 for Defendants' infringement and any continuing or future infringement, together with pre-judgment and post-judgment interest and costs as fixed by the Court;
- D. Adjudging that Defendants' infringement has been willful, and awarding Bayer treble damages pursuant to 35 U.S.C. § 284;
- E. Declaring this to be an exceptional case and awarding Bayer its attorney fees, as provided by 35 U.S.C. § 285; and
- F. Awarding Bayer such other and further relief as the Court may deem just and proper.

## DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of any and all issues triable of right by a jury.

Dated: December 24, 2008

Respectfully Submitted,

  
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T. John Ward, Jr.  
Lead Attorney

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