

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ALLERGAN USA, INC., ALLERGAN	)	
HOLDINGS UNLIMITED COMPANY and	)	
EDEN BIODESIGN, LLC,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 21-1062 (RGA)
	)	
AUROBINDO PHARMA LTD. and	)	
AUROBINDO PHARMA USA, INC.,	)	
	)	
Defendants.	)	

**FIRST AMENDED COMPLAINT**

Allergan USA, Inc. and Allergan Holdings Unlimited Company (collectively, “Allergan”), and Eden Biodesign, LLC (collectively with Allergan, “Plaintiffs”), for their Complaint against Defendants Aurobindo Pharma Ltd. and Aurobindo Pharma USA, Inc. (collectively, “Aurobindo”), hereby allege as follows.

**THE PARTIES**

1. Plaintiff Allergan USA, Inc. is a Delaware corporation with a principal place of business at 2525 Dupont Drive, Irvine, California 92612, United States. Plaintiff Allergan USA, Inc. has a registered address at 5 Giralda Farms, Madison, New Jersey 07940, United States.

2. Plaintiff Allergan Holdings Unlimited Company is an Irish corporation having a principal place of business at Clonsaugh Business & Technology Park, Coolock, Dublin 17, Ireland.

3. Plaintiff Eden Biodesign, LLC is a Delaware corporation having a place of business at 5 Giralda Farms, Madison, New Jersey 07940, United States.

4. Upon information and belief, Defendant Aurobindo Pharma Ltd. is a corporation organized and existing under the laws of India, having a place of business at Plot No. 2, Maitri Vihar, Ameerpet, Hyderabad – 500 038, Andhra Pradesh, India. Upon information and belief, Defendant Aurobindo Pharma Ltd. manufactures, imports, and/or distributes numerous generic drugs for sale and use throughout the United States, including in this judicial district, and including through its wholly owned subsidiary and agent Aurobindo Pharma USA, Inc.

5. Upon information and belief, Defendant Aurobindo Pharma USA, Inc. is a Delaware corporation having a principal place of business at 6 Wheeling Road, Dayton, New Jersey 08810. Upon information and belief, Defendant Aurobindo Pharma USA, Inc. is a wholly owned subsidiary of Aurobindo Pharma Ltd. Upon information and belief, Defendant Aurobindo Pharma USA, Inc. manufactures, imports, and/or distributes numerous generic drugs for sale and use throughout the United States, including in this judicial district, and including as a subsidiary and agent of Aurobindo Pharma Ltd.

### **NATURE OF THE ACTION**

6. This is a civil action for patent infringement by Aurobindo of Allergan's United States Patent Nos. 11,007,179 (the "'179 patent") and 11,090,291 (the "'291 patent"). This action is based upon the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, and arises from Aurobindo's submission of Abbreviated New Drug Application ("ANDA") ANDA No. 213511 to the United States Food and Drug Administration ("FDA") seeking to commercialize a generic version of Allergan's Viberzi® brand eluxadoline tablets throughout the United States, including in this judicial district, before the expiration of the '179 and '291 patents.

### **JURISDICTION AND VENUE**

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

8. This Court has personal jurisdiction over Aurobindo Pharma USA, Inc. because, on information and belief, Aurobindo Pharma USA, Inc. is a corporation organized and existing under the laws of Delaware.

9. This Court has personal jurisdiction over Aurobindo Pharma Ltd. because, *inter alia*, it has maintained continuous and systematic contacts with this judicial district and availed itself of the privilege of doing business in this judicial district. On information and belief, Aurobindo Pharma Ltd. has committed, or aided, abetted, induced, contributed to, and/or participated in the commission of a tortious act of patent infringement that will lead to foreseeable harm and injury to Plaintiffs in Delaware. Aurobindo Pharma Ltd. has participated in the preparation, filing, and/or amendment of an ANDA seeking approval to market and sell a generic version of Allergan's branded product, Viberzi<sup>®</sup>, and has distribution channels and plans to market and sell its generic product throughout the United States, including in this judicial district, before the '179 and '291 patents expire.

10. This Court also has personal jurisdiction over Aurobindo Pharma USA, Inc. and Aurobindo Pharma Ltd. ("Aurobindo") by virtue of, *inter alia*, its systematic and continuous contacts with Delaware. Upon information and belief, Aurobindo is amenable to litigating in this forum based on Aurobindo's conduct in multiple prior litigations in this judicial district. For example, Aurobindo did not contest this Court's jurisdiction in Plaintiffs' related, previously-filed civil actions regarding Aurobindo's ANDA No. 213511, Civil Action Nos. 19-1674-RGA and 19-1727-RGA. *See Allergan USA, Inc. et al. v. Aurobindo Pharma Ltd. et al.*, C.A. No. 19-1674-

RGA, D.I. 9 at ¶¶ 9–11 (D. Del.); *Allergan USA, Inc. et al. v. Aurobindo Pharma Ltd. et al.*, C.A. No. 19-1727-RGA, D.I. 23 at ¶¶ 15–17 (D. Del.).

11. Venue is proper in this judicial district for Aurobindo Pharma USA, Inc. pursuant to 28 U.S.C. § 1400(b) because Aurobindo Pharma USA, Inc. is a corporation organized and existing under the laws of Delaware.

12. Venue is proper in this judicial district for Aurobindo Pharma Ltd. pursuant to 28 U.S.C. § 1391 because Aurobindo Pharma Ltd. is organized and existing under the laws of the Republic of India and is subject to personal jurisdiction in this District.

### **THE PATENTS**

13. On May 18, 2021, the '179 patent, titled “Opioid Receptor Modulator Dosage Formations,” was duly and lawfully issued by the United States Patent and Trademark Office (“USPTO”). Allergan Holdings Unlimited Company is the owner and assignee of the '179 patent. A copy of the '179 patent is attached hereto as Exhibit A.

14. On August 17, 2021, the '291 patent, titled “Opioid Receptor Modulator Dosage Formulations,” was duly and lawfully issued by the USPTO. Allergan Holdings Unlimited Company is the owner and assignee of the '291 patent. A copy of the '291 patent is attached hereto as Exhibit B.

15. Allergan Holdings Unlimited Company holds New Drug Application (“NDA”) No. 206940 for Viberzi® brand eluxadoline tablets. Viberzi® is approved for the treatment of irritable bowel syndrome with diarrhea (“IBS-D”) in adults. The '179 patent is listed in *Approved Drug Products with Therapeutic Equivalence Evaluations* (“the Orange Book”) for Viberzi®, along with fourteen other patents.

16. Allergan USA, Inc. is the exclusive distributor of Viberzi® in the United States.

17. Eden Biodesign, LLC is the exclusive licensee of the '179 and '291 patents.

**ACTS GIVING RISE TO THIS ACTION**

18. Upon information and belief, on or before July 30, 2019, Aurobindo submitted ANDA No. 213511 to the FDA under § 505 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 355(j)). ANDA No. 213511 seeks FDA approval for the commercial manufacture, use, and sale of generic oral tablet products containing 75 mg and 100 mg of eluxadoline as the active ingredient (“the Aurobindo Generic Products”).

19. Pursuant to § 505(j)(2)(A)(vii)(IV) of the Federal Food, Drug and Cosmetic Act, ANDA No. 213511 previously included certifications that the claims of U.S. Patent No. 8,691,860 (the “’860 patent”), U.S. Patent No. 9,115,091 (the “’091 patent”), U.S. Patent No. 9,364,489 (the “’489 patent”), U.S. Patent No. 9,675,587 (the “’587 patent”), U.S. Patent No. 9,789,125 (the “’125 patent”), U.S. Patent No. 10,188,632 (the “’632 patent”), U.S. Patent No. 7,741,356 (the “’356 patent”), U.S. Patent No. 7,786,158 (the “’158 patent”), U.S. Patent No. 8,344,011 (the “’011 patent”), U.S. Patent No. 8,609,709 (the “’709 patent”), U.S. Patent No. 8,772,325 (the “’325 patent”), U.S. Patent No. 9,205,076 (the “’076 patent”), U.S. Patent No. 9,700,542 (the “’542 patent”), and U.S. Patent No. 10,213,415 (the “’415 patent”) were invalid, unenforceable, and/or would not be infringed by the manufacture, use, importation, offer for sale, or sale of the Aurobindo Generic Products. Allergan received written notification of ANDA No. 213511 and Aurobindo’s certifications pursuant to § 505(j)(2)(A)(vii)(IV) with respect to the ’356 patent, the ’158 patent, the ’011 patent, the ’709 patent, the ’325 patent, the ’076 patent, the ’542 patent, and the ’415 patent on or about July 31, 2019, and timely filed suit with respect to those patents on September 6, 2019. *Allergan USA, Inc. et al. v. Aurobindo Pharma Ltd. et al.*, C.A. No. 19-1674-RGA (D. Del.).

20. Allergan received written notification of ANDA No. 213511 and Aurobindo's certifications pursuant to § 505(j)(2)(A)(vii)(IV) with respect to the '860 patent, the '091 patent, the '489 patent, the '587 patent, the '125 patent, and the '632 patent on or about July 31, 2019, and timely filed suit with respect to those patents on September 13, 2019. *Allergan USA, Inc. et al. v. Aurobindo Pharma Ltd. et al.*, C.A. No. 19-1727-RGA (D. Del.).

21. In a letter dated July 30, 2021, Aurobindo advised Plaintiffs that it had amended ANDA No. 213511 to include a certification pursuant to § 505(j)(2)(A)(vii)(IV) of the Federal Food, Drug and Cosmetic Act, with respect to the '179 patent. Aurobindo alleged that the claims of the '179 patent were invalid, unenforceable, and/or would not be infringed by the manufacture, importation, use, sale, or offer for sale of the Aurobindo Generic Products.

22. By stipulation so-ordered on August 16, 2021, Aurobindo agreed not to launch its proposed generic eluxadoline products in the United States before final judgment by the district court, or alternatively, in compliance with terms of any final settlement between Plaintiffs and Aurobindo, of Plaintiffs' related, previously-filed civil actions regarding Aurobindo's ANDA No. 213511, Civil Action Nos. 19-1674-RGA and 19-1727-RGA. *See Allergan USA, Inc. et al. v. Aurobindo Pharma Ltd. et al.*, C.A. No. 19-1674-RGA, D.I. 75 (D. Del.); *Allergan USA, Inc. et al. v. Aurobindo Pharma Ltd. et al.*, C.A. No. 19-1727-RGA, D.I. 222 (D. Del.).

23. Aurobindo's submission of ANDA No. 213511 to the FDA constitutes infringement of one or more claims of the '179 and '291 patents under 35 U.S.C. § 271(e)(2)(A). Although the '179 and '291 patents did not issue until after ANDA No. 213511 was filed, this does not preclude Aurobindo from infringement liability under 35 U.S.C. § 271(e)(2). *Vanda Pharms. Inc. v. W.-Ward Pharms. Int'l Ltd.*, 887 F.3d 1117, 1127 (Fed. Cir. 2018).

24. Aurobindo's participation in, contribution to, inducement of, aiding, or abetting the submission of ANDA No. 213511 constitutes direct, contributory, or induced infringement of one or more claims of the '179 and '291 patents under 35 U.S.C. § 271(e)(2)(A).

25. Upon information and belief, if Aurobindo commercially manufactures, uses, offers for sale, or sells within the United States, or imports into the United States, the Aurobindo Generic Products, or induces or contributes to any such conduct, it would further infringe, *inter alia*, one or more claims of the '179 and '291 patents under 35 U.S.C. § 271(a), (b), and (c).

26. Upon information and belief, Aurobindo has infringed, *inter alia*, one or more claims of the '179 and '291 patents under 35 U.S.C. § 271(e)(2)(A), and, upon information and belief, will further infringe, *inter alia*, one or more of these claims under 35 U.S.C. § 271(a), (b), and (c), because, *inter alia*, the Aurobindo Generic Products and the methods of using the Aurobindo Generic Products, *e.g.*, by doctors, pharmacists, healthcare providers and patients, according to the proposed package insert and prescribing information will meet each and every claim element of one or more claims of the '179 and '291 patents, either literally or under the doctrine of equivalents.

27. Upon information and belief, Aurobindo has participated in, contributed to, aided, abetted, and/or induced infringement of the '179 and '291 patents and/or will participate in, contribute to, aid, abet, and/or induce infringement of the '179 and '291 patents once the Aurobindo Generic Products are commercially made, used, offered for sale, or sold in the United States, or imported into the United States.

28. Upon information and belief, Aurobindo has knowledge that if it were to receive approval from the FDA to market the Aurobindo Generic Products described in ANDA No. 213511 and make the Aurobindo Generic Products available for sale and/or use by others, *e.g.*, by

doctors, pharmacists, healthcare providers and patients, according to the package insert and prescribing information during the proposed shelf life of the products before expiration of the '179 and '291 patents, such activities would result in the sale and/or use of a product that itself infringes and/or is especially made for an infringing use. Upon information and belief, Aurobindo has knowledge of such infringement and/or such infringing use and also knows that the products described in ANDA No. 213511 are not a staple article or commodity of commerce suitable for substantial non-infringing use, but rather are especially made to infringe and/or are especially adapted for use in the direct infringement of the '179 and '291 patents.

29. Aurobindo's actions render this an exceptional case under 35 U.S.C. § 285.

30. Plaintiffs will be irreparably harmed by Aurobindo's infringing activities unless those activities are enjoined by this Court. Plaintiffs do not have an adequate remedy at law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment as follows:

a) That Aurobindo's submission of ANDA No. 213511 is an act of infringement of one or more claims of the '179 and '291 patents under 35 U.S.C. § 271(e)(2);

b) That, pursuant to 35 U.S.C. § 271(e)(4)(A), the effective date of any approval of Aurobindo's ANDA No. 213511 shall not be earlier than the expiration dates of the '179 and '291 patents, including any extensions or exclusivities;

c) That Aurobindo, its officers, agents, servants, and employees, and those persons in active concert or participation with any of them, be permanently enjoined from commercially manufacturing, using, offering for sale, or selling in the United States, or importing into the United States, the Aurobindo Generic Products, and any other product that infringes or induces



infringement or contributes to the infringement of the '179 or '291 patents, prior to the expiration of the '179 and '291 patents, including any extensions or exclusivities;

d) That this is an exceptional case under 35 U.S.C. § 285 and that Plaintiffs be awarded the attorneys' fees, costs, and expenses that they incur prosecuting this action; and

e) That Plaintiffs be awarded such other and further relief as this Court deems just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Jeremy A. Tigan*

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Jack B. Blumenfeld (#1014)  
Jeremy A. Tigan (#5239)  
1201 North Market Street  
P.O. Box 1347  
Wilmington, DE 19899  
(302) 658-9200  
jblumenfeld@morrisnichols.com  
jtigan@morrisnichols.com

*Attorneys for Plaintiffs*

OF COUNSEL:

Lisa B. Pensabene  
Hassen Sayeed  
Daniel O'Boyle  
Carolyn Wall  
James Yi Li  
Mark A. Hayden  
O'MELVENY & MYERS LLP  
7 Times Square  
New York, NY 10036  
(212) 326-2000

August 17, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that on August 17, 2021, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on August 17, 2021, upon the following in the manner indicated:

Kenneth L. Dorsney, Esquire  
MORRIS JAMES LLP  
500 Delaware Avenue, Suite 1500  
Wilmington, DE 19801  
*Attorneys for Defendants Aurobindo Pharma  
Ltd. and Aurobindo Pharma USA, Inc.*

*VIA ELECTRONIC MAIL*

Timothy H. Kratz, Esquire  
George J. Barry III, Esquire  
KRATZ & BARRY LLP  
1050 Crown Pointe Parkway, Suite 500  
Atlanta, GA 30338  
*Attorneys for Defendants Aurobindo Pharma  
Ltd. and Aurobindo Pharma USA, Inc.*

*VIA ELECTRONIC MAIL*

*/s/ Jeremy A. Tigan*

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Jeremy A. Tigan (#5239)