

9. Defendant admits that the USPTO issued the '906 Patent. Defendant denies any inferences contained in paragraph 9 of the complaint, including but not limited to any inference that the claims set forth in the '906 Patent are valid.

10. Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 and therefore leaves plaintiffs to their proof.

11. Defendant admits that BHC has been identified as a holder of NDA No. 20-118. Defendant lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 11 and therefore leaves plaintiffs to their proof.

12. Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 and therefore leaves plaintiffs to their proof.

13. Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 and therefore leaves plaintiffs to their proof.

14. Defendant admits that the '906 Patent is listed in the Orange Book.

15. Defendant admits the allegations set forth in paragraph 15 of the complaint.

16. Defendant admits the allegations set forth in paragraph 16 of the complaint.

17. Defendant admits that it transmitted a letter to plaintiffs dated December 11, 2008. The contents of that letter speak for themselves and any characterization of that letter set forth in paragraph 17 of the complaint is denied.

COUNT ONE
(Infringement of the '906 Patent Against Minrad)

18. Defendant incorporates and realleges paragraphs 1 through 17 above as if set forth in full herein.

19. Defendant denies the allegations set forth in paragraph 19 of the complaint.

20. Defendant denies the allegations set forth in paragraph 20 of the complaint.

21. Defendant denies the allegations set forth in paragraph 21 of the complaint.
22. Defendant denies the allegations set forth in paragraph 22 of the complaint.
23. Defendant denies the allegations set forth in paragraph 23 of the complaint.
24. Defendant denies the allegations set forth in paragraph 24 of the complaint.

RESPONSE TO PRAYER FOR RELIEF

Defendant denies that plaintiffs are entitled to any of the relief they seek in the complaint and respectfully request that the Court enter an order dismissing the complaint and granting defendant such other relief it deems appropriate.

AFFIRMATIVE DEFENSES

1. The complaint fails to state a claim upon which relief can be granted.
2. Defendant's manufacture, sale, use, offer for sale and/or importation of drug product pursuant to ANDA No. 90-363 has not infringed, does not infringe and will not infringe any valid claim of the '906 Patent.
3. The claims of the '906 Patent are invalid for failure to comply with one or more requirements of 35 U.S.C. §§ 100 *et seq.*, including, but not limited to, §§ 101, 102, 103 and/or 112.
4. Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel, laches and/or waiver.
5. Defendant hereby reserves the right to assert any additional affirmative defenses which may later become known to it.

COUNTERCLAIM FOR DECLARATORY JUDGMENT

1. One or more of the claims set forth in the '906 Patent are invalid for failure to comply with one or more requirements of 35 U.S.C. §§ 100 *et seq.*, including, but not limited to, §§ 101, 102, 103 and/or 112.

2. Defendant's manufacture, sale, use, offer for sale and/or importation of drug product pursuant to ANDA No. 90-363 has not infringed, does not infringe and will not infringe any valid claim of the '906 Patent.

3. Defendant is entitled to a declaration that one or more claims set forth in the '906 Patent are invalid and/or that defendant has not infringed any claim set forth in the '906 Patent.

WHEREFORE, defendant respectfully requests that the Court:

- A. Dismiss the complaint with prejudice;
- B. Enter judgment in favor of defendant and against plaintiff;
- C. Enter an order declaring that one or more claims set forth in the '906 Patent are invalid and/or that defendant has not infringed any claim set forth in the '906 Patent.
- D. Award defendant its costs and expenses, including attorneys' fees, incurred in defense of this action; and
- E. Grant such other and further relief as the Court deems just and proper.

REED SMITH LLP

/s/ David E. Wilks

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