

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ELAN PHARMA INTERNATIONAL LIMITED,
Plaintiff,

- against -

BIOGEN, INC., N/K/A BIOGEN IDEC INC.,
Defendant.

Case No. 09 - CV - 6928()
Batts, J.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiff, Elan Pharma International Limited (“Elan” or “Plaintiff”), by its undersigned counsel, as and for its Complaint against Defendant Biogen, Inc., n/k/a Biogen Idec Inc. (“Biogen” or “Defendant”), alleges as follows:

NATURE OF LAWSUIT AND NEED FOR EXPEDITED PROCEEDINGS

1. Plaintiff Elan is a party to a Development and Marketing Collaboration Agreement dated August 15, 2000 with Defendant Biogen (the “Elan-Biogen Collaboration Agreement”). The Elan-Biogen Collaboration Agreement relates to the development, regulatory approval and commercialization of a therapeutic biologic formerly known as Antegren, and currently marketed as Tysabri®, which is on track for \$1 billion in annual sales and has blockbuster potential in treating multiple disease conditions. Discovered and developed in Elan’s labs, Tysabri® is a treatment approved for relapsing forms of multiple sclerosis (“MS”) in the United States and relapsing remitting MS in the European Union and approved (with limitations) in the treatment of Crohn’s Disease. While Elan discovered Tysabri® and the benefits it brings to patients, it sought out a large and financially strong collaborative party with

expertise in MS in order to spread the expense and risk associated with the research and marketing of Tysabri®. A complete copy of the Elan-Biogen Collaboration Agreement is deemed attached hereto and incorporated herein.

2. As has been reported in the press, after a long and thorough process to consider strategic alternatives, Plaintiff Elan and its parent company, Elan Corporation, plc (“Elan PLC”) have recently entered into a set of agreements with Janssen Pharmaceutical (“JNJ”), a subsidiary of Johnson & Johnson (“J&J”), whereby, among other things, JNJ will acquire a significant minority ownership in Elan PLC. Part of the transaction involves a strategic financing and collaboration agreement made and entered into as of July 2, 2009 between Elan and JNJ (the “Elan-JNJ Financing Agreement”). A complete copy of the Elan-JNJ Financing Agreement is deemed attached hereto and incorporated herein.

3. The Elan-Biogen Collaboration Agreement and the Elan-JNJ Financing Agreement each concerns competitively sensitive information and has confidentiality provisions. Upon entry of an appropriate order governing confidentiality and permitting their filing with the Court under seal, Elan will submit complete copies of both contracts.

4. By letter dated July 28, 2009 (the “July 28, 2009 Notice”), Biogen has asserted that, by entering into the Elan-JNJ Financing Agreement, Elan has assigned or delegated rights attendant to the Elan-Biogen Collaboration Agreement without Biogen’s consent. Biogen has declared that “Elan is in material breach” of the Elan-Biogen Collaboration Agreement, and has triggered the running of a sixty (60) day period following which Biogen threatens to terminate the Elan-Biogen Collaboration Agreement.

5. Elan believes that Biogen's declaration of breach is without merit and that Elan is in compliance with its obligations under the Elan-Biogen Collaboration Agreement. It is Elan's position that the Elan-JNJ Financing Agreement does not constitute any assignment or delegation of rights under the Elan-Biogen Collaboration Agreement.

6. There is an actual case and controversy between the parties.

7. The 60 day period triggered by Biogen's July 28, 2009 Notice is running. Sixty days from July 28, 2009 is September 26, 2009. Biogen's threat to terminate the Elan-Biogen Collaboration Agreement presents serious and irreparable injury to Elan, and is interfering with the upcoming closing of the Elan PLC-J&J transaction. Money damages are not an adequate remedy.

8. The Elan PLC-J&J transaction, which is substantial, is expected to close in early September 2009.

9. The Elan-JNJ Financing Agreement and the Elan-Biogen Collaboration Agreement each provides that it is an entire, fully integrated agreement that is to be construed and enforced in accordance with the laws of the State of New York. As Elan admits being party to both contracts, there are no disputed issues of fact. It is for the Court to construe the two contracts as a matter of law, and determine whether one constitutes an assignment or delegation of rights under the other. The language of the two agreements relevant to a determination of the singular issue presented by Biogen's July 28, 2009 Notice is plain and unambiguous, and thus consideration of extrinsic evidence beyond the face of the two agreements is neither necessary nor appropriate in the resolution of the singular legal issue presented.

10. Elan is prepared to proceed forthwith to facilitate a determination of this controversy so that the Elan PLC-J&J transaction can close without the overhang of Biogen's notice of breach.

11. Elan asks this Court to: (i) set an expedited schedule for the filing, briefing and hearing of a motion for preliminary injunction staying the 60 day period; (ii) order a consolidated hearing on the preliminary injunction motion and the hearing on the merits of Elan's declaratory judgment action seeking a ruling that the Elan-JNJ Financing Agreement does not constitute any assignment or delegation of rights under the Elan-Biogen Collaboration Agreement; and (iii) permit the filing under seal of complete copies of the two agreements and papers that quote therefrom.

PARTIES, JURISDICTION AND VENUE

12. Plaintiff Elan is an Irish private limited company with its principal place of business located in Athlone, Ireland. Plaintiff is a subsidiary of Elan PLC, an Irish public limited company.

13. Defendant Biogen is a Delaware corporation with its principal place of business located in Cambridge, Massachusetts.

14. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201.

15. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 because the citizenship of the parties is diverse and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

16. This Court has jurisdiction over the person of Defendant Biogen and venue is proper in this district pursuant to the Elan-Biogen Collaboration Agreement, which

provides that disputes asserting breach of the agreement will be submitted exclusively to the federal court in New York, and that the parties consent to the jurisdiction and venue of this Court.

IRREPARABLE INJURY

17. Biogen's July 28, 2009 Notice and threat to terminate the Elan-Biogen Collaboration Agreement presents serious and irreparable injury to Elan, and is interfering with the upcoming closing of the Elan PLC-J&J transaction.

18. It is vitally important to Elan, Elan PLC, and Elan PLC's thousands of shareholders, that this Court determine expeditiously whether or not the Elan-JNJ Financing Agreement constitutes an assignment or delegation of rights under the Elan-Biogen Collaboration Agreement so that Elan PLC can proceed to close its transaction with J&J, or restructure it. The Elan PLC-J&J transaction, of which the Elan-JNJ Financing Agreement is but a piece, is scheduled to close as soon as Hart-Scott clearance is obtained and the other customary closing conditions are satisfied. It is expected that the Elan PLC-J&J transaction will close in early September 2009. It is important for Elan and Elan PLC that closing not be delayed.

19. If Biogen is permitted to run the clock and terminate the Elan-Biogen Collaboration Agreement, Elan will be irreparably injured and money damages will not be an adequate remedy. A termination would put Biogen in charge of all decisions regarding the development, regulatory approval and commercialization of Tysabri®, and decisions made and courses of action taken, once made and taken, cannot be undone. A termination would cause forfeiture of all of Elan's rights to Tysabri®, which it invented and helped bring to the global market, while at the same time saddling Elan with draconian penalties including ongoing

expense and risk-sharing obligations as to which Elan would be unable to protect itself. A termination would deprive Elan of the ability to acquire Biogen's interests in the event of a Biogen change of control, depriving Elan of a unique asset. A termination could constitute the failure of a representation and covenant in the Elan-JNJ Financing Agreement and could expose Elan and Elan PLC to claims by JNJ.

20. In comparison, Biogen suffers little or no injury by the requested stay or expedited proceedings. If Elan is correct, Biogen will avoid the monumental exposure of a wrongful termination of the Elan-Biogen Collaboration Agreement. A stay and expedited determination of the singular legal issue presented in this action so that the Elan PLC-J&J transaction can close as scheduled will also go far to minimizing the monumental risk to Biogen of tortious interference with the Elan PLC-J&J transaction. Even if Biogen is correct (and it is not), the stay requested will be of short duration and would not present any significant injury to Biogen.

21. Elan has no adequate remedy at law.

22. The Court should maintain the status quo and order an expedited hearing on Elan's preliminary injunction motion. Pursuant to Rule 65 of the Federal Rules of Civil Procedure, the Court should also consolidate Elan's motion for preliminary injunctive relief with the determination of the merits of its request for a declaratory judgment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Elan prays for the following relief:

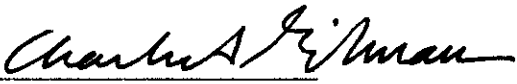
- i. An Order staying any effect of Biogen's July 28, 2009 Notice, temporarily and preliminarily enjoining Defendant Biogen from terminating the Elan-Biogen Collaboration Agreement during the pendency of this action and ordering the consolidation of the preliminary injunction hearing with trial

on the merits of the declaratory judgment action pursuant to Fed. R. Civ. P. 65(a)(2);

- ii. Judgment declaring that the Elan-JNJ Financing Agreement does not constitute an assignment or delegation of rights attendant to the Elan-Biogen Collaboration Agreement;
- iii. Judgment declaring that Biogen's consent is not required for Elan to enter into and consummate the Elan-JNJ Financing Agreement;
- iv. Judgment declaring that Elan's entry into and performance of the Elan-JNJ Financing Agreement without Biogen's consent does not constitute a material breach of the Elan-Biogen Collaboration Agreement;
- v. Judgment permanently enjoining Defendant Biogen from terminating the Elan-Biogen Collaboration Agreement based on its July 28, 2009 Notice;
- vi. Judgment declaring that the Biogen July 28, 2009 Notice is without force or effect, and ordering Biogen to withdraw the July 28, 2009 Notice;
- vii. Judgment ordering such other and further relief as this Court deems just and proper.

Dated: August 6, 2009

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