IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED, Plaintiff, v. ABRAXIS BIOSCIENCE, INC., Defendant.	§ § § § § § § § § § §	C.A. No. 06-438-GMS

PLAINTIFF ELAN PHARMA INTERNATIONAL LIMITED'S MOTION FOR (1) AN AWARD OF PREJUDGMENT INTEREST AND (2) AN ACCOUNTING OF DEFENDANT ABRAXIS BIOSCIENCE, INC.'S INFRINGING SALES SINCE JUNE 13, 2008

Plaintiff Elan Pharma International Limited ("Elan") respectfully moves the Court for (1) an Order awarding prejudgment interest on the amount of damages awarded by the jury for Abraxis BioScience Inc's ("Abraxis") infringing sales of Abraxane® calculated at the prevailing three-month United States Treasury Bill rate compounded quarterly up to the date of final judgment, and (2) directing an accounting of Abraxis's sales of Abraxane® from June 13, 2008 to the date of final judgment ("post-verdict sales"), and awarding Elan damages and prejudgment interest on those sales.[1]

The grounds for this motion are set forth in the accompanying Opening Brief, and a proposed Order setting forth the relief requested by Elan is attached.

[1] In the event that the jury's verdict is upheld, Elan anticipates filing an action seeking an accounting for infringing sales that occur after final judgment is entered and an order imposing an ongoing royalty. *See, e.g.*, Complaint at 1, *St. Clair Intellectual Property Consultants, Inc. v. Fujifilm Holdings Corp.*, No. 08-373 (D. Del. June 20, 2008) (related case before J. Farnan) and *z4 Techs., Inc. v. Microsoft Corp.*, 434 F. Supp. 2d 437, 444 (E.D. Tex. 2006), *aff'd* 507 F.3d 1340 (Fed. Cir. 2007). Elan recognizes that the Court has discretion in the current case concerning whether to account for post-verdict sales. If the Court chooses not to address those sales at this time, that accounting can be addressed in the subsequent action.

ASHBY & GEDDES

/s/ *John G. Day*

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ORDER AWARDING PREJUDGMENT INTEREST AND DIRECTING AN ACCOUNTING

Finding upon a jury verdict that Abraxis BioScience, Inc. ("Abraxis") has infringed claims 3 and 5 of U.S. Patent 5,399,363 ("the '363 Patent"), owned by Elan Pharma International Limited ("Elan"), and

Finding that the jury has awarded Elan the sum of $55,230,000.00 in damages to compensate it for such infringement, and

Upon consideration of Elan's "Motion For (1) An Award Of Prejudgment Interest And (2) An Accounting Of Abraxis BioScience, Inc.'s Infringing Sales Since June 13, 2008," and the parties' submissions in support of and opposition to that motion,

IT IS HEREBY ORDERED that:

1. Elan's motion for prejudgment interest based upon the three-month United States Treasury Bill rate, compounded quarterly, shall be, and hereby is, granted, and Elan shall be awarded the sum of _____in prejudgment interest on Abraxis's infringing sales up to June 13, 2008, which sum shall be added to the $55,230,000.00 in damages awarded by the jury for a total of _____in damages and prejudgment interest on Abraxis's infringing sales up to June 13, 2008, and that total shall be set forth in the final judgment in this case; and

2. Elan's motion for an accounting of Abraxis's sales of Abraxane® since June 13, 2008 to the date of final judgment shall be, and hereby is, granted, and royalties and prejudgment interest based upon the three-month United States Treasury Bill rate, compounded quarterly, shall be assessed on those sales and Elan shall be awarded the sum of _____ to be added to the amount of damages and prejudgment interest to be paid to Elan by Abraxis as set forth in the final judgment in this matter.

_____
Chief Judge

Dated: _____