**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| GLYCOBIOSCIENCES, INC.,<br>Plaintiff,<br>v.<br>VICHY LABORATORIES, S.A. and<br>L'ORÉAL, S.A.<br>Defendants. | Civil Action No. 22-1264 (BAH)<br>Chief Judge Beryl A. Howell |

**MEMORANDUM OPINION AND ORDER**

Plaintiff Glycobiosciences, Inc., a Canadian cosmetic and pharmaceutical company, owns two patented formulae that are allegedly being infringed by Vichy Laboratories, S.A. and L'Oréal, S.A. (collectively, "defendants").[1] Plaintiff sued defendants, alleging claims of patent infringement. *See* 35 U.S.C. §101 *et. seq*. Defendants now move to dismiss, claiming, *inter alia*, that personal jurisdiction is lacking over them in this judicial district. For the reasons below, defendants' motion to dismiss is granted, without prejudice.

## I. BACKGROUND

The relevant factual and procedural background is summarized below.

### A. Factual Background

[1] Vichy Laboratories S.A. is named as a defendant in this action, but defendants clarify that no entity with that name exists and that an entity named "Vichy LLC" is wholly owned by L'Oréal USA with "Vichy" used as a brand name. Defs.'Mot. at 5 (explaining that "Vichy" is "a brand used by L'Oréal USA and there is a separate LLC—named Vichy LLC—for that brand. L'Oréal USA is the only member of Vichy LLC and the LLC has no employees or operations."). Plaintiff concedes that Vichy Laboratories S.A. does not exist, and Vichy LLC is merely part of L'Oréal USA. *See* Pl's Opp'n at 1 n.1 ("Defendant Vichy Laboratories is apparently a non-entity that is simply a brand name of Defendant L'Oréal S.A. . . . Thus[,] the Defendants collapse back into L'Oréal S.A."). Consequently, assessment of personal jurisdiction focuses only on L'Oréal S.A.

Plaintiff is a successful Canadian cosmetic and pharmaceutical company that owns the following two patents at issue: (1) Patent No. 9,821,005, issued by the U.S. Patent and Trademark Office ("USPTO") to plaintiff on November 21, 2017, for the formula of a gel containing specific percentages of bio-fermented sodium hyaluronate, hydroxyethylcellulose, polyethylene glycol, methylparaben, and water, Pls.' Compl. ("Compl."), ¶¶ 1, 12, 17, ECF No. 1; and (2) Patent No. 10,322,142, issued by USPTO to plaintiff on June 18, 2019, for the formula of a polymer matrix composed of specific percentages of bio-fermented sodium hyaluronate, non-ionic polymer, polyethylene glycol, and water, along with the inclusion "of an active therapeutic ingredient in addition to the Hyaluronic Acid," *id.* ¶¶ 1, 13, 18. Both patents expire on August 5, 2035. *Id.* ¶ 13.

L'Oréal S.A., a corporation with its principal place of business and headquarters in Clichy, France, allegedly sells and distributes products using formulas similar to those that plaintiff has patented. *See Id.* ¶ 3, 19. Specifically, L'Oréal S.A. manufactures, distributes, and sells three cosmetics under the name Revitalift, which "contain high concentrations of Hyaluronic Acid in a Polymer matrix which includes a non-ionic polymer and are formulations that have all of the elements of one or more of the claims of the Glyco Patents and/or have formulae that are equivalent to the claimed formulas." *Id.* ¶ 14. Likewise, "Vichy manufactures and sells" three products under the name "Liftactiv," each "contain[ing] high concentrations of Hyaluronic Acid in a Polymer matrix which includes a non-ionic polymer and are formulations that have all of the elements of one or more of the claims of the Glyco Patents and/or have formulae that are equivalent to the claimed formulas." *Id.* ¶ 15.

L'Oréal S.A. sells and distributes these products in the United States, including in the District of Columbia, exclusively through L'Oréal d/b/a L'Oréal USA ("L'Oréal USA"). *See id.*

¶¶ 3–4, 6. Apart from the contacts of L'Oréal USA, the only other contact that L'Oréal S.A. has in the United States is allegedly that an "Assistant Vice President – DIPI International Head of Instrumental Cosmetics & Digital," named Dr. Roy P. Diaz, works out of an office located at 111 Terminal Avenue in Clark, New Jersey. Pl.'s Opp'n, Ex. C at 1 (Email, dated on March 22, 2022, to plaintiff's representative from Dr. Diaz with the latter's job title and office address in the signature block of the email) ("Diaz Email"), ECF No. 22-1.

**B. Procedural Background**

In an effort to resolve the dispute amicably, plaintiff contacted and presented the two patent licenses at issue to L'Oréal S.A., with a request that defendant stop selling the allegedly patent-infringing products. *See* Compl. ¶¶ 16, 24, 30, 36, 40. L'Oréal S.A. declined the request, *see id.*, prompting plaintiff to initiate the instant lawsuit, claiming that defendants willfully infringed both patents. *Id.* at 10, ¶¶ A-G. Plaintiff seeks a permanent injunction, compensatory damages, enhanced damages, attorneys' fees, prejudgment interest, and post judgment interest. *Id.* at 10, ¶¶ H-M.

Defendants timely moved to dismiss for lack of personal jurisdiction, improper service, and improper venue, *see* Defs.' Mot. to Dismiss ("Defs.' Mot"), ECF No. 10, which motion plaintiff opposes, *see* Pl.'s Opp'n to. Mot. to Dismiss ("Pl.'s Opp'n"), ECF No. 12. With briefing completed, *see* Defs.' Reply Mem. in Supp. Mot. to Dismiss ("Defs.' Reply"), ECF No. 13, defendants' motion is now ripe for resolution.

## II. LEGAL STANDARD

"Personal jurisdiction is 'an essential element of the jurisdiction of a district . . . court,' without which the court is 'powerless to proceed to an adjudication.'" *Jankovic v. Int'l Crisis Grp.*, 494 F.3d 1080, 1086 (D.C. Cir. 2007) (alteration in original) (quoting *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999)). To survive a motion to dismiss for lack of personal

jurisdiction, under Federal Rule of Civil Procedure 12(b)(2), the plaintiff must "make a *prima facie* showing of the pertinent jurisdictional facts." *Livnat v. Palestinian Auth.*, 851 F.3d 45, 56–57 (D.C. Cir. 2017) (quoting *First Chi. Int'l v. United Exch. Co.*, 836 F.2d 1375, 1378 (D.C. Cir. 1988)). The *prima facie* showing requires specific factual allegations connecting each defendant to the forum. *First Chi. Int'l*, 836 F.2d at 1378. While the complaint's factual allegations must be accepted as true, and all reasonable inferences must be drawn in plaintiff's favor, *Bernhardt v. Islamic Republic of Iran*, 47 F.4th 856, 861 (D.C. Cir. 2022), mere conclusory statements and bare allegations are insufficient, *Livnat*, 851 F.3d at 57.

Unlike on a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court "may consider materials outside the pleadings in deciding whether to grant a motion to dismiss for lack of jurisdiction." *Jerome Stevens Pharms., Inc. v. FDA*, 402 F.3d 1249, 1253 (D.C. Cir. 2005) (citing *Herbert v. Nat'l Acad. of Scis.*, 974 F.2d 192, 197 (D.C. Cir. 1992)). Indeed, jurisdictional arguments may be premised on the "pleadings, bolstered by such affidavits and other written materials as [the parties] can otherwise obtain." *Mwani v. bin Laden*, 417 F.3d 1, 7 (D.C. Cir. 2005). "When deciding personal jurisdiction without an evidentiary hearing—as here—the 'court must resolve factual disputes in favor of the plaintiff.'" *Livnat*, 851 F.3d at 57 (quoting *Helmer v. Doletskaya*, 393 F.3d 201, 209 (D.C. Cir. 2004)). The Court, however, "'need not accept inferences drawn by plaintiffs if such inferences are unsupported by the facts.'" *Id.* (quoting *Helmer*, 393 F.3d at 209).

## III. DISCUSSION

Defendants argue that the Court lacks the power to adjudicate this dispute because L'Oréal S.A. is a foreign company whose contacts in the United States are solely through L'Oréal USA, which operates as a separate legal entity and is not a party to the lawsuit. According to defendants,

L'Oréal S.A. lacks the requisite minimum contacts in the United States to satisfy the requirements for personal jurisdiction under the Fifth Amendment's Due Process Clause. Mot. at 6; Reply at 5; *see also* U.S. CONST. amend. V.[2] Defendants are right.

It is hornbook law that "a defendant outside a forum's borders may be subject to suit" only if the defendant has "'certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Livnat v*, 851 F.3d at 48 (quotation marks omitted) (quoting *Int'l Shoe Co. v. Wa.*, 326 U.S. 310, 316 (1945)). The D.C. Circuit has further "explained that the Fifth Amendment's Due Process Clause protects defendants from being subject to the binding judgments of a forum with which they have established no meaningful contacts, ties, or relations, and requires fair warning that a particular activity may subject them to the jurisdiction of a foreign sovereign." *Id.* (cleaned up).

"The traditional personal jurisdiction analysis asks first whether an applicable long-arm statute authorizes the court to hear the case, and second whether doing so comports with due process." *Atchley v. AstraZeneca UK LTD*, 22 F.4th 204, 231 (D.C. Cir. 2022). Plaintiff's claim of specific jurisdiction is premised on Federal Rule of Civil Procedure 4(k)(2), which provides as to claims arising under federal law that "serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if: (A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and (B) exercising jurisdiction is consistent with the United States Constitution and laws." FED. R. CIV. P. 4(k)(2). In this way, Rule 4(k)(2) operates "essentially [as] a federal long arm-statute." *Atchley*, 22 F.4th at 232 (cleaned up). When Rule 4(k)(2) is invoked as the basis for the exercise of personal jurisdiction over a defendant not subject

[2] Defendants also argue that venue is improper and plaintiff's attempts at service is insufficient, Defs.'Mot. at 6–9, but these alternative arguments need not be reached because this motion is resolved on personal jurisdiction grounds.

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