

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

|                         |   |                            |
|-------------------------|---|----------------------------|
| _____                   | ) |                            |
| AMGEN INC. and AMGEN    | ) |                            |
| MANUFACTURING, LIMITED, | ) |                            |
|                         | ) |                            |
| Plaintiffs,             | ) | C.A. No. 1:15-cv-00839-RGA |
|                         | ) |                            |
| v.                      | ) |                            |
|                         | ) |                            |
| HOSPIRA, INC.,          | ) |                            |
|                         | ) |                            |
| Defendant.              | ) |                            |
| _____                   | ) |                            |

**HOSPIRA, INC.’S MOTION FOR JUDGMENT AS A MATTER OF LAW  
UNDER RULE 50(B) AND, IN THE ALTERNATIVE,  
FOR REMITTITUR OR NEW TRIAL UNDER RULE 59**

Pursuant to Federal Rule of Civil Procedure 50(b), Hospira Inc. (“Hospira”) respectfully moves this Court for judgment as a matter of law that (1) the manufacture of the 21 accused batches of Hospira drug substance is protected by the safe harbor provisions of 35 U.S.C. § 271(e)(1); (2) claims 24 and 27 of U.S. Patent No. 5,856,298 are not infringed by Hospira; (3) claims 24 and 27 of U.S. Patent No. 5,856,298 are invalid as anticipated and obvious; and (4) damages can be no greater than \$1.5 million per batch, if sold. In the alternative, the Court should order a new trial and/or remittitur pursuant to Fed. R. Civ. P. 59.

The grounds for judgment as a matter of law, new trial and remittitur are set forth in Hospira’s opening brief, submitted herewith.

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Dated: October 23, 2017

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FOR THE DISTRICT OF DELAWARE

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| Plaintiffs,             | ) | C.A. No. 1:15-cv-00839-RGA |
|                         | ) |                            |
| v.                      | ) |                            |
|                         | ) |                            |
| HOSPIRA, INC.           | ) |                            |
|                         | ) |                            |
|                         | ) |                            |
| Defendant.              | ) |                            |
| _____                   | ) |                            |

**[PROPOSED] ORDER**

Having considered Defendant Hospira, Inc.’s Rule 50(b) Motion for Judgment as a Matter of Law and, in the Alternative, for Remittitur or New Trial Under Rule 59 (D.I. \_\_\_\_), the Court has determined that the Motion should be GRANTED.

Accordingly, IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2017 that the Motion is GRANTED.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE