

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. |) | |
| _____ |) | |

DEFENDANT HOSPIRA, INC.’S MOTION FOR SUMMARY JUDGMENT

Defendant Hospira, Inc. (“Hospira”), through their undersigned counsel, hereby move under Rule 56 of the Federal Rules of Civil Procedure for summary judgment of non-infringement on the following two discrete issues:

1. Summary judgment that all of Hospira’s accused erythropoietin drug substance batches are protected by the safe harbor provisions of 35 U.S.C. § 271(e)(1) and thus do not infringe U.S. Patent Nos. 5,756,349 and 5,856,298;
2. Summary judgment that Hospira does not infringe the asserted claims of U.S. Patent No. 5,856,298 either literally or under the doctrine of equivalents.

The complete grounds for this motion are set forth in Hospira, Inc.’s Opening Brief in Support of Its Motion for Summary Judgment of Non-Infringement, filed contemporaneously herewith.

Hospira respectfully submits that consideration of these discrete issues on summary judgment is appropriate. For the reasons set forth in the contemporaneously filed brief, Hospira respectfully requests an order entering summary judgment in favor of Hospira on these issues.

HEYMAN ENERIO
GATTUSO & HIRZEL LLP

OF COUNSEL:

WILLKIE FARR & GALLAGHER LLP

Thomas J. Meloro
Michael W. Johnson
Heather M. Schneider
Tara L. Thieme
Philip F. DiSanto
787 Seventh Avenue
New York, NY 10019
(212) 728-8000

/s/ Dominick T. Gattuso
Dominick T. Gattuso (# 3630)
300 Delaware Avenue, Suite 200
Wilmington, DE 19801
(302) 472-7300
dgattuso@hegh.law

Attorneys for Hospira, Inc.

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. |) | |
| _____ |) | |

[PROPOSED] ORDER TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

WHEREAS, Defendant Hospira, Inc. having moved for summary judgment of non-infringement pursuant to Federal Rule of Civil Procedure 56 (the “Motion”);

WHEREAS, the Court, having considered the Motion and any opposition thereto;

IT IS SO ORDERED this _____ day of _____, 2017 that

Defendant’s Motion is GRANTED as follows:

1. Final judgment is hereby entered in favor of Hospira on Hospira’s claim that all allegedly infringing batches of Hospira’s erythropoietin drug substance are protected by the safe harbor provisions of 35 U.S.C. § 271(e)(1);
2. Final judgment is hereby entered in favor of Hospira and against Plaintiffs on Plaintiffs’ claim that Hospira infringes the asserted claims of U.S. Patent Nos. 5,756,349 and 5,856,298;

3. Final judgment is hereby entered in favor of Hospira and against Plaintiffs on Plaintiffs' claim that Hospira literally infringes claim 24 of U.S. Patent No. 5,856,298.
4. Final judgment is hereby entered in favor of Hospira and against Plaintiffs on Plaintiffs' claim that Hospira infringes claim 24 of U.S. Patent No. 5,856,298 under the doctrine of equivalents.
5. Final judgment is hereby entered in favor of Hospira and against Plaintiffs on Plaintiffs' claim that Hospira literally infringes claim 27 of U.S. Patent No. 5,856,298.
6. Final judgment is hereby entered in favor of Hospira and against Plaintiffs on Plaintiffs' claim that Hospira infringes claim 27 of U.S. Patent No. 5,856,298 under the doctrine of equivalents.

UNITED STATES DISTRICT JUDGE