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Attorneys for Defendants Sandoz Inc., Sandoz International GmbH, and Sandoz GmbH

Attorneys for Plaintiffs Amgen Inc. and Amgen Manufacturing, Limited

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AMGEN INC. and
AMGEN MANUFACTURING, LIMITED,

Plaintiffs,

v.

SANDOZ INC., SANDOZ
INTERNATIONAL GMBH, and
SANDOZ GMBH,

Defendants.

Case No. 3:14-cv-04741-RS

**STIPULATION AND [~~PROPOSED~~]
ORDER FOR ENTRY OF JUDGMENT
REGARDING U.S. PATENT NO.
6,162,427**

1 WHEREAS Amgen Inc. and Amgen Manufacturing, Limited (collectively, “Amgen”)
2 filed a complaint against Sandoz Inc., Sandoz International GmbH, and Sandoz GmbH
3 (collectively, “Sandoz”) in the Northern District of California (the “Court”) on October 24, 2014
4 (Docket No. 1), and a first amended and supplemental complaint on October 15, 2015 (Docket
5 No. 145), alleging, among other things, infringement of United States Patent Number 6,162,427
6 (’427 patent);

7 WHEREAS Sandoz has appeared and denied infringement, and Sandoz Inc. has
8 counterclaimed for declaratory judgment of invalidity of the ’427 patent (Docket Nos. 22, 149);

9 WHEREAS the Court construed certain disputed claim terms associated with claims 1-4,
10 and 6 of the ’427 patent (“Asserted Claims”) in an order dated August 4, 2016 (Docket No. 205);

11 WHEREAS the parties have completed fact discovery regarding the ’427 patent;

12 WHEREAS Amgen has provided an expert report regarding the alleged infringement of
13 the Asserted Claims of the ’427 patent, and Sandoz has provided an expert report regarding the
14 alleged invalidity of the Asserted Claims of the ’427 patent;

15 WHEREAS the time to add or amend infringement and invalidity contentions or add or
16 amend the Asserted Claims has passed;

17 WHEREAS the parties agree that Amgen may preserve its right to appeal the claim
18 construction order after a final judgment is entered pursuant to 28 U.S.C. §§ 1291 & 1292(c)(2);

19 THEREFORE Amgen and Sandoz agree that:

20 1. Amgen and Sandoz stipulate that Sandoz does not infringe the Asserted Claims of
21 the ’427 patent within the meaning of any provision of 35 U.S.C. § 271 in light of the claim
22 constructions included in the August 4, 2016 order, Docket No. 205.

23 2. Amgen and Sandoz stipulate that the Court may enter a judgment of non-
24 infringement in favor of Sandoz and against Amgen for Amgen’s Third Cause of Action of its
25 First Amended and Supplemental Complaint filed on October 15, 2015 (Docket No. 145) and
26

1 Sandoz's Sixth Counterclaim of Sandoz Inc.'s Answer to Amended Complaint filed November
2 2, 2015 (Docket No. 149).

3 3. Amgen and Sandoz stipulate that Sandoz Seventh Counterclaim of Sandoz Inc.'s
4 Answer to Amended Complaint filed November 2, 2015 (Docket No. 149) for a declaration of
5 invalidity for the '427 Patent will be dismissed without prejudice and that Sandoz will be
6 allowed to assert the Seventh Counterclaim in the event this matter is remanded for further
7 consideration following any appeal.

8 4. This Stipulation and [Proposed] Order are without prejudice to Amgen's right to
9 appeal the Claim Construction Order (Docket No. 205), and any final judgment based thereon
10 pursuant to 28 U.S.C. §§ 1291 & 1292(c)(2).

11 5. No party will conduct any further discovery or pretrial activities related to
12 allegations of liability or damages regarding the '427 patent, including any activity related to
13 Sandoz's alleged defense and counterclaim that the '427 patent is invalid.

14 6. Neither party shall be obligated to pay the opposing party any money in
15 connection with this stipulation or resolution, and Sandoz agrees not to seek its costs with respect
16 to the '427 patent. Neither party shall use as evidence or rely on the fact of this stipulation or the
17 judgment in favor of Sandoz and against Amgen directed to the '427 patent to argue that this
18 case is exceptional.

19 7. (i) Neither party shall use as evidence or rely on the fact of this stipulation or the
20 judgment in favor of Sandoz and against Amgen directed to the '427 patent in connection with
21 the continuing litigation involving United States Patent Number 8,940,878, (ii) neither party
22 shall assert in any forum that this stipulation or the judgment in favor of Sandoz and against
23 Amgen directed to the '427 patent is inconsistent with positions regarding infringement taken by
24 any party or its experts prior to the date of this stipulation, and (iii) neither party shall use as
25 evidence or rely on the contents of this stipulation or the judgment in favor of Sandoz and
26 against Amgen directed to the '427 patent in continuing litigation relating to Amgen's unfair
27

1 competition and conversion claims except to note the fact that judgment has entered with respect
2 to the '427 patent and that the '427 patent was the only patent asserted against Sandoz by Amgen
3 prior to October 15, 2015. For the avoidance of doubt, this stipulation has no impact on the
4 claims, defenses, or prayer for relief of either party related to the validity of, infringement of, or
5 relief available for the '878 patent.

6 8. Neither party shall issue a press release or make an affirmative press statement
7 regarding this stipulation.

8
9 Respectfully submitted,

10 Dated: September 13, 2017

11 By: /s/ Nicholas Groombridge
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SIGNATURE ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I hereby certify that concurrence in the filing of this document has been obtained from each of the other Signatories shown above.

Dated: September 13, 2017

By: /s/ Sue Wang
Sue Wang

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 9/13, 2017



THE HONORABLE RICHARD SEEBORG
UNITED STATES DISTRICT COURT JUDGE

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