

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

AMGEN INC. and  
AMGEN MANUFACTURING LIMITED,

Plaintiffs,

v.

KASHIV BIOSCIENCES, LLC,  
AMNEAL PHARMACEUTICALS, LLC,  
and AMNEAL PHARMACEUTICALS, INC.

Defendants.

Civil Action No.: 2:18-cv-03347  
(CCC-MF)

**STIPULATION AND ORDER  
DISMISSING CLAIMS AND  
COUNTERCLAIMS RE:  
U.S. PAT. NO. 8,952,138**

This stipulation is made by and between Plaintiffs Amgen Inc. and Amgen Manufacturing Limited (collectively, “Amgen”), and Defendants Kashiv Biosciences, LLC (“Kashiv”), Amneal Pharmaceuticals, LLC, and Amneal Pharmaceuticals, Inc. (collectively, “Amneal” and together with Kashiv, “Defendants”).

WHEREAS Amgen filed a Second Amended Complaint against Adello Biologics, LLC (“Adello”) and Amneal alleging infringement of certain claims of, *inter alia*, U.S. Patent No. 8,952,138 (“the ’138 patent”). [Dkt. No. 84.]

WHEREAS Adello’s Answer included counterclaims seeking a declaratory judgement that, *inter alia*, certain claims of the ’138 patent are not infringed and/or are invalid. [Dkt. No. 87.]

WHEREAS, on May 20, 2019, the Patent Trial and Appeal Board (“PTAB”) amended its prior decision in IPR2016-1542 and found that claim 18 of the ’138 patent was obvious over the

prior art and ordered that claims 1-11 and 13-24 of the '138 patent are unpatentable under 35 U.S.C. § 103(a).

WHEREAS, on June 10, 2019, Kashiv replaced Adello as a party in this matter. [Dkt. No. 127.]

Amgen, Kashiv, and Amneal, by and through their counsel, jointly stipulate to the following regarding the '138 patent:

1. Amgen agrees to dismiss and hereby dismisses its causes of action directed solely to the '138 Patent, namely Count II (Judgment of Infringement of the '138 Patent) in the Second Amended Complaint.
2. Kashiv agrees to dismiss and hereby dismisses its causes of action directed solely to the '138 Patent, namely Court III (Declaratory Judgment of Non-Infringement of '138 Patent) and Count IV (Declaratory Judgment of Invalidity of '138 Patent) in its Answer to the Second Amended Complaint.
3. Amgen, Kashiv, and Amneal agree that said dismissals of causes of action directed solely to the '138 patent shall be without prejudice pending any appeal by Amgen of the PTAB's decision in IPR2016-1542.
4. Amgen, Kashiv, and Amneal agree that said dismissals of causes of action directed solely to the '138 patent shall be with prejudice, as of the date that Amgen's time to appeal has expired, in the event that no appeal is taken by Amgen regarding the PTAB's decision in IPR2016-1542.
5. Amgen, Kashiv, and Amneal agree that no party shall be entitled to attorneys' fees or costs with respect to the dismissed causes of action directed to the '138 patent, either now or at any future point in the case.

IN WITNESS WHEREOF, the parties hereto have caused this Stipulation and [Proposed] Order to be duly executed with intent to be bound as of the date set forth below.

Respectfully submitted,

Dated: July 19, 2019

AMGEN INC. and  
AMGEN MANUFACTURING LIMITED,

KASHIV BIOSCIENCES, LLC, AMNEAL  
PHARMACEUTICALS, LLC, and AMNEAL  
PHARMACEUTICALS, INC.

By their attorneys,

By their attorneys,

/s/Liza M. Walsh  
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SO ORDERED:

A handwritten signature in black ink, appearing to read 'C. Cecchi', written over a horizontal line.

Hon. Claire C. Cecchi, U.S.D.J.

September 16, 2019