

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GLAXOSMITHKLINE BIOLOGICALS SA)	
and GLAXOSMITHKLINE LLC,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 24-512 (GBW)
)	
PFIZER INC., PHARMACIA & UPJOHN)	
CO. LLC, BIONTECH SE, BIONTECH)	
MANUFACTURING GMBH, and)	
BIONTECH US INC.,)	
)	
Defendants.)	

STIPULATION AND [PROPOSED] ORDER

WHEREAS on August 14, 2024, Plaintiffs GlaxoSmithKline Biologicals SA and GlaxoSmithKline LLC filed a First Amended Complaint for Patent Infringement (D.I. 26) against Defendants Pfizer Inc., Pharmacia & Upjohn Co. LLC, BioNTech SE, BioNTech Manufacturing GmbH, and BioNTech US Inc.;

WHEREAS in their Answer, Affirmative Defenses, and Counterclaims in Response to the First Amended Complaint (D.I. 32), Defendants asserted, among other defenses and counterclaims, a defense (Third Affirmative Defense) and counterclaims (Counts XVII–XXIV) of patent misuse, and a defense (Fifth Affirmative Defense) and counterclaims (Counts XXV–XXXII) of prosecution laches;

WHEREAS Plaintiffs moved to dismiss Counterclaims XVII–XXXII and to strike Defendants’ affirmative defenses of patent misuse and prosecution laches (D.I. 34–35); and

WHEREAS, to conserve the resources of the parties and the Court, the parties have reached an agreement to resolve Plaintiffs’ Motion to Dismiss and to Strike as it relates to Defendants’ Counterclaims XVII–XXIV and affirmative defense of patent misuse;

IT IS HEREBY STIPULATED by the parties, subject to the approval of the Court, that:

1. Counts XVII–XXIV of Defendants’ Counterclaims to the First Amended Complaint (D.I. 32) are dismissed without prejudice.

2. Paragraphs 10, 100–101, and 105 of Defendants’ Counterclaims (D.I. 32) are deemed denied in their entirety by Plaintiffs.

3. Defendants may seek leave to amend their Counterclaims to add counterclaims for patent misuse related to the patents-in-suit on or before any Court-ordered deadline for amending pleadings or at such other time so long as the requirements of Fed. R. Civ. P. 15 and/or 16 are met.

4. Defendants’ third affirmative defense for patent misuse (D.I. 32) is hereby stricken without prejudice.

5. Defendants may seek leave to amend their Answer to add an affirmative defense for patent misuse related to the patents-in-suit on or before any Court-ordered deadline for amending pleadings or at such other time so long as the requirements of Fed. R. Civ. P. 15 and/or 16 are met.

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& Upjohn Co. LLC, BioNTech SE, BioNTech
Manufacturing GmbH, and BioNTech US Inc.*

October 24, 2024

SO ORDERED this _____ day of _____, 2024.

UNITED STATES DISTRICT JUDGE