

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SANOFI-AVENTIS U.S. LLC, SANOFI-AVENTIS DEUTSCHLAND GMBH.

Plaintiffs,

V.

ELI LILLY AND COMPANY,

Defendant.

C.A. No. 14-113-RGA-MPT

PRETRIAL ORDER EXHIBIT 2:

SANOFI'S STATEMENT OF FACTS

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Pursuant to Local Rule 16.3(c)(4), Plaintiffs Sanofi-Aventis U.S. LLC (“Sanofi U.S.”) and Sanofi-Aventis Deutschland GmbH (“Sanofi GmbH”) (collectively, “Plaintiffs” or “Sanofi”)¹ submit the following issues of fact that remain to be litigated. Sanofi’s identification of the issues of fact that remain to be litigated is based upon its current understanding of the arguments Defendant Eli Lilly and Company (“Eli Lilly”) is likely to make, based on the pleadings, discovery, and expert reports in the action to date. To the extent that Lilly introduces different or additional facts or alleged facts to meet its burden of proof, Sanofi reserves its right to contest such facts or alleged facts, and to present any and all rebuttal evidence in response.

I. DISPUTED FACTS CONCERNING THE ASSERTED DEVICE PATENTS

A. The Device Patents-In-Suit

1. U.S. Patent No.8,603,044 (“the ’044 Patent”), U.S. Patent No. 8,679,069 (“the ’069 Patent”), and U.S. Patent No. 8,556,864 (“the ’864 Patent”) are referred to herein as the “Asserted Device Patents.” By assignment, Sanofi GmbH owns all right, title, and interest to each of the Asserted Device Patents-in-Suit.

2. Sanofi U.S. is the exclusive licensee of the Asserted Device Patents-in-Suit with exclusive rights, including the rights to sell and offer to sell in the United States the technologies, products, or services claimed by the Patents-in-Suit, further including the right to sue and recover for the infringement of the Patents-in-Suit.

a. The ’044 and ’069 Patents

3. United States Patent 8,679,069 (“the ’069 Patent”) is titled “Pen-Type Injector.”

4. United States Patent No. 8,603,044 (“the ’044 Patent”) is titled “Pen-Type Injector.”

¹ Plaintiffs refer to Sanofi throughout to refer to the current corporate entities Sanofi-Aventis U.S. LLC and Sanofi-Aventis Deutschland GmbH, as well as their predecessors-in-interest.

5. The '069 Patent received a Patent Term Adjustment of 406 days under 35 U.S.C. § 154(b).

6. On June 4, 2013, U.S Patent Application No. 13/909,649 (which issued as the '044 Patent) was filed as a continuation of U.S. Patent Application No. 12/944,544 (which issued as the '069 Patent).

7. On November 11, 2010, U.S. Application No. 12/944,544 (which issued as the '069 Patent) was filed as a continuation of U.S. Patent Application No. 11/483,546, filed July 11, 2006. U.S. Patent Application No. 11/483,546 issued as U.S. Patent No. 7,918,833 on April 5, 2011.

8. On July 11, 2006, U.S. Patent Application No. 11/483,546 was filed as a continuation of U.S. Patent Application No. 10/790,225.

9. On March 2, 2004 U.S. Patent Application No. 10/790,225 was filed and claimed priority to Great Britain Patent Application No. 0304822.0.

10. On March 3, 2003, GB Patent Application No. 0304822.0 was filed.

b. The '864 Patent

11. U.S. Patent No. 8,556,864 ("the '864 Patent") is titled "Drive Mechanisms Suitable for Use in Drug Delivery Devices."

12. The '864 Patent received a Patent Term Adjustment of 301 days under 35 U.S.C. § 154(b).

13. On March 30, 2011, U.S. Patent Application No. 13/075,212 (which issued as the '864 Patent) was filed as a continuation of U.S. Patent Application No. 11/520,598.

14. On September 14, 2009, U.S. Patent Application No. 11/520,598 was filed as a continuation of U.S. Patent Application No. 10/790,866.

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