

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HELSINN HEALTHCARE S.A. and	)	
ROCHE PALO ALTO LLC,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 15-264 (GMS)
	)	
HOSPIRA, INC.,	)	REDACTED -
	)	
Defendant.	)	PUBLIC VERSION

**PLAINTIFFS' OPENING BRIEF IN SUPPORT  
OF THEIR MOTION TO STAY THE  
SECOND-FILED CASE IN THE DISTRICT OF DELAWARE**

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**I. STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING**

On March 23, 2015, Plaintiffs Helsinn Healthcare S.A. and Roche Palo Alto LLC (“Plaintiffs”) filed a complaint against Hospira Inc. (“Hospira”) in the District of New Jersey, Civil Action No. 15-2077 (“the New Jersey action”). (Ex. A, D.I. 1 (Civ. No. 15-2077).) Subsequently, on March 25, 2015, Plaintiffs filed a protective action against Hospira in this Court (“the Delaware action”). (D.I. 1.) As explained in Plaintiffs’ Complaint, the Delaware action was filed to ensure preservation of Plaintiffs’ Hatch-Waxman statutory stay of FDA approval. (*Id.* at ¶ 54.)

The New Jersey and Delaware actions are the same. Both actions arise under the Hatch-Waxman Act, 21 U.S.C. § 355(j), *et seq.* They also both allege infringement of the same patents, *i.e.*, U.S. Patent Nos. 7,947,724 (“the ’724 patent”), 7,947,725 (“the ’725 patent”), 7,960,424 (“the ’424 patent”), 8,598,219 (“the ’219 patent”), and 8,729,094 (“the ’094 patent”) (collectively, “the patents-in-suit”). And both are based on Hospira’s filing of Abbreviated New Drug Application (“ANDA”) No. 207005 seeking permission to manufacture and sell a generic version of Aloxi<sup>®</sup> before the expiration of the patents-in-suit.

On June 8, 2015, Hospira filed its answer and counterclaims to Plaintiffs’ complaint in the Delaware action. (D.I. 7.) Plaintiffs answered those counterclaims on November 13, 2015. (D.I. 17.) The parties have jointly submitted a request to extend the filing date for the Joint Status Report and Proposed Scheduling Order from December 2, 2015, to January 15, 2016. (D.I. 18.) Discovery has not yet commenced in the Delaware action.

**II. INTRODUCTION AND BACKGROUND**

Plaintiffs respectfully submit this motion to stay the second-filed Delaware action pending resolution of a motion to dismiss for lack of personal jurisdiction filed by Hospira in the first-filed New Jersey action (“Hospira’s motion to dismiss”). If Hospira’s motion to dismiss is

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