

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

HELSINN HEALTHCARE S.A. and)
ROCHE PALO ALTO LLC,)
)
Plaintiffs,)
v.)
HOSPIRA, INC.,)
)
Defendant.)

C.A. No. 1:15-cv-00264-GMS

[REDACTED]

**OPPOSITION TO PLAINTIFFS' MOTION TO STAY THE SECOND-FILED CASE IN
THE DISTRICT OF DELAWARE**

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I. INTRODUCTION

As Plaintiffs Helsinn Healthcare S.A. and Roche Palo Alto LLC (collectively, “Plaintiffs”) state in the first sentence of their opening brief in support of their stay motion, Plaintiffs, not Defendant Hospira, Inc. (“Hospira”), filed this patent infringement action in the District of Delaware on March 25, 2015 (“the Delaware Action”). Despite filing the Delaware Action nine months ago, Plaintiffs are just now requesting a stay in favor of the action they filed two days earlier in the District of New Jersey (“the New Jersey Action”).¹ Perhaps not surprisingly, Plaintiffs requested that Hospira agree to a stay in this Court only after their receipt of a favorable ruling in New Jersey in litigation against Teva Pharmaceuticals USA Inc. (“Teva”) involving some of the same patents at issue here.² Teva filed a notice of appeal to the Federal Circuit on November 30, 2015.

Moreover, the basis for Plaintiffs’ stay motion is both legally and factually flawed. Contrary to the arguments in Plaintiffs’ stay motion, the parties and complaints in the New Jersey Action and the Delaware Action are not identical, and the first-to-file rule therefore does not apply here. Plaintiffs also incorrectly argue that discovery has begun in the New Jersey Action, in order to support the stay request. In fact, discovery has not begun in the New Jersey Action. Accordingly, the traditional stay factors do not support Plaintiffs’ request for a stay either.

Hospira is preparing to proceed to discovery and trial in this case under whatever schedule is set by this Court. For the reasons stated in its fully-briefed motion to dismiss the

¹ The New Jersey Action is Case No. 3:15-cv-02077-MLC-DEA. It is assigned to Judge Mary L. Cooper and Magistrate Judge Douglas E. Arpert.

² That action is Case No. 3:11-cv-03962-MLC-DEA. It is also assigned to Judge Mary L. Cooper and Magistrate Judge Douglas E. Arpert.

New Jersey Action for lack of jurisdiction, Hospira is not subject to personal jurisdiction in New Jersey. However, Hospira consented to jurisdiction in this Court many months ago.

Accordingly, Plaintiffs' stay motion should be denied, and this case should be set for a Rule 16(b) scheduling conference.

II. NATURE AND STAGE OF THE PROCEEDINGS

Plaintiffs filed an initial complaint against Hospira on March 23, 2015 in the District of New Jersey, two days prior to filing the complaint in this case. (D.I. 21, Ex. A.) In the New Jersey Action, Plaintiffs assert that Hospira's plan to manufacture and sell a generic version of Aloxi in doses of 0.25 mg/5 mL and 0.075 mg/1.5 mL palonosetron hydrochloride intravenous solution products would infringe U.S. Patent Nos. 7,947,724, 7,947,725, 7,960,424, 8,598,219, and 8,729,094 (the "patents-in-suit"). (*Id.* at ¶¶ 4, 17, 19, 24, 26, 31, 33, 38, 40, 45, 47.) By contrast, in the Delaware Action, Plaintiffs allege only that Hospira's plan to manufacture and sell a generic version of Aloxi in a 0.25 mg/5 mL palonosetron hydrochloride intravenous solution product would infringe the patents-in-suit. (D.I. 1 at ¶¶ 4, 17, 19, 24, 26, 31, 33, 38, 40, 45, 47.)

After Hospira moved to dismiss the New Jersey complaint for lack of personal jurisdiction, Plaintiffs filed an amended complaint in New Jersey on June 30, 2015 adding Hospira Worldwide, Inc. ("Worldwide") as a defendant alongside Hospira. (Ex. 1.)³ Hospira and Worldwide then filed a second motion to dismiss for lack of personal jurisdiction in the New Jersey Action. (Ex. 2.) As of today, that motion is fully briefed in the New Jersey court.

³ Exhibits to Defendant's Opposition to Plaintiffs' Motion to Stay the Second-Filed Case in the District of Delaware are submitted as exhibits to the Declaration of Dominick T. Gattuso, filed herewith.

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