

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

BAXTER HEALTHCARE CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 18-303-RGA
)	
HOSPIRA, INC. and ORION CORP.,)	
)	
Defendants.)	

BAXTER’S MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, Plaintiff/Counterclaim Defendant Baxter Healthcare Corporation (“Baxter”) respectfully moves this Court to enter judgment on the pleadings in its favor and against Defendants/Counterclaim Plaintiffs Hospira, Inc. and Orion Corp. (collectively, “Defendants”). The grounds for this motion are set forth more fully in Baxter’s supporting Opening Brief, filed contemporaneously herewith, and upon the papers, records, and pleadings on file with the Court.

Baxter filed this declaratory judgment lawsuit seeking a declaration of noninfringement regarding U.S. Patent Nos. 6,716,867 (the “’867 Patent”), 8,242,158 (the “’158 Patent”), 8,338,470 (the “’470 Patent”), and 8,455,527 (the “’527 Patent”). Defendants filed a counterclaim for infringement of the ’867 Patent. There are no material issues of fact, and judgment in Baxter’s favor as to both its complaint and Defendants’ counterclaim can be granted as a matter of law.

Specifically, Baxter seeks to market and sell a proposed drug product containing dexmedetomidine hydrochloride in 0.9% sodium chloride injection 200 mcg/50 mL and 400 mcg/100 mL (the “Baxter ANDA Product”). It is undisputed that the Baxter ANDA Product does not infringe the ’158 Patent, ’470 Patent, and ’527 Patent because it is not disposed in a sealed glass container as required by the patent claims. Further, the Baxter ANDA Product does not

infringe the '867 Patent because Baxter carved out the infringing method-of-use for the '867 Patent and does not promote use in an intensive care unit. Additionally, there is no direct or contributory infringement of the '867 Patent. Finally, Baxter's submission of an Abbreviated New Drug Application in accordance with the Baxter ANDA Product was not an act of artificial infringement under 35 U.S.C. § 271(e)(2) because Baxter did not submit a Paragraph IV Certification for the '867 Patent. Accordingly, judgment in favor of Baxter is warranted as a matter of law.

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