

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HOSPIRA, INC.)	
)	
Plaintiff,)	C.A. Nos. 1:16-cv-00651
)	1:17-cv-07903
v.)	
)	Hon. Rebecca R. Pallmeyer
FRESENIUS KABI USA, LLC)	
)	
Defendant.)	

[PROPOSED] CONSENT JUDGMENT AND STIPULATED DISMISSAL

WHEREAS, Plaintiff Hospira, Inc. (“Hospira”) filed Complaints against Defendant Fresenius Kabi USA, LLC (“Fresenius Kabi”), captioned *Hospira, Inc. v. Fresenius Kabi USA, LLC*, 16-cv-651 and 17-cv-7903 for alleged infringement of U.S. Patent Nos. 8,242,158 (“the ’158 patent”); 8,338,470 (“the ’470 patent”); 8,455,527 (“the ’527 patent”); U.S. Patent No. 8,648,106 (“the ’106 patent”); U.S. Patent No. 9,320,712 (“the ’712 patent”); and U.S. Patent No. 9,616,049 (“the ’049 patent”) (collectively “the asserted patents”), related to Fresenius Kabi’s September 30, 2015 submission of Abbreviated New Drug Application No. 208129 and all amendments and supplements thereto (“ANDA No. 208129”) seeking approval to market dexmedetomidine hydrochloride products;

WHEREAS, Fresenius Kabi filed Counterclaims alleging that the asserted patents are invalid and/or will not be infringed by the manufacture, use, sale, offering for sale, or importation of dexmedetomidine hydrochloride products described in ANDA No. 208129 (“Fresenius Kabi ANDA Products”);

WHEREAS, Hospira and Fresenius Kabi stipulated to the narrowing of asserted claims by way of stipulation entered on January 29, 2018. D.I. 93 in Case No. 16 C 651;

WHEREAS, Hospira informed Fresenius Kabi as of June 17, 2018 that it would further narrow the asserted claims that it would continue to assert;

WHEREAS, in *Hospira, Inc. v. Amneal Pharmaceuticals LLC*, Civ. Action No. 1:15-cv-00697-RGA (D. Del.), the court entered judgment finding, *inter alia*, that claims 3 and 4 of the '158 patent, claim 4 of the '470 patent, and claim 5 of the '527 patent are invalid. D.I. 121;

WHEREAS, Hospira will not appeal that court's judgment with respect to the '158, '470, and '527 patents;

WHEREAS, Fresenius Kabi received Tentative Approval on March 26, 2018 with regard to ANDA No. 208129;

IT IS HEREBY ORDERED AND ADJUDGED:

That claims 3 and 4 of the '158 patent are invalid, that Hospira did not assert any of the remaining claims of the '158 patent against the Fresenius Kabi ANDA Products, and that patent is dismissed with prejudice;

That claim 4 of the '470 patent is invalid, that Hospira did not assert any of the remaining claims of the '470 patent against the Fresenius Kabi ANDA Products, and that patent is dismissed with prejudice;

That claim 5 of the '527 patent is invalid, that Hospira did not assert any of the remaining claims of the '527 patent against the Fresenius Kabi ANDA Products, and that patent is dismissed with prejudice;

The parties stipulate that the Fresenius Kabi ANDA Products do not infringe claim 5 of the '712 patent, that Hospira did not assert any of the remaining claims of the '712 patent against the Fresenius Kabi ANDA Products, and that patent is dismissed with prejudice;

That this judgment shall finally conclude and dispose of all claims related to the '158 Patent, the '470 Patent, the '527 Patent, and the '712 patent as to Fresenius Kabi and Hospira with regard to the Fresenius Kabi ANDA Products. All claims, counterclaims, affirmative defenses, and demands related to these patents are dismissed with prejudice;

That this judgment is a final adjudication on the merits with respect to all claims related to the '158 Patent, the '470 Patent, the '527 Patent, and the '712 Patent as to Fresenius Kabi and Hospira with respect to the Fresenius Kabi ANDA Products; and

That this judgment constitutes a final, non-appealable judgment.

Dated: December 20, 2018

Respectfully submitted,

/s/ Sara T. Horton

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Respectfully submitted,

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