

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SEALED

CUBIST PHARMACEUTICALS, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 14-914-GMS
)	
FRESENIUS KABI USA, LLC,)	CONFIDENTIAL—
)	FILED UNDER SEAL
Defendant.)	

CONSENT JUDGMENT

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Dated: January 29, 2016

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Plaintiff,)	
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FRESENIUS KABI USA, LLC,)	CONFIDENTIAL—
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Defendant.)	

CONSENT JUDGMENT

Plaintiff Cubist Pharmaceuticals, Inc. (“Plaintiff”) and Defendant Fresenius Kabi USA, LLC (“Defendant”), by their undersigned counsel, stipulate and agree as follows:

WHEREAS Defendant submitted Abbreviated New Drug Application No. 206077 (together with any amendments or supplements thereto, “Defendant’s ANDA”) to obtain approval from the FDA to engage in the commercial manufacture, use and/or sale of the generic daptomycin injectable product described therein (“Defendant’s ANDA Product”); and

WHEREAS Plaintiff represents that it owns Patent No. 6,468,967 (the “967 Patent”), Patent No. 6,852,689 (the “689 Patent”), Patent No. 8,058,238 (the “238 Patent”), and Patent No. 8,129,342 (the “342 Patent”); and

WHEREAS Plaintiff represents that it holds approved New Drug Application No. 21572 for CUBICIN® injectable, IV (infusion), 500 mg/vial, which contains the active ingredient daptomycin; and

WHEREAS Plaintiff has asserted in *Cubist Pharmaceuticals, Inc., v. Fresenius Kabi USA, LLC*, C.A. No. 14-914-GMS (D. Del.) (“this Litigation”) that the filing of Defendant’s ANDA infringes (directly or indirectly) and/or the commercial manufacture, use, offer for sale, sale and/or importation of Defendant’s ANDA Product would infringe (directly or indirectly)

claims 91, 98, and 187 of the '238 Patent, claims 23 and 53 of the '342 Patent, claims 16-17 and 34-35 of the '967 Patent, and claims 51-52 of the '689 Patent (collectively the "Asserted Claims"); and

WHEREAS the Court in *Cubist Pharmaceuticals, Inc. v. Hospira, Inc.*, No. 12-CV-00367 (the "*Hospira* Action") issued a Memorandum Opinion and Judgment after trial holding that all of the Asserted Claims are invalid (*Hospira* Judgment); and

WHEREAS Plaintiff appealed the *Hospira* Judgment to the U.S. Court of Appeals for the Federal Circuit in *Cubist Pharmaceuticals, Inc. v. Hospira, Inc.*, Nos. 2015-1197, -1204, -1259 (the "*Hospira* Appeal"); and

WHEREAS the Federal Circuit has affirmed in the *Hospira* Appeal that the Asserted Claims are invalid;

Now, THEREFORE, Plaintiff and Defendant consent to the entry of judgment as follows:

1. The Asserted Claims are invalid;
2. Plaintiff's claims in this Litigation are dismissed with prejudice in their entirety.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

SHAW KELLER LLP

/s/ Jack B. Blumenfeld

/s/ Karen E. Keller

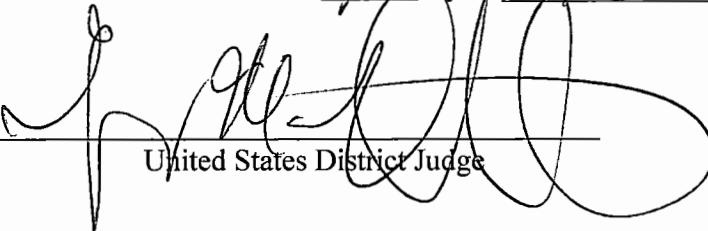
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IT IS SO ORDERED 2nd day of Feb, 2016.


United States District Judge