

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

OSI PHARMACEUTICALS, LLC and)	
GENENTECH, INC.,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 15-772 (GMS) (SRF)
)	CONSOLIDATED
APOTEX INC. and APOTEX CORP.,)	
)	
Defendants.)	

STIPULATED ORDER

WHEREAS, on January 9, 2017, the Patent Trial and Appeal Board (“PTAB”) instituted an *Inter Partes* Review, Case No. IPR2016-01284, concerning certain claims of the patent-in-suit in this Action, U.S. Patent No. 6,900,221 B1 (the “221 patent”) (the “IPR Proceeding”);

WHEREAS, Plaintiffs OSI Pharmaceuticals, LLC and Genentech, Inc. (together, “Plaintiffs”) have asserted claims 44, 46, 47 and 53 of the 221 Patent against Defendants Apotex Inc. and Apotex Corp. (together, “Defendants”) in this Action;

WHEREAS, Plaintiffs and Defendants have conferred and agreed that a stay of this Action pending the PTAB’s decision in the IPR Proceeding, including any appeal to the United States Court of Appeals for the Federal Circuit (“Federal Circuit”), is in the best interest of all parties and promotes judicial economy;

IT IS HEREBY STIPULATED AND AGREED, subject to the approval of the Court, that:

1. Plaintiffs will not continue to assert claim 47 of the 221 Patent against Defendants in this Action, and Plaintiffs and Defendants will work jointly and in good faith to remove that claim from the IPR Proceeding;

2. Defendants' ANDA No. 208396 (the "ANDA") and the products described therein (the "Apotex ANDA Product") do not infringe claims 1-43, 45, 47-52, and 54-79 of the 221 patent;

3. The ANDA and the Apotex ANDA Product infringe claims 44, 46 and 53 of the 221 Patent (the "Asserted Claims");

4. This Action is stayed pending the decision of the PTAB in the IPR Proceeding, including any appeal to the Federal Circuit and any remand proceedings;

5. The only arguments concerning the validity and/or enforceability of the Asserted Claims reserved by Defendants in this Action are those that are the subject of the IPR Proceeding, and Plaintiffs and Defendants agree that the outcome of those validity and/or enforceability arguments in this Action will be governed by the decision of the PTAB in the IPR Proceeding, including any appeal to the Federal Circuit and any remand proceedings, without the need for any further proceedings as to those issues in this Action;

6. Within five (5) days of issuance of a mandate by the Federal Circuit affirming or reversing the PTAB's decision in the IPR Proceeding, the parties shall jointly notify the Court in writing of the completion of the appeal and shall enter a joint stipulation of final judgment in this Action concerning the validity of claims 44, 46, and 53 of the 221 patent, consistent with the Federal Circuit decision, and infringement of claims 1-79 of the 221 patent (reflecting items 2-3 above), which the parties agree will not be appealable; and

7. In the event of a Federal Circuit mandate directing a remand to the PTAB, the parties shall within five (5) days of issuance notify the Court. Once further proceedings in connection with any such remand have concluded, including any further proceedings in the Federal Circuit, the parties shall within five (5) days of the conclusion of those proceedings

notify the Court in writing and shall enter a joint stipulation of final judgment in this Action concerning the validity of claims 44, 46, and 53 of the 221 patent, consistent with the outcome of the remand proceedings, and infringement of claims 1-79 of the 221 patent (reflecting items 2-3 above), which the parties agree will not be appealable.

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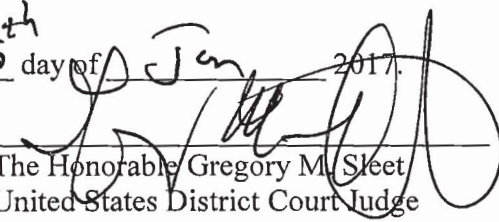
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January 20, 2017

SO ORDERED this 25th day of Jan 2017.


The Honorable Gregory M. Sleet
United States District Court Judge

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