

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

- - -
COSMO TECHNOLOGIES LIMITED, VALEANT
PHARMACEUTICALS INTERNATIONAL, and : CIVIL ACTION
VALEANT PHARMACEUTICALS LUXEMBOURG :
S.A.R.L., :
Plaintiffs, :
v :
ACTAVIS LABORATORIES FL, INC., :
Defendant. : NO. 15-164-LPS

COSMO TECHNOLOGIES LIMITED, VALEANT
PHARMACEUTICALS INTERNATIONAL, and : CIVIL ACTION
VALEANT PHARMACEUTICALS LUXEMBOURG :
S.A.R.L., :
Plaintiffs, :
v :
ALVOGEN PINE BROOK, LLC, :
Defendant. : NO. 15-193-LPS

- - -
Wilmington, Delaware
Tuesday, May 23, 2017
Bench Trial - Volume B

- - -
BEFORE: HONORABLE LEONARD P. STARK, Chief Judge

APPEARANCES: - - -

MORRIS NICHOLS ARSHT & TUNNELL, LLP
BY: MARYELLEN NORIEKA, ESQ.

and

Valerie G. Gunning Brian P. Gaffigan

1 APPEARANCES: (Continued)

2 PAUL HASTINGS, LLP
3 BY: MELANIE R. RUPERT, ESQ.,
4 DAVID M. CONCA, ESQ.,
5 NICHOLAS A. TYMOCZKO, ESQ.,
6 JOSEPH O'MALLEY, ESQ.,
7 SCOTT F. PEACHMAN, ESQ.,
8 ANDREW J. COCHRAN, ESQ., and
9 MI ZHOU, ESQ.
10 (New York, New York)

11
12 Counsel for Plaintiffs Valeant
13 Pharmaceuticals International, and
14 Valeant Pharmaceuticals Luxembourg S.A.R.L.

15 MORRIS NICHOLS ARSHT & TUNNELL, LLP
16 BY: MARYELLEN NORIEKA, ESQ.

17 and

18 IRELL & MANELLA, LLP
19 BY: GARY FRISCHLING, ESQ., and
20 YITE JOHN LU, ESQ.
21 (Los Angeles, California)

22 Counsel for Plaintiff Cosmo
23 Technologies Limited

24 PHILLIPS GOLDMAN McLAUGHLIN & HALL, P.A.
25 BY: JOHN C. PHILLIPS, JR., ESQ., and
DAVID A. BILSON, ESQ.

and

GOODWIN PROCTOR, LLP
BY: JOHN T. BENNETT, ESQ.,
SAMUEL SHERRY, ESQ., and
SHAOBO ZHU, ESQ.
(Boston, Massachusetts)

and

GOODWIN PROCTOR, LLP
BY: ELIZABETH J. HOLLAND, ESQ.,
NAOMI BIRBACH, ESQ.
(New York, New York)

Counsel for Defendant

1 APPEARANCES: (Continued)

2

SHAW KELLER, LLP
3 BY: DAVID E. FRY, ESQ., and
KAREN E. KELLER, ESQ.

4

and

5

AXINN, VELTROP & HARKRIDER, LLP
6 BY: MATTHEW J. BECKER, ESQ., and
JASON MURATA, ESQ.
7 (Hartford, Connecticut)

7

8

and

9

AXINN, VELTROP & HARKRIDER, LLP
10 BY: TODD MARABELLA, ESQ.
(Boston, Massachusetts)

10

11

and

12

AXINN, VELTROP & HARKRIDER, LLP
13 BY: BRETT GARRISON, ESQ.
(Washington, District of Columbia)

13

14

Counsel for Defendant
Alvogen Pine Brook, LLC

15

16

17

09:39:06

09:39:06 18

09:39:06

09:39:06 19

09:39:06

09:39:06 20

09:39:06

09:39:06 21

09:39:06 22

- oOo -

09:39:06 23

P R O C E E D I N G S

09:39:06 24

(REPORTER'S NOTE: The following bench trial was

08:19:50 25

held in open court, beginning at 8:35 a.m.)

08:19:50 1 THE COURT: Good morning, everyone.

08:19:50 2 (The attorneys respond, "Good morning, Your
08:26:58 3 Honor.")

08:26:58 4 THE COURT: So where are we on the plaintiffs'
08:35:24 5 side in terms of if there is any more evidence on
08:35:28 6 infringement? Can you come up to the podium and let me
08:35:32 7 know?

08:35:36 8 Good morning.

08:35:36 9 MS. RUPERT: Good morning, Your Honor.

08:35:38 10 So I'm pleased to report that the parties have
08:35:41 11 reached agreement on Dr. Sandborn's proposed testimony and
08:35:46 12 in the infringement case. We have a stipulation proposed
08:35:48 13 order here for the Court to enter, and I can read its terms
08:35:52 14 to you right now.

08:35:53 15 THE COURT: Okay.

08:35:53 16 MS. RUPERT: Okay. So, Stipulation and Proposed
08:35:56 17 Order.

08:35:56 18 It is hereby stipulated by the parties, subject
08:35:58 19 to approval of the Court that, (1), Alvogen's ANDA product
08:36:03 20 meets the claim limitation "budesonide in amount effective
08:36:06 21 to treat intestinal inflammatory disease" of claim 6 of the
08:36:10 22 '888 patent. And, (2), Actavis's ANDA product meets the
08:36:14 23 claim limitation "in an amount effective to treat intestinal
08:36:18 24 inflammatory disease" of claim 9 of the '888 patent and
08:36:21 25 "budesonide in an amount effective for treatment of

08:36:23 1 inflammatory bowel disease in the gastrointestinal tract" of
08:36:27 2 claim 3 of the '273 patent.

08:36:30 3 The stipulation goes on to state: Exhibits
08:36:33 4 PTX-630, PTX-416, and PTX-251 may be admitted at trial as if
08:36:38 5 testified to by Dr. Sandborn and if the Court so allows.
08:36:41 6 Nothing in this stipulation is with prejudice or affects
08:36:44 7 the rights of plaintiffs to call Dr. Sandborn as a witness
08:36:47 8 in connection with validity of the patents-in-suit and
08:36:50 9 plaintiffs' infringement case is closed upon entry of the
08:36:52 10 stipulation.

08:36:53 11 So the only outstanding issue is whether the
08:36:56 12 Court would be amenable to the entry of those three exhibits
08:36:59 13 because Dr. Sandborn would have served as the sponsoring
08:37:02 14 witness to get their admission, and we understand the Court
08:37:04 15 requires a sponsoring witness. Those three exhibits are the
08:37:07 16 package label for Uceris and the package labels for the two
08:37:10 17 respective ANDA products.

08:37:11 18 THE COURT: Okay. I think under the
08:37:14 19 circumstances, I'm willing to agree to accept admission of
08:37:17 20 those provided I simply confirm the stipulation is as it
08:37:21 21 sounds and agreed to by both defendants; correct?

08:37:23 22 MS. HOLLAND: Yes, Your Honor.

08:37:24 23 MR. BECKER: Yes, Your Honor.

08:37:24 24 THE COURT: All right. You may pass that up, if
08:37:26 25 you wish.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.