

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

_____)	
AMGEN INC. and AMGEN)	
MANUFACTURING, LIMITED,)	
)	
Plaintiffs,)	C.A. No. 1:15-cv-00839-RGA
)	
v.)	
)	
HOSPIRA, INC.,)	
)	
Defendant.)	
_____)	

~~[PROPOSED]~~ FINAL JUDGMENT

WHEREAS this action between Plaintiffs Amgen Inc. and Amgen Manufacturing, Limited (“Amgen”) and Defendant Hospira, Inc. (“Hospira”) involves U.S. Patent Nos. 5,756,349 (“the ’349 patent”) and 5,856,298 (“the ’298 patent”);

WHEREAS Amgen initially asserted infringement of claims 1 to 7 of the ’349 patent and claims 8, 19, 24, and 27 of the ’298 patent;

WHEREAS the Court held in its January 23, 2017 Order on Claim Construction (D.I. 180) that claims 8 and 19 of the ’298 patent are invalid;

WHEREAS the Court conducted a jury trial beginning on September 18, 2017 on the issues of infringement of claims 1 to 7 of the ’349 patent, infringement of claims 24 and 27 of the ’298 patent, validity of claims 24 and 27 of the ’298 patent, Hospira’s safe-harbor defense, and damages;

WHEREAS the Jury returned a Jury Verdict on all issues tried to the jury on September 22, 2017 (D.I. 326);

WHEREAS on September 25, 2017, the Court entered Judgment based on the Jury Verdict (D.I. 327) in the amount of \$70,000,000 for Plaintiff Amgen and against Defendant

Hospira on the Third Count of the Second Amended Complaint, further entering judgment for Defendant Hospira and against Plaintiff Amgen on the Fourth Count of the Second Amended Complaint, and further entering judgment for Plaintiff Amgen and against Defendant Hospira on Hospira's Second Counterclaim;

WHEREAS the parties stipulated and the Court ordered on October 12, 2017 that the Judgment entered on September 25, 2017 was not a final judgment under Fed. R. Civ. P. 54(a) or 54(b), was not subject to immediate appeal or execution under Fed. R. Civ. P. 62(a) or 69, and that any execution on the Judgment of September 25, 2017 was stayed pursuant to Fed. R. Civ. P. 62(b) without security until 14 days after the Court entered final judgment or as otherwise ordered by the Court or stipulated by the parties (D.I. 349 and D.I. 350);

WHEREAS the Court, having considered the parties' post-trial motions, issued a Memorandum Opinion (D.I. 386) and Order (D.I. 387) on August 27, 2018 dismissing as moot Hospira's Rule 50(a) Motion for Judgment as a Matter of Law on the Issues of Safe Harbor, Noninfringement, Invalidity, and Damages (D.I. 336); denying Hospira's Motion for Judgment as a Matter of Law Under Rule 50(b) and, in the Alternative, For Remittitur or New Trial Under Rule 59 (D.I. 355), Hospira's Motion to Seal Confidential Exhibits Admitted at Trial (D.I. 361), and Amgen's Renewed Motion for Judgment as a Matter of Law of Infringement of the '349 Patent or, in the Alternative, for a New Trial (D.I. 356); and granting in part Amgen's Motion for Prejudgment and Post-judgment Interest (D.I. 352);

WHEREAS the Court has entered a Stipulation and Order (D.I. 390) dismissing Amgen's First Count of the Second Amended Complaint with prejudice, and dismissing Hospira's Fourth Counterclaim without prejudice, except that Hospira's Fourth Counterclaim will be deemed dismissed with prejudice if Amgen does not appeal the Jury Verdict of non-

infringement of the '349 patent or this Court's denial of Amgen's Renewed Motion for Judgment as a Matter of Law of Infringement of the '349 Patent or, in the Alternative, for a New Trial (D.I. 356), or if the Court of Appeals affirms the Jury Verdict of non-infringement of the '349 patent and this Court's denial of that motion;

IT IS HEREBY ORDERED and **FINAL JUDGMENT IS HEREBY ENTERED** as follows:

IT IS ORDERED AND ADJUDGED that **FINAL JUDGMENT** in the amount of \$70,000,000 is entered in favor of Amgen and against Hospira on the Third Count of the Second Amended Complaint (D.I. 139) and Hospira's First Counterclaim (D.I. 151). As set forth in the Jury Verdict (D.I. 326), Hospira infringed claims 24 and 27 of the '298 patent, and Hospira's safe-harbor defense does not apply to fourteen (14) of the twenty-one (21) accused batches of Hospira's EPO drug substance.

IT IS ORDERED AND ADJUDGED that **FINAL JUDGMENT** is entered in favor of Amgen and against Hospira on Hospira's Second Counterclaim (D.I. 151) with respect to claims 24 and 27 of the '298 patent. As set forth in the Jury Verdict (D.I. 326), claims 24 and 27 of the '298 patent are not invalid for anticipation or obviousness.

IT IS ORDERED AND ADJUDGED that **FINAL JUDGMENT** is entered in favor of Hospira and against Amgen on Hospira's Second Counterclaim (D.I. 151) with respect to claims 8 and 19 of the '298 patent. As set forth in this Court's Order on Claim Construction (D.I. 180), claims 8 and 19 of the '298 patent are invalid.

IT IS ORDERED AND ADJUDGED that **FINAL JUDGMENT** is entered in favor of Hospira and against Amgen on the Fourth and Fifth Counts of the Second Amended Complaint

(D.I. 139) and Hospira's Third Counterclaim (D.I. 151). As set forth in the Jury Verdict (D.I. 326), Hospira did not infringe any of claims 1 through 7 of the '349 patent.

IT IS ORDERED that, for the reasons set out in this Court's Memorandum Opinion dated August 27, 2018 (D.I. 386), Amgen is awarded prejudgment interest on the jury's damages award in the amount of \$10,018,044.

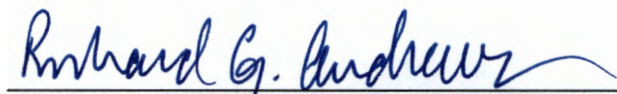
IT IS ORDERED that, for the reasons set out in this Court's Memorandum Opinion dated August 27, 2018 (D.I. 386), Amgen is awarded post-judgment interest on the \$70,000,000 damages award, calculated at the statutory rate specified under 28 U.S.C. § 1961, from September 25, 2017 until such date that Hospira satisfies this Final Judgment, computed daily and compounded annually. The applicable statutory rate for this purpose will be the one in effect for a judgment entered on September 25, 2017, namely, 1.31%.

IT IS ORDERED that, for the reasons set out in this Court's Memorandum Opinion dated August 27, 2018 (D.I. 386), Amgen is awarded post-judgment interest on the \$10,018,044 in prejudgment interest calculated at the statutory rate specified under 28 U.S.C. § 1961, from the date of entry of this Final Judgment until such date that Hospira satisfies this Final Judgment, computed daily and compounded annually. The applicable statutory rate for this purpose will be the one in effect for a judgment entered on the date of entry of this Final Judgment, namely, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of entry of this Final Judgment.

IT IS ORDERED that Amgen's First and Second Counts of the Second Amended Complaint (D.I. 139) are **DISMISSED** with prejudice.

IT IS ORDERED that Hospira's Fourth Counterclaim (D.I. 151) is **DISMISSED** without prejudice, except that Hospira's Fourth Counterclaim will be deemed dismissed with prejudice if Amgen does not appeal the Jury Verdict of non-infringement of the '349 patent or this Court's denial of Amgen's Renewed Motion for Judgment as a Matter of Law of Infringement of the '349 Patent or, in the Alternative, for a New Trial (D.I. 356), or if the Court of Appeals affirms the Jury Verdict of non-infringement of the '349 patent and this Court's denial of that motion.

SO ORDERED this 11 day of September, 2018.



THE HONORABLE RICHARD G. ANDREWS
UNITED STATES DISTRICT JUDGE