IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MERCK SHARP & DOHME CORP.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 14-915 (RGA)
	)	CONSOLIDATED
HOSPIRA, INC.,	)	
	)	
Defendant.	)	

[PROPOSED] FINAL JUDGMENT

This patent infringement action was brought by Plaintiff Merck Sharp and Dohme Corp. ("Merck") against Defendant Hospira, Inc. ("Hospira"), alleging Hospira's Abbreviated New Drug Application ("ANDA") No. 206480 infringed U.S. Patent Nos. 5,952,323 (the "'323 Patent"), 6,486,150 (the "'150 Patent") and 6,548,492 (the "'492 Patent"). On November 17, 2014, Hospira stipulated that ANDA No. 206480 infringes claims 2 and 4-6 of the '323 Patent, if those claims are not invalid or unenforceable (D.I. 34). On March 18, 2016, a Stipulation of Partial Dismissal of Claims with respect to the '492 Patent was filed (D.I. 187). The Court conducted a bench trial from April 18 to 21, 2016 on the issues of validity of the asserted claims 2 and 4-6 of the '323 Patent and the validity and infringement of the asserted claims 21-34 of the '150 Patent.

Having considered the documentary evidence and testimony, and having reviewed the parties' post-trial briefs, for the reasons set forth in the Court's *Markman* Order dated July 30, 2015 (D.I. 137), and the Trial Opinion dated October 7, 2016 (D.I. 220), **IT IS ORDERED AND ADJUDGED** that:

1. Judgment is entered in favor of Merck and against Hospira that claims 2 and 4-6 of the '323 Patent are not invalid as anticipated under 35 U.S.C. § 102, not invalid for

obviousness under 35 U.S.C. § 103, and not invalid for lack of written description under 35 U.S.C. § 112.

2. In view of the judgment for Merck on the validity of the asserted claims of the '323 Patent and the parties' aforementioned stipulation that the ertapenem product that is the subject of ANDA No. 206480 infringes claims 2 and 4-6 of the '323 Patent, judgment is entered in favor of Merck and against Hospira that the commercial manufacture, use, offer for sale, sale, in the United States and/or importation into the United States of the ertapenem product that is the subject of Hospira's Abbreviated New Drug Application ("ANDA") No. 206480 would infringe claims 2 and 4-6 of the '323 Patent.

3. Pursuant to 35 U.S.C. § 271(e)(4)(A), the effective date of any final approval by the United States Food and Drug Administration of Hospira's ANDA No. 206480 shall be a date not earlier than November 15, 2017, the date of expiration of the '323 Patent together with the period of pediatric exclusivity awarded to Merck under 21 U.S.C. § 355a.

4. Pursuant to 35 U.S.C. § 27l(e)(4)(B), Hospira and its officers, agents, employees and attorneys, and those who are in active concert or participation with those who receive actual notice of this Final Judgment by personal service or otherwise, are hereby enjoined from engaging in the commercial manufacture, use, offer for sale, sale, in the United States and/or importation into the United States of the ertapenem product that is the subject of Hospira's ANDA No. 206480 until May 15, 2017, the expiration date of the '323 Patent.

5. Judgment is entered in favor of Hospira and against Merck that asserted claims 21-34 of the '150 Patent are invalid as obvious under 35 U.S.C. § 103.

6. Judgment is entered in favor of Merck and against Hospira that claims 21-29 of the '150 patent are not invalid for lack of novelty under 35 U.S.C. § 102.

7. Judgment is entered in favor of Merck and against Hospira that the commercial importation into the United States and sale in the United States of the ertapenem product that is the subject of ANDA No. 206480 would infringe claim 21-34 of the '150 patent if those claims were not invalid under 35 U.S.C. § 103.

Dated this 24th of October, 2016

Richard G. Andrews
United States District Judge