

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

INSITE VISION INCORPORATED,
et al.,

Plaintiffs,

v.

SANDOZ INC., et al.,

Defendants.

CIVIL ACTION NO. 11-3080 (MLC)

ORDER & FINAL JUDGMENT

This action came to trial before the Court. The issues have been tried and heard, and a decision has been rendered as set forth in the Memorandum Opinion dated October 4, 2013.

IT IS on this 4th day of October, 2013, **ORDERED AND ADJUDGED** that **FINAL JUDGMENT IS ENTERED IN FAVOR OF PLAINTIFFS** and **AGAINST DEFENDANTS** with respect to Plaintiffs' claims of infringement of Claim 3 and Claim 5 of U.S. Patent No. 6,861,411 ("the '411 Patent"), pursuant to 35 U.S.C. § 271; and

IT IS FURTHER ORDERED AND ADJUDGED that **FINAL JUDGMENT IS ENTERED IN FAVOR OF PLAINTIFFS** and **AGAINST DEFENDANTS** with respect to Plaintiffs' claims of infringement of Claim 6, Claim 7, Claim 8, and Claim 9 of U.S. Patent No. 6,239,113 ("the '113 Patent"), pursuant to 35 U.S.C. § 271; and

IT IS FURTHER ORDERED AND ADJUDGED that **FINAL JUDGMENT IS ENTERED IN FAVOR OF PLAINTIFFS** and **AGAINST DEFENDANTS** with

respect to Plaintiffs' claims of infringement of Claim 16 and Claim 44 of U.S. Patent No. 6,569,443 ("the '443 Patent"), pursuant to 35 U.S.C. § 271; and

IT IS FURTHER ORDERED AND ADJUDGED that **FINAL JUDGMENT IS ENTERED IN FAVOR OF PLAINTIFFS** and **AGAINST DEFENDANTS** with respect to Plaintiffs' claims of infringement of Claim 4, Claim 6, Claim 7, Claim 9, Claim 10, Claim 11, Claim 12, Claim 30, Claim 36, and Claim 40 of U.S. Patent No. 7,056,893 ("the '893 Patent"), pursuant to 35 U.S.C. § 271; and

IT IS FURTHER ORDERED AND ADJUDGED that **JUDGMENT IS ENTERED IN FAVOR OF PLAINTIFFS** and **AGAINST DEFENDANTS** with respect to Defendants' counterclaims for non-infringement and invalidity of the '411 Patent, and all such counterclaims are **DISMISSED WITH PREJUDICE**; and

IT IS FURTHER ORDERED AND ADJUDGED that **JUDGMENT IS ENTERED IN FAVOR OF PLAINTIFFS** and **AGAINST DEFENDANTS** with respect to Defendants' counterclaims for non-infringement and invalidity of the '113 Patent, and all such counterclaims are **DISMISSED WITH PREJUDICE**; and

IT IS FURTHER ORDERED AND ADJUDGED that **JUDGMENT IS ENTERED IN FAVOR OF PLAINTIFFS** and **AGAINST DEFENDANTS** with respect to Defendants' counterclaims for non-infringement and invalidity of the '443 Patent, and all such counterclaims are **DISMISSED WITH PREJUDICE**; and

IT IS FURTHER ORDERED AND ADJUDGED that **JUDGMENT IS ENTERED IN FAVOR OF PLAINTIFFS** and **AGAINST DEFENDANTS** with

respect to Defendants' counterclaims for non-infringement and invalidity of the '893 Patent, and all such counterclaims are **DISMISSED WITH PREJUDICE**; and

IT IS FURTHER ORDERED that, pursuant to 35 U.S.C. § 271(e)(4)(B), Defendants and their officers, directors, employees, agents, successors, affiliates and assigns, and all persons and entities acting in concert or participation with them are enjoined until the expiration of the '411 Patent, '113 Patent, '443 Patent, and '893 Patent from engaging in the commercial manufacture, use, marketing, sale, or offer for sale within the United States, or from importing into the United States, generic azithromycin ophthalmic solution 1% sterile topical ophthalmic drops, including the azithromycin ophthalmic solution, 1% described in Sandoz's ANDA No. 202308, or any colorable variations thereof; and

IT IS FURTHER ORDERED that, pursuant to 35 U.S.C. § 271(e)(4)(A), the effective date of any approval of the generic azithromycin ophthalmic solution, 1% products in the ANDA filing listed above shall not be earlier than the expiration date of the '411 Patent; and

IT IS FURTHER ORDERED that, pursuant to 35 U.S.C. § 271(e)(4)(A), the effective date of any approval of the generic azithromycin ophthalmic solution, 1% products in the ANDA filing listed above shall not be earlier than the expiration date of the '113 Patent; and

IT IS FURTHER ORDERED that, pursuant to 35 U.S.C. § 271(e)(4)(A), the effective date of any approval of the generic azithromycin ophthalmic solution, 1%

products in the ANDA filing listed above shall not be earlier than the expiration date of the '443 Patent; and

IT IS FURTHER ORDERED that, pursuant to 35 U.S.C. § 271(e)(4)(A), the effective date of any approval of the generic azithromycin ophthalmic solution, 1% products in the ANDA filing listed above shall not be earlier than the expiration date of the '893 Patent; and

IT IS FURTHER ORDERED that in the event that Defendants appeal from this Final Order and Judgment, any motion for attorney's fees or costs under Fed.R.Civ.P. 54(d) and L.Civ.R. 54.1-54.2, including any motion that this case is exceptional under 35 U.S.C. § 285, shall be considered timely if filed and served within thirty days after final disposition of any such appeal; and

IT IS FURTHER ORDERED that in the event that Defendants do not appeal from this Order and Final Judgment, any motion for attorney's fees or costs under Fed.R.Civ.P. 54(d) and L.Civ.R. 54.1-54.2, including any motion that this case is exceptional under 35 U.S.C. § 285, shall be considered timely if filed and served within thirty days after the expiration of the time for filing a notice of appeal under Fed.R.App.P. 3 and 4; and

IT IS FURTHER ORDERED that the Clerk of the Court designate this action as **CLOSED**.

s/ Mary L. Cooper
MARY L. COOPER
United States District Judge