

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

FOREST LABORATORIES, LLC and )  
FOREST LABORATORIES HOLDINGS, LTD., )  
 )  
Plaintiffs, )  
 )  
v. ) C.A. No. 14-1119 (SLR) (SRF)  
 ) **CONSOLIDATED**  
SIGMAPHARM LABORATORIES, LLC, et al. )  
 )  
Defendants. )

**[PROPOSED] JUDGMENT OF NON-INFRINGEMENT  
AND ORDER OF DISMISSAL OF COUNTERCLAIMS**

WHEREAS, based on the Court’s Claim Construction Opinion and Order (D.I. 133), and as represented in the documents and samples produced to date by Defendant Breckenridge Pharmaceutical, Inc. (hereinafter referred to as “Breckenridge”) to Forest Laboratories Holdings, Ltd. (hereinafter collectively referred to as “Forest”), Forest and Breckenridge, by and through their respective attorneys, have agreed that judgment of non-infringement should be entered under 35 U.S.C. § 271(e)(2) as to all claims of U.S. Patent Nos. 7,741,358 (“the ’358 Patent”) and 8,022,228 (“the ’228 Patent”) with respect to Breckenridge’s proposed generic sublingual asenapine products that are the subject of Breckenridge’s ANDA No. 205960, as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. JUDGMENT is entered in favor of Breckenridge with respect to Forest’s Count III: Infringement of the ’358 Patent Under 35 U.S.C. § 271(e)(2). *See* Forest’s Complaint (D.I. 1, C.A. No. 14-1504-SLR) at ¶¶ 31-43.
2. JUDGMENT is entered in favor of Breckenridge with respect to Forest’s Count IV: Infringement of the ’228 Patent Under 35 U.S.C. § 271(e)(2). *See id.* at ¶¶ 44-52.

3. ORDERED that the following counterclaims asserted by Breckenridge in Civil Action No. 14-1119-SLR for declaratory judgment against Forest pertaining to the '358 and '228 patents are dismissed without prejudice.

a. Count III: Declaratory Judgment of Non-Infringement of the '358 Patent. *See* Amended Answer, Affirmative Defenses and Counterclaims of Defendant Breckenridge Pharmaceutical, Inc. (D.I. 14, C.A. No. 14-1504-SLR) at p. 14, ¶¶ 18-19.

b. Count IV: Declaratory Judgment of Invalidity of the '358 Patent. *See id.* at p. 15 ¶¶ 20-21.

c. Count V: Declaratory Judgment of Non-Infringement of the '228 Patent. *See id.* at ¶¶ 22-23.

d. Count VI: Declaratory Judgment of Invalidity of the '228 Patent. *See id.* at p. 15 ¶¶ 24-25.

The parties further STIPULATE AND AGREE that:

1. Breckenridge will promptly inform Forest in a reasonable amount of time, not to exceed 45 calendar days, but in no event less than 45 calendar days before any launch, of any material change to its proposed generic sublingual asenapine products that are the subject of ANDA No. 205960 (including any supplements or amendments thereto) relating to the solid state character (*i.e.*, crystalline polymorph or amorphous) of the asenapine in Breckenridge's proposed generic sublingual asenapine products or the solid state character of the asenapine maleate used to manufacture Breckenridge's proposed generic sublingual asenapine products that are the subject of ANDA No. 205960 (including any supplements or amendments thereto). Breckenridge, to the extent possible, will promptly produce any documents and samples relevant

to any such changes in a reasonable amount of time, not to exceed 45 calendar days, but in no event less than 45 calendar days before any launch.

2. Entry of this stipulated judgment shall not preclude Forest from bringing suit against Breckenridge under 35 U.S.C. §§ 271(a)-(c) and (e) in the event of any change to Breckenridge's proposed generic sublingual asenapine products identified in the preceding paragraph that would materially alter the infringement analysis under the Court's current construction, or in the event the Court's current claim construction is materially modified by the Court or on appeal. This JUDGMENT and ORDER shall in no way preclude or impair Plaintiffs' rights to appeal the Court's claim construction.

Each party is to bear its own costs and fees.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

BAYARD, P.A.

*/s/ Maryellen Noreika*

*/s/ Stephen B. Brauerman*

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SO ORDERED this \_\_\_\_\_ day of April 2016.

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United States District Judge