

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ENDO PHARMACEUTICALS INC. and)
MALLINCKRODT LLC,)
)
Plaintiffs,)
)
v.) C.A. No. 14-1389 (RGA)
)
TEVA PHARMACEUTICALS USA, INC.)
and BARR LABORATORIES, INC.,)
)
Defendants.)

**STIPULATION AND ORDER DISMISSING ENDO'S CLAIM
FOR INFRINGEMENT OF U.S. PATENT NO. 8,808,737
AND REQUESTING ENTRY OF PARTIAL JUDGMENT**

WHEREAS plaintiff Endo Pharmaceuticals Inc. ("Endo") asserts a claim against defendants Teva Pharmaceuticals USA, Inc. and Barr Laboratories, Inc. (collectively, "Teva") for infringement of U.S. Patent No. 8,808,737 ("the '737 patent") in connection with Teva's submission of Abbreviated New Drug Application No. 20-4324 to the U.S. Food and Drug Administration;

WHEREAS Teva has contended that the claims of the '737 patent are invalid, and has asserted a counterclaim seeking a declaration that the asserted claims are invalid;

WHEREAS Endo has also asserted a claim for infringement of the '737 patent against Actavis Inc. and Actavis South Atlantic LLC (collectively, "Actavis") in a related action encaptioned *Endo Pharmaceuticals Inc. v. Actavis Inc.*, No. 14-1381-RGA (D. Del. 2014) (the "Actavis Action");

WHEREAS on September 23, 2015, Magistrate Judge Thyng made a Report and Recommendation in the Actavis Action recommending that Endo's claims against Actavis for

infringement of the '737 patent be dismissed on the grounds that the '737 patent is invalid under 35 U.S.C. § 101 (D.I. 51 in the Actavis Action);

WHEREAS on November 17, 2015, this Court entered an Order Adopting Report and Recommendation over Endo's objections, and accordingly dismissed Endo's claims against Actavis for infringement of the '737 patent (D.I. 67 in the Actavis Action);

WHEREAS Endo disagrees with the Court's Order in the Actavis Action;

WHEREAS, in the interest of judicial economy and narrowing the disputed issues for the Court to decide in this case, and subject to the Court's consent, the parties are willing to stipulate that Court's decision regarding the validity of the '737 patent shall govern in this action, subject to the terms and conditions set forth herein;

WHEREAS the parties agree that all claims and counterclaims should be appealed together after final disposition by the Court of all issues in the above-captioned action;

ACCORDINGLY, the parties request that, based on the Court's Order in the Actavis Action, entry of partial judgment be entered in favor of Teva with respect to Teva's counterclaim for invalidity of the '737 patent in this action; and

NOW THEREFORE, the parties hereby stipulate and agree as follows, subject to approval by the Court:

1. The Report and Recommendation and Order Approving Report and Recommendation entered in the Actavis case, and all related papers submitted by the parties in the Actavis Action in connection therewith, shall be adopted and govern in this action with the same force and effect as if entered herein, subject to Endo's right to appeal therefrom based on the record presented in the Actavis Action.

2. Accordingly, Endo's claims against Teva for infringement of the '737 patent (Counts I and II of the Complaint) are hereby dismissed.

3. Nothing herein is intended to be or shall be construed as a waiver of Endo's right to appeal the Court's decision regarding the validity of the '737 patent, in this or any related action. For purposes of any such appeal in this action, the record presented in the Actavis Action relating to the Court's Order Adopting Report and Recommendation therein shall be deemed to be part of the record in this case.

4. Nothing herein is intended to trigger the time to appeal any claim or counterclaim in the above-captioned action.

5. Nothing herein is intended to affect, or shall be construed as affecting, the merits of any other claims, counterclaims or defenses asserted in the above-captioned action.

6. Nothing herein is intended to be or shall be construed as a waiver of Teva's right to challenge the validity, enforceability or infringement of the '737 patent on any grounds in the event that the Court's Order Adopting Report and Recommendation is set aside for any reason.

7. This Stipulation and Order shall be entered without prejudice to any party's right to seek to vacate or amend the Stipulation and Order in the event that the Order Adopting Report and Recommendation entered in the Actavis Action, or in any other related action in which that Order is adopted, is vacated, reversed or otherwise modified, on appeal or otherwise.

8. The Court shall enter partial judgment in this action in the form attached hereto as Exhibit A.

9. The partial judgment shall become final on the date of entry of an order or judgment in this action resolving the parties' claims and defenses concerning U.S. Patent No. 8,871,779.

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February 8, 2016

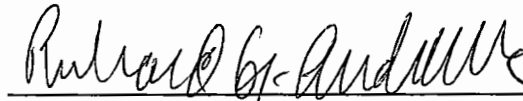
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SO ORDERED this 9 day of February 2016.



The Honorable Richard G. Andrews