

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

HORIZON PHARMA, INC. and POZEN
INC.,

Plaintiffs,

vs.

MYLAN PHARMACEUTICALS INC.,
MYLAN LABORATORIES LIMITED, and
MYLAN INC.

Defendants.

Civil Action No. 3:13-cv-04022-MLC-DEA

FINAL JUDGMENT

This is an action for patent infringement having been brought by Plaintiffs Horizon Pharma Inc. and Pozen Inc. (collectively, “Plaintiffs”) against Defendants Mylan Inc., Mylan Pharmaceuticals Inc., and Mylan Laboratories Ltd. (collectively, “Mylan”), asserting that the product that is the subject of Mylan’s Abbreviated New Drug Application (“ANDA”) No. 204920 infringes the claims of U.S. Patent Nos. 6,926,907 (“’907 patent”), 5,714,504 (“’504 patent”), 6,369,085 (“’085 patent”), 6,875,872 (“’872 patent”), 7,411,070 (“’070 patent”), 7,745,466 (“’466 patent”), 5,948,789 (“’789 patent”), and 8,557,285 (“’285 patent”).

On April 28, 2014, Mylan filed amended counterclaims asserting invalidity and non-infringement of the ’907 patent, the ’285 patent, the ’504 patent, the ’789 patent, the ’085 patent, the ’872 patent, the ’070 patent, the ’466 patent, and U.S. Patent No.

5,900,424 (“’424 patent”); counterclaims for correction of use codes for the ’504 patent, the ’424 patent, the ’085 patent, the ’907 patent, the ’070 patent, and the ’466 patent; and counterclaims for patent de-listing for the ’504 patent, the ’424 patent, and the ’872 patent. *See* ECF No. 51.

On December 15, 2014, Mylan stipulated to infringement of the claims asserted against it from the ’907 and ’285 patents: claims 5, 15, 52, 53, and 54 of the ’907 patent and claims 1-4 of the ’285 patent, with claim 54 of the ’907 patent later deemed not asserted. ECF No. 64 at 2-3; *see also* ECF No. 418 in No. 11-cv-02317 (on November 14, 2016, limiting the asserted claims of the ’907 patent to claims 5, 15, 52, and 53).

On February 3, 2015, the Court entered the parties’ joint stipulation dismissing the allegations of infringement against Mylan concerning the ’504 patent, the ’085 patent, the ’872 patent, the ’070 patent, the ’466 patent, and the ’789 patent with prejudice, and Mylan’s counterclaims against the ’424 patent, the ’504 patent, the ’085 patent, the ’872 patent, the ’070 patent, the ’466 patent, and the ’789 patent with prejudice. ECF No. 70.

This matter having been tried before this Court on January 12, 13, and 17-20, 2017, with closing arguments on May 17, 2017, the Court having heard testimony on behalf of Plaintiffs and Mylan regarding Mylan’s invalidity counterclaims with respect to claims 5, 15, 52, and 53 of the ’907 patent and claims 1-4 of the ’285 patent, the Court having considered the written post-trial submissions of the parties, and the Court having issued its Memorandum Opinion on June 26, 2017 (ECF No. 493 in No. 11-cv-02317) and its Amended Memorandum Opinion on July 10, 2017 (“Amended Opinion”) (ECF

No. 497 in No. 11-cv-02317) finding that claims 5, 15, 52, and 53 of the '907 patent and claims 1-4 of the '285 patent are not invalid under 35 U.S.C. §§ 103 and 112;

IT IS ORDERED AND ADJUDGED that this Court has jurisdiction over the Parties and the subject matter of this action;

IT IS ORDERED AND ADJUDGED that all claims and counterclaims regarding the '424 patent, the '504 patent, the '085 patent, the '872 patent, the '070 patent, the '466 patent, and the '789 patent are dismissed with prejudice (*see* ECF No. 70);

IT IS ORDERED AND ADJUDGED, for the reasons set forth in the Court's Amended Opinion, that final judgment is entered in favor of Plaintiffs and against Mylan on all claims and counterclaims regarding the validity and infringement of claims 5, 15, 52, and 53 of the '907 patent;

IT IS ORDERED AND ADJUDGED, for the reasons set forth in the Court's Amended Opinion, that final judgment is entered in favor of Plaintiffs and against Mylan on all claims and counterclaims regarding the validity and infringement of claims 1-4 of the '285 patent;

IT IS ORDERED AND ADJUDGED, pursuant to the Final Pretrial Order regarding Infringement (ECF No. 421 in No. 11-cv-02317 at 8; *see also* Case No. 3:13-cv-04022 at ECF No. 64), that the commercial manufacture, use, offer for sale, sale, or importation of Mylan's ANDA Product (*i.e.*, the generic version of VIMOVO that is the subject of Mylan's ANDA No. 204920 submitted under 35 U.S.C. §271(e)(2)(A)) within the United States or administration of Mylan's ANDA Product for the treatment of pain

and inflammation according to its prescribing information within the United States would infringe claims 5, 15, 52, and 53 of the '907 patent and claims 1-4 of the '285 patent;

IT IS ORDERED that, 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 (“FDA”) of Mylan’s ANDA No. 204920 shall be a date which is not earlier than the expiration of the '907 Patent, including any patent term extensions and/or adjustments;

IT IS ORDERED that, pursuant to 35 U.S.C. § 271(e)(4)(A), the effective date of any final approval by the FDA of Mylan’s ANDA No. 204920 shall be a date which is not earlier than the expiration of the '285 Patent, including any patent term extensions and/or adjustments;

IT IS ORDERED that in the event that Mylan appeals from this Final Judgment, any motion for attorney 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;

IT IS ORDERED that in the event that Mylan does not appeal from this Final Judgment, any motion for attorney 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;

IT IS ORDERED that all pending motions and other outstanding requests for relief not specifically addressed herein are **DENIED**; and

IT IS ORDERED that the Clerk of the Court designate Civil Action No. 3:13-cv-04022-MLC-DEA is **CLOSED**.

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

Dated: July 21, 2017