

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. 18-cv-00997-RM-KLM

DUKE UNIVERSITY and
ALLERGAN SALES, LLC,

Plaintiffs,

v.

SANDOZ, INC.,

Defendant and Counterclaim Plaintiff.

FINAL JUDGMENT

Pursuant to Fed. R. Civ. P. 58, Final Judgment is entered as follows:

Plaintiffs Duke University (“Duke”) and Allergan Sales, LLC (“Allergan”) (collectively, “Plaintiffs”) alleged that Defendant Sandoz, Inc. (“Sandoz”) infringed Claim 30 of U.S. Patent No. 9,579,270 (the “’270 patent”) under 35 U.S.C. §§ 271 (b) and (c) by selling its bimatoprost ophthalmic solution, 0.03% pursuant to its ANDA No. 202791 (“Sandoz Product”) in the United States, and that Sandoz’s infringement was willful.

Sandoz alleged that Claim 30 of the ’270 patent is invalid for obviousness under 35 U.S.C. § 103, invalid for lack of written description under 35 U.S.C. § 112, and invalid for lack of enablement under 35 U.S.C. § 112.

On February 22, 2023, Sandoz stipulated that its sale and offer of sale, within the United States, of its bimatoprost ophthalmic solution, 0.03% pursuant to its ANDA No. 202791 (“Sandoz

Product”), during the term of ’270 Patent constituted infringement of claim 30 of the ’270 Patent under 35 U.S.C. §§ 271 (b) and (c), unless that claim is found invalid. D.I. 252; *see also* D.I. 287.

On March 27, 2023, the Court held a jury trial.

On March 28, 2023, the Court granted Sandoz’s motion for judgment as a matter of law under FED. R. CIV. P. 50(a) as to Plaintiffs’ charge of willful infringement.

On March 31, 2023, the jury returned its verdict.

Pursuant to FED. R. CIV. P. 58(b), the Clerk of the Court enters judgment that:

1. Claim 30 of the ’270 patent is not invalid for obviousness under 35 U.S.C. § 103.
2. Claim 30 is not invalid for lack of written description under 35 U.S.C. § 112.
3. Claim 30 is not invalid for lack of enablement under 35 U.S.C. § 112.
4. Final judgment is entered against Sandoz on all of Plaintiffs’ claims, except that as to willful infringement, final judgment is entered against Plaintiffs.

5. Damages are awarded to Duke in the amount of \$1,227,172 and to Allergan in the amount of \$37,772,828.

6. Consistent with the parties’ agreement, Plaintiffs are awarded prejudgment interest at the weighted average prime rate for the period starting July 1, 2017 and ending on May 8, 2023 at a rate of 4.56%, compounded quarterly. As of May 8, 2023, the prejudgment interest on Allergan’s share of the judgment is \$11,444,942. As of May 8, 2023, the prejudgment interest on Duke’s share of the judgment is \$371,826.

7. Plaintiffs are awarded costs incurred in this action, to be taxed by the Clerk of the Court pursuant to Fed. R. Civ. P. 54(d)(1) and D. Colo. L.Civ.R. 54.1 and post-judgment interest pursuant to 28 U.S.C. § 1961.

8. The parties shall pay their own Colorado attorneys' fees incurred in this case.

Dated at Denver, Colorado this 22nd day of May, 2023.

BY THE COURT:
JEFFREY P. COLWELL, CLERK

s/C. Pearson, Deputy Clerk