

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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| CEPHALON, INC. and CEPHALON FRANCE, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civil Action No. 09-918-GMS |
| |) | |
| TEVA PHARMACEUTICALS USA, INC., |) | CONSOLIDATED FOR PRETRIAL |
| |) | PURPOSES |
| |) | |
| Defendant. |) | |

STIPULATION OF PARTIAL DISMISSAL & AGREEMENT

1. Cephalon, Inc. and Cephalon France (“Cephalon”) brought Civil Action No. 09-954-GMS against Mylan Pharmaceuticals Inc. (“Mylan”) alleging infringement of U.S. Patent Nos. RE37,516 E (“the ’516 Patent”) and 7,132,570 B2 (“the ’570 Patent”) based on Mylan’s filing of Abbreviated New Drug Application No. 20-0043 (“Mylan’s ANDA”), which seeks FDA approval to engage in the commercial manufacture, use, offer for sale, sale, and/or importation of generic armodafinil tablets in 50 mg, 100 mg, 150 mg, 200 mg, and 250 mg dosage strengths (“Mylan’s Armodafinil Tablets”), prior to the expiration of the ’516 and ’570 Patents (D.I. 1; *see also* D.I. 17). In its response to Cephalon’s complaint, Mylan denied infringement and asserted affirmative defenses of non-infringement, invalidity and unenforceability and four counterclaims against Cephalon, including a claim for declaratory judgment of non-infringement of U.S. Patent No. 7,297,346 B2 (“the ’346 Patent”), pursuant to 21 U.S.C. § 355(j)(5)(C) (D.I. 16; *see also* D.I. 19). Along with the ’516 and ’570 Patents, the ’346 Patent is listed in the Orange Book for Cephalon’s armodafinil product marketed under the NUVIGIL[®] name, but Cephalon did not assert the ’346 Patent against Mylan in this action or any

other action, including in its Answer to Mylan's Answer, Affirmative Defenses, and Counterclaims (D.I. 18; *see also* D.I. 23).

2. This case was consolidated for all pretrial purposes under Civil Action No. 09-918-GMS on April 26, 2010.

3. Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and in order to narrow the issues before the Court in this case, Cephalon and Mylan, by and through their respective counsel, hereby stipulate to the dismissal with prejudice of the parties' claims and counterclaims pertaining to the '516 and the '346 Patents from the above-captioned action, in accordance with the terms and conditions noted below. Each party shall bear its own costs, and no costs or attorneys' fees are awarded to any party with respect to any of the patents and claims subject to this dismissal.

4. The parties further covenant that they will not initiate or cause to be initiated against each other (or any of their parents, divisions, subsidiaries, affiliates, successors, and assigns) any claim arising from or related to the '516 and '346 Patents (including but not limited to their listing in the Orange Book) based upon the filing of Mylan's ANDA and/or the manufacture, use, sale, offer to sell, and/or importation in the United States, its territories, possessions, protectorates, and the Commonwealth of Puerto Rico of any formulation or product that is the subject of Mylan's ANDA, including any amendments or supplements to Mylan's ANDA that do not substantially change the formulations or products originally submitted in Mylan's ANDA, and described in Mylan's Notice Letter to Cephalon dated November 2, 2009, providing information pursuant to § 505(j)(2)(B)(iv) of the Federal Food, Drug, and Cosmetic Act and 21 C.F.R. § 314.95.

5. This Agreement represents the entire Agreement between Cephalon and Mylan with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous

agreements, proposals, or understandings, whether written or oral, between Cephalon and Mylan with respect to this subject matter.

Accordingly, Cephalon and Mylan stipulate as follows, and good cause appearing therefore, it is ORDERED that:

- (a) Cephalon dismisses with prejudice its claims pertaining to the '516 Patent in its Amended Complaint for Patent Infringement, including its 35 U.S.C. § 285 exceptional case claim with respect to the '516 Patent (D.I. 17, Count I);
- (b) Mylan dismisses with prejudice its counterclaims, defenses, and allegations of noninfringement, unenforceability, invalidity, and exceptional case pertaining to the '516 Patent, including its First and Second Counterclaims in the Answer Affirmative Defenses, and Counterclaims of Defendant Mylan Pharmaceuticals Inc. to Plaintiffs' Amended Complaint (D.I. 19);
- (c) Mylan dismisses with prejudice its counterclaim pertaining to the '346 Patent (D.I. 19, Fourth Counterclaim);
- (d) Cephalon dismisses with prejudice its defenses to Mylan's Fourth Counterclaim (D.I. 23); and
- (e) The dismissals with prejudice of the claims in subparagraphs (a)-(d) above shall not have any *res judicata*, collateral estoppel, or other preclusive effect with respect to any future suit between the parties alleging infringement of the '516 and/or '346 Patents by any formulation or product that is not the subject of Mylan's ANDA, which include any

amendments or supplements to Mylan's ANDA that do not
substantially change the formulations or products submitted in Mylan's
ANDA.

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Dated: July 27, 2010

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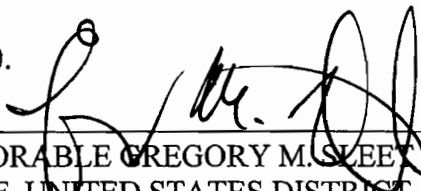
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SO ORDERED this 20th day of July, 2010.



HONORABLE GREGORY M. SLEET
CHIEF, UNITED STATES DISTRICT JUDGE

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