

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MEDICIS PHARMACEUTICAL  
CORPORATION,

Plaintiff,

v.

NYCOMED US INC.,

Defendant.

C.A. No. 11-4551 (DLC)

USDC SDNY
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**STIPULATION AND ORDER OF DISMISSAL**

WHEREAS Plaintiff Medicis Pharmaceutical Corporation ("Medicis") brought this action asserting infringement of United States Patent No. 7,794,738 (the "Medicis Patent") in the United States District Court for the District of Delaware (the "Delaware Court");

WHEREAS Nycomed US Inc. submitted to the U.S. Food and Drug Administration Abbreviated New Drug Application ("ANDA") No. 200735 (the "Nycomed ANDA") seeking approval to market and sell a generic fluocinonide cream USP, 0.1%, (the "Nycomed Product");

WHEREAS the Delaware Court transferred this action to this Court on June 16, 2011;

WHEREAS Nycomed US Inc. ("Nycomed") and Medicis are parties to litigation in this Court relating to the Nycomed ANDA and the Medicis Patent ("the Litigation");

WHEREAS Medicis and Nycomed have entered into a License and Settlement Agreement pursuant to which they have resolved the Litigation;

WHEREAS the Court has made no factual or legal findings with regard to the Medicis Patents or the Nycomed Product;

WHEREAS final settlement of the Litigation serves the public interest by saving judicial resources and avoiding the risks and uncertainties to Medicis and Nycomed associated with litigation;

WHEREAS final settlement of the Litigation will permit Medicis and Nycomed to save litigation costs, as well as adhere to the judicially recognized mandate that encourages the settlement of litigation whenever possible;

NOW, THEREFORE, Medicis and Nycomed stipulate that:

1. Except as reserved and provided for in the License and Settlement Agreement, Nycomed, on behalf of itself and its subsidiaries and affiliates, acknowledges and agrees that the Nycomed Product that is the subject of the Nycomed ANDA would, in the absence of the license granted by Medicis in the License and Settlement Agreement, infringe the Medicis Patent.

2. Except as reserved and provided for in the License and Settlement Agreement, Nycomed, on behalf of itself and its subsidiaries and affiliates, acknowledges and agrees that the Medicis Patent is valid and enforceable with respect to the Nycomed Product.

3. All claims and counterclaims in this action are dismissed with prejudice.

4. Except as set forth in the License and Settlement Agreement, each party shall bear its own costs, expenses and attorneys' fees in connection with this action.

5. The parties waive any right of appeal from this Stipulation and Order.

6. This Court shall retain jurisdiction of this action and over Medicis and Nycomed for purposes of enforcement of the terms and obligations of this Stipulation and Order of Dismissal and the parties' License and Settlement Agreement.

*So ordered.*

*James C. Lee*  
*August 15, 2011*

Dated: August 10, 2011

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*Attorneys for Plaintiff Medicis  
Pharmaceutical Corporation*

*Attorneys for Defendant Nycomed US Inc.*

SO ORDERED this \_\_\_\_\_, day of \_\_\_\_\_, 2011

\_\_\_\_\_  
United States District Court Judge