

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

BAYER HEALTHCARE LLC, BAYER)
HEALTHCARE PHARMACEUTICALS)
INC., and ONYX PHARMACEUTICALS,)
INC.,)
)
Plaintiffs,)
)
v.)
)
TEVA PHARMACEUTICALS USA, INC.,)
)
Defendant.)

C.A. No. 16-1220-LPS

JOINT MOTION TO STAY LITIGATION

Plaintiffs Bayer HealthCare LLC, Bayer HealthCare Pharmaceuticals Inc. (collectively, “Bayer”), and Onyx Pharmaceuticals, Inc. (“Onyx” and, collectively with Bayer, “Plaintiffs”) and Defendant Teva Pharmaceuticals USA, Inc. (“Teva,” and, collectively with Plaintiffs, the “Parties”) hereby jointly move the Court to stay this litigation pending resolution of Plaintiffs’ separate consolidated litigation against Mylan Pharmaceuticals, Inc. (“Mylan”), and state as follows:

1. Bayer HealthCare LLC is the owner of U.S. Patent No. 8,877,933 (the “’933 patent”). Onyx is the exclusive licensee under the ’933 patent, and Bayer HealthCare Pharmaceuticals Inc. is the NDA holder for NEXAVAR®.

2. Teva filed Abbreviated New Drug Application (“ANDA”) No. 209567 with the U.S. Food and Drug Administration (“FDA”) seeking approval to manufacture and sell generic versions of Plaintiffs’ NEXAVAR® product prior to the expiration of the ’933 patent.

3. On or about December 16, 2016, Plaintiffs filed the Complaint in this case, asserting infringement of the ’933 patent under 35 U.S.C. § 271(e)(2); on February 21, 2017, Teva

filed an Answer and Counterclaims seeking declarations of invalidity and non-infringement of the '933 patent; and, on March 15, 2017, Plaintiffs filed a reply to Teva's counterclaims.

4. Previously, Plaintiffs filed two separate lawsuits, both also currently pending in this Court and now consolidated with one another, against Mylan, Case Nos. 1:15-cv-00114-LPS (filed on January 30, 2015) and 1:15-cv-01162-LPS (filed on December 17, 2015) (collectively, the "First-Filer Litigation").

5. Mylan had previously filed ANDA No. 207012 with the FDA seeking approval to manufacture and sell generic versions of Plaintiffs' NEXAVAR® product prior to the expiration of the '933 patent, as well as several other patents as to which Plaintiffs are owners or exclusive licensees.

6. The First-Filer Litigation has substantially progressed, and is currently set for trial in November 2017. By contrast, the instant case is in its very early stages and no significant activity has occurred.

7. Resolution of the First-Filer Litigation is likely to substantially resolve many of the issues in the instant case, or at the least substantially inform the parties with respect to the issues in the instant case, and as such stands to streamline and expedite the ultimate resolution of this case. Accordingly, judicial economy and efficiency would be best served by a stay of this case pending resolution, through decision of this Court or by settlement, of the First-Filer Litigation.

8. None of the Parties will be prejudiced by entry of the requested stay.

WHEREFORE, the Parties jointly and respectfully request that the Court issue an Order staying this litigation pending resolution, whether through decision of this Court or by settlement, of *Bayer HealthCare LLC, Bayer HealthCare Pharmaceuticals Inc. and Onyx Pharmaceuticals,*

Inc. v. Mylan Pharmaceuticals, Inc., United States District Court for the District of Delaware Case No. 1:15-cv-00114-LPS, and for such other and further relief as this Court deems just and proper.

/s/ Derek J. Fahnestock

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Dated: June 28, 2017

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SO ORDERED this ____ day of _____, 2017.

Chief Judge Leonard P. Stark