

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

2007-1258, -1259

ORTHO-MCNEIL PHARMACEUTICAL, INC.,

Plaintiff-Appellee,

v.

COBALT PHARMACEUTICALS INC.,

Defendant-Appellant.

Harry J. Roper, Jenner & Block LLP, of Chicago, Illinois, argued for plaintiff-appellee. With him on the brief were Aaron A. Barlow and Eric L. Lohrenz, of Chicago, Illinois, and Marc A. Goldman, of Washington, DC.

Deanne M. Mazzochi, Rakoczy Molino Mazzochi Siwik LLP, of Chicago, Illinois, argued for defendant-appellant. With her on the brief were William A. Rakoczy and Natalie G. Mitchell.

Appealed from: United States District Court for the District of New Jersey

Judge Stanley R. Chesler

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ORTHO-MCNEIL PHARMACEUTICAL, INC.,

Plaintiff-Appellee,

v.

COBALT PHARMACEUTICALS INC.,

Defendant-Appellant.

Appeal from the United States District Court for the District of New Jersey in case no. 05-CV-4961 and 05-CV-5920, Judge Stanley R. Chesler.

DECIDED: March 31, 2008

Before MICHEL, Chief Judge, RADER and LINN, Circuit Judges.

RADER, Circuit Judge.

Instead of presenting its arguments to the district court, Cobalt Pharmaceuticals Inc. ("Cobalt") stipulated that it would be bound by the district court's final judgment order in the related ongoing litigation Ortho McNeil Pharmaceutical, Inc. v. Mylan Laboratories Inc., Case No. 04-cv-1689 (SRC) (D.N.J.) ("Ortho v. Mylan"). Accordingly, when the district court entered its judgment permanently enjoining Mylan from infringing Ortho McNeil's U.S. Patent No. 4,513,006 ('006) covering topiramate, it also entered final judgment against Cobalt. Cobalt retained its rights to appeal to this court, but stipulated that such an appeal would be based on the record of the Ortho v. Mylan litigation.

For the reasons set forth in the simultaneously issued opinion Ortho McNeil Pharmaceutical, Inc. v. Mylan Laboratories, No. 2007-1223, this court affirms the district court's judgment against Cobalt. Because Cobalt's argument that claim 1 is rendered indefinite by the inclusion of the phrase "may be" in the second clause that describes R2 and R3 and/or R4 and R5 when they are together was not presented to the district court, and because Cobalt stipulated that its appeal be based on the record in Ortho v. Mylan, this court declines to consider that argument now.

AFFIRMED