

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IDENIX PHARMACEUTICALS LLC and
UNIVERSITA DEGLI STUDI DI CAGLIARI

Plaintiffs,

v.

C.A. No. 14-846-LPS

GILEAD SCIENCES, INC.,

Defendant.

MEMORANDUM ORDER

Having reviewed the parties' Joint Status Report of February 27, 2018 (D.I. 594) and their joint letter of March 6, 2018 (D.I. 595), IT IS HEREBY ORDERED that:


1. The Court will today enter Final Judgment in this matter. The Court's Final Judgment order incorporates portions of what each side has proposed, as noted below.
2. The Court agrees with Gilead that the Court's prior January 26, 2017 Judgment Following Jury Verdict (D.I. 533) should be vacated as moot. The Court's determination that the asserted claims of the '597 patent are invalid due to lack of enablement leaves no basis for a finding of infringement or an award of damages, necessitating that the prior judgment be vacated.
3. The Court agrees with Idenix that it can neither determine the validity of, nor enter final judgment with respect to, the claims of the '597 patent that were not asserted either by Idenix, as part of its infringement claim, or by Gilead, as part of its invalidity counterclaim. Sometime before this case went to trial, the parties agreed to narrow the claims being asserted, without any agreement (or order of the Court) that the unasserted claims were being dropped

with prejudice. The parties claims and counterclaims with respect to these unasserted claims will be dismissed without prejudice. Whether Idenix can prevail on any claims for infringement of the unasserted claims of the '597 patent will depend on application of any and all pertinent legal principles (in this and/or a future separate case), including the details of any mandate from the Court of Appeals from the Federal Circuit and the doctrine of collateral estoppel.

4. The Court did not invalidate the unasserted claims. Any portion of the Court's opinion or order (D.I. 591, 592) that suggested otherwise was simply the Court's shorthand manner of referring to the group of asserted claims, which the Court did invalidate.

5. The Court has not previously, and does not here, grant Gilead's request for a new trial. Gilead's motion for a new trial was expressly conditioned on the Court not granting Gilead judgment as a matter of law. (See D.I. 535 at 2; D.I. 536 at 25) The Court *did* grant Gilead judgment as a matter of law. Hence, the condition precedent to Gilead's request for a new trial did not come to fruition. The Court expressly denied Gilead's motion in all respects other than granting judgment as a matter of law due to nonenablement of the asserted claims. (D.I. 592) At least as importantly, it will be up to the Federal Circuit (assuming there is an appeal) to consider whether, as part of any mandate, this Court should, may, must, or cannot conduct another trial.

March 14, 2018
Wilmington, Delaware


HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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Plaintiffs,

v.

GILEAD SCIENCES, INC.,

Defendant.

C.A. No. 14-846-LPS

FINAL JUDGMENT

This action came before the Court for trial beginning December 5, 2016, before a duly impaneled and sworn jury. The jury rendered a verdict on December 15, 2016 in favor of Plaintiffs Idenix Pharmaceuticals LLC and Università Degli Studi di Cagliari (collectively, “Idenix”). (D.I. 517)

On January 26, 2017, the Court entered a Judgment Following Jury Verdict in Idenix’s favor and against Gilead Sciences, Inc. (“Gilead”) on its claims of infringement, willful infringement, validity, and damages with respect to claims 1, 2, 4-7, 9-10, 16, 19, 23, and 28-31 (the “asserted claims”) of U.S. Patent No. 7,608,597 (“the ’597 patent”). (D.I. 533) The Court likewise entered judgment in Idenix’s favor and against Gilead for damages in the amount of \$2,540,000,000.00 for Gilead’s infringement of the ’597 patent. (*Id.*) The Court also entered judgment dismissing all claims and counterclaims with respect to U.S. Patent No. 6,914,054 (“the ’054 patent”). (*Id.*)

On February 23, 2017, Gilead filed a motion for judgment as a matter of law or, in the

alternative, a new trial on the issues of invalidity, willful infringement, and damages (D.I. 535), and Idenix filed a motion for enhanced damages, attorneys' fees, pre-judgment interest, and an ongoing royalty (D.I. 538). On May 30, 2017, the Court stayed consideration of Idenix's motion for an ongoing royalty, by stipulation of the parties. (D.I. 575)

On September 22, 2017, the Court issued an opinion (D.I. 587) and order (D.I. 588) denying Idenix's motion for enhanced damages and attorneys' fees, and granting Idenix's motion for pre-judgment interest.

On February 16, 2018, the Court issued an opinion (D.I. 591) and order (D.I. 592) that Gilead's "motion for judgment as a matter of law (D.I. 535) is GRANTED IN PART, as U.S. Patent No. 7,608,597 is invalid for lack of enablement, and in all other respects is DENIED" (D.I. 592).

Therefore, pursuant to Federal Rule of Civil Procedure 50, 54, and 58, FINAL JUDGMENT is hereby entered in this matter as follows:

IT IS ORDERED AND ADJUDGED that the judgment in favor of Idenix on its claims related to the '597 patent and on damages, as entered in the January 26, 2017 Judgment Following Jury Verdict, is VACATED as moot.

IT IS ORDERED AND ADJUDGED that final judgment be and hereby is entered in favor of Gilead and against Idenix on Gilead's counterclaim that the asserted claims of the '597 Patent are invalid for lack of enablement.

IT IS ORDERED AND ADJUDGED that claims 1, 2, 4-7, 9-10, 16, 19, 23, and 28-31 of the '597 patent are invalid for lack of enablement.

IT IS ORDERED AND ADJUDGED that Gilead's counterclaim that the unasserted

claims of the '597 patent are invalid is DISMISSED without prejudice.

IT IS ORDERED AND ADJUDGED that the plaintiff, Idenix, take nothing by way of its complaint.

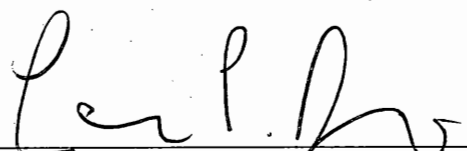
IT IS ORDERED AND ADJUDGED that Idenix's claims against Gilead on the '597 patent are DISMISSED without prejudice, and any further proceedings with respect to these claims, in this case or any future case, will be dependent on all applicable legal principles, including any remand order from the Court of Appeals and collateral estoppel.

IT IS ORDERED AND ADJUDGED that the September 22, 2017 order granting Idenix's motion for pre-judgment interest is VACATED as moot.

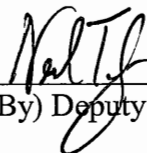
IT IS ORDERED AND ADJUDGED that Idenix's February 23, 2017 motion for ongoing damages is DENIED as moot.

IT IS ORDERED AND ADJUDGED that all claims and counterclaims with respect to direct and indirect infringement of the '054 patent are DISMISSED with prejudice in view of Idenix's filing of a mutually acceptable covenant not to sue.

Dated: March 14, 2018



HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE



(By) Deputy Clerk