

Reid 7/21/17  
EL

United States District Court  
District of Massachusetts

\_\_\_\_\_) )  
MOMENTA PHARMACEUTICALS, INC. ) )  
and SANDOZ INC., ) )  
 ) )  
Plaintiffs, ) )  
 ) )  
v. ) ) Civil Action No.  
 ) ) 11-11681-NMG  
AMPHASTAR PHARMACEUTICALS, INC. ) )  
and INTERNATIONAL MEDICATION ) )  
SYSTEMS, LTD., ) )  
 ) )  
Defendants. ) )  
\_\_\_\_\_)

Verdict Form

1. Patent Infringement

(a) Have plaintiffs proved, by a preponderance of the evidence, that defendants' 15-25% procedures infringe the asserted claims of the '886 patent? ("Yes" is a verdict for plaintiffs and "No" is a verdict for defendants.)

Claim 6	Yes	<u>✓</u>	No	_____
Claim 15	Yes	<u>✓</u>	No	_____
Claim 16	Yes	<u>✓</u>	No	_____
Claim 53	Yes	<u>✓</u>	No	_____
Claim 54	Yes	<u>✓</u>	No	_____
Claim 62	Yes	<u>✓</u>	No	_____

(b) Have plaintiffs proved, by a preponderance of the evidence, that defendants' Disaccharide Building Block ("DBB") procedure infringes the asserted claims of the '886 patent? ("Yes" is a verdict for plaintiffs and "No" is a verdict for defendants.)

Claim 6	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Claim 15	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Claim 16	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Claim 53	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Claim 54	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Claim 62	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

~~OR~~ [If you answer "Yes" as to any of the claims in Questions 1(a) and 1(b) continue to Question 2. If you answer "No" as to all the claims in Questions 1(a) and 1(b), continue to Question 4.]

## 2. Patent Validity

With respect to the following four grounds for patent invalidity, have defendants proved, by clear and convincing evidence, that any of the asserted claims of the '886 patent is invalid? ("Yes" is a verdict for defendants and "No" is a verdict for plaintiffs.)

### A. Anticipation

Claim 6	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Claim 15	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Claim 16	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Claim 53	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Claim 54	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Claim 62	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>

**B. Obviousness**

Claim 6	Yes	_____	No	<input checked="" type="checkbox"/>
Claim 15	Yes	_____	No	<input checked="" type="checkbox"/>
Claim 16	Yes	_____	No	<input checked="" type="checkbox"/>
Claim 53	Yes	_____	No	<input checked="" type="checkbox"/>
Claim 54	Yes	_____	No	<input checked="" type="checkbox"/>
Claim 62	Yes	_____	No	<input checked="" type="checkbox"/>

**C. Lack of Enablement**

Claim 6	Yes	<input checked="" type="checkbox"/>	No	_____
Claim 15	Yes	<input checked="" type="checkbox"/>	No	_____
Claim 16	Yes	<input checked="" type="checkbox"/>	No	_____
Claim 53	Yes	<input checked="" type="checkbox"/>	No	_____
Claim 54	Yes	<input checked="" type="checkbox"/>	No	_____
Claim 62	Yes	<input checked="" type="checkbox"/>	No	_____

**D. Lack of Written Description**

Claim 6	Yes	<input checked="" type="checkbox"/>	No	_____
Claim 15	Yes	<input checked="" type="checkbox"/>	No	_____
Claim 16	Yes	<input checked="" type="checkbox"/>	No	_____
Claim 53	Yes	<input checked="" type="checkbox"/>	No	_____
Claim 54	Yes	<input checked="" type="checkbox"/>	No	_____
Claim 62	Yes	<input checked="" type="checkbox"/>	No	_____

[If you answer "Yes" with respect to any of the patent claims in Questions 1(a) or 1(b) (infringement) and "No" with respect to any of those same patent claims in Question 2 (not invalid), proceed to Question 3. Otherwise proceed to Question 4.]

3. Damages

- (a) What amount of money, if any, do you award plaintiffs, for lost profits due to the infringement?

Zero (words)

\$ 0 (numbers)

[If you find in Question 3(a) that plaintiffs have not proved lost profits for all of the infringing sales or a portion of the infringing sales, answer Question 3(b). If you have determined that plaintiffs are entitled to lost profits for all of the infringing sales, proceed to Question 4.]

- (b) What amount of money, if any, do you award plaintiffs, for reasonable royalties due to the infringement?

Zero (words)

\$ 0 (numbers)

4. Enforceability

(a) 15-25% Procedures

1) Do the 15-25% procedures comply with USP <207>?

Yes ✓ No \_\_\_\_\_

[If you answer Question 4(a)(1) "Yes", answer Questions 4(a)(2) and 4(a)(3). If you answer Question 4(a)(1) "No", proceed to Question 4(b).]

2) Have defendants proved, by clear and convincing evidence, that plaintiffs have waived their right to recover for infringement of the '886 patent with respect to the 15-25% procedures? ("Yes" is a verdict for defendants and "No" is a verdict for plaintiffs.)

Yes ✓ No \_\_\_\_\_

3) Have defendants proved, by a preponderance of the evidence, that plaintiffs are estopped from enforcing the '886 patent with respect to the 15-25% procedures? ("Yes" is a verdict for defendants and "No" is a verdict for plaintiffs.)

Yes ✓ No \_\_\_\_\_

(b) Disaccharide Building Block ("DBB") Procedure

1) Does the DBB procedure comply with USP <207>?

Yes ✓ No \_\_\_\_\_

[If you answer Question 4(b)(1) "Yes", answer Questions 4(b)(2) and 4(b)(3). If you answer Question 4(b)(1) "No", your deliberations are complete.]

2) Have defendants proved, by clear and convincing evidence, that plaintiffs have waived their right to recover for infringement of the '886 patent with respect to the DBB procedure? ("Yes" is a verdict for defendants and "No" is a verdict for plaintiffs.)

Yes ✓ No \_\_\_\_\_

3) Have defendants proved, by a preponderance of the evidence, that plaintiffs are estopped from enforcing the '886 with respect to the DBB procedure? ("Yes" is a verdict for defendants and "No" is a verdict for plaintiffs.)

Yes ✓ No \_\_\_\_\_

YOUR DELIBERATIONS ARE COMPLETE. THE FOREPERSON WILL SIGN THE VERDICT FORM AND NOTIFY THE MARSHAL IN WRITING THAT THE JURY HAS COME TO A DECISION WITHOUT REVEALING THE VERDICT TO THE MARSHAL. THE JURY WILL THEN BE INVITED TO THE COURTROOM TO RETURN ITS VERDICT.

Dated: 7/21/2017 Jury Foreperson: Lia A. Casbell