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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IVERA MEDICAL CORPORATION,
Plaintiff-Counterdefendant,
vs.
HOSPIRA, INC.,
Defendant-Counterplaintiff.

Case Nos.:
11-cv-1246-H-RBB
12-cv-1582-H-RBB

**ORDER GRANTING
PARTIES' JOINT MOTION
FOR ENTRY OF FINAL
JUDGMENT AND ON
DEADLINE TO SEEK FEES
AND COSTS**

[Doc. No. 174]

In this consolidated patent infringement action, Plaintiff asserts three claims against Defendant for infringing U.S. Patent Nos. 7,780,794 (“the ‘794 patent”), 7,985,302 (“the ‘302 patent”), and 8,206,514 (“the ‘514 patent”) (collectively, the “patents-in-suit”). (See [1246]¹ Doc. No. 53, First Amended Complaint; ; [1582]² Doc. No. 8, First Amended Complaint.) Defendant asserted counterclaims that it did not infringe the patents-in-suit, that the patents-in-suit are invalid, and that the

¹ “[1246]” refers to Ivera Medical Corporation v. Excelsior Medical Corporation, No. 11-cv-1246-H.

² “[1582]” refers to Ivera Medical Corporation v. Excelsior Medical Corporation, No. 11-cv-1582-H.


1 patents-in-suit are unenforceable due to inequitable conduct. (See [1246] Doc. No. 55;
2 [1582] Doc. No. 14.) On April 29, 2014, the Court granted summary judgment for
3 Defendant and invalidated the patents-in-suit for obviousness under 35 U.S.C. § 103(a).
4 ([1246] Doc. No. 162.) On June 5, 2014, the Court ordered the parties to show cause
5 why it should not deny all pending claims as moot. (See Ivera v. Excelsior, No.
6 11-cv-1115-H, Doc. No. 128.) On June 9, 2014, the parties filed a joint motion for
7 entry of final judgment and request to preserve their rights to seek attorneys' fees after
8 appellate review of the Court's order. ([1246] Doc. No. 174.)

9 The Court, for good cause shown, grants the joint motion and enters judgment
10 for Defendant Hospira. Fed. R. Civ. P. 41(a)(2). The Court invalidated the asserted
11 patents, and "one cannot infringe an invalid patent." See Commil USA, LLC v. Cisco
12 Sys., 720 F.3d 1361, 1368 (Fed. Cir. 2013). The Court also dismisses Defendant's
13 unenforceability counterclaim as moot. The Court further orders as follows:

- 14 1. The Court permits the parties to seek attorneys' fees and costs under
15 Federal Rule of Civil Procedure 54 after appellate review; and
- 16 2. The Court enters final judgment for Defendant Hospira.

17 **IT IS SO ORDERED.**

18 DATED: June 11, 2014

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21 MARILYN L. HUFF, District Judge
22 UNITED STATES DISTRICT COURT
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