

1 Vernon M. Winters (SBN 130128)
 2 SIDLEY AUSTIN LLP
 3 555 California Street, Suite 2000
 4 San Francisco, CA 94104-1503
 Telephone: (415) 772-1200
 Facsimile: (415) 772-7400
 vwinters@sidley.com

Erik J. Olson (SBN 175815)
 MORRISON & FOERSTER LLP
 755 Page Mill Road
 Palo Alto, California 94304
 Telephone: 650.813.5600
 Facsimile: 650.494.0792
 ejolson@mof.com
 Additional counsel listed below

5 Nicholas Groombridge (*pro hac vice*)
 6 1285 Avenue of the Americas
 New York, NY 10019-6064
 Telephone: (212) 373-3000
 Facsimile: (212) 757-3990
 7 ngroombridge@paulweiss.com
 Additional counsel listed below

*Attorneys for Defendants Sandoz Inc., Sandoz
 International GmbH, and Sandoz GmbH*

8
 9 *Attorneys for Plaintiffs Amgen Inc.
 and Amgen Manufacturing, Limited*

10
 11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

13 AMGEN INC. and
 14 AMGEN MANUFACTURING, LIMITED,

Case No. 3:14-cv-04741-RS

15 Plaintiffs,

16 v.

**STIPULATION AND [PROPOSED]
 ORDER FOR ENTRY OF JUDGMENT
 REGARDING U.S. PATENT NO.
 6,162,427**

17 SANDOZ INC., SANDOZ
 18 INTERNATIONAL GMBH, and
 SANDOZ GMBH,

19 Defendants.

1 WHEREAS Amgen Inc. and Amgen Manufacturing, Limited (collectively, “Amgen”)
2 filed a complaint against Sandoz Inc., Sandoz International GmbH, and Sandoz GmbH
3 (collectively, “Sandoz”) in the Northern District of California (the “Court”) on October 24, 2014
4 (Docket No. 1), and a first amended and supplemental complaint on October 15, 2015 (Docket
5 No. 145), alleging, among other things, infringement of United States Patent Number 6,162,427
6 (’427 patent);

7 WHEREAS Sandoz has appeared and denied infringement, and Sandoz Inc. has
8 counterclaimed for declaratory judgment of invalidity of the ’427 patent (Docket Nos. 22, 149);

9 WHEREAS the Court construed certain disputed claim terms associated with claims 1-4,
10 and 6 of the ’427 patent (“Asserted Claims”) in an order dated August 4, 2016 (Docket No. 205);

11 WHEREAS the parties have completed fact discovery regarding the ’427 patent;

12 WHEREAS Amgen has provided an expert report regarding the alleged infringement of
13 the Asserted Claims of the ’427 patent, and Sandoz has provided an expert report regarding the
14 alleged invalidity of the Asserted Claims of the ’427 patent;

15 WHEREAS the time to add or amend infringement and invalidity contentions or add or
16 amend the Asserted Claims has passed;

17 WHEREAS the parties agree that Amgen may preserve its right to appeal the claim
18 construction order after a final judgment is entered pursuant to 28 U.S.C. §§ 1291 & 1292(c)(2);

19 THEREFORE Amgen and Sandoz agree that:

20 1. Amgen and Sandoz stipulate that Sandoz does not infringe the Asserted Claims of
21 the ’427 patent within the meaning of any provision of 35 U.S.C. § 271 in light of the claim
22 constructions included in the August 4, 2016 order, Docket No. 205.

23 2. Amgen and Sandoz stipulate that the Court may enter a judgment of non-
24 infringement in favor of Sandoz and against Amgen for Amgen’s Third Cause of Action of its
25 First Amended and Supplemental Complaint filed on October 15, 2015 (Docket No. 145) and
26

1 Sandoz's Sixth Counterclaim of Sandoz Inc.'s Answer to Amended Complaint filed November
2 2, 2015 (Docket No. 149).

3 3. Amgen and Sandoz stipulate that Sandoz Seventh Counterclaim of Sandoz Inc.'s
4 Answer to Amended Complaint filed November 2, 2015 (Docket No. 149) for a declaration of
5 invalidity for the '427 Patent will be dismissed without prejudice and that Sandoz will be
6 allowed to assert the Seventh Counterclaim in the event this matter is remanded for further
7 consideration following any appeal.

8 4. This Stipulation and [Proposed] Order are without prejudice to Amgen's right to
9 appeal the Claim Construction Order (Docket No. 205), and any final judgment based thereon
10 pursuant to 28 U.S.C. §§ 1291 & 1292(c)(2).

11 5. No party will conduct any further discovery or pretrial activities related to
12 allegations of liability or damages regarding the '427 patent, including any activity related to
13 Sandoz's alleged defense and counterclaim that the '427 patent is invalid.

14 6. Neither party shall be obligated to pay the opposing party any money in
15 connection with this stipulation or resolution, and Sandoz agrees not to seek its costs with respect
16 to the '427 patent. Neither party shall use as evidence or rely on the fact of this stipulation or the
17 judgment in favor of Sandoz and against Amgen directed to the '427 patent to argue that this
18 case is exceptional.

19 7. (i) Neither party shall use as evidence or rely on the fact of this stipulation or the
20 judgment in favor of Sandoz and against Amgen directed to the '427 patent in connection with
21 the continuing litigation involving United States Patent Number 8,940,878, (ii) neither party
22 shall assert in any forum that this stipulation or the judgment in favor of Sandoz and against
23 Amgen directed to the '427 patent is inconsistent with positions regarding infringement taken by
24 any party or its experts prior to the date of this stipulation, and (iii) neither party shall use as
25 evidence or rely on the contents of this stipulation or the judgment in favor of Sandoz and
26 against Amgen directed to the '427 patent in continuing litigation relating to Amgen's unfair
27

1 competition and conversion claims except to note the fact that judgment has entered with respect
2 to the '427 patent and that the '427 patent was the only patent asserted against Sandoz by Amgen
3 prior to October 15, 2015. For the avoidance of doubt, this stipulation has no impact on the
4 claims, defenses, or prayer for relief of either party related to the validity of, infringement of, or
5 relief available for the '878 patent.

6 8. Neither party shall issue a press release or make an affirmative press statement
7 regarding this stipulation.

8
9 Respectfully submitted,

10 Dated: September 13, 2017

By: /s/ Nicholas Groombridge
Nicholas Groombridge
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
ngroombridge@paulweiss.com

Vernon M. Winters (SBN 130128)
SIDLEY AUSTIN LLP
555 California Street, Suite 2000
San Francisco, CA 94104-1503
Telephone: (415) 772-1200
Facsimile: (415) 772-7400
vwinters@sidley.com

Attorneys for Amgen Inc. and Amgen Manufacturing, Ltd.

21 Dated: September 13, 2017

By: /s/ Erik J. Olson
Erik J. Olson (SBN 175815)
MORRISON & FOERSTER LLP
755 Page Mill Road
Palo Alto, California 94304
Telephone: 650.813.5600
Facsimile: 650.494.0792
ejolson@mof.com

*Attorneys for Defendants Sandoz Inc., Sandoz International
GmbH, and Sandoz GmbH*

1 **SIGNATURE ATTESTATION**

2 Pursuant to Civil Local Rule 5-1(i)(3), I hereby certify that concurrence in the filing
3 of this document has been obtained from each of the other Signatories shown above.

4 Dated: September 13, 2017

5 By: /s/ Sue Wang
6 Sue Wang

7
8
9 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

10
11 Dated: 9/13, 2017



12 THE HONORABLE RICHARD SEEBORG
13 UNITED STATES DISTRICT COURT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

ADDITIONAL COUNSEL

28

SIDLEY AUSTIN LLP

Sue Wang (SBN 286247)
555 California Street, Suite 2000
San Francisco, CA 94104-1503
Telephone: (415) 772-1200
Facsimile: (415) 772-7400
Email: abaxter@sidley.com

**PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP**

Eric Alan Stone (*pro hac vice*)
Jennifer H. Wu (*pro hac vice*)
Jennifer Gordon
Peter Sandel (*pro hac vice*)
Stephen A. Maniscalco (*pro hac vice*)
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
Email: estone@paulweiss.com
jwu@paulweiss.com
psandel@paulweiss.com
jgordon@paulweiss.com
smaniscalco@paulweiss.com

AMGEN INC.

Wendy A. Whiteford (SBN 150283)
Lois M. Kwasigroch (SBN 130159)
One Amgen Center Drive
Thousand Oaks, CA 91320-1789
Telephone: (805) 447-1000
Facsimile: (805) 447-1010
Email: wendy@amgen.com

*Attorneys for Plaintiffs Amgen Inc.
and Amgen Manufacturing Limited*

MORRISON & FOERSTER LLP

Eric C. Pai (SBN 247604)
755 Page Mill Road
Palo Alto, California 94304
Telephone: 650.813.5600
Facsimile: 650.494.0792
Email: epai@mofo.com

Stephen David Keane (S.B.N. 247588)
12531 High Bluff Drive, Ste. 100
San Diego, California 92130
Telephone: (858) 720-5100
Facsimile: (858) 720-5125
Email: skeane@mofo.com

*Attorneys for Defendants Sandoz Inc., Sandoz
GmbH, Sandoz International GmbH, and Lek
Pharmaceuticals, d.d.*