

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  
28

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

BAYER SCHERING PHARMA AG	)
and BAYER HEALTHCARE	)
PHARMACEUTICALS INC.,	)
	)
Plaintiffs/Counter-Defendants,	)
	)
v.	)
	)
WATSON PHARMACEUTICALS, INC.	)
and WATSON LABORATORIES, INC.,	)
	)
Defendants/Counter-Plaintiffs,	)
	)
and	)
	)
SANDOZ INC.,	)
	)
Defendant/Counter-Plaintiff.	)

No. 2:07-cv-01472-KJD-(GWF)

**ORDER VACATING FEBRUARY 11, 2013 ORDER RESETTING THE  
FINAL APPROVAL DATE OF DEFENDANTS’ ABBREVIATED NEW DRUG  
APPLICATIONS**

This Court entered an Order on February 11, 2013 (Dkt. 363) granting Plaintiffs Bayer Pharma AG and Bayer Healthcare Pharmaceuticals, Inc. (“Bayer”) Motion to Reset the Effective Date of the FDA’s approval for the Defendants to Market Generic YAZ® (“Resetting Order”)(Dkt. 339). The Federal Circuit stayed that Resetting Order pending appeal on March 13, 2013 (Dkt. 56). On April 16, 2013, the Court of Appeals for the Federal Circuit reversed this Court’s March 30, 2012 decision finding Bayer’s asserted patent valid and enforceable. (Dkt. 63, 4/16/2013 Opinion and Judgment, *Bayer HealthCare Pharma v. Watson Pharma.*, 12-1397 (Fed. Cir.)) The Federal Circuit also rendered judgment in favor of Watson and Sandoz. (*Id.*) On August 12, 2013, the Federal Circuit denied Bayer’s Motion for Panel Rehearing And Rehearing En Banc. (Dkt. 71, 8/12/2013 Order, *Bayer HealthCare Pharma v. Watson Pharma.*, 12-1397 (Fed. Cir.))


Defendants Watson Pharmaceuticals, Inc., and Watson Laboratories, Inc. (“Watson”) and Sandoz Inc. (“Sandoz”) (collectively, “Defendants”) filed Motions to Vacate the Resetting Order in the Federal Circuit on September 20, 2013 pursuant to that court’s final judgment in favor of Defendants (Dkts. 60 and 61). Because, under 35 U.S.C. § 271(e)(4)(A), the only predicate for the

1 Resetting Order was a judgment of infringement of a valid patent, the Federal Circuit's reversal of  
2 this Court's finding of invalidity requires that the Resetting Order be vacated.

3 This matter having been fully briefed and considered by the Court:

4 **IT IS HEREBY ORDERED AND ADJUDGED** that this Court's February 11, 2013 Order  
5 Resetting the Final Approval Date of Defendants' Abbreviated New Drug Applications is  
6 **VACATED.**

7 **IT IS SO ORDERED:**

8 

9 \_\_\_\_\_  
10 UNITED STATES DISTRICT JUDGE

11 DATED: November 26, 2013

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28