

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

NOVO NORDISK A/S, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civ. No. 05-645-SLR  
 )  
 SANOFI-AVENTIS, et al., )  
 )  
 Defendants. )

**ORDER**

At Wilmington this 26th day of September, 2008, having reviewed defendants' motion for attorney fees, and the papers filed in connection therewith;

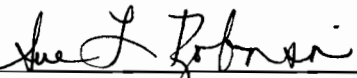
IT IS ORDERED that said motion (D.I. 175) is denied, for the reasons that follow:

1. Defendants concede that an award of attorney fees is an "extraordinary remedy." (D.I. 175) Nevertheless, they contend that they should be awarded such fees because they were put to the cost of expending "millions of dollars" defending a frivolous lawsuit and were deprived of the opportunity to prove such by: (a) my general rule that I will not consider dispositive pretrial motions (absent a stipulated set of facts) when I am the finder of fact in a bench trial; and (b) the dismissal of plaintiff's infringement claims against defendants within a month of trial.

2. Defendants argue in their motion that the asserted patent is unenforceable due to inequitable conduct; *a fortiori*, the instant infringement litigation was frivolous. Defendants submit three volumes of material in support of their argument. Plaintiff

responds in kind.

3. Given the fact that plaintiff's claims of infringement asserted against defendants have been dismissed with prejudice, defendants are asking me to make a substantive determination as to the validity of a patent, under the guise of a motion for attorney fees, when a court would not otherwise have jurisdiction to do so. I decline to undertake such an analysis.

  
United States District Judge