

February 24, 2017

Hon. Paul A. Crotty
United States Courthouse
500 Pearl Street, Room 1350
New York, NY 10007

Re: *Kowa Company Ltd., et al. v. Amneal Pharms., LLC, and related case,*
Nos. 14-cv-2758(PAC) and 14-cv-7934(PAC)

Dear Judge Crotty:

We are writing on behalf of Plaintiffs in response to the letter submitted on February 22, 2017 on behalf of Amneal and Apotex (“Defendants”).^{1/}

In their February 22nd letter, Defendants object to the Declaration of Jennifer L. Dereka and accompanying Exhibits A-D (“Dereka Decl.”), on the purported basis that it is “undisputed fact that the excerpts are not part of the official trial record.” (Defendants’ February 22, 2017 letter, at p. 1.) It is surprising that Amneal and Apotex would submit their letter filed yesterday without first checking the exhibits and confirming as to whether they actually constituted evidence introduced at trial, or at least conferring with Plaintiffs’ counsel.

Exhibits A, B, and D contain deposition testimony that is part of the trial record. While the cited testimony was not transcribed in the Court transcript, that cited testimony was presented at trial, in deposition video format. *See* Trial Transcript at 1286:2-3, 1293:6-10 (Dr. Randall Zusman); 697:7-10, 699:8-11, 711:11-14 (Dr. Anthony Palmieri); and 1044:6-9 (Dr. Jonathan

^{1/} Please disregard my letter to you which I emailed to Mr. Gonzalez yesterday, which is hereby withdrawn. The footnote on page 1 of that letter, in which we indicated that Defendants exceeded the post-trial memorandum page limits, was based on a mistaken calculation on our part, based on the ECF pagination. Defendants fully complied with the page limit on the post trial memorandum.

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Sessler). The Trial Transcript citations with corresponding deposition transcript citations are set forth below:

Exhibit	Witness	Deposition Excerpt	Played at Tr.	Cited in:
A	Zusman	101: 5 – 102:7	1293:6-8	Proposed Findings - ¶ 428
A	Zusman	104: 8-12	1293:9-10	Proposed Findings - ¶ 464
A	Zusman	154: 8-12	1286:2-3	Proposed Findings - ¶ 464
B	Palmieri	33:22 – 35:16	697:7-10	Proposed Findings - ¶ 60
B	Palmieri	148:2-17	699:8-11	Proposed Findings - ¶ 59
B	Palmieri	185:16 – 186:17	711:11-14	Post-Trial Memorandum - p. 12
D	Sessler	60:3 – 61:1	1044:6-9	Proposed Findings - ¶ 283

The above-referenced testimony that was introduced into evidence at trial was specifically identified in the trial record by deposition page and line, and the trial transcript incorporating this deposition testimony is referenced in Plaintiffs' post-trial submissions as identified above.

The remaining exhibit, Exhibit C, an excerpt from the deposition of Dr. Roush, is simply an excerpt showing appearances of counsel and the first introductory page of testimony showing who the counsel were and the role they played at the deposition. This exhibit, along with a portion of Exhibit B showing the appearances of counsel at the Palmieri deposition, are referenced in Plaintiffs' post-trial submissions to show who the counsel were at these depositions. *See, e.g.*, Plaintiffs' Post-Trial Memorandum ("Memorandum"), at 5 n. 6.

As Plaintiffs pointed out in their post-trial submissions, at trial, Amneal newly characterized its obviousness-type double patenting challenge to the '336 patent based on the '953 patent as a supposed "Sawai-only defense." *See* Trial Tr. at 1504:15-16, 21, 1505:4, 14; Memorandum at 5 n.6, 11; Proposed Findings at ¶61. It was Amneal's counsel, however, who defended Dr. Palmieri's deposition (Amneal's predecessor counsel defending, with present counsel attending), and it was Amneal's counsel who took the deposition of Dr. Roush with

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regard to obviousness-type double-patenting issues (Amneal's present counsel)). *See* Dereka Decl., Exh. C. As pointed out in Plaintiffs' post-trial submissions, Sawai's counsel did not even attend the deposition of Dr. Palmieri. *See* Memorandum at 5 n.6; Dereka Decl. Exhs. A and B.

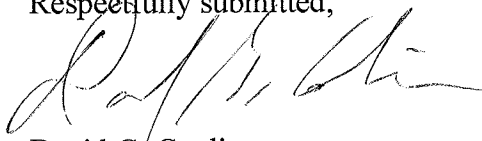
These excerpts showing attendance by Amneal at these depositions were submitted in connection with Plaintiffs' Memorandum and Proposed Findings in connection with Plaintiffs addressing the overall lack of merit of Amneal's obviousness-type double-patenting defense; the lack of credibility of Dr. Palmieri; Amneal's attempt to distance itself from that defense to the extent it relied on the '953 patent; and Amneal's characterization of that defense as it related to the '953 patent as a "Sawai-only defense," when Amneal abandoned that argument at trial. (Trial Tr. at 1504:15-16, 21, 25 – 1505:14.)

Plaintiffs respectfully request that the Court deny Defendants' request to strike the referenced Declaration of Jennifer L. Dereka and accompanying Exhibits A-D.

Plaintiffs remain available to provide any further information with regard to the above that the Court may find helpful.

Thank you very much for your consideration.

Respectfully submitted,



David G. Conlin

cc: All Counsel of Record