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September 24, 2018

The Honorable Richard G. Andrews
United States District Court for the District of Delaware
844 North King Street
Wilmington, DE 19801

HIGHLY CONFIDENTIAL – PROTECTIVE ORDER MATERIAL

FILED UNDER SEAL

Re: *Bayer Intellectual Property GmbH v. Taro Pharmaceutical Industries, Ltd.*
C.A. No. 17-462 (RGA)

Dear Judge Andrews:

I write in response to Mylan's September 21, 2018 letter, D.I. 121, submitted in response to Plaintiffs' September 18 letter, D.I. 120, concerning the recent claim construction dispute that has arisen between the parties.

Plaintiffs brought this dispute to the Court's attention now to avoid a situation where the issue is first disclosed to the Court at trial, and sought guidance as to the Court's preference concerning whether to further brief the issue now, or instead to address it at trial. In its response, Mylan asserts that additional claim construction briefing would be "a waste of the parties' and the Court's time and resources." D.I. 121 at 1. However, Mylan then proceeds to present detailed arguments with citations to case law as to why its claim construction position is correct.

Plaintiffs respectfully submit that either the parties should be permitted to brief the issue now, or it should be addressed at trial, whichever the Court prefers. Plaintiffs wish to point out, however, that Mylan's arguments concerning the claim construction issue are misplaced. Contrary to Mylan's new assertion, there was no need for the Court's construction to specify that [redacted] Although Mylan asserts that its IPR Petition is somehow consistent with its current position, D.I. 121 at 2, its submission to the PTO reflects that this is not the case.

[redacted] As Plaintiffs pointed out in their claim construction brief, the '218 patent incorporates by reference PCT 04/012897. D.I. 82 at 5 & n.3 (published as WO 2005/060940; English translation in CA 2 547 113, *see* D.I. 82 at 5 & n.4; D.I. 58-1 at Exs. B-C.) That application, in turn, defines "rapid-release tablets" in a manner identical to the '218 patent.[1] D.I. 82 at 5-6; D.I. 58-1, Ex. C at 5:3-7. The definition in that application also refers to chapter 5.2.2 of its specification as an example of what constitutes a rapid-release tablet. *Id.* Chapter 5.2.2 contains a table showing that "[t]he amounts of active compound released" after 30 minutes in the tablets studied were 92% and 95% respectively. D.I. 58-1, Ex. C at 10:1-6 & Table 1. [redacted]

Plaintiffs respectfully request the Court's guidance on how to proceed. We are available to discuss this issue further at the Court's convenience.

Respectfully,

/s/ Jack B. Blumenfeld

Jack B. Blumenfeld (#1014)

JBB/bac

cc: Clerk of the Court (via hand delivery)
Counsel of Record Mylan Pharmaceuticals Inc. (via electronic mail)

[1] As the Court observed in its *Markman* opinion, Mylan never even responded to this argument in its claim construction briefing. D.I. 91 at 2 n.1.