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October 8, 2021

The Honorable Colm F. Connolly United States District Court for the District of Delaware 844 North King Street Wilmington, DE 19801 VIA ELECTRONIC FILING

REDACTED -PUBLIC VERSION

Re: Novo Nordisk Inc. et al. v. Sandoz Inc., C.A. No. 20-747-CFC

Dear Chief Judge Connolly:

We represent the Novo Nordisk Plaintiffs in this matter. We write in response to Defendant Sandoz's October 4 letter (D.I. 123) seeking leave to move for summary judgment of non-infringement of Novo Nordisk's '833 patent. Novo Nordisk opposes that request.

There is no pressing need to divert the Court and the parties from other matters with summary judgment proceedings on the '833 patent. A bench trial in this Hatch-Waxman case is scheduled for April 2022, and the 30-month stay extends to October 21, 2022.

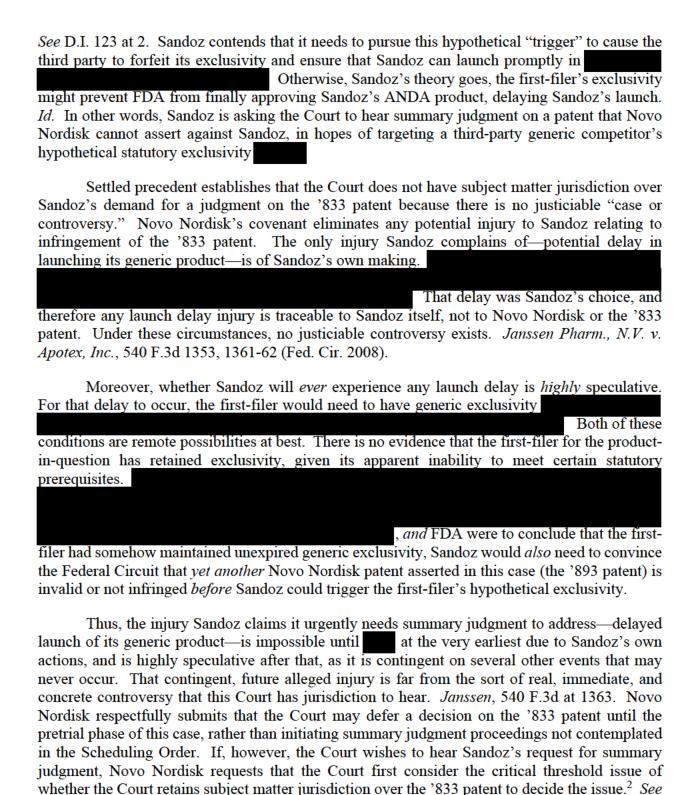
There is therefore no urgency to Sandoz's request. The parties can address the '833 patent as part of the pretrial process.

Moreover, on October 4, Novo Nordisk provided Sandoz a covenant not-to-sue on the '833 patent, which eliminated any controversy between the parties concerning that patent. After granting the covenant, Novo Nordisk asked Sandoz to stipulate to the dismissal of the parties' claims and counterclaims concerning the '833 patent, the easiest and most efficient way to remove it from the case. Sandoz declined and instead asked the Court to initiate summary judgment proceedings. With no infringement issue, the only remaining issue regarding the '833 patent is whether the Court has subject matter jurisdiction to rule on it.

According to Sandoz, Novo Nordisk's covenant is insufficient because only a judgment on the '833 patent can "trigger" a third-party "first ANDA filer's" 180-day generic exclusivity, which might someday block Sandoz from "enter[ing] the generic market" for the product-in-question.



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² Specifically, if the Court wishes to address the '833 patent at this time, Novo Nordisk would seek dismissal of the '833 patent for lack of subject matter jurisdiction. But rather than burden the



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Vanda Pharm. Inc. v. West-Ward Pharm. Int'l Ltd., 887 F.3d 1117, 1123 (Fed. Cir. 2018) ("We must first address whether the district court properly exercised [subject matter] jurisdiction").

Respectfully,

/s/Jack B. Blumenfeld

Jack B. Blumenfeld (#1014)

cc: All Counsel of Record (via CM/ECF and electronic mail)

Court with motion practice on dismissal, this too can be deferred until the pretrial phase for the same reasons that summary judgment can be deferred. Both forms of relief rise and fall on whether the Court retains subject matter jurisdiction over the '833 patent.

