

BEFORE THE UNITED STATES
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

)
)
)
In re Ozempic® (Semaglutide) Patent) MDL No. _____
Litigation)
)
)
)

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR TRANSFER OF
ACTION TO THE DISTRICT OF DELAWARE PURSUANT TO 28 U.S.C. § 1407 FOR
COORDINATED AND CONSOLIDATED PRETRIAL PROCEEDINGS**

OF COUNSEL:

Jeffrey J. Oelke

Ryan P. Johnson

Robert E. Counihan

Laura T. Moran

FENWICK & WEST LLP

902 Broadway, Suite 14

New York, NY 10010-6035

(212) 430-2600

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

Jack B. Blumenfeld (#1014)

Brian P. Egan (#6227)

1201 North Market Street

P.O. Box 1347

Wilmington, DE 19899

(302) 658-9200

jblumenfeld@morrisnichols.com

began@morrisnichols.com

James F. Companion (W. Va. Bar No. 790)

Sandra K. Law (W. Va. Bar No. 6071)

SCHRADER COMPANION DUFF & LAW, PLLC

401 Main Street Wheeling, WV 26003

(304) 233-3390

jfc@schraderlaw.com

skl@schraderlaw.com

*Attorney for Novo Nordisk Inc. and
Novo Nordisk A/S*

May 6, 2022

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| I. BACKGROUND | 1 |
| II. ARGUMENT..... | 4 |
| A. The Panel Should Transfer the West Virginia Action and Consolidate the Ozempic® Patent Litigations | 4 |
| 1. The West Virginia Action Shares Common Questions of Fact with the Delaware Actions..... | 6 |
| 2. Transfer and Consolidation Will Serve the Convenience of the Parties and Witnesses..... | 9 |
| 3. Transfer and Consolidation Will Promote the Just and Efficient Conduct of the Actions | 10 |
| 4. The Additional Patents-In-Suit in the West Virginia Action Do Not Diminish the Benefits of Transfer..... | 11 |
| B. The Panel Should Select the District of Delaware for Consolidated Pretrial Proceedings in the Ozempic® Patent Litigations | 14 |
| III. CONCLUSION..... | 16 |

TABLE OF AUTHORITIES

| | <u>Page(s)</u> |
|--|----------------|
| Cases | |
| <i>In re Alfuzosin Hydrochloride Patent Litig.</i> , 560 F. Supp. 2d 1372 (J.P.M.L. 2008)..... | 5, 10 |
| <i>Amgen Inc. v. Hoechst Marion Roussel, Inc.</i> , 314 F.3d 1313 (Fed. Cir. 2003)..... | 7 |
| <i>In re Armodafinil Patent Litig.</i> , 755 F. Supp. 2d 1359 (J.P.M.L. 2010)..... | 11 |
| <i>In re Auryxia (Ferric Citrate) Patent Litig.</i> , 412 F. Supp. 3d 1347 (J.P.M.L. 2019)..... | 5, 14 |
| <i>Ben Venue Labs., Inc. v. Novartis Pharm. Corp.</i> , 146 F. Supp. 2d 572 (D.N.J. 2001) | 2 |
| <i>Boehringer Ingelheim Pharm. Inc. et al. v. Mankind Pharma Ltd. et al.</i> , Case No. 18-cv-1689-CFC-SRF (D. Del.)..... | 14 |
| <i>In re BRCA1- and BRCA2-Based Hereditary Cancer Test Patent Litig.</i> , 999 F. Supp. 2d 1377 (J.P.M.L. 2014)..... | 12 |
| <i>In re Brimonidine Patent Litig.</i> , 507 F. Supp. 2d 1381 (J.P.M.L. 2007)..... | 11 |
| <i>Eisai Co. Ltd. v. Dr. Reddy's Labs., Ltd.</i> , 533 F.3d 1353 (Fed. Cir. 2008)..... | 8 |
| <i>In re Entresto (Sacubitril/Valsartan) Patent Litig.</i> , 437 F. Supp. 3d 1372 (J.P.M.L. 2020)..... | 5, 6, 14 |
| <i>In re Fenofibrate Patent Litig.</i> , 787 F. Supp. 2d 1352 (J.P.M.L. 2011)..... | 9 |
| <i>Genzyme Corp. et al. v. Apotex Corp. et al.</i> , Case No. 18-cv-1795-CFC (D. Del.) | 14 |
| <i>In re Kerydin (Tavaborole) Topical Sol. 5% Patent Litig.</i> , 366 F. Supp. 3d 1370 (J.P.M.L. 2019)..... | 5, 10, 11, 14 |
| <i>In re Metoprolol Succinate Patent Litig.</i> , 329 F. Supp. 2d 1368 (J.P.M.L. 2004)..... | 11 |

| | |
|---|---------------|
| <i>In re Nebivolol ('040) Patent Litig.,</i> 867 F. Supp. 2d 1354 (J.P.M.L. 2012)..... | <i>passim</i> |
| <i>Novo Nordisk Inc. et al. v. Dr. Reddy's Laboratories, Ltd. and Dr. Reddy's Laboratories, Inc.,</i> Case No. 22-cv-298-CFC (D. Del.) | 2, 8 |
| <i>Novo Nordisk Inc. et al. v. Hikma Pharmaceuticals USA Inc.,</i> Case No. 21-cv-01783 (D. Del.) | 15 |
| <i>Novo Nordisk Inc. et al. v. Mylan Institutional LLC,</i> Case No. 19-cv-1551 (D. Del.) | 15 |
| <i>Novo Nordisk Inc. et al. v. Mylan Pharmaceuticals Inc.,</i> Case No. 22-cv-00023-JPB (N.D. W. Va.)..... | 3 |
| <i>Novo Nordisk Inc. et al. v. Sandoz Inc.,</i> Case No. 20-cv-00747 (D. Del.) | 15 |
| <i>Novo Nordisk Inc. et al. v. Teva Pharmaceuticals, Inc. et al.,</i> Case No. 21-cv-01782-CFC (D. Del.) | 12 |
| <i>In re Palbociclib Patent Litig.,</i> 396 F. Supp. 3d 1360 (J.P.M.L. 2019)..... | 5, 14 |
| <i>In re Pharmastem Therapeutics, Inc., Patent Litig.,</i> 360 F. Supp. 2d 1362 (J.P.M.L. 2005)..... | 6, 9 |
| <i>In re RAH Color Techs. LLC Patent Litig.,</i> 347 F. Supp. 3d 1359 (J.P.M.L. 2018)..... | 6 |
| <i>In re Sitagliptin Phosphate ('708 & '921) Patent Litig.,</i> 402 F. Supp. 3d 1366 (J.P.M.L. 2019)..... | 5, 14 |
| <i>Teva Pharm. USA, Inc. v. Sandoz, Inc.,</i> 574 U.S. 318 (2015)..... | 6 |
| <i>UCB, Inc. et al. v. Annora Pharma Private Ltd. et al.,</i> Case No. 20-cv-00987-CFC-JLH (D. Del.) | 14 |
| <i>In re Xarelto (Rivaroxaban) ('310) Patent Litig.,</i> 2021 WL 5872990 (J.P.M.L. 2021)..... | 5, 14 |

Rules and Statutes

| | |
|--------------------------------------|---------------|
| 21 U.S.C. §§ 355(j)(5)(B)(iii) | 2 |
| 21 U.S.C. § 355(j)(5)(F)(ii)..... | 2 |
| 28 U.S.C. § 1407..... | <i>passim</i> |
| 35 U.S.C. § 103..... | 8 |
| 35 U.S.C. § 271(e)(2)..... | 2 |

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.