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February 26, 2020

**BY CM/ECF**

Hon. Peter R. Marksteiner  
Circuit Executive and Clerk of Court  
United States Court of Appeals for the Federal Circuit  
717 Madison Place, N.W.  
Washington, DC 20439

Re: *Amgen Inc. v. Watson Laboratories, Inc.*,  
Appeal Nos. 2019-1650, -1770

Dear Mr. Marksteiner:

Pursuant to Federal Rule of Appellate Procedure 28(j), we as counsel for defendants-*amici curiae* Cipla Ltd. and Cipla USA, Inc. (collectively, “Cipla”) to bring the Court’s attention to *Serta Simmons Bedding, LLC v. Casper Sleep Inc.*, No. 2019-1098, 2020 WL 717771 (Fed. Cir. Feb. 13, 2020).

*Serta* reaffirms that “a binding settlement generally moots an action” and this is so “even if the agreement requires future performance.” *Id.* at \*3. This holding reinforces Cipla’s argument (ECF 71 at 13-18) that these appeals should be dismissed for lack of jurisdiction.

The record of these appeals clearly shows that Amgen and Watson/Teva have entered into a “binding” settlement agreement. Amgen filed an “unopposed” motion for issuance of a “consent judgment” that would effectively expand the scope of U.S. Patent No. 9,375,405 (ECF 46); and Amgen did this based solely on an unexplained “admission” of “infringement” by Watson/Teva. *See* ECF 78 at 5 (“Watson’s infringement admission was effective upon the agreement’s execution”).

In *Cipla Ltd. v. Amgen Inc.*, 386 F. Supp. 3d 386 (D. Del.), *aff’d*, 778 F. App’x 135 (3d Cir. Jul. 16, 2019), the court noted that “Teva stands to make \$200 million from its already shipped product if the market remains un-genericized.” 386 F.

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Supp. 3d at 409 n.25. It is, thus, no wonder that Watson did not oppose Appeal No. 19-1770 or Amgen's failed bid (ECF 46) to undermine the legal basis on which Cipla is currently selling generic cinacalcet products as established in the *Cipla* case.

Amgen's assertion, "Watson's infringement admission was effective upon the agreement's execution" (ECF 78 at 5), is no basis on which an Article III court could rightly expand scope of the '405 patent to encompass subject matter that is, today, "public property." *Graham v. John Deere Co.*, 383 U.S. 1, 31 n.17 (1966).

Where, as in *Serta* and in this case, litigants have entered into a "binding" settlement agreement, the only appropriate disposition is dismissal. *See Aqua Marine Supply v. AIM Mach., Inc.*, 247 F.3d 1216, 1219-20 (Fed. Cir. 2001) (appeal moot despite district court refusal to enter joint proposed order).

Respectfully yours,

/s/ James W. Dabney

James W. Dabney

cc: Counsel of Record (by CM/ECF)

CERTIFICATE OF COMPLIANCE

This letter complies with the type-volume limitation of Federal Rule of Appellate Procedure 28(j) because the body of the letter contains 348 words, as determined by the word-count function of Microsoft Word 2016.

Dated: February 26, 2020

/s/ James W. Dabney

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the CM/ECF system on February 26, 2020. All participants in the case are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

Dated: February 26, 2020

/s/ James W. Dabney