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March 12, 2020

By CM/ECF

Hon. Peter R. Marksteiner
Clerk of Court
U.S. Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

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

Dear Col. Marksteiner:

Under FRAP 28(j), Amgen responds to Cipla's submission of *Serta Simmons Bedding, LLC v. Casper Sleep Inc.*, 950 F.3d 849 (Fed. Cir. 2020) (ECF No. 108).

Cipla's filing—like previous ones—contravenes the governing rules. FRAP 28(j) only authorizes “a party” to submit supplemental authority, but Cipla is not a party. This Court denied Cipla intervention and permitted it to participate only as an *amicus*. ECF No. 57.

Regardless, *Serta* does not support Cipla's position because there is a fundamental difference between the agreement in *Serta* and the one here. The issue in *Serta* was whether a settlement agreement requiring future payment by one of the parties mooted the dispute when the agreement was executed. 950 F.3d at 851-53. It did, and the Court held that the settlement agreement's call for “future performance” *by a party* did not necessarily preclude mootness. *Id.* at 853. Here, by contrast, critical features of the agreement are tied to a future *court action*—namely, entry of a consent judgment which sets the “effective date.” See Reply Br. at 8 n.2 (ECF No. 78). That distinction matters. See, e.g., *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 371 & n.10 (1982) (case not moot when settlement agreement was subject to court approval). Indeed, *Serta* pointed to exactly that distinction in holding that another case, *Gould v. Bowyer*, 11 F.3d 82 (7th Cir. 1993), was inapposite. 950 F.3d at 853.

A settlement agreement does not automatically strip a federal court of jurisdiction, because federal courts retain jurisdiction to “make ... disposition of the whole case as justice may require.” *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 21 (1994). Here, that disposition should be vacatur with direction to enter the consent judgment. See Opening Br. at 19-37 (ECF No. 38). *Serta* does not impact Amgen's argument to that effect and certainly does not preclude this Court from ordering such a disposition. In fact, the ultimate result in *Serta*

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was exactly the one Amgen seeks here—an order that fully effectuates and enforces the Amgen-Watson agreement.

Respectfully submitted,

/s/ Bradford J. Badke
Bradford J. Badke

cc: All counsel of record (by ECF)

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of March, 2020, I caused the foregoing document to be electronically filed with the Clerk of the Court for the U.S. Court of Appeals for the Federal Circuit using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

/s/ Bradford J. Badke
Bradford J. Badke