



1301 Avenue of the Americas, 40th Floor  
New York, NY 10019-6022  
PHONE 212.999.5800  
FAX 212.999.5899  
www.wsgr.com

April 24, 2020

**VIA CM/ECF**

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

**Re: Takeda Pharmaceuticals U.S.A., Inc. v. Mylan Pharmaceuticals Inc.,  
Appeal Nos. 2020-1407, -1417**

Dear Colonel Marksteiner:

We write on behalf of Defendant-Appellee Mylan Pharmaceuticals Inc. (“MPI”) in response to Plaintiff-Appellant Takeda Pharmaceuticals U.S.A., Inc.’s (“Takeda”) letter to the Court dated April 23, 2020, which directs the Court to its recent decision in *O.F. Mossberg & Sons, Inc. v. Timney Triggers, LLC*, --- F.3d ---, No. 2019-1134 (Fed. Cir. Apr. 13, 2020).

This additional authority supports MPI’s position on appeal – not Takeda’s. Specifically, the Court’s decision in *O.F. Mossberg* further confirms that the *West-Ward* Judgment constituted a “Final Court Decision” holding that all patent claims that were both “asserted *and* adjudicated” against a Third Party in the *West-Ward* Litigation were “not infringed,” thus triggering Section 1.2(d) of the parties’ License Agreement and permitting MPI to launch its colchicine product. ECF No. 47 at 2, 16-22.

In *O.F. Mossberg*, this Court held that a voluntary dismissal under Rule 41(a)(1)(A) is not a “final court decision.” *O.F. Mossberg*, slip op. at 6. In so holding, the Court recognized that a Rule 41(a)(1)(A) voluntary dismissal “becomes effective immediately upon [the] filing of the notice of dismissal,” such that a dismissal order entered by the court after a party files the voluntary dismissal “ha[s] no legal effect.” *Id.* The Court’s decision in *O.F. Mossberg* makes clear that the Stipulation of Dismissal in the *West-Ward* Litigation, pursuant to which Takeda voluntarily dismissed its claims relating to five of the eight patents at issue under Rule 41(a)(1)(A)(ii) (Appx2346-2348), did not constitute an adjudication of the five dismissed patents under Section 1.2(d) of the License Agreement.<sup>1</sup> See ECF No. 47 at 61-62. Because the three remaining patents – the only Licensed Patents that were *both* asserted *and* adjudicated in the *West-Ward* Litigation – were held by the *West-Ward* court to be “not infringed” in a “Final Court

---

<sup>1</sup> Takeda has repeatedly conceded that the five dismissed patents in the *West-Ward* Litigation were not adjudicated. See ECF No. 47 at 19-21. Takeda also does not dispute that the *West-Ward* Judgment constitutes a “Final Court Decision” under the License Agreement. Appx19.

Wilson Sonsini Goodrich & Rosati  
PROFESSIONAL CORPORATION

The Honorable Peter R. Marksteiner  
April 24, 2020  
Page 2

Decision,” MPI was permitted to launch its colchicine product under Section 1.2(d). *Id.* at 2, 16-22.

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

A handwritten signature in black ink, appearing to read 'M/S', is positioned above the typed name of the signatory.

Michael S. Sommer  
Attorney for Mylan Pharmaceuticals Inc.

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