

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

TAKEDA PHARMACEUTICALS U.S.A., INC.,
Plaintiff-Appellant

v.

**ALKEM LABORATORIES LIMITED, ASCEND
LABORATORIES, LLC,**
Defendants-Appellees

2020-1545

Appeal from the United States District Court for the District of Delaware in No. 1:20-cv-00325-RGA, Judge Richard G. Andrews.

Decided: July 31, 2020

PORTER F. FLEMING, Haug Partners LLP, New York, NY, argued for plaintiff-appellant. Also represented by EDGAR HAUG, JONATHAN HERSTOFF, CAMILLE YVETTE TURNER.

TERESA MARIE SUMMERS, Wiley Rein, LLP, Washington, DC, argued for defendants-appellees. Also represented by NEAL SETH, LAWRENCE M. SUNG.

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LIMITED

CHARLES B. KLEIN, Winston & Strawn LLP, Washington, DC, for amici curiae Hikma Pharmaceuticals International Limited, Hikma Pharmaceuticals USA, Inc. Also represented by DAN HOANG, Chicago, IL.

Before PROST, *Chief Judge*, NEWMAN and HUGHES, *Circuit Judges*.

Opinion for the court filed by *Chief Judge* PROST.

Dissenting opinion filed by *Circuit Judge* NEWMAN.

PROST, *Chief Judge*.

Takeda Pharmaceuticals U.S.A., Inc., appeals the decision of the United States District Court for the District of Delaware denying a preliminary injunction based on the court's conclusion that Takeda failed to show that it was likely to succeed on the merits or that it would be irreparably harmed absent a preliminary injunction. For the reasons stated in *Takeda Pharmaceuticals U.S.A., Inc. v. Mylan Pharmaceuticals Inc.*, No. 20-1407 (Fed. Cir. July 31, 2020), we affirm the district court's denial of Takeda's request for a preliminary injunction.

AFFIRMED

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NEWMAN, *Circuit Judge*, dissenting.

This appeal is from the district court's denial of injunctive relief, despite the settlement license provisions of irreparable harm and immediate injunctive relief. My colleagues' refusal to enforce the settlement terms violates fundamental contract law, and negates precedent and the strong public policy favoring settlement of litigation on agreed terms. For the reasons elaborated in today's decision on a substantively identical contract, in *Takeda Pharmaceuticals U.S.A., Inc. v. Mylan Pharmaceuticals*

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Inc., No. 20-1407 (Fed. Cir. July 31, 2020) (Newman, J.,
dissenting), I respectfully dissent.