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Vanessa Park-Thompson
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**Re: *In re: Ozempic (Semaglutide) Patent Litigation*, MDL No.
22-MD-3038 (CFC)**

Dear Vanessa:

I write to reiterate that Mylan Pharmaceuticals Inc. (“Mylan”) will not pursue by motion or at trial in this litigation any grounds of invalidity instituted in *Mylan Pharmaceuticals Inc. v. Novo Nordisk A/S*, No. IPR2023-00724 (PTAB), against the originally-issued claims of U.S. Patent No. 10,335,462, unless a change in law otherwise permits.

As you are aware, Novo Nordisk forced Mylan to participate in coordinated and consolidated pre-trial proceedings in this litigation, including expert discovery, by moving to transfer Mylan from the Northern District of West Virginia to the District of Delaware. *See* Mem. in Supp. of Plaintiffs’ Mot. for Transfer of Action to the D. of Del. Pursuant to 28 U.S.C. § 1407 For Coordinated and Cons. Pretrial Procs. (ECF No. 1-1), *In re Ozempic® (Semaglutide) Patent Litigation*, MDL No. 3038 (J.P.M.L. May 6, 2022) (arguing that centralization was “warranted to eliminate duplicative discovery” and to “conserve the resources of the parties, their counsel and the judiciary”). In advocating for transfer, Novo Nordisk argued that “Defendants are expected to pursue similar invalidity arguments” against the ’462 patent and stated that “at least allegations of obviousness of [the ’462 patent] will be common” between the Delaware action and Mylan’s West Virginia action. *Id.* at 7-8. Likewise, Novo Nordisk argued that “[t]ransfer of the West Virginia

Action and consolidation of the six actions before Chief Judge Connolly in the District of Delaware will serve the convenience of the parties and witnesses by ensuring a common pretrial schedule, common fact and expert discovery, and a ‘streamlined’ and consistent approach to scheduling, motions practice, and claim construction.” *Id.* at 9. Specifically, with respect to expert discovery, Novo Nordisk argued:

Transfer and consolidation will also promote efficiency in expert discovery, resulting in greater convenience to the parties and to the expert witnesses. For example, consolidation will eliminate the need for the same experts to submit multiple reports on different schedules in multiple jurisdictions, expressing largely the same opinions. Transfer and consolidation will further eliminate the need for experts to sit for multiple depositions, conserving party and witness resources.

Id. at 10. Indeed, Novo Nordisk successfully persuaded the Panel to transfer Mylan’s case from West Virginia by noting that it “anticipated overlapping expert witnesses for the generics, who often share experts.” Ozempic MDL, ECF No. 21 at 2. Novo Nordisk argued that keeping the cases separated would lead to harmful inefficiencies, including “multiple expert reports on the same issues, including by the same experts.” *Id.* at 5. Novo Nordisk specifically noted that

Mylan did not rule out sharing experts with other defendants, as often occurs in multi-filer Hatch-Waxman litigations. If Mylan does share experts, it is another reason transfer and consolidation will convenience the parties and witnesses and further the efficient conduct of the actions.

ECF No. 21 at 5, n.4.

Additionally, on October 31, 2023, Novo Nordisk stipulated that Novo Nordisk and Mylan “will remain in the District of Delaware for trial of

all claims and counterclaims” and that “[a]ll such claims and counterclaims shall be tried as part of the trial” involving the other consolidated defendants. ECF No. 162 at 3. To recognize the efficiencies that Novo Nordisk repeatedly advocated compelled consolidation, and consistent with this Court’s order that Defendants shall “coordinate their discovery efforts in this matter” (No. 22-cv-294, ECF No. 22, ¶13(a)), Mylan has and will continue to share experts with its involuntary co-defendants in this litigation and will serve common expert reports that may include grounds that Mylan is not pursuing. Nonetheless, Mylan reaffirms that it will not pursue by motion or at trial in this litigation any grounds of invalidity instituted in *Mylan Pharmaceuticals Inc. v. Novo Nordisk A/S*, No. IPR2023-00724 (PTAB), against the originally-issued claims of U.S. Patent No. 10,335,462, unless a change in law otherwise permits.

Sincerely,

David L. Anstaett

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