

July 31, 2024

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Vanessa Park-Thompson
Fenwick & West LLP
902 Broadway
New York, NY 10010

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

Dear Vanessa:

I write in response to your letter dated July 19, 2024. For the reasons explained in my prior letters (the substance of which you largely ignore), we continue to disagree with Plaintiffs' characterization of the issues and record in this case. *See* June 20, 2024 Letter from Anstaett to Park-Thompson; July 12, 2024 Letter from Anstaett to Park-Thompson. And despite contending that your positions on the scope of Mylan's stipulation (which you initially misidentified as a *Sotera* stipulation) are "clear," you have yet to cite any authority in support of them.

As to your specific requests, you ask that we confirm (1) "whether Mylan will be involved, directly or indirectly, in the preparation and/or defense of any expert depositions as they relate to [the IPR Grounds], including the depositions of Drs. Jusko, Bantle, Dalby, Sinko, and Trautmann as they relate to those grounds" and (2) "whether Mylan will be involved, directly or indirectly, in preparing the pretrial order (including motions *in limine*) and in preparing any witnesses to testify at trial, regarding these grounds." July 16, 2024 Letter from Park-Thompson to Anstaett at 3.¹

On the first point, Mylan confirms it will not prepare or defend any of Drs. Jusko, Bantle, or Dalby on the IPR Grounds. Nor will Mylan depose Drs. Sinko and Trautmann on the IPR Grounds. However, as you know, WO537, Lovshin, and

¹ We do not know what you mean by "indirect" involvement in these activities. If you have something in mind, define it.

WO421 are part of obviousness combinations asserted by Defendants in the district court proceedings which are distinct from the obviousness combinations instituted in Mylan's IPR. Thus, even under Plaintiffs' interpretation of the *Sand Revolution* stipulation, there is no prohibition on Mylan questioning Plaintiffs' experts about those references as they relate to non-instituted obviousness combinations, preparing and defending Defendants' experts on those references as they relate to non-instituted obviousness combinations, or, as another example, addressing those references and related issues in the pretrial order as they relate to non-instituted obviousness combinations.

Further, we do not understand your letter to contend Mylan is limited in any way on issues related to secondary considerations of non-obviousness. To the extent your letter implies Mylan is unable to participate in defending Defendants' experts on secondary considerations issues (i.e., Drs. Grunberger, Lin, McDuff, Schwartzbard, and Spiegel), or deposing Plaintiffs' experts on the same issues, we disagree. These are issues introduced by Plaintiffs into this litigation, which are not specific to the IPR Grounds, and you have never claimed that Mylan's IPR stipulation estops our participation on these issues.

On the second point, Mylan confirms it will not be involved in preparing the pretrial order (including motions *in limine*) and in preparing any witnesses to testify at trial on the IPR Grounds. But for the same reasons discussed above, Mylan is not estopped from addressing the WO537, Lovshin, and WO421 references as they relate to non-instituted obviousness combinations.

Finally, to be clear, Mylan will continue to advance other invalidity and non-infringement defenses in this case (i.e., all defenses other than the IPR Grounds). And Mylan's role in the development of those defenses—whether at the upcoming expert depositions or in preparing the pretrial order—is not limited by the '462 patent IPR.

To the extent Plaintiffs still believe there is a dispute that warrants a meet and confer, please explain why you believe that is the case so that we may consider your position before we confer.

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Sincerely,

/s/ David L. Anstaett

David L. Anstaett