

No. 14A792  
(13-854)

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IN THE SUPREME COURT OF THE UNITED STATES

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TEVA PHARMACEUTICALS USA, INC., TEVA PHARMACEUTICAL  
INDUSTRIES, LTD., TEVA NEUROSCIENCE, INC., and YEDA RESEARCH AND  
DEVELOPMENT CO., LTD.,

*Petitioners,*

v.

SANDOZ INC. and MOMENTA PHARMACEUTICALS INC.,

*Applicants-Respondents,*

and

MYLAN PHARMACEUTICALS INC., MYLAN INC.,  
and NATCO PHARMA LTD.,

*Applicants-Respondents.*

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REPLY TO APPLICATION FOR IMMEDIATE TRANSMISSION OF THE COURT'S  
OPINION AND CERTIFIED COPY OF THE JUDGMENT TO THE CLERK OF THE  
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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## **RULE 29.6 STATEMENT**

The Rule 29.6 statement included in Sandoz and Mylan's application remains accurate.

**REPLY TO APPLICATION FOR IMMEDIATE TRANSMISSION OF THE  
COURT'S OPINION AND CERTIFIED COPY OF THE JUDGMENT TO THE  
CLERK OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL  
CIRCUIT**

This Court should issue the certified copy of its opinion and judgment forthwith so that the Federal Circuit can consider whether this Court's opinion affects the Circuit's judgment that the '808 patent is invalid as indefinite. Because that patent will expire on September 1, 2015, the Federal Circuit needs to begin remand proceedings immediately so that the remand does not effectively moot the merits of this case.

Teva has no good reason to oppose this request. The delay envisioned by this Court's Rules between this Court's decision and the transmission of the certified copy is to allow time for the aggrieved parties to seek rehearing. But Sandoz and Mylan are not going to seek rehearing. Teva has no basis to do so (nor does its response make any claim that it will). And contrary to Teva's suggestion, a nineteen-day delay is materially significant given the short life remaining in this patent. Accordingly, there is no basis to delay issuance of the certified copy of the judgment.

Teva's response states that it opposes immediate issuance because it has asked permission of the district court for leave to file a motion to "modify" the judgment under Federal Rule of Civil Procedure 60(b)(5). As an initial matter, Teva cites nothing in this Court's rules or precedent supporting the idea that the Court should withhold issuance of its mandate because one party has a tactical preference for delay. Moreover, Teva has not filed the motion it references in the district court,

because it is not yet permitted to do so. Teva has merely sent a letter to the district court asking for a pre-motion conference to discuss whether it may file a motion; for Teva to be able to file the motion, the district court would have to grant Teva leave to do so. *See* Individual Practices of Judge William H. Pauley III at 2.<sup>1</sup> Nor does Teva explain how the district court would even have jurisdiction at this time to take action based on this Court's decision.

Finally, contrary to Teva's suggestion, the circumstances, and the equities, are far different than when Teva first won in the district court in 2012. The Federal Circuit has since held the patents invalid as insolubly ambiguous, based on the public record Teva created, including its irreconcilable statements to the Patent and Trademark Office. Moreover, this Court did not decide that the '808 patent was valid. Although the Court reviewed this case to decide the standard of appellate review for claim construction, its remand to the Federal Circuit did not hold (or even suggest) that the ultimate judgment of invalidity was incorrect. In the United States' view, application of a clear-error standard here "would likely not alter the court of appeals' indefiniteness holding." US Br. 25 (capitalization altered).

In the meantime, Teva needs no injunction to protect its rights. Respondents believe, as the Chief Justice correctly concluded, that Teva faces no irreparable harm here. *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, No. 13A1003, 572 U.S. \_\_, \_\_, slip op. at 1 (2014) (Roberts, C.J., in chambers). That is even more true today than

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<sup>1</sup> [http://www.nysd.uscourts.gov/cases/show.php?db=judge\\_info&id=1105](http://www.nysd.uscourts.gov/cases/show.php?db=judge_info&id=1105).

when the Chief Justice so concluded, as there is even less time remaining on Teva's patent.

In short, this Court should not refuse to issue its mandate on the basis of Teva's letter to the district court. Indeed, withholding the mandate would be directly at odds with both Teva's purported willingness to expedite proceedings on remand and its prior statement to this Court. *See* Teva Reply Br. 23 n.11 (stating that this Court did not need to reach the merits of invalidity because the Federal Circuit could "swiftly" do so on remand).

### CONCLUSION

Because no party intends to seek reconsideration, this Court should issue its certified decision forthwith, so that the Federal Circuit can carry out the remand ordered by this Court.

Respectfully submitted,

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