

No. 14A\_\_\_\_  
(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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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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JANUARY 23, 2015

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## **RULE 29.6 STATEMENT**

Pursuant to Supreme Court Rule 29.6, Defendant Sandoz Inc. states that it is an indirect wholly-owned subsidiary of Novartis AG and that no other publicly held company owns 10% or more of the stock of Sandoz Inc.

Momenta Pharmaceuticals, Inc. is a publicly held corporation. No parent corporation or other publicly held corporation owns more than 10% of Momenta's stock.

Defendant Mylan Inc. states that it is a publicly held corporation and that no parent corporation or publicly held corporation owns more than 10% of its stock. Defendant Mylan Pharmaceuticals Inc. is wholly owned by Mylan Inc.

Natco Pharma Ltd. states that it is a publicly held corporation and that no parent corporation or publicly held corporation owns more than 10% of its stock.

**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**

To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States, as Circuit Justice for the United States Court of Appeals for the Federal Circuit:

Applicants and respondents Sandoz Inc. and Momenta Pharmaceuticals Inc. ("Sandoz") and Mylan Pharmaceuticals Inc., Mylan Inc., and Natco Pharma Ltd. ("Mylan") respectfully seek an order pursuant to Rule 45.3 of the Rules of this Court directing the 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. Counsel for applicants contacted counsel for petitioners Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Teva Neuroscience, Inc., and Yeda Research and Development Co., Ltd. ("Teva") this afternoon requesting Teva's position on this application. Given that it was Friday evening for his clients in Israel, Teva's counsel indicated that he would not be able to state a position until Monday, January 26, 2015, at noon Eastern time.

The only remaining patent at issue in this case expires on September 1, 2015. On January 20, 2015, this Court vacated the judgment of the Federal Circuit holding that patent invalid as indefinite and remanded for the Federal Circuit to conduct further proceedings consistent with this Court's decision.

The Court should order the immediate transmission of its opinion and certified copy of the judgment to the Federal Circuit. Under this Court's ordinary practice of waiting at least 25 days before making such a transmission, there will be

a considerable delay before the Federal Circuit can resolve this case on remand. Any delay in the resolution of this case would prejudice Sandoz and Mylan, could effectively moot the case, and would cause substantial harm to the public.

*First*, unless this case moves expeditiously on remand, Sandoz and Mylan may not obtain a final determination of patent invalidity before the expiration date of Teva's sole remaining asserted patent. As the government explained to this Court, a remand "could have the effect of depriving respondents of any practical benefit of a judicial ruling that the claim of [Teva's] patent is invalid." US Br. 33 n.5. Accordingly, Sandoz and Mylan intend to move for expedited consideration of this case in the Federal Circuit so that they can obtain a final invalidity ruling before the last patent expires. Immediate return of the case to the Federal Circuit would facilitate its expedited consideration by the court of appeals.

*Second*, the public is harmed by the delay. Both multiple sclerosis patients and payors are paying rapidly increasing monopoly prices for Copaxone®. Over the past decade, the annual cost of Copaxone® has "roughly quadrupled \* \* \* to about \$60,000 a year."<sup>1</sup> Indeed, the price of Copaxone® has significantly increased during the pendency of this Court's review. Shortly before oral argument in this Court, Teva raised the price of Copaxone® by 9.9%.<sup>2</sup> And on January 1, 2015, Teva again

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<sup>1</sup> Andrew Pollack, *Supreme Court to Hear Appeal of Generic Drug Case*, N.Y. Times, Apr. 1, 2014, at B3.

<sup>2</sup> *UBS: Teva hiked Copaxone price 9.9 percent*, FirstWord Pharma, Sept. 1, 2014, available at <http://www.firstwordpharma.com/node/1232696?tsid=17#axzz30WLvthEe>.

raised the price of Copaxone® by an additional 9.9%.<sup>3</sup> The public and payors will never recoup these monopoly costs, and Teva lacks any incentive to reduce the cost of Copaxone® until there is competition. That competition will be facilitated by a quick, final determination of Teva’s patent’s invalidity.

*Third*, the requested relief will not prejudice Teva. The 25-day delay before transmitting this Court’s opinion and certified copy of the judgment to the court of appeals provides time for an aggrieved party to seek rehearing. Teva has no basis to seek rehearing. This Court resolved the question presented in Teva’s petition. Pet. i. Nor can Teva complain about the relief it received. Before this Court, Teva stated that a remand was all it needed: “This Court could answer the question presented simply by disapproving the Federal Circuit’s rule that there are no factual issues in claim construction, and remanding to apply the ordinary fact/law distinction set out in Rule 52(a).” Teva Reply Br. 15. Indeed, in arguing against “an urgent need for this Court to resolve” invalidity rather than remanding to the Federal Circuit, Teva stated that the remand could be handled “swiftly.” Teva Reply Br. 23 n.11. The Court should grant this application so that such “swift[]” action on remand may take place.

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<sup>3</sup> *UBS: Teva again raises Copaxone prices*, FirstWord Pharma, Jan. 4, 2015, available at <http://www.firstwordpharma.com/node/1254905#axzz3OwLvthEe>.

## CONCLUSION

The application for the 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 should be granted.

Respectfully submitted,

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