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June 23, 2015

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By CM/ECF

Daniel E. O'Toole
Circuit Executive & Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Re: *Amgen Inc. v. Sandoz Inc.*, No. 2015-1499 (Newman, Lourie, Chen, J.J.; oral argument held June 3, 2015) — Letter Pursuant to Fed. R. App. P. 28(j)

Dear Admiral O'Toole:

On May 5, this Court issued an injunction pending appeal and directed bond briefing, which was completed May 19. Amgen did not contest the bond requirement. For good reason: "Normally an injunction bond or equivalent security is essential." *Roche Diagnostics Corp. v. Medical Automation Sys., Inc.*, 646 F.3d 424, 428 (7th Cir. 2011). Yet no bond has yet been required. Sandoz respectfully requests that the Court require Amgen immediately to post a bond, or lift the injunction.

A bond is necessary because this Court or the Supreme Court may later conclude that Sandoz "had the right all along to do what it was enjoined from doing" or that the scope of the injunction was too broad. *Nintendo of Am., Inc. v. Lewis Galoob Toys, Inc.*, 16 F.3d 1032, 1036 (9th Cir. 1994). If so, Sandoz "is entitled to be made whole." *Roche*, 646 F.3d at 428.

There is no dispute that Sandoz is being harmed. Each day, Sandoz loses its head start over its competitors, as well as sales and investments. Amgen disputes only the extent of Sandoz's harm. But that is an *amount* of damages question that need not be determined now.

The risk of setting a bond that is too low runs only in one direction. Amgen has ample resources (\$27 billion in cash and marketable securities, A1040) and will not be harmed by posting a bond, even if the bond amount later turns out to be more than necessary. By contrast, the only way Sandoz could be made whole is by the posting of a sufficient bond

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now. Otherwise, even if Sandoz ultimately prevails, Amgen could argue that Sandoz “has no action for damages in the absence of a bond.” *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 770 n.14 (1983). “Judges therefore should take care that the bond is set high enough to cover the losses that their handiwork could cause.” *Roche*, 646 F.3d at 428. As Amgen does not dispute, “[a] limit of zero—the upshot of an injunction without a bond—is bound to be too low.” *Id.*

Respectfully submitted,

/s/ Deanne E. Maynard
Deanne E. Maynard

Counsel for Defendant-Appellee Sandoz Inc.

cc: Counsel of Record by CM/ECF

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system on June 23, 2015.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: June 23, 2015

/s/ Deanne E. Maynard