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July 16, 2021

VIA CM/ECF

The Honorable Colm F. Connolly
District Court of Delaware
J. Caleb Boggs Federal Building
844 N. King Street
Wilmington, DE 19801-3555

Re: *Amgen Inc. et al. v. Hospira, Inc. et al.*, C.A. No. 20-201-CFC

Dear Chief Judge Connolly:

Plaintiffs write to seek clarification regarding Your Honor's July 14, 2021 Order concerning the procedure for Defendants' proposed motion for summary judgment of non-infringement. (D.I. 76.) On pages 2 and 3 of the Order the Court states that the "purpose of the June 11 hearing was to provide both sides an opportunity to adduce whatever evidence they deemed necessary for the Court to construe the salt concentration limitation and streamline the case for a potential summary judgment motion based on that construction," and that "the hearing was convened precisely so that the parties could create the complete record on which any summary judgment motion based on the salt concentration limitation would proceed." (D.I. 76 at 2-3.)



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Plaintiffs write to clarify that Plaintiffs understood the purpose of the June 11 claim construction hearing was to present any extrinsic evidence or other factual matters necessary for claim construction (the first step of the infringement analysis), and that in Plaintiffs' view the parties were given a full opportunity to do so. However, Plaintiffs did not understand the purpose of the claim construction hearing was to present evidence as to the comparison of the construed claims to the accused process (the second step of the infringement analysis). Plaintiffs understand that they will have an opportunity to present evidence as to how, in their view, the now-construed claims read on the accused process under the doctrine of equivalents as part of their response to the Defendants' motion for summary judgment of non-infringement. If this understanding is incorrect, Plaintiffs' respectfully request an opportunity to further address the proper scope of briefing on the upcoming summary judgment motion.

Respectfully,

/s/ Robert W. Whetzel

Robert W. Whetzel (#2288)

cc: Counsel of Record (via CM/ECF & E-mail)