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RE: IN THE MATTER OF the *Patent Act* R.S.C. 1985, c. P-4, as amended
AND IN THE MATTER OF Sandoz Canada Inc. (the "Respondent") – Publication of the
Hearing Panel's August 1, 2012 Decision on the Merits

Counsel:

I am writing further to the parties' submissions on the issue of the publication of the Hearing Panel's August 1, 2012 Decision on the Merits and Order in the above matter.

The Panel wishes to note that it fully considered the issue of the confidentiality of the contents of the Decision before it was released. The Panel drafted the Decision with a view to creating a document that could be issued publicly so that, without the disclosure of confidential information received in the course of the proceeding, patentees or potential patentees could be informed of the Panel's reasoning concerning the important issues in the Decision regarding the parties who must report their sales and pricing information to the Board.

The Panel was aware, from the preliminary motion on the issue of confidentiality, of the representations of Sandoz on the confidentiality of the information that it had or would be filing or disclosing in testimony in the proceeding. As the Panel has noted, the Board is very sensitive to the confidentiality of information that is filed with the Board by patentees.

Despite a considerable passage of time between the end of argument and the issuance of the Decision, Sandoz did not file further representations concerning the confidentiality of the record. The Panel was, however, able to draft the Decision with a combination of publicly available information and information about Sandoz and the manner in which Sandoz markets patented medicines that is readily inferred by industry members informed in relation to the marketing of medicines by generic pharmaceutical companies and, where applicable, their brand-name affiliates.

The Decision and Order were released to the parties on August 1, 2012. Parties were informed that the Decision and Order would be posted on the Board's website on August 7, 2012. Contrary to the assumption of Sandoz, the delay in the publication of the Decision had nothing to do with the potential confidentiality of the information in the Decision. It is and always has been the Board's practice to allow patentees to review decisions for a brief period prior to its publication, as a courtesy to the patentees so that they are aware of the decisions by the time they enter the public domain. Accordingly, the Decision and Order were posted on August 7. They were temporarily removed from the Board's website on August 7, so that the Panel could review the representations of the Respondent on the confidentiality of the record.

The Panel has considered the representations filed by the parties since the issuance of the Decision. The Panel was not persuaded from these representations that specific, direct and substantial harm would be caused by the disclosure of the information contained in the Decision. Indeed, the Panel remains of the view that there is no information in the Decision that could not be derived or readily inferred from publicly available information about Sandoz, its affiliates, the patents in issue, and the manner in which companies in the position of Sandoz and its affiliates operate in the market for generic pharmaceuticals.

Accordingly, the Panel has concluded that it will not amend the text of its August 1 decision for purposes of publication and as such will re-issue the Decision on October 3, 2012, under date of August 1, 2012.

As well, the Panel has not yet ruled on the confidentiality of the entirety of the information filed during the course of these proceedings and awaits the parties' representation in this regard.

Yours very truly,

Original signed by

Sylvie Dupont
Director, Board Secretariat
and Communications