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14 January 2022

Susie Black

Director
Competitions Exemptions
GPO Box 3131
Canberra ACT 2601
AUSTRALIA

Dear Ms Black,

Juno Pharmaceuticals Pty Ltd, Natco Pharma Ltd, Celgene Corporation and Celgene Pty Ltd application for authorisation AA1000592 – interested party consultation

I refer to your letter of 15 December 2021 seeking submissions from IP Australia on the Applicants' application for authorisation to operate according to the Agreement between the Applicants.

IP Australia is responsible for administering Australia's Intellectual Property rights comprising Patents, Trademarks, Designs and Plant Breeder's Rights. IP Australia has no influence on the way such rights are used, and it would therefore be inappropriate for IP Australia to provide comment on the public benefits of the Proposed Conduct, or the likely effects on market competition and pricing.

Notwithstanding this, I would like to provide further information about the re-examination of Celgene Patents that may be of interest.

Specifically, I wish to advise that several of these patents are due to be re-examined by IP Australia. These matters were paused while the relevant court proceedings were pending. Once the proceedings cease, re-examination will recommence.

It is also noted that the agreement states at 3.7(4) and (6) that parties will not participate in, and release each other from, actions or proceedings, including re-examination proceedings. Despite these undertakings, the Commissioner of Patents must re-examine a patent when re-examination is requested (s97(2) of the *Patents Act 1990 (Cth)*).

Even if a re-examination request is withdrawn by the requestor, the Commissioner has the authority to undertake re-examination. Consequently, some of the Celgene Patents may have their scope of protection altered or revoked, either partially or fully, because of re-examination.

Yours faithfully,

Greg Powell
Assistant General Manager – Patent Oppositions
Deputy Commissioner of Patents
Patents Oppositions, Business Improvement & PBR Group
IP Australia