

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

THE MEDICINES COMPANY,

Plaintiff,

v.

DAVID KAPPOS, in his official capacity as Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office; UNITED STATES PATENT AND TRADEMARK OFFICE; MARGARET A. HAMBURG, in her official capacity as Commissioner of the United States Food and Drug Administration; UNITED STATES FOOD AND DRUG ADMINISTRATION; KATHLEEN SEBELIUS, in her official capacity as Secretary of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendants.

Case No. 1:10-CV-00286-CMH/JFA

ECF Case

**APP PHARMACEUTICALS, LLC'S NOTICE OF APPEAL TO THE
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

John P. Corrado (VSB No. 20247)
MORRISON & FOERSTER LLP
2000 Pennsylvania Avenue, NW, Suite 6000
Washington, DC 20006-1888
Tel: (202) 887-1500
Fax: (202) 887-0763
E-Mail: jcorrado@mofoc.com

Emily A. Evans (*pro hac vice*)
MORRISON & FOERSTER LLP
755 Page Mill Road
Palo Alto, CA 94304
Tel: (650) 813-5600
Fax: (650) 494-0792
E-Mail: eevans@mofoc.com

Attorneys for *Prospective Intervenor-
Defendant*
APP PHARMACEUTICALS, LLC

NOTICE IS HEREBY GIVEN THAT Prospective Intervenor-Defendant APP Pharmaceuticals, LLC (“APP”) hereby appeals to the United States Court of Appeals for the Federal Circuit from the Court’s August 3, 2010, Order (*see* Dkt. No. 55), which ordered Defendant United States Patent and Trademark Office to consider Plaintiff The Medicine Company’s patent term extension application timely filed and to adopt an interpretation of 35 U.S.C. § 156(d)(1) that includes a next business day construction for filing of a patent term extension application, and all related and underlying orders and rulings including, but not limited to, the Order entered on May 21, 2010 (*see* Dkt. No. 51), which ordered a second, indefinite extension of the term of United States Patent No. 5,196,404. APP intends this Notice to become effective upon the granting of APP’s pending Motion for Leave to Intervene Under Federal Rule of Civil Procedure 24. (*See* Dkt. Nos. 56-58.)

In the event that the Court denies or conditionally grants APP’s pending Motion for Leave to Intervene, notice is hereby given that APP shall appeal to the United States Court of Appeals for the Federal Circuit from that Order and related rulings as well.

A check for \$455 representing the fees for docketing a case on appeal (*see* 28 U.S.C. § 1913) and for filing a notice of appeal (*see* 28 U.S.C. § 1917) is enclosed.

Dated: September 1, 2010

Respectfully submitted,

/s/ John P. Corrado
John P. Corrado (VSB No. 20247)
MORRISON & FOERSTER LLP
2000 Pennsylvania Avenue, NW
Suite 6000
Washington, DC 20006-1888
Tel: (202) 887-1500
Fax: (202) 887-0763
E-Mail: jcorrado@mofo.com

Emily A. Evans (*pro hac vice*)
MORRISON & FOERSTER LLP
755 Page Mill Road
Palo Alto, CA 94304
Tel: (650) 813-5600
Fax: (650) 494-0792

Attorneys for *Prospective Intervenor-Defendant*
APP PHARMACEUTICALS, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September 2010, I electronically filed in Case No. 1:10-cv-00286 (CMH/JFA) the foregoing **APP PHARMACEUTICALS, LLC'S NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT** using the CM/ECF system and that service was thereby accomplished on:

Craig C. Reilly
111 Oronoco Street
Alexandria, Virginia 22314
Tel: (703) 549-5354
Fax: (703) 549-2604
E-mail: craig.reilly@creillylaw.com

Jeffrey P. Kushan
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
Tel: (202) 736-8000
Fax: (202) 736-8711
E-mail: jkushan@sidley.com

Attorneys for Plaintiff

Dennis C. Barghaan, Jr.
OFFICE OF THE UNITED STATES ATTORNEY
EASTERN DISTRICT OF VIRGINIA
Justin W. Williams United States Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22314
Tel: (703) 299-3891
Fax: (703) 299-3983
E-mail: dennis.barghaan@usdoj.gov

Attorneys for Defendants

Elizabeth Marie Locke
Kirkland & Ellis LLP (DC)
655 15th St NW
Suite 1200
Washington, DC 20005-5793
Tel: (202) 879-5000

Fax: (202) 879-5200

Email: elocke@kirkland.com

Attorneys for Teva Pharmaceuticals USA, Inc.

/s/ John P. Corrado

John P. Corrado (VSB No. 20247)

MORRISON & FOERSTER LLP

2000 Pennsylvania Avenue, NW

Suite 6000

Washington, DC 20006-1888

Tel: (202) 887-1500

Fax: (202) 887-0763

E-Mail: jcorrado@mofo.com