

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
PFIZER, INC., <i>et al.</i>)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 09-02283 (RJL)
)	
HON. DAVID J. KAPPOS,)	
Under Secretary of Commerce for)	
Intellectual Property & Director of the)	
United States Patent & Trademark Office)	
)	
Defendant.)	
_____)	

JOINT MOTION TO REMAND

Plaintiffs Pfizer Incorporated, and Pfizer Products Incorporated (collectively “Plaintiffs”) and Defendant, the Honorable David J. Kappos,¹ Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (“USPTO;” collectively, “the Parties”), by and through undersigned counsel, hereby respectfully move the Court to administratively reopen this case and remand it to the USPTO for further proceedings.

On January 7, 2010, the United States Court of Appeals for the Federal Circuit upheld this Court’s decision in Wyeth & Elan Pharma Int’l Ltd. v. Hon. Jon W. Dudas, Civil Action No. 07-01492 (JR), holding that plaintiffs Wyeth and Elan Pharma were entitled to patent-term adjustments under 35 U.S.C. § 154(b) due to the USPTO’s delay in prosecuting their patent applications. See Wyeth & Elan Pharma Int’l Ltd. v. Kappos, ___ F.3d ___, 2010 WL 27184 (Fed.

¹ Hon. David J. Kappos is automatically substituted for former Under Secretary and Acting Director Hon. John J. Doll. See Fed. R. Civ. P. 25(d).

Cir. Jan. 7, 2010) (“Wyeth”). Both the USPTO and the Department of Justice have decided not to seek further review of the Federal Circuit’s decision.

The only relief Plaintiff seeks in this action is the correction of the original patent-term adjustment made by the USPTO under 35 U.S.C. § 154(b)(4)(A) in a manner consistent with that found to be required by this Court in Wyeth. Accordingly, the Parties respectfully move the Court to vacate the original patent-term adjustment determination of the USPTO, and remand the case to the USPTO with a mandate to determine Plaintiffs’ patent term adjustment in accordance with Wyeth.

Respectfully submitted,

/s/
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[PROPOSED] ORDER

Upon consideration of the parties' Joint Motion to Remand, and the record herein, it is hereby **ORDERED** that the joint motion BE, and it hereby IS, **GRANTED**.

It is further **ORDERED** that the case is hereby administratively reopened; and

It is further **ORDERED** that the Plaintiff's existing patent-term calculation is hereby **VACATED**; and

It is further **ORDERED** that the matter is **REMANDED** to the United States Patent and Trademark Office, which shall recalculate and adjust the disputed patent term in accordance with the decision of the United States Court of Appeals for the Federal Circuit in Wyeth & Elan Pharma Int'l Ltd. v. Kappos, ___ F.3d ___, 2010 WL 27184 (Fed. Cir. Jan. 7, 2010).

SO ORDERED this ____ day of _____, 2010.

Richard J. Leon
United States District Judge