

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ENDO PHARMACEUTICALS INC.,

Plaintiff,

v.

ROXANE LABORATORIES, INC.,

Defendant.

C.A. No. 13-cv-3288-TPG

**ENDO PHARMACEUTICALS INC.'S PROTECTIVE SECOND AMENDED NOTICE
OF CROSS-APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT**

In light of the Court's June 29, 2016 Order Resolving Post-Trial Motions (D.I. 234) and the accompanying June 29, 2016 Amended Judgment (D.I. 235) in the above-named action, notice is hereby given that Plaintiff Endo Pharmaceuticals Inc. ("Endo") hereby files this protective second amended notice of cross-appeal to the United States Court of Appeals for the Federal Circuit and appeals from the judgments and orders listed below:¹

¹ Endo notes that the parties filed certain post-trial motions that fall under Federal Rule of Appellate Procedure 4(a)(4)(A), including Plaintiffs' September 1 and 21, 2015 motions pursuant to Federal Rule of Civil Procedure 52(b) and 60(a) to amend and correct the Judgment entered on August 24, 2015 in the above action (D.I. 196, 208). Accordingly, the time for Endo to file a Notice of Appeal from the Judgment entered in this action did not start until this Court's resolution of the pending motions at the earliest. *See* Fed. R. App. P. 4(a)(4)(A). Nevertheless, Endo filed a Notice of Cross-Appeal on September 30, 2015, (D.I. 215), out of an abundance of caution lest any court should decide that the August 24, 2015 Judgment was a final judgment for purposes of calculating the time to appeal. Endo then amended its Notice of Cross-Appeal on June 3, 2016, (D.I. 230) to incorporate rulings adverse to Endo in the Court's Omnibus Opinion and Order lest any court should decide that the April 29, 2016 Omnibus Opinion and Order (D.I. 227, 228) constituted a final judgment for purposes of calculating the time to appeal. Pursuant to Federal Rule of Appellate Procedure 4(a)(4)(B)(i), Endo's September 30, 2015 Notice of Cross-Appeal and June 3, 2016 Amended Notice of Cross-Appeal are "treated as filed on the date of and after the entry" of the Court's June 29, 2016 Order Resolving Post-Trial Motions (D.I. 234) and the accompanying June 29, 2016 Amended Judgment (D.I. 235). Out of an abundance of

1) the Amended Judgment entered on June 29, 2016, in the above-captioned case (D.I. 235), and the Judgment entered on August 24, 2015, in the above-captioned case (D.I. 195), as amended by the June 29, 2016 Amended Judgment, denying Endo's requests for relief regarding claims 40 and 42 of United States Patent Number 8,329,216 ("the '216 patent"), finding no infringement under 36 U.S.C. § 271(e)(2), and denying Endo's requests for relief under § 271(e)(4)(A) and (B);

2) the Order Resolving Post-Trial Motions entered on June 29, 2016, in the above-captioned case (D.I. 234), finding no infringement under § 271(e)(2) and denying Endo's requests for relief under § 271(e)(4)(A) and (B);

3) the Omnibus Opinion and Order entered on April 29, 2016, in the above-captioned case (D.I. 227, 228), finding no infringement under § 271(e)(2) and denying Endo's requests for relief under § 271(e)(4)(A) and (B);

4) the Findings of Fact and Conclusions of Law dated August 14, 2015, and entered on August 18, 2015, in the above-captioned case (D.I. 194), denying Endo's requests for relief regarding claims 40 and 42 of the '216 patent;

5) the Order entered on August 14, 2015, in the above-captioned case (D.I. 193), denying Endo's requests for relief regarding claims 40 and 42 of the '216 patent; and

6) all opinions, orders, and rulings subsumed therein and made prior and after thereto resulting in final judgment adverse to Endo's requests for relief.

caution, Endo hereby files this protective Second Amended Notice of Cross-Appeal to amend its earlier Notices of Cross-Appeal in light of the Court's June 29, 2016 Order Resolving Post-Trial Motions (D.I. 234) and the accompanying June 29, 2016 Amended Judgment (D.I. 235).

All applicable fees were paid when Endo filed its original notice of appeal on September 30, 2015, and pursuant to Federal Rule of Appellate Procedure 4(a)(4)(B)(iii) no additional fees are required to file this protective amended notice.

Dated: July 15, 2016

By: /s/ Brian M. Goldberg

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Protective Amended Notice of Appeal has been served on all counsel of record via the Court's CM/ECF system pursuant to Local Civil Rule 5.2(a), on July 15, 2016.

By: /s/ Brian M. Goldberg
Brian M. Goldberg