July 12, 2007

Jan Horbaly, Clerk of Court
U.S. Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439

Re: Request to Make the Decision in *Daiichi Sankyo Co. v. Apotex, Inc.*, Case No. 2006-1564 (Fed. Cir. July 11, 2007), Precedential

Dear Mr. Horbaly,

I write to request that the Court make precedential its decision in the above-captioned case. By copy of this letter, I am providing notice of my request to counsel for the parties in this case.

The panel's decision in this appeal would materially add to the body of law regarding how a factfinder determines the level of skill in the art in a nonobviousness inquiry. Although I have not conducted comprehensive research on the point, I know of only two Federal Circuit decisions that overturned a finding of fact about the level of skill in the art—*Daiichi*, and the October 2006 case of *Dystar Textilfarben GmbH v. C.H. Patrick Co.*, 464 F.3d 1356, 1361-1363 (Fed. Cir. 2006). In addition, *Daiichi*, unlike *Dystar*, reviews a district judge's bench trial analysis of the level of skill in the art, thus providing more detailed insight on the proper level-of-skill inquiry. (*Dystar*, on appeal from a jury trial, reviewed an implied finding.) If there are more such decisions overturning a finding of fact on the level of skill in the art, they are surely quite rare. The bar would, I think, benefit from making *Daiichi* a precedential decision adjudicating a contested skill-level question.

I do not know of any pending case that would be determined or affected by reissuance of the opinion in this case as precedential. I write solely as a member of the Court's bar, and as a law professor who regularly teaches basic and advanced patent law classes.

Regards,

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