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June 12, 2006

VIA FEDEX

Honorable Pauline Newman, Randall R. Rader and
Sharon Prost, United States Circuit Judges
United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Re: *Integra LifeSciences I, Ltd. v. Merck KGaA, Nos. 02-1052, -1065*

Your Honors:

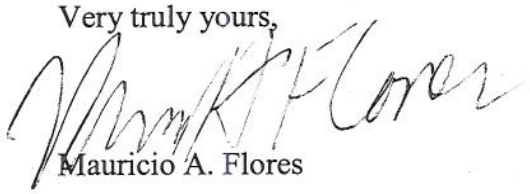
This letter responds to Merck's letter filed June 8, 2006.

Integra agrees with Merck that this is not an appropriate case in which to make new law on the issue of whether patent claims to research tools (however that term may be defined) are excluded from the ambit of Section 271(e)(1). The Supreme Court has ruled that this case does not raise that issue. Hence, its resolution is outside the Supreme Court's mandate. Integra has never argued, and does not now contend, that any of its claims at issue belong to a class of patent claims outside the reach of that statutory exemption. Integra's argument set forth in Section C of its Supplemental Brief is based on a factual distinction between the use of the RGD peptides as controls and their use as the subject of experimental inquiry – not on any legal distinction between types of claimed inventions. This factual argument can and should be resolved by application of the standards governing Rule 50 review and does not require further interpretation of Section 2271(e)(1).

Given the above, Integra strongly opposes further briefing. Having construed Section 271(e)(1), the Supreme Court directed this Court to determine under the form of verdict and jury instruction below whether the District Court erred in denying Merck's motion for judgment as a matter of law with respect to its affirmative defense under that statute. The legal standard controlling that determination under Rule 50 is clear and undisputed. The facts have been exhaustively set forth in the briefs and discussed at oral argument. Further briefing is unnecessary.

Certainly the issue of how, or if, Section 271(e)(1) applies to patent claims on research tools is extremely important to the biomedical research community. But its importance from a public policy perspective does not justify its adjudication in this case. To the contrary, the importance of the issue weighs strongly in favor of reaching an adjudication only in a case where issue has been squarely raised and thoroughly vetted before the District Court. Moreover, this case has been very costly for both sides. It would be unfair as well as unproductive for the Court to require the parties to spend further resources litigating an issue that is not necessary to resolve the case.

Very truly yours,



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cc: E. Joshua Rosenkranz
M. Patricia Thayer
Donald R. Dunner