

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MYLAN PHARMACEUTICALS INC.,
Appellant

v.

BIOGEN MA, INC.,
Appellee

2020-1673

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. IPR2018-
01403.

ON PETITION FOR PANEL REHEARING

Before REYNA, and HUGHES, *Circuit Judges**.

PER CURIAM.

* Circuit Judge O'Malley, who served on the merits panel in this case, retired on March 11, 2022. Circuit Judge Reyna and Circuit Judge Hughes have acted as a quorum with respect to this order. *See Fed. Cir. R. 47.11.*

ORDER

Mylan Pharmaceuticals Inc. and Biogen MA Inc. filed a joint status report on October 17, 2022, detailing the Supreme Court's denial of Biogen's petition for certiorari in the companion case, *Biogen Int'l GmbH v. Mylan Pharms. Inc.*, 18 F.4th 1333, 1346 (Fed. Cir. 2021), *cert. denied*, 2022 WL 4652058, at *1 (Oct. 3, 2022). In the companion case, Appeal No. 1933, this court found the '514 patent invalid for lack of written description under 35 U.S.C. § 112. Accordingly, in this appeal, Appeal No. 20-1673, both parties agree that there is an absence of a live controversy and ask that this court vacate the Board's final written decision and remand with instructions to dismiss the IPR. In light of our precedent, we agree with the parties that this appeal is moot and the underlying final written decision should be vacated. *See Apple Inc. v. Voip-Pal.com, Inc.*, 976 F.3d 1316, 1321 (Fed. Cir. 2020) (vacating Board decisions on patentability and remanding with instructions to dismiss IPRs as to those claims because a district court's invalidation of those claims rendered the appeal moot (citing *United States v. Mun-singwear, Inc.* 340 U.S. 36, 39–41 (1950))).

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The Board's final written decision issued on February 2, 2020 is vacated.

(2) The Board is instructed to dismiss the inter partes petition.

FOR THE COURT

October 25, 2022

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court