

EXHIBIT 3

Haunschild, Philip

From: Li, Yan-Xin <yanxin.li@kirkland.com>
Sent: Thursday, May 23, 2024 8:19 PM
To: Haunschild, Philip; Genevant Team; 'Arbutus_MoFo'; *jshaw@shawkeller.com; 'Karen E. Keller (kkeller@shawkeller.com)'; 'Nate R. Hoeschen (nhoeschen@shawkeller.com)'; 'Emily DiBenedetto' #KEModernaSpikevaxService; 'Jack Blumenfeld (jblumenfeld@morrisnichols.com)'; 'Egan, Brian P.'; 'Travis J. Murray (tmurray@morrisnichols.com)'
Cc:
Subject: RE: Arbutus v. Moderna (22-252) // Supplemental Interrogatory Response (No. 18)

[CONTAINS INFORMATION DESIGNATED HIGHLY CONFIDENTIAL BY MODERNA]

Hi Philip:

Thanks for your emails, and for the meet and confer last week. We have considered our discussions and the issues raised in Plaintiffs' May 9, 2024 letter. We disagree as to any alleged prejudice to Plaintiffs. By contrast, Moderna has undergone an extremely burdensome investigation, while still fully complying with its notice and confidentiality obligations to foreign governments, in providing information responsive to the non-objectionable scope of Plaintiffs' Interrogatory No. 18 (and 19–21) pertaining to “vaccines manufactured abroad and sold abroad.” D.I. 229.

The crux of Plaintiffs' May 9, 2024 letter appears to focus only on “negotiations” as identified in subpart (3) of Interrogatory No. 18. Plaintiffs should know, yet ignore, that “pricing and contracting negotiations in the United States alone do not constitute or transform [] extraterritorial activities into a sale within the United States” when substantial activities of a sales transaction, such as delivery and performance under the sales contract, occur entirely outside the United States—as is the case here. *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 831 F.3d 1369, 1378 (Fed. Cir. 2016). Indeed, U.S. patent laws are to be understood against a background presumption **against** extraterritorial reach. *Microsoft Corp. v. AT & T Corp.*, 550 U.S. 437, 444 (2007).

Your identification of certain documents as purportedly showing “substantial sales activity” in the United States before (or even after) June 2021 mischaracterizes both the documents and the facts that Plaintiffs have been provided by Moderna.

This is incorrect.

There is no “sales in China.”

Your reliance on *Apeldyn* and *McGinley* presupposes that Plaintiffs have actually demonstrated relevance for OUS discovery, given the strong presumption against any extraterritorial reach of U.S. patent law. Plaintiffs have failed to do so, and continue to base their broad sweeping discovery demands on mere suspicion and speculation. *Tessera, Inc. v. Broadcom Corp.*, No. 16-380, 2017 WL 4876215, at *5 (D. Del. Oct. 24, 2017). In view of Plaintiffs' failure, Moderna does not agree to produce its pre-June 2021 or post-June 2021 OUS supply agreements.

Best regards,
Yan-Xin

Yan-Xin Li

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From: Haunschild, Philip <phaunschild@wc.com>
Sent: Tuesday, May 21, 2024 7:40 AM
To: Li, Yan-Xin <yanxin.li@kirkland.com>; Genevant Team <GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; 'Karen E. Keller' <kkeller@shawkeller.com>; 'Nate R. Hoeschen' <nhoesch@shawkeller.com>; 'Emily DiBenedetto' <edibenedetto@shawkeller.com>
Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; 'Jack Blumenfeld' <jblumenfeld@morrisonichols.com>; 'Egan, Brian P.' <began@morrisonichols.com>; 'Travis J. Murray' <tmurray@morrisonichols.com>
Subject: RE: Arbutus v. Moderna (22-252) // Supplemental Interrogatory Response (No. 18)

Hi Yan-Xin,

It is now just over a week from the close of fact discovery, and we still have not heard back from Moderna regarding the issues raised in our May 9 letter. Can you please get back to us by COB tomorrow? Thank you.

Philip N. Haunschild

Associate | Williams and Connolly LLP

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From: Haunschild, Philip
Sent: Wednesday, May 15, 2024 6:44 PM
To: 'Li, Yan-Xin' <yanxin.li@kirkland.com>; Genevant Team <GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; 'Karen E. Keller' <kkeller@shawkeller.com>; 'Nate R. Hoeschen' <nhoesch@shawkeller.com>; 'Emily DiBenedetto' <edibenedetto@shawkeller.com>
Cc: #KEModernaSpikevaxService' <KEModernaSpikevaxService@kirkland.com>; 'Jack Blumenfeld' <jblumenfeld@morrisonichols.com>; 'Egan, Brian P.' <began@morrisonichols.com>; 'Travis J. Murray' <tmurray@morrisonichols.com>
Subject: RE: Arbutus v. Moderna (22-252) // Supplemental Interrogatory Response (No. 18)

Hi Yan-Xin,

Thank you for the meet-and-confer yesterday. We understand from our discussion that Moderna will be reverting regarding the issues we have raised in our May 9 letter in the next few days. We would ask for your response no later than COB Thursday, May 16, as Plaintiffs continue to be prejudiced by the delay in providing these materials.

As to Moderna's proposal to put up Mr. Brackmann tomorrow as a 30(b)(6) witness on Topics 41 – 43 with the limitation that he would only speak to the content of Moderna's response to Interrogatory No. 18, we cannot accept Moderna's proposed limitations. We understand that Moderna is only proposing to designate Mr. Brackmann on the content of Moderna's interrogatory response, and will not put up a witness on the further supplements to Interrogatory No. 18 that we are requesting to obtain a complete answer, or to address the documents that Moderna has not yet produced. Plaintiffs cannot accept these unreasonable limitations, which amount to nothing more than the witness repeating what Moderna's lawyers wrote in the interrogatory responses. Plaintiffs are entitled to test those responses in discovery, including with documents that Moderna has yet to produce. As we said on the call, however, we are willing to work with Moderna to reach a limited scope of deposition regarding the documents Moderna produces and/or the facts in further supplements to Interrogatory No. 18, as we have requested.

With respect to Moderna's production of board materials, we understand that Moderna is still collecting and preparing these materials for production. We reiterate what we said on the call: Moderna's delay in producing these materials

in the absence of these materials and without adequate time to review them. Moderna has been under Court order to produce these materials for nearly three months, and Plaintiffs cannot be expected to review them in the short window of time remaining. Accordingly, we will reserve the right to recall Moderna's witnesses who will be deposed this week and next. We again ask that these documents (or any that are ready) be produced immediately and without further delay.

Thank you,

Philip N. Haunschild

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From: Haunschild, Philip

Sent: Monday, May 13, 2024 10:25 AM

To: Li, Yan-Xin <yanxin.li@kirkland.com>; Genevant Team <GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; Karen E. Keller (<kkeller@shawkeller.com> <kkeller@shawkeller.com>); Nate R. Hoeschen (<nhoesch@shawkeller.com> <nhoesch@shawkeller.com>); Emily DiBenedetto <edibenedetto@shawkeller.com>

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Subject: RE: Arbutus v. Moderna (22-252) // Supplemental Interrogatory Response (No. 18)

Hi Yan-Xin,

Plaintiffs are available at 5:30 p.m. ET tomorrow. We can use the following dial-in:

Dial-in by phone

[+1 332-249-0718,799706732#](tel:+13322490718799706732) United States, New York City

[Find a local number](#)

Phone conference ID: 799 706 732#

Thank you,

Philip N. Haunschild

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From: Li, Yan-Xin <yanxin.li@kirkland.com>

Sent: Monday, May 13, 2024 9:09 AM

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Subject: RE: Arbutus v. Moderna (22-252) // Supplemental Interrogatory Response (No. 18)

Philip:

As to your demand for a meet and confer with Delaware counsel, we are not available today. We can be available Tuesday, May 14 at or after 5:30 pm ET.

Yan-Xin Li

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From: Haunschild, Philip <phaunschild@wc.com>

Sent: Thursday, May 9, 2024 3:44 PM

To: Li, Yan-Xin <yanxin.li@kirkland.com>; Genevant Team <GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; Karen E. Keller <kkeller@shawkeller.com> <kkeller@shawkeller.com>; Nate R. Hoeschen <nhoesch@shawkeller.com> <nhoesch@shawkeller.com>; Emily DiBenedetto <edibenedetto@shawkeller.com>

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Subject: RE: Arbutus v. Moderna (22-252) // Supplemental Interrogatory Response (No. 18)

Hi Yan-Xin,

Please see the attached correspondence.

Thank you,

Philip N. Haunschild

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From: Li, Yan-Xin <yanxin.li@kirkland.com>

Sent: Friday, May 3, 2024 7:59 PM

To: Genevant Team <GenevantTeam@wc.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; Karen E. Keller <kkeller@shawkeller.com> <kkeller@shawkeller.com>; Nate R. Hoeschen <nhoesch@shawkeller.com> <nhoesch@shawkeller.com>; Emily DiBenedetto <edibenedetto@shawkeller.com>

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Subject: Arbutus v. Moderna (22-252) // Supplemental Interrogatory Response

Counsel:

Attached please find:

- DEFENDANTS' FIRST SUPPLEMENTAL OBJECTIONS AND RESPONSES TO PLAINTIFFS' FOURTH SET OF INTERROGATORIES (NO. 18)

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