
From: Cunningham, Laura [<mailto:lcunningham@cooley.com>]
Sent: Wednesday, May 28, 2014 11:27 AM
To: Schmidt, Leslie M.; 'Hardman, Cynthia Lambert'; Hollis, Amanda
Cc: Altieri, Stephen; Graves, Jon; Wang, Jing; 'Holland, Elizabeth'; De Vries, Mike W.; J. Mitchell Jones
Subject: RE: IPR2014-00003: Protective Order

Leslie,

We are not asking AKBM to agree that these documents are relevant, and your continued demands that we justify their relevance is improper. We are simply asking AKBM to agree that this limited set of documents produced in the ITC as CBI (including some documents that were apparently marked CBI in error, which I have previously identified and repeatedly requested you confirm are public) can be accessed by persons qualified under this PO. AKBM will of course have the opportunity to make relevance or other objections to the evidence at a later time. There is no reason for the parties to engage on the relevance of the documents at this point, other than to delay resolution of the issue.

Regarding the Sampalis transcripts, we obviously disagree with your characterizations. We have heard nothing about the Sampalis transcripts for weeks and have never received a request to use any specific portions of them, and yet now, AKBM and Enzymotec suddenly demand immediate agreement as to submission of three days' worth of testimony from the ITC case, the vast majority of which has no arguable relevance to these proceedings. This blatant attempt to further delay resolution regarding the documents Neptune identified weeks ago is unacceptable. Neptune has a pressing need to use these documents in depositions and in its Response. It is clear that AKBM is not willing to work with us in good faith to reach agreement on this issue and thus we will have to raise it on today's Board call.

Regards,
Laura

From: Schmidt, Leslie M. [<mailto:leslie.schmidt@kirkland.com>]
Sent: Tuesday, May 27, 2014 7:52 PM
To: Cunningham, Laura; 'Hardman, Cynthia Lambert'; Hollis, Amanda
Cc: Altieri, Stephen; Graves, Jon; Wang, Jing; 'Holland, Elizabeth'; De Vries, Mike W.; J. Mitchell Jones
Subject: RE: IPR2014-00003: Protective Order

Laura,

Although we asked you to identify any ITC documents you wanted to use in connection with the IPR on April 18, you did not do so until May 15. That was 7 business days ago, and you have not yet provided the information we asked for so that we could evaluate your request. We asked you to identify the information in the listed documents that Neptune contends is relevant to this proceeding and why you believed such information is relevant. Instead of providing that information, you only generically referred us back to your ITC “expert.” Please provide the requested information. Without such information on a document by document basis we cannot provide you your requested objections or agreement on a document by document basis.

Also, we have not yet received any position from Neptune regarding AKBM’s request to use the Sampalis transcripts. Given the Board’s statements that deposition transcripts should be submitted in full we would seek to submit the entire transcripts under seal. As we discussed with you back in April, these transcripts are relevant at minimum because they contradict Neptune’s positions about heat including that Beaudoin’s heating steps would result in heat-induced hydrolysis and are inconsistent with obtaining an extract containing the claimed phospholipid. *See, e.g.*, Sampalis Dep. Tr. at 102:6-107:22, 109:18-112:20; *id.* at 210:9-25, 214:11-216:10; *id.* at 299:15-302:17; *id.* at 361:5-14; *id.* at 502:16-507:8; *id.* at 744:5-745:18; *id.* at 807:11-809:15, 811:22-812:7; *id.* at 813:17-814:1. Indeed, Neptune already should have disclosed such transcripts to the Board as Neptune has a duty to disclose information inconsistent with positions it has taken in this proceeding.

If you object to our submission of the Sampalis transcripts and refuse to submit those transcripts yourself, please let us know your basis for such objection and refusal.

Best regards,
Leslie

From: Cunningham, Laura [<mailto:lcunningham@cooley.com>]

Sent: Tuesday, May 27, 2014 5:47 PM

To: Schmidt, Leslie M.; 'Hardman, Cynthia Lambert'; Hollis, Amanda

Cc: Altieri, Stephen; Graves, Jon; Wang, Jing; 'Holland, Elizabeth'; De Vries, Mike W.

Subject: RE: IPR2014-00003: Protective Order

Leslie,

It has now been nearly two weeks since we provided you a short list of ITC documents, and far longer since we began discussing this issue last month. We are still waiting for a response as to whether AKBM objects to persons qualified under the PO in this proceeding having access to the listed documents. Please provide your agreement or objections (and bases therefore) for each document by close of business tomorrow. Absent complete agreement, we request AKBM’s availability for a Board call to discuss this issue on Thursday and Friday, May 29/30.

Likewise, please provide AKBM's response to the draft PO I circulated last Thursday. It seems we are close to reaching agreement on the draft PO, but given the upcoming depositions, if we do not reach an agreement quickly we will need to seek Board assistance on that issue as well.

Regards,
Laura

From: Cunningham, Laura
Sent: Thursday, May 22, 2014 12:38 PM
To: Schmidt, Leslie M.; Hardman, Cynthia Lambert; Hollis, Amanda
Cc: Altieri, Stephen; Graves, Jon; Wang, Jing; Holland, Elizabeth; De Vries, Mike W.
Subject: RE: IPR2014-00003: Protective Order

Leslie,

Most if not all of the listed AKBM documents were relied up on by our expert in rebutting Respondents' 103 arguments in the ITC case and are obviously equally relevant here. In addition, at least one document appears to have been improperly designated as CBI, and the Aker interrogatory response provides information that does not appear confidential. If AKBM objects to submission to the Board and/or disclosure to persons qualified under the PO for any of these documents, please state the reasons on a per-document basis as I requested so we can attempt to resolve the dispute without involving the Board.

Regards,
Laura

From: Schmidt, Leslie M. [<mailto:leslie.schmidt@kirkland.com>]
Sent: Monday, May 19, 2014 5:17 PM
To: Cunningham, Laura; Hardman, Cynthia Lambert; Hollis, Amanda
Cc: Altieri, Stephen; Graves, Jon; Wang, Jing; Holland, Elizabeth; De Vries, Mike W.
Subject: RE: IPR2014-00003: Protective Order

Dear Laura:

We have reviewed the AKBM documents you identified below and many are highly confidential and do not appear relevant. Please identify the information in these documents that Neptune contends is relevant to this proceeding and why you believe such information is relevant. AKBM remains willing to work with Neptune on resolving this issue, but as you are aware, under the Board's order, information submitted even under a to-be-entered protective order could become public should the Board cite it in its decision. As a result, AKBM requests more detail regarding Neptune's alleged need to use this information.

Best regards,

Leslie

From: Cunningham, Laura [<mailto:lcunningham@cooley.com>]
Sent: Thursday, May 15, 2014 10:11 AM
To: Hardman, Cynthia Lambert; Hollis, Amanda
Cc: Altieri, Stephen; Graves, Jon; Wang, Jing; Holland, Elizabeth; Abdelnour, Dennis J.; Schmidt, Leslie M.
Subject: RE: IPR2014-00003: Protective Order

Amanda and Cynthia,

We proposed an exchange of lists of documents the parties may potentially want to use so that we could resolve all or most disputes now. But at least AKBM seems unable or unwilling to provide a list of any additional documents beyond the Sampalis transcripts already identified.

So, in the interest of avoiding further delay, we will proceed on an ad hoc basis to seek agreement for documents as necessary throughout the proceeding. At this time, Neptune requests Aker's consent for the following documents (or excerpts, as indicated) to be submitted to the Board and/or disclosed to persons qualified under the PO:

- Aker document (CX-0803C)
- Aker document (CX-1215C)
- Aker document (CX-0659C)
- Aker document (CX-0633C)
- Aker whitepaper (CX-0662C) – this document was designated as CBI but appears public. Please confirm.
- Aker document (CX-0566C)
- Aker document (CX-1450C)
- Aker interrogatory response (CX-0024C, pages 1, 57-58, 124-26)
- Vage transcript designations (CX-1371C)

And similarly, Neptune requests the same consent from Enzymotec as to:

- Enzymotec interrogatory response (CX-0040C, pages 1, 14-15, 41-43)
- Ben-Dror deposition transcript (pages 1-24, 33-37:22, 134:22-137:25)

Please provide a response, including the bases for any objections, by close of business on May 19.

Regards,
Laura

From: Hardman, Cynthia Lambert [<mailto:CHardman@kenyon.com>]
Sent: Thursday, May 15, 2014 9:43 AM
To: 'Hollis, Amanda'; Cunningham, Laura
Cc: Altieri, Stephen; Graves, Jon; Wang, Jing; Holland, Elizabeth; Abdelnour, Dennis J.; Schmidt, Leslie M.

Subject: RE: IPR2014-00003: Protective Order

All,

Given Judge Green's statement that any confidential information used in the PTAB's final written decision will become public, Enzymotec is reluctant to agree to the below procedures without first knowing which of its confidential documents are at issue. Having Neptune's list at this stage may help address their concerns.

Cynthia

Cynthia Lambert Hardman

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From: Hollis, Amanda [<mailto:ahollis@kirkland.com>]

Sent: Wednesday, May 14, 2014 12:14 PM

To: Cunningham, Laura

Cc: Altieri, Stephen; Jon Graves (jgraves@cooley.com); Wang, Jing; Holland, Elizabeth; Hardman, Cynthia Lambert; Abdelnour, Dennis J.; Schmidt, Leslie M.

Subject: FW: IPR2014-00003: Protective Order

Laura,

We already identified for you on April 18 the confidential documents from the ITC proceedings that we currently wish to use (the Sampalis deposition transcripts). We asked your team on April 23 what particular AKBM confidential documents Neptune wanted to use, but have not yet heard back. We are happy to discuss those documents as soon as you identify them for us and we have a chance to review them.

We agree that we may determine we want to use additional confidential documents as the proceedings progress, including after we see Neptune's response brief, and we are happy to set up future meet and confers to identify and discuss those issues as they arise as you suggest.

Regards,
Amanda

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