

Nasri Hage

From: Hartmann, Anthony <anthony.hartmann@finnegan.com>
Sent: Friday, August 18, 2017 1:09 PM
To: Aydin Harston; E. Anthony Figg; LITIGATION PARALEGALS
Cc: KakenIPR; Livingstone, John; toan.vo@bausch.com; Yoshida, Naoki
Subject: RE: ACRUX DDS PTY LTD. & ACRUX LIMITED v. KAKEN PHARMACEUTICAL CO., LTD.
Case IPR2017-00190

Dear Aydin,

Further to our email, we consulted with our client about Petitioner's request for additional discovery regarding "marketing spend" under 37 C.F.R. § 42.51(b)(2). We do not agree to your request for additional discovery.

Regards,
Tony

Anthony A. Hartmann
Of Counsel

Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
901 New York Avenue, NW, Washington, DC 20001-4413
+1 202 408 4275 | fax +1 202 408 4400 | anthony.hartmann@finnegan.com | www.finnegan.com

FINNEGAN

From: Hartmann, Anthony
Sent: Friday, August 11, 2017 2:28 PM
To: 'Aydin Harston'; E. Anthony Figg; LITIGATION PARALEGALS
Cc: KakenIPR; Livingstone, John; toan.vo@bausch.com; Yoshida, Naoki
Subject: RE: ACRUX DDS PTY LTD. & ACRUX LIMITED v. KAKEN PHARMACEUTICAL CO., LTD. Case IPR2017-00190

Dear Aydin,

"US_ __ _20170531(2).xlsx" and "012617 Jublia 4mEq Commercial Market Comparison.xlsx" are Exhibit 2095 and Exhibit 2093, respectively. Accordingly, Patent Owner has provided the information upon which Exhibit 2098 and Exhibit 2099 are "based on." All information that Mr. Thomas has relied on has been produced to Petitioners. Patent Owner believes that it has complied with the requirements of 37 C.F.R. § 42.51(b)(1).

As to your request for additional discovery under 37 C.F.R. § 42.51(b)(2) regarding "marketing spend," we will consider your request with our client.

Regards,
Tony

Anthony A. Hartmann
Of Counsel

Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
901 New York Avenue, NW, Washington, DC 20001-4413
+1 202 408 4275 | fax +1 202 408 4400 | anthony.hartmann@finnegan.com | www.finnegan.com

FINNEGAN

ACRUX DDS PTY LTD. et al

From: Aydin Harston [<mailto:aharston@rothwellfigg.com>]

Sent: Thursday, August 10, 2017 1:16 PM

To: Hartmann, Anthony; E. Anthony Figg; LITIGATION PARALEGALS

Cc: KakenIPR; Livingstone, John; toan.vo@bausch.com; Yoshida, Naoki

Subject: ACRUX DDS PTY LTD. & ACRUX LIMITED v. KAKEN PHARMACEUTICAL CO., LTD. Case IPR2017-00190

Dear Tony,

I write to request that PO provide "US___20170531(2).xlsx" and "012617 Jublia 4mEq Commercial Market Comparison.xlsx," in addition to any other document or information underlying the preparation of Exhibits 2093-2095 and 2098-2099, to Petitioners immediately. PO's commercial success expert, Mr. Vincent A. Thomas, has relied upon Exhibits 2098 and 2099 in his analysis. According to Mr. Thomas' Declaration, these exhibits are "based on" the underlying documents which were not provided with the POR. See EX. 2028, n.3-4 (Exhibit 2098 is "based on US___20170531(2).xlsx" and Exhibit 2099 is "based on 012617 Jublia 4mEq Commercial Market Comparison.xlsx.) In light of the fact that the witness himself states the exhibits he relied upon in order to form his opinions are "based on" some other withheld information, Petitioners request the specified spread sheets be provided immediately, as well as any other as yet withheld document or information either used in the preparation of Exhibits 2093-2095 and 2098-2099 or relied upon by Mr. Thomas in forming his opinions (either directly or indirectly). 37 C.F.R. § 42.51(b)(i).

In addition, given Mr. Thomas' testimony that "the marketing spend for Jublia is consistent with other companies' advertising costs on comparable branded topical onychomycosis treatments such as Lamisil (more than \$100 million in advertising to date) and Penlac (more than 10 million annually)" (EX. 2028, ¶25), Petitioners request PO provide a document or documents sufficient to show the quarterly total of the marketing spend attributable to Jublia from the 4th quarter of 2013 (just prior to Jublia's launch) through the 2nd quarter of 2017. 37 C.F.R. § 42.51(b)(ii).

As it is Petitioners' position that this information qualifies as routine discovery and/or information that is inconsistent with the positions taken by the declarant under the Board rules, it should have been provided with the POR. If PO refuses to provide the information, please let us know your availability for a meet-and-confer to discuss these issues. In the absence of an agreement, Petitioners intend to contact the Board to request authorization to file a motion to obtain the information.

Thank you,

Aydin H. Harston, Ph.D.
Rothwell, Figg, Ernst & Manbeck PC
607 14th Street, NW; Suite 800
Washington, DC 20005
ph: 202-783-6040
fax: 202-783-6031

www.rfem.com



The information contained in this electronic message and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential and/or privileged information. If you are not the addressee, note that any disclosure, copy, distribution or use of the contents of this message is prohibited. If you are not the intended recipient, please notify Rothwell, Figg, Ernst & Manbeck P.C. immediately at (202) 783-6040 or email us at aharston@rfem.com, and destroy all copies of this message and any attachments.

This e-mail message is intended only for individual(s) to whom it is addressed and may contain information that is privileged, confidential, proprietary, or otherwise exempt from disclosure under applicable law. If you believe you have received this message in error, please advise the sender by return e-mail and delete it from your mailbox. Thank you.