

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

- - -

ELAN PHARMA INTERNATIONAL : Civil Action  
LIMITED, :

Plaintiff, :

v. :

ABRAXIS BIOSCIENCE INC., :

Defendant. : No. 06-438-GMS

- - -

Wilmington, Delaware  
Tuesday, June 10, 2008  
8:45 a.m.  
SEVENTH DAY OF TRIAL

- - -

BEFORE: HONORABLE GREGORY M. SLEET, Chief Judge,  
and a Jury

APPEARANCES:

JOHN G. DAY, ESQ.  
Ashby & Geddes

-and-

STEPHEN SCHEVE, ESQ.,  
LINDA M. GLOVER, ESQ.,  
JEFFREY SULLIVAN, ESQ.,  
ROBERT RIDDLE, ESQ., and  
PAUL FEHLNER, ESQ.

Baker Botts LLP  
(Houston, TX)

-and-

GREGORY BOKAR, ESQ.  
Counsel - Elan Drug Delivery

Counsel for Plaintiff

1 APPEARANCES CONTINUED:

2

ELENA C. NORMAN, ESQ., and  
3 MICHELLE SHERETTA BUDICAK, ESQ.  
Young Conaway Stargatt & Taylor, LLP

4

-and-

5

MICHAEL A. JACOBS, ESQ.,

6

EMILY A. EVANS, ESQ.,  
ERIC S. WALTERS, ESQ.,

7

LISA CHIARINI, ESQ.,  
DIANA KRUZE, ESQ., and

8

ERIK J. OLSON, ESQ.

Morrison & Foerster

(San Francisco, CA)

9

Counsel for Defendant

10

- - - - -

11

THE COURT: Good morning.

12

(Counsel respond "Good morning.")

13

THE COURT: I understand we have an issue.

14

MR. JACOBS: A couple of things, Your Honor.

15

THE COURT: I hope they are short.

16

MR. JACOBS: Two are short and one may take a

17

few minutes. No. 1, we have reached a stipulation on a

18

person of ordinary skill in the art.

19

THE COURT: Good. I was wondering whether we

20

were going to hear about that mystic person.

21

MR. JACOBS: Procedurally, Your Honor, would you

22

like Ms. Kruze to read it? It would have come up in

23

Dr. Amiji's testimony. Ms. Kruze could just read the

24

stipulation into the record, if that would be appropriate.

25

MR. SCHEVE: Fine.

1 MR. JACOBS: No. 2, documents in evidence. How  
2 do we work? I am still a little confused. I know we have  
3 heard several times how this is supposed to work but we are  
4 at the level of mechanics, understanding what is in and what  
5 isn't, especially documents that are --

6 THE COURT: All objections were overruled to  
7 documentary exhibits, unless raised again. I have not  
8 entertained any additional objections. So it's in.

9 MR. JACOBS: On the original exhibits list, all  
10 those exhibits are in evidence.

11 THE COURT: Are in. What you want the jury to  
12 consider is another matter. Is that where we are going with  
13 this?

14 MR. JACOBS: No. I think there are documents --

15 THE COURT: For your record, they are in.

16 MR. JACOBS: For closing --

17 THE COURT: That's evidence.

18 MR. JACOBS: Terrific.

19 THE COURT: Mr. Scheve, do you have any  
20 questions?

21 MR. SCHEVE: That's exactly what I have  
22 understood, Your Honor.

23 MR. JACOBS: Dr. Brittain, two alternative  
24 paths, from our standpoint.

25 No. 1, we put him on the stand, he is here in

1 the courtroom, by the way. We put him on the stand, and we  
2 examine him pursuant to the second Bench memo we filed  
3 yesterday, in which we elicit only -- I can hand Your Honor  
4 a copy.

5 THE COURT: I got it yesterday, you say?

6 MR. JACOBS: Yes. We didn't focus on it  
7 yesterday.

8 THE COURT: Have you seen the Bench memo,  
9 Mr. Scheve?

10 MR. SCHEVE: Yes.

11 MR. JACOBS: We gave it to them yesterday, Your  
12 Honor.

13 The main point of this Bench memo, Your Honor,  
14 is that when we ask him questions, we do not want him  
15 volunteering, we do not want counsel for Elan eliciting  
16 testimony beyond the specific and narrow facts that are  
17 already in the record from his deposition or from the  
18 documents.

19 THE COURT: You know, counsel and those in the  
20 well, you can sit. It seems like this is going to take a  
21 few minutes. There is no reason for you to have to stand.

22 Mr. Jacobs.

23 MR. JACOBS: There is only one question from the  
24 deposition that I need to ask him, which is, Did you perform  
25 studies on Abraxane? Beyond that, I don't believe counsel

1 for Elan should be allowed to elicit additional testimony  
2 about what he did because he was instructed not to answer a  
3 whole range of questions about what he actually did at his  
4 deposition.

5 Actually, the second path is that we do not put  
6 Dr. Brittain on the stand, and the Court explains to the  
7 jury what happened with the privilege log and why we are  
8 where we are. I prepared and gave to counsel for Elan  
9 yesterday a proposed statement from the Bench that would  
10 just lay out, very briefly, lay out exactly what happened.  
11 That way, we don't have to deal with uncertainties about  
12 what Dr. Brittain might say when he testifies on this issue.

13 THE COURT: I got to believe that Mr. Scheve  
14 probably doesn't want the jury hearing about that from me.  
15 Maybe I am wrong about that.

16 MR. SCHEVE: Well, after all day yesterday  
17 asking witnesses, What did you have for breakfast?, and  
18 hearing, Well, I had eggs right next to an order of  
19 amorphous paclitaxel contained in Abraxis, all day, and now  
20 to have counsel say, We really don't want any gratuitous  
21 answers, or to go beyond -- they are now the sponsoring  
22 witness, Your Honor. There is no expert report from him.  
23 If they are going to ask fact questions, you know, it's my  
24 decision, I would think, whether or not I wade into  
25 something. I will be very cautious about that. The idea

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.