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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91233327
Party	Defendant Gilead Capital LP
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Attachments	2018-01-02 Motion to Amend Standard Protective Order.pdf(255611 bytes) 2018-01-02 Leung Declaration ISO Motion to Amend Standard Protective Order.pdf(1987414 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
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EJW/lw

Opposition No. 91233311 (Parent)
Opposition No. 91233327

Gilead Sciences, Inc.

v.

Gilead Capital LP

**APPLICANT GILEAD CAPITAL'S
MOTION TO AMEND THE STANDARD PROTECTIVE ORDER**

PRELIMINARY STATEMENT

This is a case that warrants modification of the Board's standard protective order because Applicant Gilead Capital's in-house counsel is the sole attorney defending the case and needs access to all the information produced in order for Gilead Capital to have a full and fair opportunity to be heard. Permitting in-house counsel to access Opposer's trade secret or commercially sensitive information would not create an unacceptable risk of disclosure or misuse of the information for several reasons.

First, Applicant's in-house counsel has sworn that she would not knowingly or intentionally disclose or use the information in violation of a protective order.

Second, Applicant's in-house counsel has the experience and knowledge to implement security safeguards to prevent unauthorized access to Opposer's documents, such that there is a low risk of inadvertent disclosure.

Third, Applicant's in-house counsel is not involved in competitive decision making because the parties are not competitors, and therefore, she cannot (mis)use any of Opposer's information to obtain unfair competitive advantage. Applicant is an investment management firm, while Opposer is a pharmaceutical company. Applicant has neither the ability nor the incentive to use Opposer's proprietary information to advance its own commercial interests at the expense of Opposer. The reasoning for a two-tiered protective order simply does not apply.

Fourth, even if the parties were competitors—and they are not—Applicant's in-house counsel does not participate in competitive decision making at Gilead Capital. She does not participate in investment decisions, but rather, performs primarily legal and compliance functions, and her operational roles are either compliance-related or administrative.

Accordingly, good cause does not exist for imposing the burdens of attorneys-eyes-only restrictions in this case and they should be removed from the Protective Order.

STATEMENT OF FACTS

The Parties

Applicant Gilead Capital LP (“Applicant,” “Gilead Capital,” or the “Firm”) is an investment adviser, registered with the Securities and Exchange Commission (“SEC”) (SEC File No. 801-107184), as a large advisory firm with regulatory assets under management of more than \$100 million. *See* Leung Decl. ¶ 9.¹ Gilead Capital provides discretionary investment advice and management services to certain institutional clients pursuant to investment management agreements. Investment in separately managed accounts or private funds managed by Gilead Capital is generally only available to institutional investors and certain high net worth individuals that are “accredited investors,” “qualified clients,” and “qualified purchasers,” or non-“U.S. persons” within the meaning of the Securities Act of 1933 (“Securities Act”), the Investment Advisers Act of 1940 (“Advisers Act”), and the Investment Company Act of 1940 (“Investment Company Act”). *See id.* ¶ 10. Gilead Capital does not provide services to general consumers or retail investors who do not meet the criteria for accredited investors, qualified clients, or qualified purchasers. The Firm does not engage in general advertising, but rather, relies on its partners’ existing personal and professional networks for introductions to potential investors. *See id.* ¶ 11.

Gilead Capital employs an investment strategy of “Leadership Investing,” which combines the principles of long-term value investing with responsible active ownership. The

¹ The Declaration of Kanchana Wangkeo Leung, Esq. In Support Of Gilead Capital’s Motion to Amend the Standard Protective Order is referred to herein as the “Leung Decl.”

Firm takes meaningful stakes in a concentrated group of companies that it believes has underachieved their business and valuation potential and works productively with management teams, boards of directors, and other stakeholders over long-term holding periods to elevate corporate achievement and valuation by enhancing governance, strengthening management, and improving strategy and execution. *See* Leung Decl. ¶ 12. The Firm believes that its constructive investment approach is distinguishable from traditional activist investing and owns U.S. Registration No. 5127612 for “Leadership Investing” in connection with “[h]edge fund investment services; [i]nvestment advisory services; [i]nvestment management; [f]inancial services, namely, operation and management of hedge funds, commodity pools and other collective investment vehicles, and trading for others of securities, options, futures, derivatives, debt instruments and commodities.” *See id.* ¶ 13.

In selecting investments, Gilead Capital focuses on companies with small to mid-market capitalizations and invests across a broad spectrum of industries in developed markets, including but not limited to, North America, developed Europe, and Australia. The Firm invests primarily in equity and equity-linked securities of an issuer, and may also invest in corporate debt securities and derivatives. In addition, the Firm may utilize financial instruments such as futures, forward contracts, stock index futures and options, and swaps, caps, and floors both for investment purposes and to seek to hedge against changes in currency exchange rates, market interest rates, and equity prices. *See* Leung Decl. ¶ 14. In short, Gilead Capital is in the business of investing. *See id.* ¶ 15.

In contrast, Opposer Gilead Sciences, Inc. (“Opposer”) is a pharmaceutical company. In its 2016 Annual Form 10-K, Opposer describes its business as follows:

Gilead Sciences, Inc. (Gilead, we or us), incorporated in Delaware on June 22, 1987, is a research-based biopharmaceutical company that discovers, develops and

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