



ITAB

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



Novo Nordisk A/S, )  
)  
Opposer, )  
)  
v. )  
)  
Innoject, Inc. )  
)  
Applicant, )  
\_\_\_\_\_)

12-26-2002

U.S. Patent & TMO/c/TM Mail Rept Dt. #72

Opposition No. 125,203

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**STIPULATED PROTECTIVE ORDER**

The parties hereto have acknowledged that during the course of this action certain documents, information, or things may be produced that are or may constitute a trade secret, confidential research, development, or otherwise confidential commercial information within the meaning of Rule 26(c) of the Federal Rules of Civil Procedure. The parties desire to protect such confidential information from improper disclosure, and have therefore stipulated that this protective order may be entered by the Board and that it shall govern all confidential information produced in these proceedings.

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that

1. Definition of Confidential Information

"Confidential Information" as used herein means any type or classification of information that is designated as confidential by the supplying party, whether it be a document, information revealed during a deposition, information revealed in an

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interrogatory answer, or otherwise, to or for either of the parties in this opposition proceeding.

## 2. Designation of Confidential Information

Each deposition transcript page or portion thereof, each interrogatory answer or portion thereof, each produced document or portion thereof, and each answer to a request for admission or portion thereof, which is in good faith deemed by a party to disclose confidential information of that party, shall be so identified and marked "CONFIDENTIAL" by that party. In the case of transcript pages, the designating party shall advise opposing counsel of the specific pages to be maintained in confidence within twenty (20) calendar days after receipt of the transcript of the deposition. Pending notification from opposing counsel during the twenty (20) calendar day period, all transcript pages shall be treated as "HIGHLY CONFIDENTIAL - FOR ATTORNEYS' EYES ONLY" and may be used only in accordance with such designation under this Protective Order.

## 3. Treatment of Confidential Information and Persons Entitled to Access

Until and unless the Board rules that any information, document, or thing designated as Confidential, is not confidential information, or may be disclosed beyond the limits permitted by this Order, access, copying and dissemination of such information, documents, and things shall be limited to the following persons:

- A. Outside attorneys and inside attorneys working on this opposition proceeding and staff and supporting personnel of such attorneys who are working directly on this opposition proceeding under the direction of such

attorneys and to whom it is necessary that the materials be disclosed for purposes of this opposition proceeding.

- B. Designated experts for, or consultants to, a party (hereafter "outside experts"), who are not employed by or consultants to the receiving party or who are not employed by or consultants to a competitor of either party, and whose advice and consultation are being or will be used by the party only in connection with this action, and their agents, stenographic and clerical employees whose duties and responsibilities require access to Confidential Information; provided, however, that before such access is given, such "outside experts" have agreed in writing in the form attached hereto as Exhibit A to be bound by the terms of this Protective Order.
- C. In addition to individuals identified in Paragraph 3A, not more than two (2) designated employees of Opposer and not more than two (2) designated employees of Applicant whose advice and consultation are being or will be used by a party hereto in connection with preparation for trial or trial of this action; provided, however, that before such access is given, such designated employees have agreed in writing in the form attached hereto as Exhibit A to be bound by the terms of this Protective Order.
- D. Board reporters, stenographers, clerks, law clerks, and other Board personnel employed by the Board.

4. Materials Designated as "HIGHLY CONFIDENTIAL FOR ATTORNEYS' EYES ONLY"

In the event that either party deems in good faith certain information, documents or things extraordinarily sensitive and, therefore, inappropriate for treatment merely as CONFIDENTIAL discovery material, such items may be designated and marked "HIGHLY CONFIDENTIAL FOR ATTORNEYS' EYES ONLY." Materials so designated may be disclosed only to persons as described in Paragraphs 3A, 3B, and 3D above.

5. Restrictions on Use and Dissemination of Designated Information

All information produced by a party in the course of this opposition proceeding and designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL FOR ATTORNEYS' EYES ONLY pursuant to this Protective Order shall be used by the receiving party solely for the purpose of this opposition proceeding. Any person receiving information designated pursuant to the provisions of this Protective Order shall be advised of this Protective Order.

6. Certain Information Not Subject to Scope of Order

The restrictions of this Protective Order shall not apply to information which (a) was, is, or becomes public knowledge, not in violation of this Protective Order, or (b) was or is acquired from a third party possessing such information and having no obligation of confidentiality to the designating party, or (c) the receiving party can establish that the information was in its rightful and lawful possession at the time of disclosure or is developed independently by the receiving party without the use of Confidential Information.

### 7. Exceptions by Board Order or by Agreement by Parties

Nothing shall prevent disclosure beyond the terms of this Order if the party designating the information consents in writing to such disclosure, or if the Board, after notice to the other party and the opportunity to be heard, orders such disclosure.

### 8. Inadvertent or Unintentional Disclosure

The inadvertent or unintentional disclosure by the supplying party of information designated under this Protective Order, regardless of whether the information was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of a party's claim of confidentiality, either as to the specific information disclosed or as to any other information relating thereto or on the same or related subject matter.

Counsel for the parties shall in any event, to the extent possible, upon discovery of inadvertent error, cooperate to restore the confidentiality of the designated information.

Upon receipt of written notification and identification of inadvertent disclosure of CONFIDENTIAL or HIGHLY CONFIDENTIAL FOR ATTORNEYS' EYES ONLY information, the receiving party shall either mark the materials with the appropriate designation or return them to the producing party for such marking.

### 9. Challenges to Designations

A party shall not be obligated to challenge the propriety of a designation under this Protective Order at the time made, and failure to do so shall not preclude a subsequent challenge thereto. In the event that either party to this opposition proceeding disagrees at any point in these proceedings with the designation by the supplying party of any information, the parties shall first attempt to resolve such dispute in good faith on an informal basis. If the dispute cannot be resolved, the objecting party

may seek appropriate relief from the Board, and the party asserting confidentiality shall have the burden of proving same. The parties may, by written stipulation, provide for exceptions to this Order.

10. Filing Confidential Information or Papers Containing Confidential Information with the Board

In the event that a party wishes to file or to use any information designated under this Protective Order in any affidavit, brief, memorandum of law, or other paper filed with the Board in this opposition proceeding, the portion of the paper containing the designated information shall be filed under seal and maintained under seal by the Board while the non-confidential portion of the paper shall not be filed under seal. The envelopes or containers of such sealed information or documents shall prominently be stamped or marked with a legend in substantially the following form:

**CONFIDENTIAL INFORMATION  
or  
HIGHLY CONFIDENTIAL FOR ATTORNEYS' EYES ONLY**

**This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except under the terms of the protective order and by order of the Board.**

11. Modification of Protective Order

A party may seek the written permission of the other party or further order of the Board, after notice to the other party and opportunity to be heard, with respect to modification of this Protective Order.

## 12. Return or Destruction of Confidential Information

Within thirty (30) days after the final conclusion of this opposition proceeding, including all appeals, all originals and reproductions of any documents produced and designated under this Protective Order by a party shall be returned to the producing party except (a) to the extent any information that constitutes the receiving party's work product has been written or entered on the produced documents, such documents shall be destroyed by the receiving party, and (b) trial counsel may retain one complete set of pleadings, correspondence, production documents, and oppositions after final conclusion of this opposition proceeding.

## 13. Continuing Effect

Insofar as the provisions of this Protective Order entered in this action restrict the communication and use of the documents produced thereunder, this Order shall constitute a contract between the parties that continues to be binding after the conclusion of this opposition proceeding, except that a party may seek the written permission of the other party or further order of the Board, after notice to the other party and opportunity to be heard, with respect to dissolution or modification of this Protective Order.

## 14. Advice to Client Based on Confidential Information

Nothing in this Order shall bar or otherwise restrict any attorney herein from rendering legal advice to his client with respect to this opposition proceeding and in the course thereof, referring to or relying upon the attorney's examination of designated information; provided, however, that in rendering such legal advice and in otherwise

communicating with his clients, the attorney shall not disclose the contents or the source of any designated information.

15. Discovery Objections, Claim of Privilege

It is not the intention of this Protective Order to deal with any discovery objections to produce, answer, or respond on the grounds of attorney-client privilege or work product or to preclude any party from seeking further relief or protective orders from the Board as may be appropriate under the Federal Rules of Civil Procedure.

16. Examination of Witnesses Regarding Confidential Information

Notwithstanding any of the provisions of this Order, any witness subject to a noticed deposition in this opposition proceeding and his or her counsel of record may be shown, and questioned, concerning any document of which he is alleged or claims to be the author or a recipient or of which he is alleged to have knowledge. Nothing in this Order shall preclude Board officials or any certified reporter retained to transcribe depositions in this opposition proceeding from access to designated materials during judicial proceedings or depositions in this opposition proceeding.

17. Treatment of Confidential Information Produced by Third Parties

If in the course of this action discovery is sought from third parties that would require such parties to disclose and/or produce CONFIDENTIAL or HIGHLY CONFIDENTIAL FOR ATTORNEYS' EYES ONLY information, such third parties may gain the protections of this Protective Order by simply agreeing in writing to produce documents pursuant to this Order and to be bound by it. No further order of the Board shall be necessary to extend the protections of this Order to such third parties.

STIPULATED AND AGREED TO BY:

NOVO NORDISK A/S

By its attorney,

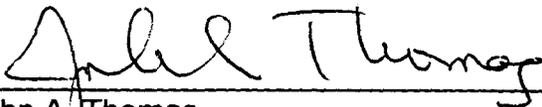


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INNOJECT, INC.

By its attorney,



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

Novo Nordisk A/S, )  
 )  
 Opposer, )  
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 v. ) Opposition No. 125,203  
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 Innoject, Inc. )  
 )  
 Applicant, )  
 \_\_\_\_\_ )

**STIPULATED PROTECTIVE ORDER**

I, \_\_\_\_\_, hereby acknowledge that I am to receive information designated under a Protective Order in the above-captioned opposition proceeding. I hereby certify my understanding that such information is being provided to me pursuant to the terms and restrictions of a Protective Order dated \_\_\_\_\_ in the above-captioned opposition proceeding and that I have been given a copy of, have read, and understand said Protective Order and agree to be bound by the terms thereof. I understand that any copy I make of any documentary material designated under the Protective Order containing information or any notes or other records that I make regarding such information shall be returned to the custody of the attorneys of record who provide me with such information after use by me in connection with the captioned matter.

I further agree and do hereby submit myself to the jurisdiction of the above-captioned Board in all matters concerning enforcement or violation of the Protective Order. For this purpose, I may be served and do hereby accept service by registered mail, return receipt requested, at the following address:

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, hereby certify that on December 26, 2002, a true and correct copy of the foregoing STIPULATED PROTECTIVE ORDER was served by the indicated means to the persons at the addresses listed:

**Via First Class Mail:**

John A. Thomas, Esq.  
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By:



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