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Filing date: **10/05/2009**

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

Proceeding	91184978
Party	Defendant Walgreen Co.
Correspondence Address	Mark J. Liss Leydig, Voit & Mayer Two Prudential Plaza, Suite 4900, 180 N. Stetson Avenue Chicago, IL 60601 UNITED STATES cstevens@leydig.com
Submission	Motion to Compel Discovery
Filer's Name	Caroline L. Stevens
Filer's e-mail	cstevens@leydig.com
Signature	/Caroline L. Stevens/
Date	10/05/2009
Attachments	2009.10.05 Walgreens Motion to Compel.pdf (6 pages)(22609 bytes) 2009.10.05 Exhibits Motion to Compel.pdf (20 pages)(448137 bytes)

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

McNEIL-PPC, Inc.)	In re Trademark Application
)	Serial No. 76/682,070
Opposer,)	Opposition No. 91184978
)	Trademark: WAL-ZYR
v.)	
)	
WALGREEN COMPANY,)	
)	
Applicant.)	

APPLICANT’S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Pursuant to 37 C.F.R. § 2.120(e), Applicant, Walgreen Company (“Walgreens”), moves that the Board compel Opposer, McNEIL-PPC, Inc. (“McNeil”) to produce certain communications by and among McNeil, UCB Pharma, S.A. (“UCB”), UCB Inc., and Johnson & Johnson (“J&J”) that concern this Opposition and/or the WAL-ZYR mark, and which were requested by Walgreens through document requests. McNeil would not agree to produce the requested documents and would not consent to this Motion. In support of this Motion, Applicant states as follows:

1. McNeil based this Opposition on Reg. No. 2,204,253 for the ZYRTEC mark, which is owned by UCB. (See Notice of Opposition, Para. 13). McNeil claims to be UCB’s exclusive U.S. licensee for use of the ZYRTEC mark in connection with over-the-counter allergy medicine. *Id.* On information and belief, UCB’s U.S. subsidiary is UCB Inc., and McNeil’s parent company is J&J.

2. Walgreens served McNeil with discovery requests, including Document Request No. 32, requesting communications by and among UCB, J&J, and McNeil, and their related companies and divisions (including UCB Inc.) concerning this Opposition or Walgreens’ use of the WAL-VERT mark. (See attached Exhibit A). Document Request No. 32 states in pertinent part:

All Communications between persons employed by UCB Pharma, S.A., UCB S.A. and McNeil-PPC, Inc., McNeil Consumer Healthcare, Johnson & Johnson, or any of their divisions or related companies in Opposer's possession, custody and control concerning Applicant's use or registration of Applicant's Mark or this Opposition. (See Exhibit A).

3. McNeil refused to produce communications responsive to this request for three reasons: (1) the communications are protected by the "work-product doctrine"; (2) the communications are privileged under the "common interest doctrine"; and (3) based on numerous common objections. (See Exhibit B for McNeil's written response to Doc. Request 32). McNeil has the burden of proving that these doctrines, privileges, and objections apply to this case, but McNeil will not be able to do so; none of these doctrines, privileges, or objections shield McNeil from responding to Doc. Request No. 32.

4. First, the work-product doctrine protects materials prepared in anticipation of litigation by or for a party or its representative. Fed. R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495, 510-12 (1947). The work-product doctrine applies only to materials prepared by or for *a party to this Opposition*. All (or nearly all) of the communications identified by McNeil as responsive to Doc. Request No. 32 were prepared by counsel for UCB or J&J.¹ (Exhibit C, privilege log). Neither UCB nor J&J is a party to this Opposition, so none of the communications prepared by UCB and J&J's attorneys is protectable work-product.

5. Second, the communications are not protected by the common interest doctrine either. The common interest doctrine is not an independent basis for privilege. Rather, it is an exception to the general rule that no attorney-client privilege attaches when otherwise confidential communications are disclosed to a third party, if the third party shares a common legal interest, and if the parties agree to maintain the original privilege of the communications. *In re Regents of Univ. of Calif.*, 101 F.3d 1386, 1387 (Fed.Cir.1996) (applying Seventh Circuit

¹ There are six communications prepared by James Weinberger or attorneys at Mayer Brown, LLP; it is not known whom these attorneys represented with regard to the communications identified on the privilege log, but at least at one point, Mr. Weinberger represented McNeil. Any protection in this correspondence was lost by disclosure to a third party where it was not agreed that the communication would not be shared with Walgreens. In addition, counsel for UCB and counsel for J&J copy other individuals on some of the correspondence.

law); *Libbey Glass, Inc. v. Oneida, Ltd.*, 197 F.R.D. 342, 348-49 (March 16, 1999) (party asserting privilege must show affirmative steps taken to acknowledge and protect privileged status of shared communications).

6. The common interest doctrine is inapplicable with respect to the correspondence identified in McNeil's privilege log, because the communications were not protected by the attorney-client privilege in the first place. Under the attorney-client privilege, communications between a client and his attorney may be privileged. In this case, the communications were not between a client and his attorney. All, or nearly all, of the communications were between an attorney for UCB and an attorney for J&J, two companies that are separate entities apart from each other and from McNeil, and which have their own legal counsel. In addition, neither UCB nor J&J is a party to the Opposition.

7. Even assuming (for the sake of argument) that the communications were attorney-client communications, any privilege was lost when the communications were disclosed to a third party, i.e., when UCB's counsel sent the communication to J&J's counsel, and vice versa, and also copied counsel at UCB Inc. and possibly counsel for McNeil, too. Upon disclosure, the communications did not retain any attorney-client privilege they may have had, because the parties (UCB, J&J, UCB Inc., and McNeil) did not have a common legal interest, and because on information and belief, the parties did not agree that any privilege in the communications would be retained despite the disclosures.

8. Third, McNeil claims it is not required to produce documents responsive to Doc. Request No. 32 based on its stated objections. (See Exhibit B). McNeil's objections are as follows: A – undue burden or expense; B – unreasonably cumulative or duplicative, or can be obtained from another source; C – not reasonably calculated to lead to discovery of admissible or relevant information; D – not reasonably particular, or seeks information tangential to matters, not limited in time or geographic region; and F – wording is vague and/or ambiguous. With regard to objections, McNeil threw in the proverbial “everything but the kitchen sink.”

9. Contrary to McNeil's claims, McNeil's objections do not excuse McNeil from producing documents responsive to Doc. Request No. 32. There is no undue burden or expense in producing the documents, because according to McNeil's privilege log (see Exhibit C), the responsive documents amount to only 82 pages. The request is not unreasonably cumulative or duplicative, given that McNeil has not produced the documents yet, and Walgreens cannot obtain the documents from another source unless Walgreens serves a non-party with a subpoena. The responsive documents are relevant, because they include communications by UCB and J&J and their related divisions and companies. UCB is the owner of the ZYRTEC mark, and J&J is the former owner of the licensed rights to use the ZYRTEC mark. It would be highly relevant if the actual owner of the mark ZYRTEC believed confusion and/or dilution by WAL-ZYR was not likely. The request is also sufficiently particular, and it is not vague or ambiguous. To the extent the request is understood, McNeil should produce responsive documents, and to the extent it is not understood, McNeil should identify any allegedly vague or ambiguous terms so they can be clarified.

10. In summary, the communications identified in Doc. Request No. 32 are relevant or likely to lead to the discovery of admissible evidence, and the communications are not shielded by any privilege, doctrine, or objection.

11. Counsel for Walgreens made a good faith effort by conference call on September 2, 2009 and also by correspondence to try to resolve with McNeil and McNeil's attorney the issues presented in this Motion, but the parties were unable to resolve their differences.

12. Accordingly, for the foregoing reasons, Walgreens requests that the Board issue an order compelling McNeil to produce all documents responsive to Doc. Request No. 32, including but not limited to those identified by McNeil in its privilege log. (Exhibit C).

Respectfully submitted,

Date: October 5, 2009

s/Caroline L. Stevens
Mark J. Liss
Caroline Stevens
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(312) 616-5600
mliss@leydig.com

Attorneys for Walgreen Co.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above foregoing “Applicant’s Motion to Compel Production of Documents” was served by e-mail (as agreed) on October 5, 2009 to:

Laura Popp-Rosenberg
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017
lpopp-rosenberg@frosszelnick.com

s/Caroline L. Stevens
Caroline L. Stevens

EXHIBIT A

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

McNEIL-PPC, Inc.)	In re Trademark Application
)	Serial No. 76/682,070
Opposer,)	Opposition No. 91184978
)	Trademark: WAL-ZYR
v.)	
)	
WALGREEN COMPANY,)	
)	
Applicant.)	

**APPLICANT'S SECOND REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and the Trademark Trial and Appeal Board's Manual of Procedure, Section 406, Applicant requests Opposer to produce to Applicant's counsel, per the signature page below, within the time period permitted by the Trademark Rules of Practice and the Federal Rules of Civil Procedure, the documents and things set forth below, subject to the following definitions and instructions:

INSTRUCTIONS AND DEFINITIONS

A. These requests shall be deemed to seek production of all documents and things which are now in the possession, custody or control of Opposer, or hereafter come into the possession, custody or control of Opposer during the pendency of this proceeding, up to and including the termination of the discovery period set by the Board.

B. The definitions contained in Applicant's First and Second Set of Interrogatories to Opposer are incorporated by reference as if fully set forth herein.

DOCUMENT REQUESTS

REQUEST NO. 32:

All Communications between persons employed by UCB Pharma, S.A., UCB S.A. and McNeil-PPC, Inc., McNeil Consumer Healthcare, Johnson & Johnson, or any of their divisions or related companies in Opposer's possession, custody and control concerning Applicant's use or registration of Applicant's Mark or this Opposition.

REQUEST NO. 33:

Any and all communications, contracts, licenses, agreements and other Documents concerning the chain of title of Opposer's Mark or licensing of rights in and to Opposer's Mark.

REQUEST NO. 34:

All reports, studies, surveys or polls concerning consumer consideration of active ingredients in allergy medicine when selecting and purchasing allergy medicine.

REQUEST NO. 35:

Documents sufficient to establish any and all guidelines or requirements for use of Opposer's Mark.

REQUEST NO. 36:

Documents reflecting the number of "hits" or "visits" to www.zyrtec.com, www.zyrtopia.com, www.zyrtecprofessional.com, and any other website or web page that features products offered under Opposer's Mark.

REQUEST NO. 37:

Documents showing the number of Communications that refer to the products offered under Opposer's Mark and received through www.zyrtec.com, www.zyrtopia.com, and

REQUEST NO. 42:

All Documents reflecting data on how consumers become aware of or decide to purchase over the counter antihistamines, including, but not limited to, data concerning physician recommendations, historic prescriptions, word-of-mouth recommendations, and advertisements.

Respectfully submitted,



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Leydig, Voit & Mayer
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(312) 616-5600
mliss@leydig.com
Attorneys for Applicant Walgreen Co.

EXHIBIT B

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

McNEIL-PPC, INC.,

Opposer,

-against-

WALGREEN CO.,

Applicant.

Opp. No. 91184978

**OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Opposer McNEIL-PPC, Inc. ("Opposer"), by its counsel Fross Zelnick Lehrman & Zissu, P.C., responds to Applicant's Second Request for Production of Documents and Things (the "Requests" and each individual request, a "Request") as follows:

GENERAL OBJECTIONS

The General Objections set forth in Opposer's Objections and Responses to Applicant's First Request for Production of Documents and Things, except for General Objection No. 1, are incorporated by reference as if fully set forth herein.

SPECIFIC OBJECTIONS

The following specific objections may be incorporated in Opposer's response to a particular Request. Opposer's decision not to specifically reference one or more of the following objections in its response to a particular Request is not an admission that the Request is not objectionable on that basis.

A. The Request exposes Opposer to undue burden or expense in relation to its likely benefit, taking into account the needs of the case, the property in controversy, Opposer's resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

B. The Request is unreasonably cumulative or duplicative, or the requested information can be obtained from some other source that is more convenient, less burdensome, or less expensive.

C. The Request is not reasonably calculated to lead to the discovery of admissible or relevant evidence.

D. The Request is not reasonably particular, or seeks information merely tangential to the matters at issue in the case, or is not limited to a particular time period or geographic region.

E. The Request seeks information that is not within Opposer's possession, custody or control.

F. The wording of the Request is vague and/or ambiguous including, without limitation, due to use of undefined terms.

SPECIFIC RESPONSES AND OBJECTIONS

Document Request No. 32: All Communications between persons employed by UCB Pharma, S.A., UCB S.A. and McNeil-PPC, Inc., McNeil Consumer Healthcare, Johnson & Johnson, or any of their divisions or related companies in Opposer's possession, custody and control concerning Applicant's use or registration of Applicant's Mark or this Opposition.

Response to Request No. 32:

Opposer objects to Document Request No. 32 on the basis of Specific Objections A, B, C, D and F.

Document Request No. 33: Any and all communications, contracts, licenses, agreements and other Documents concerning the chain of title of Opposer's Mark or licensing of rights in and to Opposer's Mark.

Response to Request No. 43:

Opposer objects to Document Request No. 43 on the basis of Specific Objections C, D and F. Subject to and without waiving the foregoing objections, Opposer will produce responsive documents, if any.

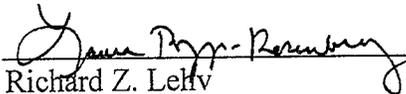
Document Request No. 44: All Documents reflecting data on how consumers become aware of or decide to purchase over the counter antihistamines, including, but not limited to, data concerning physician recommendations, historic prescriptions, word-of-mouth recommendations, and advertisements.

Response to Request No. 44:

Opposer objects to Document Request No. 44 on the basis of Specific Objection B. Subject to and without waiving the foregoing objections, Opposer incorporates its Response to Request No. 41 as if fully set forth herein.

Dated: New York, New York
June 11, 2009

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 
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New York, New York 10017
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Attorneys for Opposer McNEIL-PPC, Inc.

EXHIBIT C

McNEIL'S PRIVILEGE LOG

Production Range	Date	From/Author	To	CCs	Description	Protection Claim
McNEIL 004888	03/21/08	Jake Feldman, Senior Trademark Attorney, J&J	Jacques Somerlinckx, Senior Trademark Counsel, UCB	Benoit Beuken, Chief Trademark Counsel, UCB Maria Kirczow, Trademark Paralegal, J&J Jerry Swindell, Senior Counsel, J&J	Email re WAL-ZYR dispute	CI, WP
McNEIL 004889-90	04/02/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	03/21/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
McNEIL 004891-92	04/03/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow Allen Norris, Vice-President, Head Group IP, UCB	Email re WAL-ZYR dispute	CI, WP
	04/02/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	03/21/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
McNEIL 004893-95	04/03/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/03/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/02/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP

Legend: "CI" = Common interest privilege; "WP" = Work product doctrine. Failure to indicate a particular protection is not a waiver of that protection.

McNEIL'S PRIVILEGE LOG

Production Range	Date	From/Author	To	CCs	Description	Protection Claim
McNEIL 004893-95 (continued)	03/21/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
McNEIL 004896-902	04/03/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/03/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/02/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	03/21/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
McNEIL 004903-05	04/11/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	04/03/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/02/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	03/21/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
McNEIL 004906-09	04/14/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	04/11/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	04/03/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris	Email re WAL-ZYR dispute	CI, WP

McNEIL'S PRIVILEGE LOG

Production Range	Date	From/Author	To	CCs	Description	Protection Claim
McNEIL 004906-09 (continued)	04/02/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	03/21/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
McNEIL 004910-13	04/14/08	J. Feldman	J. Somerlinckx		Email re WAL-ZYR dispute	CI, WP
	04/14/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	04/11/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	04/03/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/02/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	03/21/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
McNEIL 004914-18	04/18/09	S. Somerlinckx	J. Feldman	David Emch, Senior Counsel, UCB B. Beuken	Email re WAL-ZYR dispute	CI, WP
	04/14/08	J. Feldman	J. Somerlinckx		Email re WAL-ZYR dispute	CI, WP
	04/14/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	04/11/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP

McNEIL’S PRIVILEGE LOG

Production Range	Date	From/Author	To	CCs	Description	Protection Claim
McNEIL 004914-18 (continued)	04/03/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/02/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	03/21/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
McNEIL 004919-23	04/23/08	J. Feldman	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell James Weinberger, Partner, Fross Zelnick Lerhman & Zissu, P.C.	Email re WAL-ZYR dispute	CI, WP
	04/18/09	S. Somerlinckx	J. Feldman	David Emch, Senior Counsel, UCB B. Beuken	Email re WAL-ZYR dispute	CI, WP
	04/14/08	J. Feldman	J. Somerlinckx		Email re WAL-ZYR dispute	CI, WP
	04/14/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	04/11/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	04/03/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/02/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP

McNEIL’S PRIVILEGE LOG

Production Range	Date	From/Author	To	CCs	Description	Protection Claim
McNEIL 004919-23 (continued)	03/21/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
McNEIL 04924-30	04/25/08	Robert Trainor, Executive Vice-President & General Counsel, UCB	J. Weinberger, J. Feldman, J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/25/08	J. Weinberger	R. Trainor, J. Feldman, J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/25/08	R. Trainor	J. Feldman, J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, J. Weinberger, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/25/08	J. Feldman	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, J. Weinberger, A. Norris, R. Trainor	Email re WAL-ZYR dispute	CI, WP
	04/25/08	J. Somerlinckx	J. Feldman	D. Emch, B. Beuken, J. Swindell, J. Weinberger, A. Norris, R. Trainor	Email re WAL-ZYR dispute	CI, WP
	04/25/08	J. Feldman	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, J. Weinberger	Email re WAL-ZYR dispute	CI, WP
	04/23/08	J. Weinberger	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, F. Feldman	Email re WAL-ZYR dispute	CI, WP
	04/23/08	J. Feldman	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell James Weinberger, Partner, Fross Zelnick Lerhman & Zissu, P.C.	Email re WAL-ZYR dispute	CI, WP

McNEIL’S PRIVILEGE LOG

Production Range	Date	From/Author	To	CCs	Description	Protection Claim
McNEIL 04924-30 (continued)	04/18/09	S. Somerlinckx	J. Feldman	David Emch, Senior Counsel, UCB B. Beuken	Email re WAL-ZYR dispute	CI, WP
	04/14/08	J. Feldman	J. Somerlinckx		Email re WAL-ZYR dispute	CI, WP
	04/14/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP
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	04/03/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/02/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	03/21/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
McNEIL 004931-38	04/25/08	J. Feldman	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, J. Weinberger	Email re WAL-ZYR dispute	CI, WP
	04/23/08	J. Weinberger	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, F. Feldman	Email re WAL-ZYR dispute	CI, WP
	04/23/08	J. Feldman	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell James Weinberger, Partner, Fross Zelnick Lerhman & Zissu, P.C.	Email re WAL-ZYR dispute	CI, WP

McNEIL'S PRIVILEGE LOG

Production Range	Date	From/Author	To	CCs	Description	Protection Claim
McNEIL 004931-38 (continued)	04/18/09	S. Somerlinckx	J. Feldman	David Emch, Senior Counsel, UCB B. Beuken	Email re WAL-ZYR dispute	CI, WP
	04/14/08	J. Feldman	J. Somerlinckx		Email re WAL-ZYR dispute	CI, WP
	04/14/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	04/11/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	04/03/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/02/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	03/21/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
McNEIL 004939-45	04/25/08	J. Somerlinckx	J. Feldman	D. Emch, B. Beuken, J. Swindell, J. Weinberger, A. Norris, R. Trainor	Email re WAL-ZYR dispute	CI, WP
	04/25/08	J. Feldman	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, J. Weinberger	Email re WAL-ZYR dispute	CI, WP
	04/23/08	J. Weinberger	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, F. Feldman	Email re WAL-ZYR dispute	CI, WP

McNEIL'S PRIVILEGE LOG

Production Range	Date	From/Author	To	CCs	Description	Protection Claim
McNEIL 004939-45 (continued)	04/23/08	J. Feldman	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell James Weinberger, Partner, Fross Zelnick Lerhman & Zissu, P.C.	Email re WAL-ZYR dispute	CI, WP
	04/18/09	S. Somerlinckx	J. Feldman	David Emch, Senior Counsel, UCB B. Beuken	Email re WAL-ZYR dispute	CI, WP
	04/14/08	J. Feldman	J. Somerlinckx		Email re WAL-ZYR dispute	CI, WP
	04/14/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	04/11/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	04/03/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/02/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	03/21/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
McNEIL 004946-52	04/25/08	J. Feldman	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, J. Weinberger, A. Norris, R. Trainor	Email re WAL-ZYR dispute	CI, WP
	04/25/08	J. Somerlinckx	J. Feldman	D. Emch, B. Beuken, J. Swindell, J. Weinberger, A. Norris, R. Trainor	Email re WAL-ZYR dispute	CI, WP

McNEIL’S PRIVILEGE LOG

Production Range	Date	From/Author	To	CCs	Description	Protection Claim
McNEIL 004946-52 (continued)	04/25/08	J. Feldman	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, J. Weinberger	Email re WAL-ZYR dispute	CI, WP
	04/23/08	J. Weinberger	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, F. Feldman	Email re WAL-ZYR dispute	CI, WP
	04/23/08	J. Feldman	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell James Weinberger, Partner, Fross Zelnick Lerhman & Zissu, P.C.	Email re WAL-ZYR dispute	CI, WP
	04/18/09	S. Somerlinckx	J. Feldman	David Emch, Senior Counsel, UCB B. Beuken	Email re WAL-ZYR dispute	CI, WP
	04/14/08	J. Feldman	J. Somerlinckx		Email re WAL-ZYR dispute	CI, WP
	04/14/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	04/11/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	04/03/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/02/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	03/21/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP

McNEIL’S PRIVILEGE LOG

Production Range	Date	From/Author	To	CCs	Description	Protection Claim
McNEIL 004953-59	04/25/08	R. Trainor	J. Feldman, J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, J. Weinberger, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/25/08	J. Feldman	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, J. Weinberger, A. Norris, R. Trainor	Email re WAL-ZYR dispute	CI, WP
	04/25/08	J. Somerlinckx	J. Feldman	D. Emch, B. Beuken, J. Swindell, J. Weinberger, A. Norris, R. Trainor	Email re WAL-ZYR dispute	CI, WP
	04/25/08	J. Feldman	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, J. Weinberger	Email re WAL-ZYR dispute	CI, WP
	04/23/08	J. Weinberger	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell, F. Feldman	Email re WAL-ZYR dispute	CI, WP
	04/23/08	J. Feldman	J. Somerlinckx	D. Emch, B. Beuken, J. Swindell James Weinberger, Partner, Fross Zelnick Lerhman & Zissu, P.C.	Email re WAL-ZYR dispute	CI, WP
	04/18/09	S. Somerlinckx	J. Feldman	David Emch, Senior Counsel, UCB B. Beuken	Email re WAL-ZYR dispute	CI, WP
	04/14/08	J. Feldman	J. Somerlinckx		Email re WAL-ZYR dispute	CI, WP
	04/14/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP

McNEIL'S PRIVILEGE LOG

Production Range	Date	From/Author	To	CCs	Description	Protection Claim
McNEIL 004953-59 (continued)	04/11/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, A. Norris, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	04/03/08	S. Somerlinckx	J. Feldman	B. Beuken, M. Kirczow, A. Norris	Email re WAL-ZYR dispute	CI, WP
	04/02/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
	03/21/08	J. Feldman	J. Somerlinckx	B. Beuken, M. Kirczow, J. Swindell	Email re WAL-ZYR dispute	CI, WP
McNEIL 004960-64	06/09/08	D. Emch	Hal Russo, Vice-President, Business Development, J&J		Email re WAL-ZYR dispute	CI, WP
McNEIL 004965	06/16/08	J. Feldman	D. Emch	J. Swindell, J. Weinberger John Crisan, General Counsel, J&J	Email re WAL-ZYR dispute	CI, WP
McNEIL 04966-67	06/15/08	J. Feldman	D. Emch		Memorandum re WAL-ZYR	CI, WP
McNEIL 04968	06/24/08	A. John P. Mancini, Partner, Mayer Brown LLP	J. Feldman	D. Emch, R. Trainor Gregory Frantz, Associate, Mayer Brown LLP	Email re WAL-ZYR dispute	CI, WP
McNEIL 04969	06/24/08	Mayer Brown LLP	J. Feldman	D. Emch	Memorandum re WAL-ZYR	CI, WP