ESTTA Tracking number: **ESTTA441868**
Filing date: **11/18/2011**

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

| | |
|---|---|
| Proceeding | 91199018 |
| Party | Plaintiff<br>Amylin Pharmaceuticals, Inc. |
| Correspondence Address | JENNIFER FRASER<br>CONNOLLY BOVE LODGE & HUTZ LLP<br>PO BOX 2207<br>WILMINGTON, DE 19801<br>UNITED STATES<br>trademarks@cblh.com |
| Submission | Motion for Sanctions |
| Filer's Name | Jennifer Fraser |
| Filer's e-mail | trademarks@cblh.com, jfraser@cblh.com, bstaley@cblh.com |
| Signature | /jf/ |
| Date | 11/18/2011 |
| Attachments | Second Motion to Compel and For Discovery Sanctions.pdf ( 27 pages )(897698 bytes ) |

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

| | | |
|---|---|---|
| In re: Application Serial No. 85/094,790 | : | |
| Filed: July 28, 2010 | : | |
| For the Mark: DR. AMLIN | : | Opposition No 91199018 |
| Published: March 8, 2011 | : | |
| Amylin Pharmaceuticals, Inc., | : | |
| Opposer, | : | |
| v. | : | Attorney Docket No.: 32377-1 |
| Amlin Health, LLC | : | |
| Applicant. | : | |

**OPPOSER'S SECOND MOTION TO COMPEL**
**AND FOR DISCOVERY SANCTIONS**

Amylin Pharmaceuticals, Inc. ("Opposer") respectfully moves for entry of judgment against Amlin Health, LLC ("Applicant") and any other relief the Board deems just as a sanction for Applicant's failure to comply with the Board's October 28, 2011 Order (the "Board Order") to provide Opposer with Applicant's required Rule 26 Initial Disclosures pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure. *See* FRCP 37(b)(2)(A)(vi). Such an order is appropriate because Applicant has failed to provide Opposer with its required disclosures pursuant to the Board Order and the Federal Rules. Although not required to do so for a Motion for Discovery Sanctions under TBMP Section 527.01(a), Opposer inquired as to when it could expect such disclosures from Applicant, along with other discovery responses ordered by the Board, and Applicant has also failed to provide information as to when the disclosures and

responses would be provided. As indicated by Opposer's inquiry, counsel for Opposer has made a good faith effort to resolve the issue with Applicant but Opposer has not received any indication as to when the disclosures and responses would be provided.

**BACKGROUND**

On March 16, 2011, Opposer filed a Notice of Opposition against Application No. 85/094,790 for the mark "DR. AMLIN & Design" for the goods "dietary and nutritional supplements; dietary supplements; vitamins." On the same day, the Board instituted this proceeding and set discovery to open on May 25, with Initial Disclosures due June 24, 2011. Then-counsel for Applicant and Opposer held the discovery conference, with Board participation, on May 23, 2011. During the conference, among other things, the parties agreed to send courtesy copies of documents by e-mail.

On June 24, 2011, Opposer served Applicant with Opposer's Rule 26 Initial Disclosures (by e-mail and mail). Opposer did not receive Applicant's Rule 26 Initial Disclosures. On June 29, Opposer served Applicant with Opposer's First Set of Interrogatories, First Set of Requests for Production, and First Set of Requests for Admission. Opposer still had not received Applicant's Initial Disclosures so, on July 7, Opposer sent an e-mail to Applicant and then-counsel for Applicant inquiring as the status of Applicant's Initial Disclosures.[1] Opposer advised that if they did not hear from Applicant (or then-counsel of record) as to the status of the Initial Disclosures, Opposer would have to raise the issue with the Board and file a Motion to Compel (e-mail attached at Exhibit A). On July 8, Opposer also sent a letter by first class mail to Applicant and then-counsel of record (attached at Exhibit B). Neither Applicant nor then-

[1] On July 6, Applicant's counsel filed a Motion to Withdraw as Counsel, providing the Board with Applicant's contact information.

counsel of record responded to Opposer's inquiries and Opposer did not receive Initial Disclosures from Applicant. On July 14, 2011, Opposer filed its first Motion to Compel Discovery.[2]

After the first deadline for the Initial Disclosures, on July 28, Applicant filed what appeared to be a 90-day extension of time to extend discovery deadlines; on August 24, it filed what appeared to be an amended motion to extend the discovery deadlines 180 days; and, on September 1, it filed what it claimed to be "Facts and Reasons" apparently to try to support a request for the 180-day extension of time.[3] Because these documents were wholly deficient and requested too long a period for an extension, Amylin Pharmaceuticals, Inc. opposed both requests on August 22 and August 30.

On October 28, the Board issued an Order granting Opposer's July 14 Motion to Compel and ordering Applicant to provide Opposer with its required Initial Disclosures within 15 days of the Order. Also, after explaining Applicant had not yet abused the privilege of extensions and acknowledging a desire to avoid other motions, the Board also granted Applicant 15 additional days to provide discovery responses indicating that Applicant should have been working on the required disclosures and responses (which were initially due June 24 and August 3, respectively). Accordingly, the new due date for the Initial Disclosures and Responses was November 12, 2011 (because this date fell on a Saturday, the responses could have been timely served on Monday, November 14).

---

[2] On August 12, Applicant requested the Board allow it to represent itself and the Board granted this request in the Board Order.

[3] In its August 5 Order, the Board indicated it did not know whether Applicant was seeking an Extension of Time to the Motion to Compel and thus, it appears Applicant never directly responded to the outstanding Motion.

Opposer did not receive Applicant's disclosures or discovery responses on November 14.[4] On November 15, Opposer sent an e-mail to Applicant inquiring as the status of Applicant's disclosures and discovery responses. Opposer advised that if they did not hear from Applicant as to the status of the disclosures and responses, Opposer would have to raise the issue yet again with the Board and file another Motion to Compel and for other relief (e-mail attached at Exhibit D).[5] To date, Opposer has not received Initial Disclosures or other discovery responses from Applicant. (Declaration attached at Exhibit G).

## I. OPPOSER'S MOTION TO COMPEL AND FOR DISCOVERY SANCTIONS SHOULD BE GRANTED

If a party fails to comply with an order of the Board, "the Board may make any appropriate order, including any of the orders provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure[.]" 37 CFR § 2.120(g)(1). One such order, particularly appropriate for failure to obey a discovery order, is a rendering of a default judgment against the disobedient party. *See* FRCP 37(b)(2)(A)(vi); *see also e.g., MHW Ltd. v. Simex, Aussenhandelgesellschaft Salvelsberg KG,* 59 USPQ2d 1477 (TTAB 2000). Because Applicant has failed to comply with the Board Order and provide Initial Disclosures to Opposer, Opposer requests the Board issue an order entering a default judgment against Applicant and sustaining the instant Opposition.

As detailed in Opposer's First Motion to Compel and subsequent Oppositions to Applicant's extension requests, Applicant appears incapable of meeting the deadlines set forth by

[4] On November 5, Applicant appears to have "replied" to the e-mail notification sent by the TTAB addressing the interlocutory attorney, despite the clear warning not to reply to the e-mail and that this "Mail Box is Not Monitored" (see e-mail attached at Exhibit C ).

[5] To this day, Applicant has not contacted Opposer's counsel to advise when, or if, the disclosures and responses would be provided (see Applicant's November 18 e-mail attached at Exhibit E and Opposer's November 19 e-mail attached at Exhibit F ).

the Board and following the Federal Rules and the Trademark Rules. Such conduct has now forced Opposer's counsel to file yet a second Motion as well as two prior Oppositions to papers that were not in proper form and sought to add significant further delay to the proceeding.

The Board has repeatedly warned Applicant that he might need assistance, either from counsel or someone to monitor his calendar and assist, if he cannot devote time and attention to this matter. Despite such warnings, Opposer again finds itself in the position of filing a paper with the Board to try to move this case forward. As suggested by Applicant's e-mail "reply" to the Board Order, Applicant claims to be out of the country again, but this excuse cannot be used over and over to expend the Board's time and resources and, as detailed in the prior Oppositions, this is not a sufficient excuse. The delay is unreasonable and within Applicant's control and Opposer should not have to file such papers to obtain information to which it is entitled and needlessly involve the Board to simply move this case along or find out if Applicant is interested in defending the application. Applicant's pattern of ignoring deadlines, then filing improper and incomplete papers is prejudicial to Opposer and inhibits its ability to resolve this matter promptly in a manner consistent with the prescribed rules, and also forces Opposer to incur fees and needlessly involve the Board. Accordingly, for violations of the first Order setting forth the deadline for Initial Disclosures and the Board Order ordering service of the Initial Disclosures and Discovery Responses, Opposer requests the Board sustain this Opposition.

Although Opposer does not believe it is necessary to allow Applicant another opportunity to miss a deadline, in the event the Board considers an alternative to entering default judgment, Opposer respectfully suggests the Board could once again issue another order compelling Applicant to provide its required Rule 26 Initial Disclosures and responses to the outstanding

discovery requests, and for the outstanding Requests for Admission for which no responses have been provided, Opposer requests the Board deem such requests admitted. Such an order is appropriate because Applicant has failed to provide Opposer with its required responses pursuant to the Board Order and has failed to respond to Opposer's request to comply with its obligations. *See* FRCP 36(a)(3); *see also* 37 CFR § 2.120(h). Counsel for Opposer has made a good faith effort to resolve the issue with Applicant but Opposer has not received any reply or indication as to when the responses would be provided.

The Board can also require Applicant to respond fully and without objection to Opposer's requests for production and interrogatories. *See No Fear, Inc. v. Ruede D. Rule,* 54 USPQ2d 1551, 1551 (TTAB 2000) (stating that "applicant was ordered [by the Board] to provide discovery responses without objection"). Additionally, under the Federal Rules, a "matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." FRCP 36(a)(3); *see also* 37 CFR § 2.120(h). Accordingly, if the Board declines to sustain the Opposition, Opposer requests the Board order Applicant to respond fully and without objection to Opposer's Requests For Production and Interrogatories and that Opposer's Requests for Admission be deemed admitted.

## II. CONCLUSION

Applicant has clearly disregarded both its duty under Rule 26 to make initial disclosures and the Board's October 28, 2011 Order to Compel the same. Because of this blatant disregard for the Board's rules and Order, Opposer requests the Board issue an order entering a default judgment against Applicant and sustaining the instant Opposition.

Alternatively, Opposer respectfully requests that the Board enter an order compelling Applicant to provide its required Rule 26 Initial Disclosures, Responses to Opposer's Requests for Production and Responses to Interrogatories, fully and without any objections, and to deem Opposer's Requests for Admission admitted.

Respectfully submitted,
Amylin Pharmaceuticals, Inc.

Date: November 18, 2011

/s/ Jennifer Fraser

Jennifer Fraser
Christina M. Hillson
Connolly Bove Lodge & Hutz LLP
The Nemours Building
1007 N. Orange Street
P.O. Box 2207
Wilmington, DE 19899
Attorneys for Opposer

4545349_1.DOC

## CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November 2011 a true and correct copy of the foregoing document was caused to be served on the following party as indicated:

**VIA E-MAIL AND FIRST CLASS MAIL**

Linus Zhang, M.D.
Amlin Health, LLC
451 Hungerford Drive
Suite 119-132
Rockville, MD 20850
amlinhealth@gmail.com

/s/ Jennifer Fraser
Jennifer Fraser

# EXHIBIT A

## Breanne M. Staley

**From:** Jennifer Fraser
**Sent:** Thursday, July 07, 2011 1:03 PM
**To:** 'mswyers@thetrademarkcompany.com'; 'amlinhealth@gmail.com'
**Cc:** Breanne M. Staley
**Subject:** Amylin Pharaceuticals, Inc. vs. Amlin Health, LLC

Dear Mr. Swyers and Mr. Zhang,

We are writing to inquire about the status of Applicant's Initial Disclosures which were due almost two weeks ago on June 24. Please advise when we can expect to receive Applicant's Initial Disclosures.

If we do not hear from you shortly, we will be forced to raise this issue with the Board and will file a Motion to Compel on July 14 unless we receive the required disclosures by that time.

Please contact us if you would like to discuss this matter.

Regards,

Jennifer Fraser
Connolly Bove Lodge & Hutz LLP
Suite 1100
1875 Eye Street NW
Washington, DC 20006
TEL (202) 756-4356 (direct)
FAX (202) 293-6229

# EXHIBIT B

CONNOLLY BOVE LODGE & HUTZ LLP
ATTORNEYS AT LAW

Jennifer Fraser
Partner
Bar Affiliations: Maryland and District of Columbia
TEL (202) 756-4356
FAX (302) 658-5614
EMAIL jfraser@cblh.com

WASHINGTON, DC
1875 Eye Street, NW
Suite 1100
Washington, DC 20006
TEL: (202) 331 7111
FAX: (202) 293 6229
WEB: www.cblh.com

July 8, 2011

**VIA 1st CLASS MAIL**

Dr. Linus Zhang
Amlin Health, LLC
451 Hungerford Drive
Suite 119-132
Rockville, MD 20850

Re: Amylin Pharmaceuticals, Inc. v. Amlin Health, LLC
Trademark Opposition No. 91199018 against DR. AMLIN & Design
Our Ref.: 32377-1

Dear Dr. Zhang:

Further to our July 7 e-mail, we are writing to inquire about the status of Applicant's Initial Disclosures which were due almost two weeks ago on June 24. Please advise when we can expect to receive Applicant's Initial Disclosures.

If we do not hear from you shortly, we will be forced to raise this issue with the Board and will file a Motion to Compel on July 14 unless we receive the required disclosures before then.

Please contact us if you would like to discuss this matter.

Very truly yours,

JENNIFER FRASER

JF/bms
cc: Matthew H. Swyers, Esq.
4387602_1.DOC

# EXHIBIT C

**Breanne M. Staley**

**From:** Linus Zhang [amlinhealth@gmail.com]
**Sent:** Saturday, November 05, 2011 12:48 AM
**To:** ESTTA@uspto.gov
**Cc:** Breanne M. Staley; Jennifer Fraser; usptoinfo@uspto.gov; Linus Zhang
**Subject:** Re: TTAB Order - Do Not Reply By E-mail. Mail Box Not Monitored - proceeding 91199018

**Attention to: CHERYL S GOODMAN and Jennifer Fraser**
(I have difficulty to locate Cheryl's email address from overseas, I just respond you this way).

**Hello,**
**I am out of the country at this point, so I have limited access to my email.**
**By the way, I have to request to HOLD the case process until I return in the end of November.**

**Thank you very much for your understanding.**

**Regards,**

**Linus Zhang, M.D.**
**Amlin Health LLC**

On Sat, Oct 29, 2011 at 3:16 AM, <ESTTA@uspto.gov> wrote:
UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board

Proceeding No. 91199018

10/28/2011

IMPORTANT NOTICE

The Trademark Trial and Appeal Board (TTAB) has issued an order in this proceeding. To see the order, click on the link below or paste the URL into the address box of your browser.

http://ttabvue.uspto.gov/ttabvue/v?pno=91199018&pty=OPP&eno=16

This order contains important information which you should review immediately. A response may be required and trial dates may have changed. In some cases, this will be the only notification of this order you

will receive. An e-mail copy of the order itself will not be sent.

If you are unable to view the order, call the TTAB for technical assistance at 571-272-8500. Do not use the reply button to respond to this message by e-mail.

---

The entire public file of this proceeding may be viewed at http://ttabvue.uspto.gov.

Papers in Board proceedings may be filed electronically with ESTTA at http://estta.uspto.gov.

Further information is available at the TTAB□s web page at http:// www.uspto.gov.

# EXHIBIT D

## Breanne M. Staley

**From:** Jennifer Fraser
**Sent:** Tuesday, November 15, 2011 12:53 PM
**To:** 'amlinhealth@gmail.com'
**Cc:** Breanne M. Staley
**Subject:** Amylin Pharmaceuticals, Inc. v. Amlin Health, LLC; Trademark Opp. No. 91199018

Dear Dr. Zhang,

According to the October 28 Trademark Trial and Appeal Board Order, Applicant's Initial Disclosures and responses to Opposer's discovery requests were due November 12 (because this date fell on a Saturday, the disclosures and responses could be timely served Monday, November 14). We have not yet received these documents. Please advise when we can expect to receive Applicant's Initial Disclosures and responses to discovery.

If we do not hear from you shortly, we will be forced to raise this issue yet again with the Board and will file a Motion to Compel and for other relief on November 17.

Please contact us if you would like to discuss this matter.

Regards,

Jennifer Fraser
Connolly Bove Lodge & Hutz LLP
Suite 1100
1875 Eye Street NW
Washington, DC 20006
TEL (202) 756-4356 (direct)
FAX (202) 293-6229

# EXHIBIT E

**Breanne M. Staley**

**From:** Linus Zhang [amlinhealth@gmail.com]
**Sent:** Friday, November 18, 2011 8:36 AM
**To:** Jennifer Fraser
**Cc:** Breanne M. Staley; cheryl.goodman@uspto.gov; amlinhealth@gmail.com
**Subject:** Re: Amylin Pharmaceuticals, Inc. v. Amlin Health, LLC; Trademark Opp. No. 91199018

Dear Jennifer:

I have been out of the country until the end of this month. I think you must have received the email I sent to you on 11/5/2011 (please see the email below). Let's discuss this matter after I return to the states.

Regards,

Linus Zhang, M.D.
Amlin Health, LLC

-----Original Message-----

From: amlinhealth@gmail.com
Sent: 11/5/2011 12:47:59 AM
To: ESTTA <ESTTA@USPTO.GOV>
Cc: "BStaley@cblh.com" <BStaley@cblh.com>; "JFraser@cblh.com" <JFraser@cblh.com>; USPTO Info <usptoInfo@uspto.gov>; Linus Zhang <amlinhealth@gmail.com>
Subject: Re: TTAB Order - Do Not Reply By E-mail. Mail Box Not Monitored - proceeding 91199018

Attention to: CHERYL S GOODMAN and Jennifer Fraser (I have difficulty to locate Cheryl's email address from overseas, I just respond you this way).
Hello, I am out of the country at this point, so I have limited access to my email. By the way, I have to request to HOLD the case process until I return in the end of November.

Thank you very much for your understanding.
Regards,
Linus Zhang, M.D.
Amlin Health LLC

On Nov 16, 2011, at 1:52 AM, Jennifer Fraser wrote:

Dear Dr. Zhang,

According to the October 28 Trademark Trial and Appeal Board Order, Applicant's Initial Disclosures and responses to Opposer's discovery requests were due November 12 (because this date fell on a Saturday, the disclosures and responses could be timely served Monday, November 14). We have not yet received these documents. Please advise when we can expect to receive Applicant's Initial Disclosures and responses to discovery.

If we do not hear from you shortly, we will be forced to raise this issue yet again with the Board and will file a Motion to Compel and for other relief on November 17.

Please contact us if you would like to discuss this matter.

Regards,

Jennifer Fraser
Connolly Bove Lodge & Hutz LLP
Suite 1100
1875 Eye Street NW
Washington, DC 20006
TEL (202) 756-4356 (direct)
FAX (202) 293-6229

This e-mail and any attachment is intended only for use by the addressee(s) and may contain privileged and confidential information. Please email or call 302-658-9141 to advise the sender of a transmission error and delete the message and any attachments and any printouts. Any tax advice contained in this communication is not intended and cannot be used to avoid penalties under the Internal Revenue Code or to promote, market or recommend to another party any transaction or matter addressed herein.

# EXHIBIT F

## Breanne M. Staley

**From:** Jennifer Fraser
**Sent:** Friday, November 18, 2011 10:34 AM
**To:** 'Linus Zhang'
**Cc:** Breanne M. Staley
**Subject:** RE: Amylin Pharmaceuticals, Inc. v. Amlin Health, LLC; Trademark Opp. No. 91199018

Dear Dr. Zhang,

We are in receipt of your e-mail dated November 18. Your e-mail does not indicate when we can expect to receive the outstanding Initial Disclosures and Discovery Responses that were due November 14, as requested in our November 15 e-mail. Our November 15 e-mail also indicated we would involve the Board if we did not hear from you about these documents by November 17. Because these documents are overdue and you have made no effort to contact us prior to the deadline about these documents, and/or indicate when they would be forthcoming, we are again forced to request the Board's assistance in resolving this issue and will do so today because you have only suggested you would like to "discuss" upon your return, and we do not know when that is or what you would like to discuss and, most importantly, when we will receive the overdue documents. Your e-mail below to the ESTTA address is unclear and similarly does not address these documents or the Board Order. These vague e-mails that fail to address the overdue documents and the deadlines, and do not provide any specific information, no less any concrete topic or request for discussion, still indicate that it will be necessary to involve the Board to try to move this matter forward in a timely manner consistent with the Trademark Rules and the Board Order.

If you would like to discuss this matter today, please contact me at the number below.

Regards,

Jennifer Fraser
Connolly Bove Lodge & Hutz LLP
Suite 1100
1875 Eye Street NW
Washington, DC 20006
TEL (202) 756-4356 (direct)
FAX (202) 293-6229

-----Original Message-----
From: Linus Zhang [mailto:amlinhealth@gmail.com]
Sent: Friday, November 18, 2011 8:36 AM
To: Jennifer Fraser
Cc: Breanne M. Staley; cheryl.goodman@uspto.gov; amlinhealth@gmail.com
Subject: Re: Amylin Pharmaceuticals, Inc. v. Amlin Health, LLC; Trademark Opp. No. 91199018

Dear Jennifer:

I have been out of the country until the end of this month. I think you must have received the email I sent to you on 11/5/2011 (please see the email below). Let's discuss this matter after I return to the states.

Regards,

Linus Zhang, M.D.
Amlin Health, LLC

-----Original Message-----

From: amlinhealth@gmail.com
Sent: 11/5/2011 12:47:59 AM

To: ESTTA <ESTTA@USPTO.GOV>
Cc: "BStaley@cblh.com" <BStaley@cblh.com>; "JFraser@cblh.com" <JFraser@cblh.com>; USPTO Info <usptoInfo@uspto.gov>; Linus Zhang <amlinhealth@gmail.com>
Subject: Re: TTAB Order - Do Not Reply By E-mail. Mail Box Not Monitored - proceeding 91199018

Attention to: CHERYL S GOODMAN and Jennifer Fraser (I have difficulty to locate Cheryl's email address from overseas, I just respond you this way).
Hello, I am out of the country at this point, so I have limited access to my email. By the way, I have to request to HOLD the case process until I return in the end of November.

Thank you very much for your understanding.
Regards,
Linus Zhang, M.D.
Amlin Health LLC

On Nov 16, 2011, at 1:52 AM, Jennifer Fraser wrote:

Dear Dr. Zhang,

According to the October 28 Trademark Trial and Appeal Board Order, Applicant's Initial Disclosures and responses to Opposer's discovery requests were due November 12 (because this date fell on a Saturday, the disclosures and responses could be timely served Monday, November 14). We have not yet received these documents. Please advise when we can expect to receive Applicant's Initial Disclosures and responses to discovery.

If we do not hear from you shortly, we will be forced to raise this issue yet again with the Board and will file a Motion to Compel and for other relief on November 17.

Please contact us if you would like to discuss this matter.

Regards,

Jennifer Fraser
Connolly Bove Lodge & Hutz LLP
Suite 1100
1875 Eye Street NW
Washington, DC 20006
TEL (202) 756-4356 (direct)
FAX (202) 293-6229

This e-mail and any attachment is intended only for use by the addressee(s) and may contain privileged and confidential information. Please email or call 302-658-9141 to advise the sender of a transmission error and delete the message and any attachments and any printouts. Any tax advice contained in this communication is not intended and cannot be used to avoid penalties under the Internal Revenue Code or to promote, market or recommend to another party any

transaction or matter addressed herein.

# EXHIBIT G

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

| | | |
|---|---|---|
| In re: Application Serial No. 85/094,790 | : | |
| Filed: July 28, 2010 | : | |
| For the Mark: DR. AMLIN | : | Opposition No 91199018 |
| Published: March 8, 2011 | : | |
| Amylin Pharmaceuticals, Inc., | : | |
| Opposer, | : | |
| v. | : | Attorney Docket No.: 32377-1 |
| Amlin Health, LLC | : | |
| Applicant. | : | |

**DECLARATION OF JENNIFER FRASER, ESQ.**
**IN SUPPORT OF MOTION FOR SANCTIONS**

I, Jennifer Fraser, submit this Declaration in Support of Amylin Pharmaceuticals, Inc.'s Motion for Sanctions and declare:

1. I am counsel for Amylin Pharmaceuticals, Inc. ("Opposer") in the above-identified Opposition proceeding. I am an attorney admitted to practice in the District of Columbia and Maryland.

2. On June 24, 2011, Opposer served Applicant with Opposer's Rule 26 Initial Disclosures (by e-mail and mail). Opposer did not receive Applicant's Rule 26 Initial Disclosures.

3. On July 14, 2011, Opposer filed a Motion to Compel Discovery.

4. On October 28, 2011, the Board issued an order granting Opposer's Motion to Compel and directing Applicant to serve its Initial Disclosures. The Board's Order allowed Applicant fifteen days from October 28 to provide these disclosures as required under the Federal Rules of Civil Procedure. Opposer did not receive any response from Applicant prior to the termination of this fifteen-day period. Opposer has still not received the Initial Disclosures from Applicant.

5. The October 28, 2011 Board Order also ordered Applicant to serve its responses to Opposer's outstanding discovery requests (i.e., Requests for Admission, Interrogatories and Requests for Production of Documents). The discovery requests were initially served on June 29, 2011 and were initially due August 3, 2011. To date, no responses to these requests have been received.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Respectfully submitted,

Dated: November 17, 2011

By: _____

Jennifer Fraser
CONNOLLY BOVE LODGE & HUTZ LLP
1007 North Orange Street
P.O. Box 2207
Wilmington, DE 19899
302-658-9141

4546812_1.DOC