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Filing date: **12/11/2006**

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

Proceeding	91163895
Party	Plaintiff VALENT U.S.A. CORPORATION VALENT U.S.A. CORPORATION 1333 NORTH CALIFORNIA BOULEVARD #600 WALNUT CREEK, CA 945968025
Correspondence Address	Raymond L. Geraldson, Jr. Pattishall, McAuliffe, Newbury, et al 311 S. Wacker Drive, Suite 5000 Chicago, IL 60606 UNITED STATES TDT@pattishall.com,RIG@pattishall.com,BLC@pattishall.com
Submission	Other Motions/Papers
Filer's Name	Teresa D. Tambolas
Filer's e-mail	TDT@pattishall.com,BLC@pattishall.com,RIG@pattishall.com
Signature	/TDT/
Date	12/11/2006
Attachments	blcdec.pdf (19 pages)(742283 bytes)

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

VALENT U.S.A. CORPORATION,)	
)	
Opposer,)	
)	Opposition No. 91163895
v.)	Opposition No. 91165551
)	Opposition No. 91165552
)	Opposition No. 91165560
VALEANT PHARMACEUTICALS)	Opposition No. 91165568
INTERNATIONAL,)	Opposition No. 91165569
)	
Applicant.)	

SECOND DECLARATION OF BRADLEY L. COHN

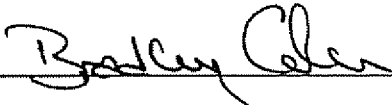
I, Bradley L. Cohn, pursuant to 28 U.S.C. § 1746, hereby declare the following:

1. I am an attorney with the law firm of Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, counsel for Opposer. This Declaration is submitted in support of Opposer's Surreply in Opposition to Applicant's Motion to Compel.
2. I have personal knowledge of the facts stated herein, and could, if called as a witness, testify competently as to them.
3. On November 8, 2006, I sent an e-mail to Applicant's counsel, stating that I understood that the parties' litigation efforts would be suspended while the parties discussed settlement. I also asked Applicant's counsel to advise if that was not his understanding, or if settlement negotiations had ended, so that the parties could work on a mutually agreeable deposition schedule when Opposer's lead counsel returned to the office. Attached hereto as Exhibit 1 is a true and correct copy of the e-mail I sent to Applicant's counsel on November 8, 2006.
4. Attached hereto as Exhibit 2 is a true and correct copy of an e-mail I received from Applicant's counsel on November 15, 2006.

5. Attached hereto as Exhibit 3 is a true and correct copy of an e-mail I sent to Applicant's counsel on November 15, 2006.
6. Attached hereto as Exhibit 4 is a true and correct copy of a second e-mail I sent to Applicant's counsel on November 15, 2006.
7. Opposer has repeatedly told Applicant that Opposer will offer 30(b)(6) witnesses for every avenue of inquiry that Applicant wishes to pursue. Representative written communications include Exhibits 1 and 2 of the Declaration of Bradley L. Cohn, filed on November 4, 2006, and submitted with Opposer's Response brief.
8. Attached hereto as Exhibit 5 is a true and correct copy of an e-mail I sent to Applicant's counsel on August 14, 2006.

I hereby certify under penalty of perjury that the foregoing is true and correct.

Executed in Chicago, Illinois, this 11th day of December, 2006.



Bradley L. Cohn

Exhibit

1

Teresa Tambolas - RE: Valent U.S.A. v. Valeant Pharmaceuticals International

From: Bradley Cohn
To: Geraldson, Raymond; Norberg, Jeffrey
Date: 11/8/2006 3:17:21 PM
Subject: RE: Valent U.S.A. v. Valeant Pharmaceuticals International
CC: Cullum, Janet; Peck, Anne; Tambolas, Teresa

Dear Jeff:

We understand that Robin Demouth and Eileen Pruette agreed that the parties' litigation efforts would be suspended while the parties discussed settlement. Your continued requests for deposition dates while the parties are negotiating reveals a disconnect between you and your client.

If this is not your understanding, or if settlement negotiations have ended, please let us know, and when Ray returns to the office, we can work on an agreeable schedule. If we go forward with depositions, the schedule must include dates for Ms. Pruette, Mr. Arendt, Mr. Cole, and the completion of Mr. Tyson's deposition, in addition to third parties.

We believe your contemplated reply is inaccurate and not productive.

Sincerely,
Bradley

Bradley L. Cohn
Pattishall, McAuliffe, Newbury,
Hilliard & Geraldson LLP
311 South Wacker Drive, Suite 5000
Chicago, Illinois 60606
(312) 554-8000 Main
(312) 554-7953 Direct
(312) 554-8015 Fax
bcohn@pattishall.com
www.pattishall.com

>>> "Norberg, Jeffrey" <jnorberg@cooley.com> 11/8/2006 2:10 PM >>>

Ray,

I note that you still have yet to provide any response to our numerous requests for deposition dates. In addition to the requests outlined in our motion to compel, Janet asked you for dates on September 20. When you failed to respond to her request, I sent similar requests on October 2, October 31 and November 2. To date, you have not provided any response to these e-mails. We intend to detail your continuing efforts to obstruct discovery in our reply to the motion to compel.

Sincerely,

Jeff

From: Norberg, Jeffrey
Sent: Thursday, November 02, 2006 3:28 PM
To: 'Raymond Geraldson'
Cc: Cullum, Janet; Peck, Anne; 'Bradley Cohn'; 'Teresa Tambolas'
Subject: RE: Valent U.S.A. v. Valeant Pharmaceuticals International

Ray,

We still have yet to receive a substantive response from you on my requests for deposition dates for Anita Dale, Kelli Woodwick, Bruce Kirkpatrick, Jeff Johnson, Mariola Kopcinski, Trevor Thorley, Mike Donaldson and Ben Bristol. As we outline in our motion to compel, we have made numerous requests for these depositions over the course of more than a year. If we do not receive dates from you by the close of business tomorrow, we will consider your failure to provide dates as an additional refusal to produce the deponents and so note in our reply to the motion to compel.

Sincerely,

Jeff Norberg

From: Norberg, Jeffrey
Sent: Tuesday, October 31, 2006 9:38 AM
To: Raymond Geraldson
Cc: Cullum, Janet; Peck, Anne; 'Bradley Cohn'; Teresa Tambolas
Subject: Valent U.S.A. v. Valeant Pharmaceuticals International

Ray,

We understand that the parties will be having further conversations this week in an effort to resolve the wide gap between the two versions of the proposed settlement. To facilitate this, we believe it makes sense for the parties to make an effort to avoid incurring additional legal expenses while the settlement discussions are ongoing. As you know, we have immovable deadlines approaching in the Australia opposition proceeding and you have a Friday deadline to respond to our motion to compel. We are disappointed that you have not responded to Anne Peck's offer to avoid the expenses both parties will incur if required to meet both of these deadlines.

While we are trying to be optimistic about the prospect of settlement, we are also very cognizant that further delays in discovery will prejudice our client if the matter does not settle. Accordingly, we feel we need to set the long awaited depositions of Anita Dale, Kelli Woodwick, Bruce Kirkpatrick, Jeff Johnson, Mariola Kopcinski, Trevor Thorley, Mike Donaldson and Ben Bristol. Please provide deposition dates for each of these individuals in the next three weeks.

Sincerely,

Jeffrey T. Norberg

Cooley Godward Kronish LLP . Five Palo Alto Square
3000 El Camino Real . Palo Alto, CA 94306-2155
Direct: 650/843-5889 . Fax: 650/857-0663
Bio: www.cooley.com/jnorberg . Practice: www.cooley.com/litigation

Exhibit

2

Teresa Tambolas - RE: Valent U.S.A. v. Valeant Pharmaceuticals International

From: "Norberg, Jeffrey" <jnorberg@cooley.com>
To: "Bradley Cohn" <BLC@pattishall.com>, "Raymond Geraldson" <RIG@pattishall.com>
Date: 11/15/2006 11:16:37 AM
Subject: RE: Valent U.S.A. v. Valeant Pharmaceuticals International
CC: "Cullum, Janet" <jcullum@cooley.com>, "Peck, Anne" <PECKAH@cooley.com>, "Teresa Tambolas" <TDT@pattishall.com>

Brad,

The parties did not agree to suspend all litigation efforts during settlement discussions. Rather, Eileen agreed to work with Robin to extend deadlines so long as progress was being made during the settlement talks. There is currently a wide gap between the two versions of the settlement agreement that have been circulated. Moreover, additional delays in discovery will be prejudicial to Applicant if the case does not settle. It is therefore critical that we get the long awaited depositions scheduled now so they can proceed without delay if the settlement discussions fail. I explained all of this more than two weeks ago in my e-mail to Ray below. Opposer has nonetheless chosen to continue to ignore our numerous requests for deposition dates. Accordingly, we have little choice but to seek the Board's assistance.

Sincerely,

Jeff

From: Bradley Cohn [mailto:BLC@pattishall.com]
Sent: Wednesday, November 08, 2006 1:17 PM
To: Norberg, Jeffrey; Raymond Geraldson
Cc: Cullum, Janet; Peck, Anne; Teresa Tambolas
Subject: RE: Valent U.S.A. v. Valeant Pharmaceuticals International

Dear Jeff:

We understand that Robin Demouth and Eileen Pruette agreed that the parties' litigation efforts would be suspended while the parties discussed settlement. Your continued requests for deposition dates while the parties are negotiating reveals a disconnect between you and your client.

If this is not your understanding, or if settlement negotiations have ended, please let us know, and when Ray returns to the office, we can work on an agreeable schedule. If we go forward with depositions, the schedule must include dates for Ms. Pruette, Mr. Arendt, Mr. Cole, and the completion of Mr. Tyson's deposition, in addition to third parties.

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Subject: Valent U.S.A. v. Valeant Pharmaceuticals International

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Sincerely,

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Cooley Godward Kronish LLP . Five Palo Alto Square

3000 El Camino Real . Palo Alto, CA 94306-2155

Direct: 650/843-5889 . Fax: 650/857-0663

Bio: www.cooley.com/jnorberg . Practice: www.cooley.com/litigation

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Exhibit
3

Teresa Tambolas - RE: Valent U.S.A. v. Valeant Pharmaceuticals International

From: Bradley Cohn
To: Geraldson, Raymond; Norberg, Jeffrey
Date: 11/15/2006 4:54:54 PM
Subject: RE: Valent U.S.A. v. Valeant Pharmaceuticals International
CC: Cullum, Janet; Peck, Anne; Tambolas, Teresa

Dear Jeff:

As you may know, Ray and Anne spoke about the drafts, and Valeant's concerns. I understand that Robin has or will soon be sending Eileen a revised settlement agreement attempting to address the perceived concerns. With respect to deposition scheduling, delay is now inevitable because your motion suspended the case. As to "ignoring" your requests, I will leave that to the Board to decide; in this regard, please see my e-mail of last week.

Sincerely,
Bradley

>>> "Norberg, Jeffrey" <jnorberg@cooley.com> 11/15/2006 11:15 AM >>>
Brad,

The parties did not agree to suspend all litigation efforts during settlement discussions. Rather, Eileen agreed to work with Robin to extend deadlines so long as progress was being made during the settlement talks. There is currently a wide gap between the two versions of the settlement agreement that have been circulated. Moreover, additional delays in discovery will be prejudicial to Applicant if the case does not settle. It is therefore critical that we get the long awaited depositions scheduled now so they can proceed without delay if the settlement discussions fail. I explained all of this more than two weeks ago in my e-mail to Ray below. Opposer has nonetheless chosen to continue to ignore our numerous requests for deposition dates. Accordingly, we have little choice but to seek the Board's assistance.

Sincerely,

Jeff

From: Bradley Cohn [mailto:BLC@pattishall.com]
Sent: Wednesday, November 08, 2006 1:17 PM
To: Norberg, Jeffrey; Raymond Geraldson
Cc: Cullum, Janet; Peck, Anne; Teresa Tambolas
Subject: RE: Valent U.S.A. v. Valeant Pharmaceuticals International

Dear Jeff:

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If this is not your understanding, or if settlement negotiations have ended, please let us know, and when Ray returns to the office, we can work on an agreeable schedule. If we go forward with depositions, the schedule must include dates for Ms. Pruette, Mr. Arendt, Mr. Cole, and the completion of Mr. Tyson's deposition, in addition to third parties.

We believe your contemplated reply is inaccurate and not productive.

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(312) 554-7953 Direct
(312) 554-8015 Fax
bcohn@pattishall.com
www.pattishall.com

Exhibit

4

Teresa Tambolas - RE: Valent U.S.A. v. Valeant Pharmaceuticals International

From: Bradley Cohn
To: Norberg, Jeffrey
Date: 11/15/2006 6:31:31 PM
Subject: RE: Valent U.S.A. v. Valeant Pharmaceuticals International

Dear Jeff:

I am familiar with the Board's Rules. Where the disconnect arises is in your failure to address the circumstances of this case. I understand that the parties' litigation efforts were suspended after Eileen invited Robin to discuss settlement, which they did. Presumably that is the reason you did not pursue the depositions of Valent's witnesses that were scheduled for the week of October 16.

As to "refuse" and "only conclude", I will let the Board decide; again, I refer you to my e-mail of last week.

Sincerely,
Bradley

>>> "Norberg, Jeffrey" <jnorberg@cooley.com> 11/15/2006 5:55 PM >>>
Brad,

Our motion to compel does not excuse Opposer from producing its witnesses because those depositions were noticed long before the motion was filed. TBMP 501.03(a) states that "neither the filing of a motion to compel nor the Board's resulting suspension order tolls the time for parties to respond to any outstanding discovery requests which had been served prior to the filing of the motion to compel, nor does it excuse a party's appearance at any discovery deposition which had been duly noticed prior to the filing of the motion to compel." All of the depositions we are seeking were noticed prior to the motion to compel. Notwithstanding our repeated requests and your unambiguous obligation to produce witnesses for deposition, you *still* refuse to provide any deposition dates. Given this, we can only conclude that you do not intend to produce your witnesses absent an order from the Board.

Sincerely,

Jeff

From: Bradley Cohn [mailto:BLC@pattishall.com]
Sent: Wednesday, November 15, 2006 2:55 PM
To: Norberg, Jeffrey; Raymond Geraldson
Cc: Cullum, Janet; Peck, Anne; Teresa Tambolas
Subject: RE: Valent U.S.A. v. Valeant Pharmaceuticals International

Dear Jeff:

As you may know, Ray and Anne spoke about the drafts, and Valeant's concerns. I understand that Robin has or will soon be sending Eileen a revised settlement agreement attempting to address the perceived concerns. With respect to deposition scheduling, delay is now inevitable because your motion suspended the case. As to "ignoring" your requests, I will leave that to the Board to decide; in this regard, please see my e-mail of last week.

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Bradley

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Exhibit

5

Teresa Tambolas - RE: Valent / Valeant (Deposition scheduling)

From: Bradley Cohn
To: Norberg, Jeffrey
Date: 8/14/2006 5:36:13 PM
Subject: RE: Valent / Valeant (Deposition scheduling)
CC: Cullum, Janet; Geraldson, Raymond; Tambolas, Teresa

Dear Jeff:

What days would you like for the week of October 16?

On September 20-22, Ray and I are defending depositions in another case, so while we could squeeze Ms. Woodwick in that Tuesday (Sept. 19) to help move things along, we would not have time that week to do all the Valeant depositions.

Sincerely,
Bradley

>>> "Norberg, Jeffrey" <jnorberg@cooley.com> 8/14/2006 5:08 PM >>>

Brad,

I will have to get back to you on the other issues, but the week of October 16th will work for the Kirkpatrick and Rogers depositions. We would also like to take Mr. Johnson's deposition during that week. We will be noticing Mr. Donaldson's deposition for that week, as well.

For the Valeant depositions, can you do those the week of September 19th? We still need to check with the client on availability, but it would seem to make sense to try to do them that week since Ms. Woodwick is available in Orange County on the 19th.

Sincerely,

Jeff

From: Bradley Cohn [mailto:BLC@pattishall.com]
Sent: Monday, August 14, 2006 1:42 PM
To: Norberg, Jeffrey
Cc: Raymond Geraldson; Teresa Tambolas
Subject: RE: Valent / Valeant (Deposition scheduling)

Dear Jeff:

Thank you for the e-mail. Teresa is out of the office today, so we will have to follow up with you on the status of the documents when she returns. With regard to depositions the weeks of October 16, we will check on availability and let you know as soon as we can. Also, you indicated that you could not depose Jeff Johnson in September - are you interested in deposing him during the week of October 16? The week of October 9 is unavailable, because Ray is out of town for a mediation in a federal case.

With regard to Ms. Woodwick, we know the week of September 25 is unavailable. If you want to depose her the same week we are deposing Valeant witnesses, we will wait to hear from you on the availability of the Valeant witnesses, and then see whether Ms. Woodwick is also available then.

With respect to Eileen Pruette, she is Valeant's designee for certain Rule 30(b)(6) topics, and we are entitled to examine her on those. Non-privileged information would include the fact of any third-party uses or disputes, or conversations she may have had with persons outside Valeant on topics implicated in this proceeding. Similarly, Dugal Sickert, Valent's in-house attorney, is Valent's designee on certain topics. You yourselves will be deposing Mr. Sickert in two weeks. Accordingly, please

confirm whether Ms. Pruette is available during the same week in September as the other Valeant witnesses.

As for Messrs. Kirkpatrick and Rogers, as I indicated in my e-mail message to this morning (see below), we are waiting to hear from you on your availability in October. That will save time on arranging witness schedules for dates on which you are not even available. Both Messrs. Kirkpatrick and Rogers are available in the week of October 16.

With respect to Messrs. Donaldson and Thorley, as we indicated during our conversation this past Friday, we are not able to confirm them until we first meet with General Counsel, which will not be until the week of August 21. In the meanwhile, we are trying to track down Mr. Bristol's current residence, and will let you know what we find out.

Finally, given the party and third-party depositions that still need to be scheduled and finished, it seems the discovery period will need to be extended out for 90 days, perhaps for a final time. Please confirm, and we will file the necessary motion with the Board.

Sincerely,
Bradley