

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

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4 MYLAN PHARMACEUTICALS INC.,
5 Petitioner,

6 vs

7 NOVO NORDISK A/S,
8 Patent Owner,

9 -----

10 Case IPR2023-00724

11 U.S. Patent No. 10,335,462

12 -----

13 Conference Call

14 Monday, July 22, 2024

15 12:14 p.m. CST

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18
19 Job No.: 546358

20 Pages: 1 - 65

21 Reported by: THERESA A. VORKAPIC,

22 CSR, RMR, CRR, RPR

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Conference call, pursuant to agreement before
Theresa A. Vorkapic, a Certified Shorthand
Reporter, Registered Merit Reporter, Certified
Realtime Reporter, Registered Professional
Reporter and a Notary Public in and for the State
of Illinois.

1 A P P E A R A N C E S

2 ON BEHALF OF THE PETITIONER:

3 DAVID L. ANSTAETT, ESQUIRE

4 PERKINS COIE LLP

5 33 East Main Street, Suite 201

6 Madison, Wisconsin 53703-3095

7 608-663-5408

8 danstaett@perkinscoie.com

9 ON BEHALF OF THE PATENT OWNER:

10 J. STEVEN BAUGHMAN, ESQUIRE

11 GROOMBRIDGE WU BAUGHMAN & STONE LLP

12 801 17th Street, NW, Suite 1050

13 Washington, DC 20006

14 202-505-5832

15 steve.baughman@groombridgewu.com

16 APPEARED ON BEHALF OF SUN PHARMA:

17 BRIAN SODIKOFF, ESQUIRE

18 KATTEN MUCHIN ROSENMAN LLP

19 525 West Monroe Street

20 Chicago, Illinois 60661-3693

21 312-902-5462

22 brian.sodikoff@katten.com

1 A P P E A R A N C E S (Continued)
2 APPEARED ON BEHALF OF DR. REDDY'S
3 LABORATORIES:
4 SCOTT BORDER, ESQUIRE
5 WINSTON & STRAWN, LLP
6 1901 L Street NW
7 Washington, DC 20036
8 202-282-5054
9 sborder@winston.com

10
11
12
13
14
15
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1 P R O C E E D I N G S

2 (Proceedings were had which are not herein
3 transcribed.)

4 MR. BAUGHMAN: I'd like to go on to the
5 relief we're seeking if that's agreeable.

6 THE CHAIRPERSON: Yes, that would.

7 MR. BAUGHMAN: So we're not seeking to
8 have the board enforce Mylan's stipulation. It's
9 not purpose of this call. And if Mylan continues,
10 I expect we'll see litigation counsel do that at
11 the District Court.

12 What we're seeking permission for is a
13 motion for sanctions for Mylan's ongoing
14 violations, and those are sanctions the District
15 Court can't give us. The standard for sanctions
16 under PQA and OpenSky, I'm happy to give the cites
17 for those, it's IPR2021-1229, Paper 102 that's
18 precedential, at Pages 36 to 37 and OpenSky is
19 IPR2021-1064 Paper 102 at 26. It's a three-part
20 test. The first is whether the parties performed
21 conduct warranting sanctions, and PQA says that
22 the fact-based inquiry about whether conduct

1 demonstrates an abuse of process or conduct that
2 otherwise thwarts the supposed advances of --
3 (inaudible).

4 The second test is whether the conduct
5 could cause harm, and that could be to another
6 party, to the proceedings of the office, and the
7 third is whether potential sanctions are
8 proportionate to the harm.

9 We're prepared to make an appropriate
10 showing on all three of those factors. I can
11 pause now, your Honor, or go forward with that.

12 THE CHAIRPERSON: Let me ask you a quick
13 questions on the factual background as far as how
14 you see Mylan's participation.

15 MR. BAUGHMAN: Yes, your Honor.

16 THE CHAIRPERSON: Mylan is part of the
17 expert reports, is that what you're seeing, is
18 their experts that now are working for third party
19 that may or may not do something for the
20 stipulation, sorry, is that like -- how are you
21 seeing your active participation?

22 MR. BAUGHMAN: Sure. So there are three

1 experts your Honor, Drs. Dalby, Bantle and Jusko
2 that in March submitted reports that each of them
3 says they've been retained by Mylan and then they
4 list the other defendant groups as well, so there
5 are five defendant groups, but each of them in the
6 first paragraph of their report says been retained
7 on Mylan and X-Y-Z and then collectively there's
8 the defendants.

9 So we know that Mylan had continued to
10 engage these experts, but then shared them with
11 the other defendants and then Mylan served the
12 reports.

13 THE CHAIRPERSON: Okay. Thank you.

14 MR. HERMAN: And my understanding is that,
15 again, I haven't seen them, that some number of
16 experts last week did something similar with Mylan
17 saying, well, it won't pursue the grounds that are
18 overlapping by motion or trial, but obviously it's
19 still going full bore on expert discovery and
20 everything else. That's sort of the quarterback
21 that we see of the other defendants.

22 THE CHAIRPERSON: And how do you

1 understand, and I will certainly turn to Mylan to
2 get their position, but as you understand Mylan's
3 position is if the law changes, we want to make
4 sure that we have a record that we can run with
5 that will not pursue motions for the grounds at
6 trial if there's not a change in the law.

7 MR. BAUGHMAN: My understanding is -- I'm
8 sorry, your Honor.

9 THE CHAIRPERSON: No, no, go ahead.

10 MR. BAUGHMAN: My understanding is they're
11 saying, look, even though we promise not to pursue
12 these things, we have to pursue them to preserve
13 them and essentially, you know, I'm going to break
14 my promise in case the law later changes and says
15 I'm not bound by it.

16 And I guess I would add if they really
17 thought they were preserving something, they could
18 have done that by writing us a letter or sending
19 us a separate conditional opinion in case the law
20 changes. They didn't need to share their experts
21 with the other defendants, coordinate with them
22 and then serve up the reports essentially coaching

1 them to do what Mylan is not allowed to do.

2 THE CHAIRPERSON: Okay.

3 MR. BAUGHMAN: If you like, I can go
4 through the three factors, your Honor, or I can
5 pause in case you want to talk with the other
6 parties.

7 THE CHAIRPERSON: Yes, let me turn to
8 Mylan and get their response to the factual
9 scenario so we understand factually what's going
10 on.

11 MR. ANSTAETT: Thank you, your Honor.

12 And I do want to take some time to respond
13 and answer any questions that the board has
14 because I think patent owner's question here is
15 entirely unjustified and baseless on a variety of
16 different grounds.

17 I'll start by giving a high-level overview
18 of the points I'd like to cover and if not
19 necessarily in this particular order, but I'm, of
20 course, happy to, you know, say as much or as
21 little as the board wants, but first sanctions
22 here would literally be unprecedented and the

1 board has denied permission in the past to file
2 such a motion.

3 Second, the District Court is where issues
4 like this should be raised as previous board
5 decisions had pointed out.

6 Third, the specific conduct that patent
7 owner is complaining about is not inconsistent at
8 all with our stipulations.

9 And fourth, today's accusations are a
10 virtual word-for-word retread of issues that
11 patent owner already raised in which the board
12 rejected when the board instituted and joined
13 Sun's IPR for this one.

14 I'll start with again to be clear what our
15 Sand Revolution stipulation was. It was that
16 petitioner will not pursue in the District Court
17 any instituted grounds against the originally
18 issued claims unless a change in law otherwise
19 permits. And we have told patent owner's IPR
20 counsel and its District Court counsel that unless
21 the law changes, we will not pursue by motion or
22 at trial in the District Court litigation any

1 grounds of invalidity instituted in this IPR
2 against the originally issued claims of the '462
3 patent.

4 Now, with respect to patent owner's
5 complaint about the sharing of experts, we are
6 aware of no authority that prohibit with respect
7 to the Sand Revolution stipulation or otherwise
8 the sharing of experts in District Court
9 litigation. That is something that the District
10 Court both expects and demands when there is a
11 large joint defense group as is the case here
12 because it is not going to hear from multiple
13 experts on the same or related issues at trial.
14 Nor are we aware of any prohibition on splitting
15 expert bills amongst the joint defendants,
16 especially when the experts are addressing both
17 instituted and non-instituted invalidity grounds
18 in their reports and nor to our knowledge is there
19 any prohibition on participating in expert
20 deposition preparation.

21 I think it's important to realize here
22 that because Mylan filed a Sand Revolution

1 stipulation, it can assert Section 102 and 103
2 grounds in the District Court that differ from
3 differ from the instituted grounds, and those
4 additional grounds as well as Section 112 grounds
5 are contained in the expert report about that the
6 patent owner complains and many of those ground
7 involve the exact same prior art references that
8 are in the instituted grounds.

9 Now, add to the fact that the instituted
10 grounds are also in those expert reports, patent
11 owner has never explained despite our repeated
12 request how it is prejudiced by the inclusion of
13 grounds in District Court expert reports that are
14 publicly available and can be pursued by the
15 District Court defendants who aren't involved in
16 these IPRs and aren't subject to any kind of
17 estoppel. After all, the joint petitioners here
18 simply copied the Mylan petition in the Mylan
19 expert reports and there's no reason that parties
20 in the District Court who are not involved in the
21 IPR cannot do the same exact thing.

22 Sand Revolution -- sure.

1 THE CHAIRPERSON: So can you represent
2 that Mylan is not involved in, you know, dealing
3 with those grounds, strategizing over the grounds
4 that are involved in the IPR or are you just --
5 it's convenient, of course, to put it in one
6 report that Mylan is not involved, can you
7 represent that, that you're not involved in
8 pursuing those grounds in those expert reports?

9 MR. ANSTAETT: I'm reluctant to -- I'm
10 reluctant to say anything on that score,
11 your Honor, because as we've pointed out to patent
12 owner with respect to their request for discovery
13 in the communications with the experts, that would
14 raise work product protection issues under Rule
15 26(b)(4), and invite waiver of those protections,
16 but I think the point is this with respect to
17 that, our stipulation was specifically conditioned
18 on the fact that there would not be a change in
19 law with respect to this, and there are challenges
20 to how -- whether the board has the authority to
21 deny institution on those grounds and procedurally
22 whether or not the rules were promulgated in the

1 right way. And as we've pointed out, if we -- if
2 there is a change in law and we can pursue those
3 grounds, they have to be preserved in expert
4 reports, but the fact that they are in expert
5 report doesn't ask the District Court to do
6 anything with that. The District Court doesn't --
7 as opposed to the board, the District Court
8 doesn't receive expert reports. It doesn't read
9 expert reports because they're not evidence. The
10 only way that the District Court is ever going to
11 consider these grounds is if they are presented
12 via a dispositive motion or at trial and, of
13 course, at trial there are defendants in the joint
14 defense group in the District Court who are not
15 subject to any kind of estoppel and they are aware
16 because they are all in the public domain, all
17 these expert reports are in the public domain for
18 anybody to use. And so we don't view what we are
19 doing here is inconsistent in any way with our
20 stipulation. We are preserving argument in case
21 there is a change in the law, but we have
22 committed to both patent owner's counsel here and

1 the District Court counsel that we are not going
2 to pursue those by a motion or at trial unless the
3 law on this changes.

4 I think that this is not the first time
5 that that issue -- that this issue has been raised
6 either in this IPR or in numerous other IPRs that
7 we have cited the to patent owner's counsel in the
8 meet and confer process here. And I think it's
9 particularly important to note what has already
10 happened in this IPR.

11 So patent owner made all these same
12 arguments that we've heard today with the
13 institution and joinder of the Sun IPR. That's
14 IPR 2024-00107. Patent owner argued there that
15 Sundays Sand Revolution stipulation "should carry
16 no weight because, e.g., Sidus and Rio who are
17 additional District Court defendants who are not
18 involved in the IPRs will still be able to assert
19 those same grounds in the parallel litigation to
20 which petitioner and Mylan remain parties. That
21 was in IPR 2024-107 Paper 10.

22 When Sun replaced its Sand Revolution

1 stipulation with a broader Sotera stipulation,
2 patent owner argued that that was also
3 insufficient because Sun, "shares invalidity
4 experts and presumably the experts' expenses in
5 litigation with parties who have not agreed to any
6 estoppel."

7 Patent owner also argued that Sun's Sotera
8 stipulation should be disregarded because Sun
9 might "still pursue the stipulated grounds behind
10 the scenes in the District Court by, e.g., paying
11 for experts, participating in expert reports,
12 deposition preparation, et cetera, in connection
13 with any of the stipulated grounds."

14 And then in instituting the Sun IPR on
15 May 8 of 2024, the board noted all of these
16 arguments that patent owner made and stated that
17 the director's guidance "does not condition or
18 otherwise qualify the effect of a Sotera
19 stipulation on our exercise of discretion to deny
20 the petition based on any remaining defendants in
21 the parallel litigation that are not subject to
22 the stipulation or any alleged behind-the-scenes

1 participation by petitioner such as paying for
2 experts, participating in expert reports or
3 deposition preparation in connection with any of
4 the stipulated grounds." And the board said
5 petitioner has filed such a stipulation and,
6 therefore, we will not exercise our discretion to
7 deny the petition in that IPR.

8 And then about two weeks after the board
9 issued that decision, patent owner sent us its
10 sanctions motion. So essentially the board
11 rejected patent owner's argument that I just
12 described in instituting the Sun IPR and then
13 patent owner turned around and recycled those
14 exact same arguments in a sanctions motion against
15 us, and we think that's improper.

16 Now, I mentioned other cases in which the
17 board has considered this issue and how sanctions
18 here would be unprecedented. There is no case of
19 which we are aware in which the board has ordered
20 sanctions for the alleged violations of the Sand
21 Revolution or Sotera stipulation. So the
22 contrary, the board has repeatedly denied requests

1 to file sanctions motions or motions for
2 institution rehearing for the alleged violation of
3 a Sotera or Sand Revolution stipulation and the
4 board repeatedly has found that the scope and
5 alleged violation of such stipulations are for the
6 District Court to evaluate because that's where
7 they are to be enforced, and I'm happen to cite
8 the various case that our research located in
9 which the board has taken that position.

10 I would also note, your Honor, that this
11 motion, this proposed motion, is incredibly
12 untimely. The District Court expert reports about
13 which patent owner complains were served on March
14 19 of 2024 as my friend on the other side said.
15 Invalidity contentions in the District Court were
16 served even earlier, most recently in January of
17 2024, but the first complaint we ever heard from
18 patent owner about an alleged stipulation
19 violation was when it served us this draft
20 sanctions motion on June 10. The that was three
21 months after the service of the District Court
22 expert reports about which they are complaining

1 and six months after the most recent invalidity
2 contentions, and patent owner never once picked up
3 the phone be it in January or in March to confer
4 on this dispute. Instead, they waited for months
5 to raise any objections, waited until after the
6 board had refuse to deny institution of the Sun
7 petition on the same bases and waited for a time
8 when the culmination of these proceedings is
9 looming and patent owner's District Court counsel
10 by contrast had never raised any objections to our
11 contentions or expert reports until July 9th, less
12 than two weeks ago, mand it did so only after we
13 pointed out to patent owner's IPR counsel that the
14 District Court counsel had never objected or
15 raised any issues, and so we think this is
16 untimely. It threatens to delay these proceedings
17 which are approaching the oral hearing,
18 37 CFR § 42.25 provides that a party should
19 release promptly after the need to relieve is
20 identified and the delay in seeking relief may
21 justify a denial of the relief sought, and we
22 think patent owner is entitled to no relief

1 whatsoever here, but they can't sit on these
2 allegations for months without even reaching out
3 to us raising the issue seeing the same kind of
4 arguments rejected in the Sun petition and only
5 now coming and seeking sanctions when it's about a
6 month to the oral hearing.

7 So I'll stop there and see if the board
8 has any questions.

9 THE CHAIRPERSON: I do have a question
10 about our back and forth of you're asserting work
11 product, which I get when you're talking about
12 drafts going back and forth, that once that expert
13 are report has been filed, I mean, can you not say
14 whether you were involved at all in prepping that
15 final report in terms of the ground that overlaps.
16 It sounds like to me what I'm getting is Mylan's
17 position is we'll make sure the record is there
18 despite the stipulation, and we'll forward it on
19 to a motion for summary judgment or pursue it at
20 trial unless the law changes.

21 MR. ANSTAED: I mean, I think that --
22 again, I'm cautious, your Honor, about waiving

1 privilege or work product protections not only on
2 behalf of us but the joint defense are group in
3 the District Court litigation, but I think the
4 gist of what your Honor is saying is right. It is
5 certainly our position that based on our
6 stipulation which was expressly conditioned on
7 keeping open the possibility that we could pursue
8 these grounds if there is an a change incentive
9 that they can be included in an expert report
10 because you have to do that in the District Court
11 to preserve the argument. If we don't do that,
12 that reservation of rights is -- so I think we
13 were purposely entitled to do that.

14 What we're not doing is and what we've
15 committed, you know, to not doing repeatedly is if
16 there's not a change in the law, we are not going
17 to ask the District Court to do anything about
18 those grounds. We are not going to move for a
19 judgment on those grounds. We are not going to
20 prevent those grounds at trial.

21 Patent owner's argument seems to be that
22 like if there is any -- you know, if we were to

1 talk to the experts, you know, in deposition
2 preparation about these grounds or if we were to
3 share, you know, expenses on experts in a way that
4 didn't break out what grounds they were working on
5 which is completely impractical when the prior art
6 that is in the instituted grounds is in the
7 un-instituted grounds as well, all of it is, that
8 somehow that's a violation of our stipulation, and
9 we absolutely reject that. And, again, are aware
10 of no authority that would suggest that that is a
11 violation and I think that's what the board said
12 in the Sun institution decision and to the extent
13 there is some kind of dispute over the scope of
14 what can or cannot be done in the District Court,
15 that's a matter for the District Court to decide
16 where petitioner's -- patent owner's counsel has
17 raised no objection, and as I've mentioned, any
18 board decisions that we found say when there is a
19 dispute about the scope of one of these
20 stipulations, you raise it in the District Court
21 where the stipulation is to be enforced.

22 THE CHAIRPERSON: Let me ask you, your

1 definition of pursue in the stipulation you mean
2 as long as I'm not presuming it directly to the
3 District Court judge to decide or the jury, I'm
4 not pursuing, I'm just preserving a record that
5 should the law change, I have access to to make
6 the argument, but in your mind that's not pursuing
7 to file expert declarations or be involved and
8 I'll just assume for the sake of argument Mylan's
9 involved in developing the grounds that are
10 presented in our IPR here, your position is that's
11 not pursuing and until we present it in a summary
12 judgment motion or we're arguing it at trial,
13 that's not pursuing until we get to that point?
14 Is that a correct understanding?

15 MR. ANSTAETT: I think that is a correct
16 understanding, your Honor, of our position and
17 that, again, based on the fact that we -- it's our
18 view that we're perfectly entitled to preserve
19 these issues and it's a Hatch-Waxman trial so it
20 is a trial to the court, so there is not a jury
21 here, but, yes, I think that's a fair statement.

22 THE CHAIRPERSON: Okay. Mr. --

1 MR. ANSTAETT: Your Honor, I'm sorry. If
2 I may just make one final point with respect to
3 that, patent owner in its sanctions motion and
4 communications with us has noted that the expert
5 report in the District Court on these instituted
6 grounds are essentially verbatim, you know, they
7 repeat verbatim what is in the IPR on those
8 grounds and, of course, those are all publicly
9 available, and there are parties in the District
10 Court who are not estopped in any way. And,
11 again, we're aware of nothing that says they can't
12 take the arguments that are in the public domain
13 and pursue those in the District Court. And so to
14 the extent that the patent owner is complaining
15 that we made have to face these, they are going to
16 face them anyway because the District Court
17 defendants aren't estopped and the allegation is,
18 well, they are verbatim repeated what is in the
19 publicly available IPR petition and declarations.
20 We don't understand what the prejudice is.

21 MR. BAUGHMAN: Your Honor, Steve Baughman.
22 May I respond?

1 THE CHAIRPERSON: Yes.

2 MR. SODIKOFF: Sorry. Your Honor, this is
3 Brian Sodikoff for Sun. I just want to put in
4 marker at some point because patent owner is
5 seeking sanctions that would go to the IPR
6 generally not just Mylan, that Sun would have an
7 opportunity to present some facts as well. So I
8 just want to put like a marker down for that that
9 in case that came up.

10 THE CHAIRPERSON: Sure.

11 MR. SODIKOFF: If you'd rather hear that
12 now or after further arguments from Novo.

13 THE CHAIRPERSON: Let me hear from patent
14 owner, and I will circle back, but certainly
15 anybody, Dr. Reddy's Labs, anybody who has a stake
16 in this IPR I want to hear from your if you have
17 something you want to say.

18 So let me hear from Mr. Baughman and I'll
19 circle back for Sun.

20 MR. BAUGHMAN: Thanks, your Honor. Steve
21 Baughman.

22 A lot to unpack here. And I guess the

1 first thing I would say is I think even though
2 it's come so far, I should make it sufficiently
3 clear that there are very important fact issues
4 here that need briefing, and I know the board's
5 PQA authority has emphasized the fact down nature
6 of sanctions motions and I think these are
7 incredibly serious and important issues.

8 I think your Honor never got an answer to
9 the question which we've been posing for weeks
10 which is, yes or no, can Mylan represent it has no
11 substantive involvement in the preparation,
12 discussion or the development of these theories
13 and it continues last week.

14 I think it is quite surprising to hear
15 them make the two arguments now that essentially
16 edit the clear words of their stipulation. The
17 stipulation says they're not going to pursue it
18 period, any pursuit, and now they're saying, well,
19 we're not going to pursue it by motion or at
20 trial, but we can do all we want to in the
21 meantime. And I think you did get an answer to
22 your question, your Honor, because they basically

1 said we think we are perfectly entitled to do that
2 to talk about the grounds of the experts,
3 retaining the experts for the grounds, and if you
4 look at the policies underlying stipulations
5 including Sand Revolution, it's quite her that
6 they are two fold; one is to avoid duplicative
7 harassing litigation like the gang tackle that
8 Mylan is organizing here against Novo, and the
9 notion that Rio and Sidus can continue, that's
10 perfectly true, but they can't continue with Mylan
11 as their quarterback. Just because codefendants
12 with whom they're sharing experts have the ability
13 to make arguments doesn't mean that because they
14 share experts, Mylan gets to join them and help
15 them and to do that.

16 The Sun institution decision to which my
17 colleagues at the Bar referred on Page 10 as we
18 understand it, this panel decided that the policy
19 behind Sotera's stipulation is the directors'
20 June 22 policy doesn't require more commitment in
21 order to trigger the board not to institute --
22 sorry, not to exercise its discretion, but it

1 certainly doesn't say that Mylan can organize and
2 pay others to do what Mylan is not allowed to do.
3 Sidus and Rio can continue litigating issues
4 obviously, but they have to do it themselves, not
5 with Mylan.

6 In terms of sharing generally, again, the
7 parties share experts. They also ask experts to
8 itemize their bills and they excuse themselves
9 when there are things like protective orders or
10 other requirements that keep them from having
11 certain conversations. It's not that complicated
12 and it's certainly not an excuse to violate the
13 stipulation that Mylan gave the board, the promise
14 it made to the board in exchange for institution.

15 The other had high level argument that I
16 feel like we're hearing overall here is that the
17 board should never hear these issues. I think I
18 heard counsel say these are always issues that
19 should go to the District Court. First of all,
20 that's not true and we have examples that we've
21 discussed with the parties, but the notion that
22 only the District Court can consider stipulations

1 means that the board will never be able to
2 sanction anyone for violating their promise to
3 obtain institution. That's certainly not what the
4 board has said.

5 One of the cases that we've discussed with
6 the parties is in the context of a motion to
7 terminate, it was not a sanctions motion, but it
8 is a case where the board recently authorized
9 briefing on a motion to terminate because a
10 petitioner who had unlike this case actually
11 sought relief from their stipulation in District
12 Court was still actively litigating in both
13 places, and I can give you the citation. It's
14 10X -- Parse versus 10X, IPR2023-00955. We were
15 involved in that case and there we did not seek
16 sanctions, the board authorized on a motion to
17 terminate. In a call board it actual sua sponte
18 proposed it. We had sought a call with the board
19 to ask them to direct the petitioner to file a
20 stipulation in the District Court.

21 Turning to the notion this is all public
22 information, there are pieces of the IPR

1 declarations that show up as quotations in the
2 District Court opinions, but, I guess there at
3 least two things to say about that. First the
4 stipulation is not just about stopping arguments
5 with a new wrinkle. Making identical arguments is
6 a violation. Mylan making identical arguments
7 breaks the stipulation and Mylan simply ignoring
8 things like the harm to the board and the
9 integrity of the system and the clear harm to
10 patent owner.

11 Second, it's factually incorrect. There
12 are refinements and responses in the District
13 Court opinions to arguments that patent owner has
14 made in the IPRs. So Mylan is helping these
15 District Court defendants continue to evolve the
16 opinions and respond to things that are happening
17 here in this proceeding as a roadmap.

18 MR. ANSTAETT: Your Honor, may I respond
19 to some of that, at some point may I have an
20 opportunity to respond?

21 THE CHAIRPERSON: Sure. Go ahead, you go
22 ahead and then I'll ask my question of

1 Mr. Baughman.

2 MR. BAUGHMAN: Sure. The motion that this
3 is untimely again, first of all, it's not Novo's
4 job to make sure that Mylan is following a
5 stipulation, it's Mylan's job, but when we became
6 aware of the issue, we first noted that shortly
7 thereafter in papers before the board and then you
8 took the time to follow the board's procedure
9 about drafting and serving a motion and starting a
10 21-day meet and confer period.

11 So when we became aware of it, we
12 certainly acted promptly and we know from what's
13 happened since then that it would have made no
14 difference. First of all, we can't unscramble
15 what Mylan has done with the co-defendants. They
16 have educated them and prepared them to keep going
17 and, yes, the notion that the District Court
18 counsel is responding to edits to positions taken
19 before board, I think District Court counsel has
20 separately plotted that out. It's a distraction.

21 Your Honor a question for me?

22 THE CHAIRPERSON: Yes. So until these

1 grounds get presented in a motion for summary
2 judgment or presented during trial, has Novo
3 Nordisk been harmed, in other words, is it
4 premature because, yeah, this is churning away in
5 the background but let's say for argument sake we
6 agree Mylan is breaching that stipulation, are you
7 harmed or do we have to wait for that harm?

8 MR. ANSTAETT: Your Honor, to respond
9 to --

10 THE CHAIRPERSON: Go ahead.

11 MR. BAUGHMAN: We're being harmed right
12 now because we are being forced to respond with
13 our own expert reports and depositions to Mylan as
14 an additional adversary.

15 The board's Sand Revolution and Sotera
16 juris prudence shows that the office puts value on
17 having individual combatants removed from the
18 field, and so facing two defendants instead of
19 three certainly has value to patent owner
20 especially when one of them is clearly
21 quarterbacking the entire effort and appears to
22 intend to continue that.

1 So the notion that discovery is free game
2 and all you have to avoid is trial and dispositive
3 motions, that's crazy. It is certainly not what
4 the stipulation policies of the office intend.

5 THE CHAIRPERSON: Have you all thought
6 through, the patent owner thought through the
7 timing of briefing? I know we are approaching the
8 hearing, and what would be your proposed timing
9 for briefing if we about briefs?

10 MR. BAUGHMAN: Sure. Our suggestion,
11 we're certainly prepared to move forward in
12 parallel with briefing on the sanctions and the
13 requests for additional discovery recognizing that
14 we have obviously asked for relief that could save
15 the parties and the board effort if they were done
16 sequentially. We recognize the boards has already
17 twice extended the schedule. We are not
18 affirmatively asking for that although we
19 certainly wouldn't oppose it for purposes of
20 efficiency, but we are prepared to go forward next
21 Friday, August 2, with a response on August 16 and
22 a reply on August 23. The board could hear

1 arguments at the hearing if it wished to do so or
2 we could address that separately on the sanctions
3 and discovery issues and, frankly, the discovery
4 would have to come later and my proposal there
5 would be that we could submit a short paper after
6 the discovery is completed if it affects the
7 existing briefing.

8 I know Sun raised an issue. I can respond
9 to that in advance or we can let them state it
10 first.

11 THE CHAIRPERSON: Yes. I think petitioner
12 wanted to respond to some things you said, and
13 then I'll hear from Sun.

14 MR. ANSTAED: Thank you, your Honor.

15 I don't -- I still don't hear how there
16 has been any prejudice. I mean, they are just --
17 I don't know where this language of gang tackle
18 and quarterbacking comes from.

19 In their draft sanctions motion they sent
20 to us, the complaint was that the publicly
21 available IPR declarations in petition had been
22 copied verbatim. And that is perfectly -- the

1 other defendants are perfectly entitled to do
2 that. That's what happened with the defendants
3 who joined here is they had copied the petition
4 and so they will face these issues at trial.
5 There won't be any summary judgment motions I
6 don't think on this because the District Court
7 doesn't entertain summary judgment motions in
8 Hatch-Waxman cases. So the non-estopped
9 defendants can raise these institutions and their
10 complaints were, well, you're sharing experts in
11 the District Court litigation and they're saying
12 the same thing there. That's all based on
13 publicly available information and, again, there
14 is just this presumption that underlies this that
15 somehow by including an argument in an expert
16 report, we are somehow in violation of the scope
17 of the stipulation, but what I haven't heard any
18 response to is if that stipulation, if that
19 reservation that has been in there the entire time
20 is to have any meaning whatsoever, those arguments
21 have to be preserved in expert reports, but that
22 does not mean that we are going to try those

1 arguments. They repeatedly refer to about a
2 campaign to educate and organize the other
3 defendants, but, again, I don't know how that
4 squared with the fact that all of these arguments
5 are already publicly available.

6 And, again, I'm aware of no authority that
7 says that in this kind of situation you can't
8 share experts in the District Court, which I again
9 emphasize is the expectation in the District Court
10 because the District Court does not, you know,
11 countenance multiple experts on the same or
12 overlapping issues.

13 So I think that this is -- the Patent
14 Office also has an interest in expeditiously
15 considering challenges to patents that are or
16 perhaps wrongly issued and what this threatens to
17 do is derail that process and delay that process
18 when the oral argument is scheduled for August 27.
19 And so, again, I don't -- I'm not aware of any
20 authority in which the board has done this. We
21 researched and found many cases where the board
22 said that they were not authorizing the filing of

1 these motions for alleged violations of Sand
2 Revolution and Sotera stipulations, and so we
3 would strongly oppose this -- granting patent
4 owner permission to file a sanctions motion here.
5 And I just want to say with respect to the Parse
6 case my friend on the other side cited, what the
7 board said in that case was that regardless of
8 how -- first of all, they told them not to file it
9 as a sanctions motion and then they said
10 regardless how we decide it, we're going to give
11 the petitioner five days to file a stipulation in
12 the District Court that says they won't pursue
13 these grounds and if they do that, then the IPR is
14 going forward. So I think that's in line with how
15 the board traditionally handled these situations.
16 So we would certainly oppose allowing them to
17 brief it.

18 And on the delay issue, they did delay.
19 They delayed incredibly. Like I said, these
20 expert reports about which they complained for the
21 first time on June 10 were served back in the
22 middle of March and the District Court contentions

1 were served even earlier than that in January and
2 so the notion that they needed time to work on
3 this I just don't think withstands scrutiny. They
4 have delayed egregiously with respect to these
5 allegations.

6 MR. BAUGHMAN: Your Honor -- I'm sorry.

7 THE CHAIRPERSON: On the presentation, I
8 know you're talking about the presentation of the
9 identical grounds in the District Court and you're
10 saying that the expert reports copied what was
11 done in the IPR. Is there any changes in what had
12 been presented in this IPR versus what was in the
13 District Court because I hear you arguing kind of
14 two things, it's identical, it's publically
15 accessible. I do agree the papers are publicly
16 accessible, but you're not willing to go so far as
17 to say, well, Mylan wasn't involved in developing
18 anything further. So I wasn't sure how much is
19 different in the District Court if that's even --
20 if you know that how much is different in what was
21 presented.

22 MR. ANSTAETT: I know that my friend on

1 the other side keeps saying that we have tweaked
2 the arguments or changed the argument. What they
3 told us in their draft sanctions motion, what they
4 complained was that the arguments in the IPR
5 petitions and in the expert reports were virtually
6 verbatim. I think that's a quote from their draft
7 sanctions motion. They have always maintained
8 that their issue is essentially that they are
9 identical. When we pointed out to them that like,
10 well, yeah, because they're publicly available and
11 for anybody to use. Then they said, well, we
12 think tinkered with them and are leading the
13 charge and changing them. I don't know what
14 exactly they're referring to about that, but what
15 I can tell you is with respect to those three
16 grounds, in our view they are. You know, the
17 District Court expert reports in the reports in
18 the IPR are essentially the same. So I'm not sure
19 what the allegation is there about how they have
20 changed.

21 THE CHAIRPERSON: That kind of begs the
22 question why will petitioner not represent that,

1 you know, we haven't developed those arguments
2 further in line with our stipulation?

3 MR. ANSTAED: Well, again, your Honor, I
4 think maybe the easiest way to do this without
5 raising, you know, privilege issues or work
6 product protection issues I suppose is to look at
7 the arguments in the two sets of expert reports
8 to see, you know, what if any differences there
9 are, but I cannot -- you know, I do not believe as
10 I sit here today and they have not told us what
11 they think the differences are, but from a
12 substantive perspective, I don't know of any
13 substantive changes, you know, to the reports.
14 I'm sure there are some wording differences
15 between them, but I don't know that that moves the
16 needle or really changes anything that the
17 substance of those grounds are the same.

18 THE CHAIRPERSON: Okay. Thank you. Let
19 me here now from Sun.

20 MR. SODIKOFF: Thank you, your Honor.
21 This is Brian Sodikoff. Sure, thank you. This is
22 Brian Sodikoff on behalf of Sun.

1 I think we just want to emphasize that
2 what Novo is seeking our understanding is
3 sanctions that are were not just against Mylan but
4 would go to the core of the IPR and would
5 essentially impact Sun in a Draconian fashion in
6 that they are requesting discovery from Sun
7 without a specific allegation of Sun doing
8 anything wrong and a dismissal of Sun's IPR,
9 again, based on conduct of Mylan, not Sun.

10 And if we could just highlight some of the
11 facts of Sun's IPR petition, just so you guys get
12 maybe a better feel of where this alleged
13 violation fits within the whole circle of facts in
14 the District Court and in the IPR.

15 Sun timely filed its IPR on November 2nd,
16 2023. Sun's IPR did not use the Mylan experts.
17 It had identical expert reports that matched up
18 identically with the three expert reports that
19 Novo had identified, Dalby, Bantle and Jusko. It
20 Sun had three expert reports that essentially
21 mimic those and have the exact same grounds which
22 the board later recognizes in the institution in

1 Sun's IPR where it says on the merits that Novo is
2 not even challenging it and Sun is has the same
3 the grounds albeit with different experts but with
4 identical expert reports. So that was
5 November 2023.

6 March 19, 2023 -- 2024, I'm sorry, our
7 expert reports were filed in the District Court
8 litigation. At that time Sun had a petition
9 pending but it was not yet granted. It was under
10 no restrictions to litigate in the District Court.
11 Sun was free to pursue these exact same grounds,
12 and at that time Sun had three experts who had
13 written reports that were on these three grounds.
14 So there is, you know, just from a public record,
15 it's quite clear that Sun could have filed expert
16 report on March 19 on these exact same three
17 grounds with expert reports that were ready to go
18 that would not be in violation of any stipulation
19 by Sun.

20 So the delta here at most at that time is
21 that instead of Novo facing six or nine experts
22 across the two proceedings, it only faced the same

1 three because Novo was always going to face these
2 three grounds in the District Court. It was just
3 a question of whether it would face the efficiency
4 of having the same three experts as in the IPR in
5 Mylan's IPR or whether it would have to face these
6 it three grounds with three experts of Mylan in
7 the IPR and then a different three experts by Sun
8 in the District Court litigation and potentially
9 other experts, for example, DRL had experts ready.
10 And so the delta here is which is more efficient
11 ultimately for Novo when you're looking at harm
12 for them to face these three experts across the
13 different litigations, the IPR and the District
14 Court, or whether they would have faced the same
15 grounds with multiple experts involving more
16 reports, more depositions, more reply reports and
17 all the efficiencies that would go to several
18 experts addressing the same issue. On March 29 --
19 sorry.

20 THE CHAIRPERSON: So Sun and DRL you did
21 not file your expert, you were joined you had
22 access to Mylan's experts and so only the experts

1 were presented in the District Court?

2 MR. SODIKOFF: Correct. We did not file
3 three sets of three reports in the District Court.
4 We as a JDG filed one set of reports that were the
5 Mylan three experts.

6 THE CHAIRPERSON: Okay. Thank you.

7 MR. SODIKOFF: And as counsel mentioned, I
8 don't think the District Court would have
9 appreciated or allowed defendants to file multiple
10 expert reports on the same grounds. That just
11 doesn't happen in District Court and would create
12 wild inefficiencies if every defendant in the
13 District Court had three experts. There are five
14 groups there. That would have been 15 experts on
15 these same three issues.

16 THE CHAIRPERSON: Thank you.

17 MR. SODIKOFF: On March 29, Novo submitted
18 a surreply in our IPR which for the record
19 mentioned earlier is 2024-107, in that surreply,
20 Novo did not assert that Mylan was violating its
21 stipulation or that Sun had somehow violated some
22 type of stipulation by participating or joining

1 with Mylan's experts in the District Court. In
2 the March 29 paper which is ten days after the
3 expert reports were filed, Novo just said that --
4 actually identified other non-IPR participants in
5 the expert reports and that's Paper 12.

6 In paper 14 which was filed May 20 by
7 Novo, they for the first time mentioned
8 participation in the violation by Mylan by filing
9 the expert reports March 19, they specifically
10 raised those issues in the arguments in Sun's IPR
11 and this panel on May 28, 2024 in Paper 16
12 instituted these same three grounds and found that
13 Sun's Sotera stipulation was sufficient to resolve
14 any issues. And so as of that date, everything
15 that they've raised since March expert reports,
16 they existed, they were addressed by Novo and
17 Sun's petition was still instituted over that
18 based on Sun's Sotera stipulation. So whatever
19 relief Novo is seeking against Mylan, it's Sun's
20 position and I'm sure DRL's as well that shouldn't
21 be Sun's IPR, Sun's petition and the public's
22 interest in determining whether this '462 patent

1 is valid or not which has a significant impact on
2 the public and the health of the public given that
3 this drug is an important drug.

4 I think that's kind of what we wanted to
5 highlight. We are not aware of any grounds which
6 would allow for discovery of Sun based on the
7 limited statements about us quote-unquote
8 participating with Mylan filing expert report on
9 March 19 when we were under no obligation to
10 monitor Mylan and were expressly allowed at that
11 time to file expert reports on those three
12 grounds.

13 So we're not aware of anything that would
14 allow for discovery into Sun specifically or a
15 sanction that would impact Sun as opposed to a
16 Mylan-specific sanction or discovery.

17 So I guess just to caution, some of the
18 briefing and e-mails to the board, there is a lot
19 of statements about Mylan and then petitioner and
20 then the relief sought puts an extra S on there of
21 petitioners, so we would just kindly request that
22 panel consider separately whether Sun and DRL

1 should be subject to the discovery and sanctions
2 that Novo is seeking here.

3 THE CHAIRPERSON: Thank you.

4 MR. BAUGHMAN: Your Honor, could I briefly
5 respond?

6 THE CHAIRPERSON: Yes, Mr. Baughman, yes,
7 you can.

8 MR. BAUGHMAN: As to Sun and DRL, both are
9 bound to the outcome here for from Mylan because
10 they joined the proceedings as silent
11 understudies. As part of their motions for
12 joinder, they both agreed to be bound by things
13 like agreements on the taking of testimony. They
14 are in the back seat with Mylan and Mylan has done
15 what has happened here, but more importantly or
16 perhaps in parallel, each of Sun and DRL knew
17 about Mylan's Sand Revolution stipulation. They
18 each copied the stipulation into their own copycat
19 petitions and then each of them litigated the as
20 your Honor knows, the addition of broader Sotera
21 stipulations before the board. They also knew of
22 and participated in and benefited for Mylan's

1 filing those -- sorry, serving the March 19
2 reports. They were part of them and they knew
3 Mylan wasn't supposed to be making those arguments
4 when they joined those reports and we did point
5 that out for DRL on April 3rd and 2024-9 Paper 18
6 at 1 to 2, and for Sun as counsel said on May 20th
7 and Paper 14 at 1 to 2.

8 Frankly, we pointed those out when we
9 became aware of them. We are not litigation
10 unlike Mylan's counsel that's in both places.

11 And two other quick things I would say,
12 your Honor, on the question of whether these are
13 verbatim excerpts, they are not. The draft motion
14 says that that swaps or verbatim swaps are the
15 same, but we pointed out repeatedly in our meet
16 and confer that are refinements and changes on top
17 the base that was copied, and, although frankly,
18 Mylan was urging the same thing as a violation and
19 in terms of the question about whether 10X ruled
20 on sanctions, if your Honor looks at Exhibit 3001
21 in the 10X case, you'll see the question that was
22 before the board was whether this was agreed to a

1 regular motion or a sanctions motion which would
2 have required 21 extra days. It wasn't a request
3 for sanctions. It was a question of whether the
4 21-day period was required. Exhibit 3001 is
5 e-mail to the board in setting up the call.

6 I'm happy to answer any other questions
7 but I know your Honors are already past the 1:00
8 time.

9 THE CHAIRPERSON: Yes, thank you. I
10 appreciate that.

11 MR. BORDER: Your Honor, this is Scott
12 Border from DRL. May I quickly address --

13 THE CHAIRPERSON: Yes. I wanted to ask
14 you.

15 MR. BORDER: I don't want to rehash
16 everything that counsel for Sun explained, but DRL
17 is in a similar position as a joined
18 co-petitioner. I think what we would request is
19 that to the extent there is a motion briefing
20 schedule authorized that the co-petitioners also
21 get a chance to independently address whatever
22 arguments that Novo makes.

1 THE CHAIRPERSON: Okay. Thank you for
2 that. Let me put you all on a brief hold and
3 confer with the panel and we'll come right back.
4 Thank you.

5 (A recess was had.)

6 THE CHAIRPERSON: Thank you, everyone for
7 your patience. We are back on the record.

8 Let me ask you Mr. Baughman -- I think --
9 well, let me say the panel is inclined to
10 authorize briefing and I think you had given me,
11 Mr. Baughman, a schedule that would finish
12 briefing before oral argument, which we would
13 certainly like do so that we have that opportunity
14 to ask questions.

15 So could you go over the schedule that you
16 have proposed again? And your request for
17 discovery is subsumed within your motion, correct?
18 You're talking about --

19 MR. BAUGHMAN: Your Honor, yes. I'm
20 sorry.

21 We propose to brief motions on the same
22 schedule and the proposal -- to be clear, I have

1 not because we never advanced past there shouldn't
2 be a motion of the parties, we have not agreed on
3 a schedule but my proposal was next Friday
4 August 2 for the opening briefs, August 16 for the
5 opposition briefs and August 23 for replies.

6 THE CHAIRPERSON: Okay. So that's --

7 MR. BAUGHMAN: Your Honor, I should
8 note -- I'm sorry. I should note -- I believe
9 there is a court reporter on the line that joined
10 after we began. So I want to just say that for
11 your Honor. We can file the transcript as an
12 exhibit if that's the court's direction.

13 THE CHAIRPERSON: That would be great.
14 That would be fantastic if you could do that.

15 So let me ask petitioner are you amenable
16 to that schedule?

17 MR. ANSTAETT: We'll do, of course,
18 your Honor, whatever the board wants. I'm not
19 sure why -- this is a draft motion that they have
20 prepared and sent to us in June. So I'm not sure
21 why they need until August 2nd to get that filed
22 and then give us two weeks to respond it. So I

1 think it could be moved up, but, of course, we'll
2 do whatever the board prefers.

3 THE CHAIRPERSON: Selfishly, from the
4 panel's perspective earlier is better so we can
5 really take a look before oral argument.

6 Go ahead, Mr. Baughman.

7 MR. BAUGHMAN: Understood, your Honor.
8 I'm sorry.

9 We have a final hearing in another matter
10 on Wednesday and our surreply in matter due the
11 5th so two things I would note in addition to
12 that, one, we haven't had a chance to have a
13 meaningful discussion about producing discovery.
14 We have had several discussions, but I think they
15 were again premised on the idea there would be no
16 discovery at all. I do harbor the hope that we
17 might be able to reach some concession or
18 agreement on some aspects of the discovery
19 requests and that motion is not written. So
20 that's the reason for the timing. Obviously if
21 your Honor prefers us to go faster, we can try to
22 do that, but we would ask for the 2nd if that's

1 acceptable to the board.

2 THE CHAIRPERSON: Okay. And you're
3 talking about, I'm sorry, there is two different
4 motions that you're proposing, the motion for
5 discovery and a motion for sanctions; is that what
6 you --

7 MR. BAUGHMAN: Yes, your Honor.

8 THE CHAIRPERSON: Okay.

9 MR. BAUGHMAN: We have to update the
10 motion for sanctions based on the six weeks of
11 back and forth.

12 THE CHAIRPERSON: Okay.

13 MR. ANSTAETT: And, your Honor, I would
14 just say that, you know, I appreciate counsel has
15 other commitments. We have other commitments as
16 well and are getting two weeks to respond to two
17 motions one of which we haven't seen yet and one
18 which seems designed to demand discovery and
19 material that is covered by work product and
20 privilege protections. We have to get rid of or
21 we have to get prepared for the oral argument in
22 this case which schedule for August 27th. So

1 telling us that our opposition brief is due on
2 August 16, I don't think that's particularly fair
3 on petitioner's, either.

4 THE CHAIRPERSON: Do you have a time or
5 proposal of what you think?

6 MR. ANSTAETT: I think that just looking
7 at the calendar right now, I mean, I don't see why
8 the patent owner couldn't submit their brief on
9 August 29 and, again, they drafted the sanctions
10 motion, they sent it to us in June and then, you
11 know, I think giving us a little bit of extra time
12 to respond to these things would make sense as
13 well. And so, again, just looking at the
14 calendar, I think we would think the August 16th
15 date, that would give us more time to respond to
16 two motions that they propose to file and then
17 they can file their reply. I think that's
18 probably more an issue for the board in providing
19 the board enough time to take a look at it before
20 the hearing on the 27th.

21 MR. BAUGHMAN: Your Honor, we could do the
22 31st. We also have a deposition I'm being

1 reminded of on Friday in this matter. If we could
2 do the 31st rather than the 29th, I think that
3 splits the difference.

4 THE CHAIRPERSON: Yes. That is what I was
5 going to say. I think that's the 31st is fine and
6 then August 16 and August 23rd, and I know that
7 Sun and DRL are a little differently situated and
8 may have -- let me hear from them. I'm assuming
9 they would like to either weigh in with a short
10 paper to say their piece as far as being
11 differently situated than Mylan; is that correct,
12 from Sun or DRL?

13 MR. SODIKOFF: Your Honor, this is Brian
14 Sodikoff from Sun.

15 I think our position is that the discovery
16 motion specifically should not be sent to Sun like
17 it should not include discovery sought from Sun,
18 it should just be Mylan based on the -- of any
19 type of allegation that Sun is engaged in any
20 wrongdoing, to authorize a discovery motion on Sun
21 would be a burden in and of itself and that Sun
22 would want a third of the -- whatever number

1 you're giving to time to respond for Sun on the
2 actual sanction motion, but it would ask for like
3 a third of the space or half the space paper-wise
4 and it would likely be able to split that with DRL
5 and do a joint filing with it.

6 So I guess our request -- on timing we're
7 fine. Our request would be that we don't
8 authorize the motion for discovery against Sun or
9 I'm sure DRL because that showing has not been
10 made so it kind of spreads beyond Mylan and any
11 discovery about what Mylan did could be obtained
12 from Mylan, and then on the sanction briefing
13 itself, we're fine with the schedule as long as we
14 get some ability to independently put in our
15 position.

16 THE CHAIRPERSON: Okay.

17 MR. BORDER: Your Honor, this is Scott
18 Border from DRL.

19 Yes, we're definitely aligned with Sun on
20 everything just stated.

21 THE CHAIRPERSON: So you're fine with
22 filing one brief from you all at least a third of

1 what we authorized for Mylan and Novo Nordisk?

2 MR. BORDER: That's right, your Honor.

3 THE CHAIRPERSON: Okay.

4 MR. ANSTAETT: Your Honor, do I understand
5 from that that Mylan, in other words, we don't
6 even get the full pages we would otherwise be
7 entitled to in the response but that we'll get two
8 thirds of them?

9 THE CHAIRPERSON: No. You would get the
10 same page number. I would just, you know, give
11 Sun and DRL a third of that, up to a third of that
12 for their paper.

13 MR. ANSTAETT: Understood, your Honor.
14 Thank you.

15 MR. BAUGHMAN: Your Honor, this Steve
16 Baughman for patent owner.

17 We don't oppose the third additional pages
18 as long as we get to respond in a separate short
19 paper to that Sun paper, and, again, we think
20 discovery of Sun and DRL petitioners is justified
21 especially given the fact that they have relevant
22 evidence.

1 THE CHAIRPERSON: Okay. In terms of the
2 number of pages, what are you suggesting? I'll
3 hear from Baughman and then certainly from
4 petitioner.

5 MR. BAUGHMAN: You Honor, we worked really
6 hard to get to the standard motion length of 15
7 and that's what we pros for the motion for
8 sanctions. On the discovery motion I think would
9 do 10 if that's acceptable to the board.

10 THE CHAIRPERSON: Okay. 15 for sanctions
11 and then 10, okay. And then standard reply,
12 standard amount on the reply according.

13 MR. BAUGHMAN: That's our proposal,
14 your Honor.

15 THE CHAIRPERSON: Okay.

16 MR. ANSTAETT: I'm just not entirely
17 clear how this -- I understand there's been
18 briefing authorized on these things, but I don't
19 understand how the discovery is expected to work
20 here.

21 Is the briefing on the discovery motion
22 about whether or not, you know, any discovery

1 would be authorized is going to be filed four days
2 before the oral argument, I just don't quite
3 understand how -- and, again, it's our position
4 that the discovery they've asked for is privileged
5 and protected by work product. I'm not sure how
6 that will work and this is, again, we think, you
7 know, all a result of the fact that they have
8 waited so long to raise this issue that we are
9 now, you know, jammed up with the oral argument
10 looming, and certainly we do not want that delay.

11 THE CHAIRPERSON: Timing is tough here. I
12 certainly agree, Mr. Baughman. I'm sorry, did you
13 want to say something?

14 MR. BAUGHMAN: Yes. Our proposal,
15 your Honor, would be to complete the briefing on
16 that schedule. To the extent that the board
17 grants the motion for additional discovery, we
18 could set a short period thereafter to provide it,
19 and my proposal earlier stands which is to the
20 extent that something in that discovery is
21 pertinent in the judgment of patent owner to the
22 briefing that's completed on the sanctions

1 portion, we would propose to be able to submit a
2 short paper on that to which Mylan could respond.
3 We don't propose to extend the schedule.

4 In terms of privilege, I'll just note that
5 there are definitely cases where the board
6 especially in situations where they're inquiring
7 into the relationships among parties have directed
8 the provision of a privilege log including asking
9 for particular details to allow that to go
10 forward.

11 MR. ANSTAETT: Your Honor, and this is
12 part of the problem. I don't recall any
13 discussion today of discovery, and I don't think
14 Mr. Baughman proposal -- I still don't understand
15 how it works because apparently any discovery
16 would take place after the oral argument and,
17 again, I haven't heard any argument today about
18 how they're entitled to discovery and to
19 communications which is what they've asked for
20 between lawyers and experts, and I just -- the
21 sanctions motion obviously, we didn't think it
22 should be authorized, but I suppose that's one

1 thing, but the discovery motion I haven't heard a
2 justification for the pursuit of that kind of
3 discovery or what it would do to the schedule
4 here.

5 THE CHAIRPERSON: Well, I understand your
6 position and not wanting to say that Mylan was not
7 necessarily involved in the three rounds that
8 overlap, I think patent owner at least gets the
9 opportunity to explore that a little bit and we
10 can handle -- I think, I mean, it's certainly
11 pressed on time and we're pushed for time with the
12 oral argument but I do think we will authorize
13 that and should we grant the submission for
14 discovery, we can handle that on a shortened
15 timeline I think. Certainly I don't want to go
16 beyond October 4th and want to get this decision
17 in, but we do have a little bit of leeway because
18 of the joinders to push that just a little bit if
19 we need to to get some of this stuff done. I
20 mean, it's certainly my intention not to push the
21 October 4th deadline if we possibly can get that
22 done, but we do -- we have a little bit of leeway

1 to get that discovery motion heard and if there is
2 discovery granted, we can handle that. So I think
3 we are good on that front and get the briefing and
4 the motions on the timeline that the parties could
5 agree to in terms of at least being doable.

6 Is there anything else that I have missed
7 or anything else that we need to discuss?

8 MR. BAUGHMAN: Not for patent owner.

9 THE CHAIRPERSON: And from petitioner
10 Mylan?

11 MR. ANSTAETT: Not for petitioner Mylan,
12 your Honor.

13 THE CHAIRPERSON: What about Sun?

14 MR. SODIKOFF: Nothing additional
15 your Honor.

16 We would just reiterate our request that
17 the discovery motion not apply to us because
18 anything that Mylan did or did not do would be in
19 Mylan's papers and there is no need to go to third
20 parties, but that's what I already said so nothing
21 additional.

22 THE CHAIRPERSON: Yes. What about from

1 Dr. Reddy's Labs?

2 MR. BORDER: Your Honor, this is Scott
3 Border.

4 Same position. Any discovery of DRL/Sun
5 would be duplicative of any discovery sought by
6 Mylan so we also would encourage the board not to
7 authorize the motion for discovery into DRL and
8 Sun.

9 And I just wanted to clarify to the extent
10 it was unclear, DRL and Sun get five pages to
11 respond to the sanction motion and to the extent
12 that the discovery motion is authorized against
13 DRL and Sun, we would get -- we would also get
14 five the pages in that instance?

15 THE CHAIRPERSON: A third would be like --
16 I'm fine, you know, I'm not going to nickel and
17 dime you between three and five pages.

18 MR. BORDER: We will strive to do that,
19 your Honor.

20 THE CHAIRPERSON: And we will take that
21 under advisement whether you're included in terms
22 of the motion for sanctions because I do

1 understand your position that you shouldn't be
2 involved from Mylan's alleged wrongdoing.

3 MR. BORDER: Thank you, your Honor.

4 THE CHAIRPERSON: With that, if there is
5 nothing else, we will adjourn the call. And I
6 will get an order out as soon as we can that sets
7 forth the briefing schedule and the call.

8 Thank you all. It's been very helpful.
9 Thank you for your time. This call is adjourned.

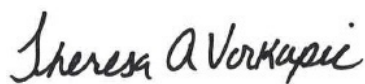
10 (Call concluded at 12:40 p.m. CST.)
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1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

2 I, Theresa A. Vorkapic, Certified
3 Shorthand Reporter No. 084-2589, CSR, RMR, CRR,
4 RPR, and a Notary Public in and for the County of
5 Kane, State of Illinois, the officer before whom
6 the foregoing deposition was taken, do hereby
7 certify that the foregoing transcript is a true
8 and correct record of the conference call; that
9 said meeting was taken by me and thereafter
10 reduced to typewriting under my direction; and
11 that I am neither counsel for, related to, nor
12 employed by any of the parties to this case and
13 have no interest, financial or otherwise, in its
14 outcome.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and affixed my notarial seal this 22nd day of
17 July, 2024.

18 My commission expires November 6, 2027.

19 
20 _____

21 THERESA A. VORKAPIC

22 NOTARY PUBLIC IN AND FOR ILLINOIS

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