

From: [J. Steven Baughman](#)
To: [Anstaett, David L. \(Perkins Coie\)](#)
Cc: [White-ptab@perkinscoie.com](#); [White, Brandon \(Perkins Coie\)](#); [Greb-ptab@perkinscoie.com](#); [prochnow-ptab@perkinscoie.com](#); [jones-ptab@perkinscoie.com](#); [tietz-ptab@perkinscoie.com](#); [lembo-ptab@perkinscoie.com](#); [Bloodworth, Shannon \(Perkins Coie\)](#); [kelley_nathan-ptab@perkinscoie.com](#); [RSwartz@perkinscoie.com](#); [Semaglutide-Ozempic@perkinscoie.com](#); [Wong, Jovial \(jwong@winston.com\)](#); [Border, Scott](#); [sclin@winston.com](#); [Sodikoff, Brian](#); [Ferenc, Christopher B.](#); [Novo-Semaglutide-IPR@groombridgewu.com](#)
Subject: RE: IPR2023-00724 - Service of draft proposed motion for sanctions
Date: Wednesday, July 10, 2024 11:29:21 AM
Attachments: [RE IPR2023-00724 - Service of draft proposed motion for sanctions.msg](#)

Dave-

As indicated in our call on Wednesday afternoon, July 3, I write regarding your July 2 email (attached).

While your message mentions bits of my June 25 and July 1 emails, it fails to answer the basic questions we have repeatedly asked about Mylan's specific conduct in connection with the three March expert reports Mylan joined and served, pursuing three arguments for invalidity of the '462 patent that Mylan explicitly promised the Board and Patent Owner it would *not* pursue in district court.

Tellingly, in our multiple exchanges, Mylan has never disputed the underlying facts of Mylan's wrongdoing. To convince the Board to institute Mylan's IPR despite the Board's stated policy concerns—embodied in *Fintiv*—about the waste and inefficiency of the same parties litigating the same issue in multiple forums at once, Mylan stipulated *not* to pursue *any instituted ground* in district court litigation upon institution of its IPR. Institution occurred on October 4, 2023, and while Mylan's promised prohibition went into force immediately, Mylan nonetheless decided *after* October 4 to share its '462 patent IPR experts, who until then had testified only for Mylan, with all of its litigation codefendants; to coordinate and join (and, it appears, fund) those codefendants to work with these newly-shared experts in taking verbatim swaths of their previously-filed IPR testimony and further revise and refine those opinions to account for and substantively attack responsive positions Patent Owner had subsequently taken in the IPR (true "gamesmanship" against Patent Owner, to use your term); and continue actively pursuing three identical, overlapping grounds in both the district court and the IPR in direct violation of Mylan's promise to the Board and Patent Owner in its petition—joining and serving the three expert reports making those prohibited arguments on behalf of Mylan and all other defendants.

As we have repeatedly explained, even if now (long after being confronted with its misconduct) Mylan were to concede it must abide by its promise (and that is by no means clear from your conspicuously incomplete and ambiguous statements about

what Mylan will and won't do), Mylan's going-forward compliance would not erase the harm caused by Mylan's misconduct. Mylan actively organized and educated its codefendants to continue acting on Mylan's behalf without Mylan. Indeed, your continued protests about Mylan's convenience—that, because Mylan chose to share experts, Mylan now finds it inconvenient to avoid discussing, or paying for the pursuit of, the forbidden grounds with the same overlapping experts its codefendants are using—are both baseless and revealing. Mylan's convenience does not excuse or authorize violation of its stipulation. And while Mylan can't organize or fund others to do what Mylan is forbidden from doing itself, that is precisely what Mylan seems intent on continuing to do. Nor has Mylan somehow been forced in litigation to share experts or violate its stipulation. In addition to our own prior refutation of these arguments, we understand litigation counsel is separately addressing your mischaracterization of events in the district court, where you know from our draft motion that Patent Owner is prepared to take further appropriate steps. Here, however, we are seeking relief in the form of sanctions (adverse judgment in the IPR) that only the PTAB—not the district court—can provide.

The fact that the Board has not, at least to our knowledge, previously confronted misconduct like Mylan's is not surprising—nor is it a free pass for Mylan from sanctions. Most litigants, of course, feel bound by the promises they make to an opposing party, let alone to a tribunal like the Board. And most would not engineer their misconduct to ensure its continuing impact even if they are eventually forced to honor their promises. (Even now, having been caught in its violation, Mylan continues to argue it can continue to do whatever it wishes regarding the stipulated grounds short of “trial” or a dispositive “motion,” and further suggests that—contrary to its stipulation and the Board's entire *Fintiv* doctrine—Mylan can ignore its stipulation and engage in duplicative litigation in the guise of “preserv[ing]” its ability to do so if the law later changes.) Mylan's choice to do what most parties would not does not insulate Mylan from sanctions.

Nor is some particular prejudice to Patent Owner a prerequisite for the Board to impose sanctions, as you continue to argue. Although, as discussed above, real prejudice to Patent Owner clearly exists here, your arguments ignore that *Mylan also broke its promise to the Board* to obtain institution. The Board needs nothing more to sanction Mylan. And respectfully, the Board seems unlikely to endorse Mylan's view that petitioners are free to violate their stipulations until caught, and even then with no consequences other than having to follow their promises from that point forward.

Since our first meet and confer on June 14 you have been trying to dissuade us from pursuing Mylan's misconduct by threatening sanctions for purported failure to cite what

you contended was controlling contrary legal authority. Until your July 3 email you refused to identify that authority. And, now that you have finally provided your citations, they clearly do not provide authority—let alone controlling legal authority—contradicting Patent Owner’s position that the Board should sanction Mylan’s misconduct under Rule 11. Two of your four cited cases—the first, *Google v. Hafeman*, and the fourth, *Apple Inc. v. Maxell, Ltd.*—**do not even involve a motion for sanctions**. Instead, both concern rehearing as a way of requesting termination of trial. See *Hafeman*, IPR2022-01188, EX3001 (Mar.20, 2023) (denying permission “to file a rehearing request out of time” concerning the decision to institute); *Apple Inc. v. Maxell, Ltd.*, IPR2020-00204, Pap.21 (Dec.15, 2020) (denying rehearing based on numerous arguments). (Your second citation from *Hafeman* is simply to part of a question posed by a judge during the final hearing (Pap.31), not a ruling of the Board.) Unlike the patentees in *Hafeman* and *Maxell*, we are proceeding under Rule 11, and (as indicated in the draft motion) Patent Owner seeks sanctions for Mylan’s misconduct including adverse judgment on the overlapping grounds and costs (although dismissal is an alternative remedy the Board could consider). And the Board has, for that matter, recently authorized briefing on a motion to terminate in connection with a *Sand Revolution* stipulation. See, e.g., *Parse Biosciences Inc. v. 10x Genomics, Inc.*, IPR2023-00955, Pap.24, July 3, 2024 (approving briefing of motion to terminate where petitioner violated its *Sand Revolution* stipulations, despite petitioner seeking relief from its stipulations in district court based on claim of changed circumstances).

This is also not a case where there is any factual dispute for the district court to resolve about whether a petitioner’s prior art combination asserted in litigation matches its stipulation, as in your other two cases, *Samsung Elecs. Co. v. Netlist, Inc.*, IPR2022-00639, EX3003 (parties presenting dispute concerning scope of “reasonably could have been raised” estoppel), and *Lightspeed Commerce Inc. v. Cloudfchange, LLC*, IPR2022-00779, EX2031 (transcript of hearing) (conceding “we would expect before trial in September to have a *ruling from the Court about the scope of the stipulation with respect to that proceeding.*”) and Pap. 28 (July 25, 2023) (noting district court would decide issue), as well as *Maxell*, Pap.21, 9 (arguing petitioner was “citing [overlapping art] in a summary judgment motion as ‘evidence that the claimed elements were *routine and conventional.*’”). Here, Mylan is pursuing three **identical** invalidity grounds in both the IPR and the district court: that is what the expert reports served by Mylan **say**.

We also note you have pointed to no discussion in *any* of your cited cases about a petitioner’s violation of a stipulation alongside co-defendants the petitioner was marshalling to continue on without it, as Mylan has done here.

Far from presenting any controlling legal authority contrary to Patent Owner's positions, your four citations instead reveal Mylan's attacks as, in your word, "frivolous." We expect your baseless counter-threats of sanctions to stop.

Your suggestion that Patent Owner's approach to Mylan's misconduct was untimely is also baseless. First, it overlooks (again) that the harm Mylan imposed on Patent Owner by its conduct with the March expert reports could not have been undone (whether immediately thereafter or now) by a late promise from Mylan to obey its stipulation going forward. It also ignores the facts. Once Patent Owner's PTAB counsel (who, unlike Mylan's, are different from its litigation counsel) became aware of Mylan's misconduct after service of your March expert reports, Patent Owner investigated and analyzed the information that was available to assess the harm caused by Mylan's misconduct—harm that, again, cannot now be undone even if Mylan were to commit to ceasing its violation going forward—and then researched, prepared, and served a draft motion for sanctions. Your complaint that Patent Owner did so with a "lengthy" motion (which actually satisfies the normal 15-page limit) ignores Rule 11(d)(2), which required Patent Owner to do precisely this. And as you will recall, Patent Owner did so in the midst of defending numerous depositions and reviewing Mylan's Reply.

You now appear to make another amorphous suggestion that Mylan might yet do or commit to do something more to follow its stipulation, at least going forward. As we cautioned when you raised a similar unspecified notion in our June 14 meet and confer (which was later proven inadequate when you put it in writing), if some new approach falls short of Mylan's actual stipulation this will be inadequate again, and we will consider what Mylan commits to when it actually does so. As we have already detailed, your prior attempt (following the June 14 call) to change Mylan's actual stipulation that Mylan would not pursue the overlapping grounds **at all** and **immediately** upon institution into some different commitment that would not prevent Mylan from doing **anything** until **later**, at the point of dispositive "motions and trial," is facially improper and inadequate. And, of course – like adding a "footnote" today saying what Mylan will rely on *going forward* from the March expert reports – it says and does nothing about Mylan's conduct in preparing and presenting those March expert reports with its codefendants, or the harm Mylan's violation of its stipulation has caused and continues to cause.

Finally, regarding your question about the brief we will file upon authorization from the Board, as we said in our first email to you on this topic we will be revising that initial draft, including based on what you have said in our meet and confer discussions—but the factual basis remains the same.

Respectfully,
Steve

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From: J. Steven Baughman <steve.baughman@groombridgewu.com>

Sent: Monday, July 1, 2024 3:58 PM

To: White, Brandon (Perkins Coie) <BMWhite@perkinscoie.com>

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Subject: RE: IPR2023-00724 - Service of draft proposed motion for sanctions

Counsel,

Please find below our draft email to the Board requesting a call to authorize a motion for sanctions and a motion for additional discovery. Could you please confirm your availability for a call with the Board next Thursday and Friday, July 10 and 11, and Monday, July 15? Given the holiday on Thursday, we intend to write to the Board on Monday, July 8.

We have not heard from you on this topic since our email last Tuesday and assume Petitioner's positions remain the same, including regarding Petitioner's refusal to answer our questions below or to provide any discovery.

Regarding counsel for Sun's query about the possibility of deferring potentially overlapping discovery as to the joining petitioners (and without waiver of or prejudice to Petitioner's position that, per the representations of Sun and DRL in connection with joinder, Patent Owner is entitled to rely on the positions of Petitioner Mylan on behalf of all joined petitioners), Patent Owner is open to further discussion in advance of the call

with the Board to try to narrow this aspect of the dispute. If Sun and/or DRL may be open to answering some basic questions about participation in the March 2024 expert reports as a possible basis for deferring aspects of Patent Owner's discovery requests as to Sun and DRL, please let us know and we are happy to arrange a discussion.

Best regards,
Steve

--DRAFT

Patent Owner respectfully requests a call with the Board to seek permission to file a motion for sanctions, pursuant to Rule 42.12, based on Petitioner Mylan's violation of its promise to the Board and Patent Owner that, upon institution, Mylan "will not pursue in the district court any instituted grounds against the originally-issued claims" (Pet. 66), by actively litigating three instituted grounds in district court--including in three expert reports expressly made on behalf of Mylan and its co-defendants and served by Mylan. The 21-day period specified in Rule 42.11(d)(2) has passed, and Patent Owner seeks sanctions that are not available in the district court. Counsel for Petitioner Mylan confirms that Petitioner **opposes** this request.

Because Petitioner has refused any discovery regarding its conduct in connection with the expert reports noted above, Patent Owner--in order to understand the extent of Petitioner's violation--further requests leave to file a motion for limited additional discovery from Petitioners regarding their respective retention, direction, and payment of these three experts in connection with the instituted '462 grounds who, prior to institution, were experts in this IPR and only for Mylan. Counsel for Petitioner Mylan has stated that Mylan believes no discovery is appropriate and **opposes** this request.

Counsel for both parties are available to discuss their respective positions with the Board on **Thursday, July 11, between 3 and 5pm ET, Friday, July 12, between 3 and 5pm ET, or Monday, July 15, between 1 and 5pm ET**, or as the Board otherwise directs.

Respectfully submitted,

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From: J. Steven Baughman <steve.baughman@groombridgewu.com>
Sent: Tuesday, June 25, 2024 1:23 PM
To: White, Brandon (Perkins Coie) <BMWhite@perkinscoie.com>
Cc: White-ptab@perkinscoie.com; Beel, Bryan D. (Perkins Coie) <BBeel@perkinscoie.com>; Greb-ptab@perkinscoie.com; prochnow-ptab@perkinscoie.com; jones-ptab@perkinscoie.com; tietz-ptab@perkinscoie.com; lembo-ptab@perkinscoie.com; Bloodworth, Shannon (Perkins Coie) <SBloodworth@perkinscoie.com>; kelley_nathan-ptab@perkinscoie.com; RSwartz@perkinscoie.com; Semaglutide-Ozempic@perkinscoie.com; Wong, Jovial (jwong@winston.com) <jwong@winston.com>; Border, Scott <SBorder@winston.com>; slin@winston.com; Sodikoff, Brian <brian.sodikoff@katten.com>; West, Christopher W. <christopher.west@katten.com>; Ferenc, Christopher B. <christopher.ferenc@katten.com>; Novo-Semaglutide-IPR@groombridgewu.com; Anstaett, David L. (Perkins Coie) <DAAnstaett@perkinscoie.com>
Subject: RE: IPR2023-00724 - Service of draft proposed motion for sanctions

Brandon,

We are, first, surprised by Mylan's conspicuous attempt to alter and limit Mylan's commitment to the Board to pursuing the instituted grounds only **“by motion or at trial.”** As you know, in its petition Mylan explicitly promised it would not pursue those instituted grounds in district court litigation **at all** upon institution (Pet.66):

In addition, Petitioner stipulates that if the Board institutes, Petitioner **will not pursue in the district court** any instituted grounds against the originally-issued claims unless a change in law otherwise permits. This further weighs in favor of institution.

Far from “reaffirm[ing]” or “reiterat[ing]” its promise, Mylan now tries to rewrite it going forward—all the while refusing to answer any questions in the IPR about what Mylan has already done.

There is no basis for Mylan's suggestion that, so long as it stops short of doing so in a “motion or... trial,” Mylan is somehow entitled to pursue these foresworn grounds in litigation in other ways—such as by submitting reports asserting and detailing those improper grounds on Mylan's own behalf and on behalf of its co-defendants (organized and prepared by Mylan to carry on even if Mylan is eventually forced, going forward, to follow Mylan's petition stipulation). Indeed, the point of making a *Fintiv*-related stipulation like Mylan's is to assure the Board that wasteful, duplicative litigation by the petitioner will stop in full and *immediately at institution*—not at some future time or only in pre-trial motions or arguments at trial.

Mylan's attempt to recast its promise also calls into question what Mylan now concedes it won't do, going forward, at trial or in motion practice. It is apparent that Mylan, after institution, agreed to share with its litigation co-defendants Mylan's three IPR experts, who not only copied vast swaths of their IPR declarations but also, with Mylan's apparent sponsorship and participation, included further additional opinions responding to specific arguments raised by Patent Owner in the IPR. Mylan then formally submitted these three reports to Patent Owner in litigation on behalf of Mylan and all of its codefendants. This is certainly an example of Mylan "pursu[ing] in the district court [the three] instituted grounds," contrary to its stipulation. Does Mylan agree that, going forward, it will not pursue these grounds, whether alone or in collaboration (openly or "behind the scenes") with its codefendants? Or, is it Mylan's position that Mylan need only refrain from officially signing on to arguments Mylan helps to prepare on those foresworn grounds when they are advanced against Patent Owner in the district court?

While Mylan argues it was "forced... to participate in coordinated and consolidated pre-trial proceedings," Mylan's characterization of the litigation history (even if it were accepted, *arguendo*) would not absolve Mylan of its obligations to follow its commitments to the Board or any other requirements—whether in the interests of Mylan's "convenience" or otherwise. (Notably, Mylan's reliance on Patent Owner's arguments for consolidated pre-trial proceedings in the MDL ignore that these were made nearly a year prior to the filing of Mylan's petition, and that Mylan's promise came **after** consolidation was ordered and Mylan was fully aware it would be involved in pre-trial proceedings with defendants not bound by Mylan's promise. Similarly, the October 31, 2023 **joint** stipulation was entered into after institution was granted and Mylan's promise was in force, and did not relieve Mylan of its promise—"coordinating [] discovery efforts" does not mean Mylan can substantively assist those other defendants.) For example, the suggestion that Mylan is somehow incapable of funding and sharing experts *only on permissible topics*, and *not* on the grounds Mylan promised the Board and Patent Owner it would not pursue, is nonsensical—and it is, of course, belied by the conduct of Mylan's own co-petitioners, Sun and DRL, who (as Sun noted in our June 14 meet and confer) have expressly stated they are not joining certain aspects of the co-defendants' shared expert reports following institution of their joined petitions. *E.g.*, Responsive Expert Report of Arthur Z. Schwartzbard, M.D., F.A.C.C., at 1 n.1 ("I understand that Dr. Reddy's Laboratories, Ltd., Dr. Reddy's Laboratories, Inc., Sun Pharmaceutical Industries Ltd., and Sun Pharmaceutical Industries, Inc. do not adopt my opinions as they relate to anticipation or obviousness of the '462 patent.").

Finally, Mylan's attempt to rewrite its stipulation to the Board going forward notably

omits any comment on what Mylan has already done, including in the March 19, 2024, expert reports it joined and served for all the defendants months after institution. While Mylan has yet to acknowledge it did anything to violate its stipulation, Mylan has not explained its conduct or disputed any of the facts presented in our draft motion for sanctions, and we intend to seek the Board's assistance. Notwithstanding Mylan's stated refusal in our meet and confer to consider any discovery on any aspect of this matter, we also intend to seek the Board's permission for related discovery, and will follow up on that topic in separate correspondence. But in the meantime, we ask again: can Mylan represent to Patent Owner that (other than completed work Mylan had already performed solely in connection with the IPR) Mylan had no substantive involvement in the preparation, discussion, or other development of the invalidity theories in the March 19, 2024 expert reports of Drs. Bantle, Jusko, and Dalby that Mylan promised it would not pursue in the district court?

Regarding Mylan's repeated threat that—if Patent Owner seeks the Board's assessment of and assistance with Mylan's conduct here—Mylan will “seek its own sanctions,” we respectfully submit this is facially improper and unfounded, as confirmed by Mylan's conduct in our June 14 meet and confer. During that discussion, Mylan's counsel repeatedly suggested he had in mind controlling legal authority that a sanctions motion against Mylan would be impermissible and improper—but in response to our repeated, explicit requests, he flatly refused to identify any such authority. We are not aware of any, and we ask again that Mylan either identify it to us so that we may consider it, or cease making improper threats of retaliation.

Respectfully,
Steve

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From: White, Brandon (Perkins Coie) <BMWhite@perkinscoie.com>
Sent: Friday, June 21, 2024 10:51 AM
To: J. Steven Baughman <steve.baughman@groombridgewu.com>
Cc: White-ptab@perkinscoie.com; Beel, Bryan D. (Perkins Coie) <BBeel@perkinscoie.com>; Greb-ptab@perkinscoie.com; prochnow-ptab@perkinscoie.com; jones-ptab@perkinscoie.com; tietz-ptab@perkinscoie.com; lembo-ptab@perkinscoie.com; Bloodworth, Shannon (Perkins Coie) <SBloodworth@perkinscoie.com>; kelly_nathan-ptab@perkinscoie.com;

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Subject: RE: IPR2023-00724 - Service of draft proposed motion for sanctions

Steve,

Attached is a copy of a letter provided to counsel in *In re Ozempic (Semaglutide) Patent Litigation*, MDL No. 22-MD-3038 (CFC). MPI reaffirms in this letter that it will not pursue by motion or at trial in the district court litigation any grounds of invalidity instituted in *Mylan Pharmaceuticals Inc. v. Novo Nordisk A/S*, No. IPR2023-00724 (PTAB), against the originally-issued claims of U.S. Patent No. 10,335,462, unless a change in law otherwise permits.

While Novo Nordisk now appears to take issue with the Defendants in the district court litigation sharing experts and serving common expert reports, that is exactly what Novo Nordisk expected and relied upon before the JPML to force MPI to litigate in Delaware. Novo Nordisk understood and expected that there would be overlapping invalidity issues and shared experts between the cases it filed in Delaware and the case it filed against MPI in the Northern District of West Virginia and leveraged that expectation to compel MPI's transfer from the Northern District of West Virginia to Delaware. Moreover, the Delaware court ordered the parties to coordinate discovery in the litigation and Novo expressly agreed that the Mylan case should remain in Delaware for trial. Given Novo Nordisk's expectation of shared experts and overlapping invalidity positions on the consolidated Delaware litigation, it is not surprising that Novo Nordisk's Delaware counsel, despite raising other issues concerning the contentions and expert reports served in the Delaware litigation, has never suggested that MPI has improperly pursued any issue. MPI remains in full compliance with its representations to the Board.

Novo's draft motion for sanctions is baseless, and the discovery it seeks is unwarranted. Should Novo Nordisk continue to pursue this motion or this discovery, MPI reserves the right to seek its own sanctions.

Brandon White | Perkins Coie LLP
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From: Anstaett, David L. (MSN) <DAAnstaett@perkinscoie.com>

Sent: Friday, June 14, 2024 8:56 AM

To: J. Steven Baughman <steve.baughman@groombridgewu.com>

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Subject: RE: IPR2023-00724 - Service of draft proposed motion for sanctions

Steve,

Please send a dial-in number for a call at 6:30pm EST today.

Regards,
Dave

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From: J. Steven Baughman <steve.baughman@groombridgewu.com>
Sent: Thursday, June 13, 2024 8:15 PM
To: Anstaett, David L. (MSN) <DAnstaett@perkinscoie.com>
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Subject: RE: IPR2023-00724 - Service of draft proposed motion for sanctions

Dave,

I'm happy to speak to you from Japan, but the two specific hours you offered for a meet and confer are 4-6am. If you prefer Friday over Monday, I can talk any time after 6:30pm ET Friday.

(We obviously disagree with your other characterizations, but can address those at an appropriate time.)

Best,

Steve

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From: Anstaett, David L. (Perkins Coie) <DAAnstaett@perkinscoie.com>

Sent: Thursday, June 13, 2024 3:37 PM

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Wong, Jovial (jwong@winston.com) <jwong@winston.com>; Border, Scott <SBorder@winston.com>; slin@winston.com;
Sodikoff, Brian <brian.sodikoff@katten.com>; West, Christopher W. <christopher.west@katten.com>;
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Subject: Re: IPR2023-00724 - Service of draft proposed motion for sanctions

Steve,

Given that Patent Owner has accused Petitioner of “breathtaking misconduct,” we are surprised to learn that neither you nor anyone on your team is available to confer on Friday. Patent Owner’s request for discovery to support its proposed motion, which is utterly lacking in any factual or legal basis, even prior to the 21-day period required by the rules is frivolous. Regardless, Patent Owner is required to meet and confer before bringing such a motion request to the Board. So while I understand from your email that it is personally inconvenient for you to meet and confer on Friday, your personal inconvenience pales in comparison to the harm Novo’s actions have caused Petitioner. And as you were able to send your baseless motion and discovery demand from Japan, the need for you to be available to meet and confer while overseas was foreseeable.

We remain available on Friday at anytime you or one of the many members of your team is available.

Regards,

Dave

On Jun 13, 2024, at 8:37 AM, J. Steven Baughman
<steve.baughman@groombridgewu.com> wrote:

Brandon - thanks for your message. I am still in Japan on Friday but could talk on Monday afternoon or Tuesday from 3-5pm ET; could you please let me know if one of those times works for you?

Thanks,
Steve

J. Steven Baughman
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From: White, Brandon (Perkins Coie) <BMWhite@perkinscoie.com>
Sent: Thursday, June 13, 2024 2:12:18 AM
To: J. Steven Baughman <steve.baughman@groombridgewu.com>; White-ptab@perkinscoie.com <White-ptab@perkinscoie.com>; Beel, Bryan D. (Perkins Coie) <BBeel@perkinscoie.com>; Greb-ptab@perkinscoie.com <Greb-ptab@perkinscoie.com>; prochnow-ptab@perkinscoie.com <prochnow-ptab@perkinscoie.com>; jones-ptab@perkinscoie.com <jones-ptab@perkinscoie.com>; tietz-ptab@perkinscoie.com <tietz-ptab@perkinscoie.com>; lembo-ptab@perkinscoie.com <lembo-ptab@perkinscoie.com>; Bloodworth, Shannon (Perkins Coie) <SBloodworth@perkinscoie.com>; Anstaett, David L. (Perkins Coie) <DAnstaett@perkinscoie.com>; kelly_nathan-ptab@perkinscoie.com <kelly_nathan-ptab@perkinscoie.com>; RSwartz@perkinscoie.com <RSwartz@perkinscoie.com>; Semaglutide-Ozempic@perkinscoie.com <Semaglutide-Ozempic@perkinscoie.com>; Wong, Jovial (jwong@winston.com) <jwong@winston.com>; Border, Scott <SBorder@winston.com>; slin@winston.com <slin@winston.com>; Sodikoff, Brian <brian.sodikoff@katten.com>; West, Christopher W. <christopher.west@katten.com>; Ferenc, Christopher B. <christopher.ferenc@katten.com>; Novo-Semaglutide-IPR@groombridgewu.com <Novo-Semaglutide-IPR@groombridgewu.com>
Subject: RE: IPR2023-00724 - Service of draft proposed motion for sanctions

Steve,

We are available to meet and confer on Patent Owner's request for discovery between noon and 3 pm ET on Friday, June 14.

From: J. Steven Baughman <steve.baughman@groombridgewu.com>
Sent: Monday, June 10, 2024 10:30 PM
To: *White-ptab <White-ptab@perkinscoie.com>; Beel, Bryan D. (POR) <BBeel@perkinscoie.com>; *Greb-ptab <Greb-ptab@perkinscoie.com>; *prochnow-ptab <prochnow-ptab@perkinscoie.com>; *Jones-ptab <jones-ptab@perkinscoie.com>; *tietz-ptab <tietz-ptab@perkinscoie.com>; *lembo-ptab <lembo-ptab@perkinscoie.com>; Bloodworth, Shannon (WDC) <SBloodworth@perkinscoie.com>; Anstaett, David L. (MSN) <DAnstaett@perkinscoie.com>; *Kelley_Nathan-ptab <kelley_nathan-ptab@perkinscoie.com>; Swartz, Rodney (POR) <RSwartz@perkinscoie.com>; *Semaglutide-Ozempic <Semaglutide-Ozempic@perkinscoie.com>; Wong, Jovial (jwong@winston.com) <jwong@winston.com>; Border, Scott <SBorder@winston.com>; slin@winston.com; Sodikoff, Brian <brian.sodikoff@katten.com>; West, Christopher W. <christopher.west@katten.com>; Ferenc, Christopher B. <christopher.ferenc@katten.com>; Novo-Semaglutide-IPR@groombridgewu.com
Subject: IPR2023-00724 - Service of draft proposed motion for sanctions

Counsel-

Please find enclosed for service a draft proposed motion for sanctions in this IPR in connection with Petitioner Mylan's failure to abide by its *Sand Revolution* stipulation; because of size constraints, we will separately forward a link with the presently-contemplated additional related exhibits.

This draft is provided pursuant to Rule 42.11(d)(2), and reflects Patent Owner's intent to seek the Board's permission to file such a motion after the passage of the 21-day period specified in the Rule. Consistent with the Rule, during this period we are prepared to discuss this proposed motion if Mylan wishes to do so, including whether Mylan is willing to provide the requested relief without the need for a motion. Patent Owner reserves the right to revise this motion before any filing with the Board (including, without limitation, in response to any discussions with or further conduct by Mylan, any additional information obtained, or other changed circumstances).

In connection with Petitioner Mylan's failure to follow its stipulation and this intended motion, Patent Owner also intends to seek now the Board's authorization for additional discovery from Petitioners into the circumstances surrounding Mylan's cooperation and coordination with DRL, Sun, and the other litigation co-defendants in the parallel litigation following

institution of Mylan's IPR on October 4, 2023. In particular, Patent Owner intends to ask authorization from the Board to seek the following from all Petitioners:

1. All documents consisting of or reflecting communications (including without limitation any actual or potential agreements, drafts, or other documents communicated) between or among Mylan and any other litigation co-defendant about the actual or potential retention of Mylan's IPR experts, Drs. William Jusko, John Bantle and/or Paul Dalby, by any of the co-defendants other than Mylan in the parallel Delaware litigation, *In re: Ozempic (Semaglutide) Patent Litigation*, No. 1:22-cv-01040-CFC (D. Del.). To the extent you assert any such documents are privileged, please provide a privilege log substantiating the basis for your assertion.
2. All documents reflecting any communications (including without limitation any drafts or other documents communicated) between or among any litigation co-defendant and any of Mylan's IPR experts Drs. William Jusko, John Bantle and/or Paul Dalby, relating to or reflecting any direction, instruction, or consultation of such expert(s) in connection with the parallel Delaware litigation. To the extent you assert any such documents are privileged, please provide a privilege log substantiating the basis for your assertion.
3. All documents and things relating to or reflecting the retention and payment of Mylan's IPR experts, Drs. William Jusko, John Bantle and/or Paul Dalby, in connection with the parallel Delaware litigation, including without limitation all actual or draft retention agreements, invoices, and payment confirmations. To the extent you assert any such documents are privileged, please provide a privilege log substantiating the basis for your assertion.

Please let us know whether Petitioner opposes this request for additional discovery, and (if so) your availability for a meet and confer regarding this request.

Thank you for your prompt response.

Respectfully,

Steve Baughman
Counsel for Patent Owner

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