From:	Daniel L. Shores
To:	Edwards, Jeremy
Cc:	Maddox, Steven; Garrison, Brett; Adam M. Nicolais; Priestly, Tina; Lim, Tracy
Subject:	Re: [EXTERNAL] Hongene-Chemgenes IPRs
Date:	Wednesday, February 14, 2024 8:50:33 AM
Attachments:	image001.jpg image002.jpg image003.jpg image004.jpg image005.jpg

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Jeremy,

Several of these documents are heavily redacted without a stated basis for doing so. Please produce unredacted versions immediately. If you have a good faith basis for the redactions, please provide it immediately. We reserve all rights to take this up with the Board.

Best regards,
Dan

From: "Edwards, Jeremy" <Jeremy.Edwards@procopio.com>
Date: Tuesday, February 13, 2024 at 10:15 PM
To: "Daniel L. Shores" <DShores@rfem.com>
Cc: "Maddox, Steven" <Steven.Maddox@procopio.com>, "Garrison, Brett" <Brett.Garrison@procopio.com>, "Adam M. Nicolais" <anicolais@rothwellfigg.com>, "Maddox, Steven" <Steven.Maddox@procopio.com>, "Garrison, Brett" <Brett.Garrison@procopio.com>, "Priestly, Tina" <Tina.Priestly@procopio.com>, "Lim, Tracy" <Tracy.Lim@procopio.com>
Subject: RE: [EXTERNAL] Hongene-Chemgenes IPRs

Dan,

Here is the production.

Sincerely,

Jeremy

JEREMY J. EDWARDS
PARTNER

P. 202.830.0540 C. 410.627.6833 | jeremy.edwards@procopio.com
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From: Daniel L. Shores <DShores@rfem.com>

CHEMGENES EXHIBIT 2047
Shanghai Hongene v. ChemGenes
Case IPR2023-00862

Sent: Monday, February 12, 2024 5:13 PM
To: Edwards, Jeremy <Jeremy.Edwards@procopio.com>
Cc: Maddox, Steven <Steven.Maddox@procopio.com>; Garrison, Brett <Brett.Garrison@procopio.com>; Adam M. Nicolais <anicolais@rothwellfigg.com>
Subject: RE: [EXTERNAL] Hongene-Chemgenes IPRs

*** EXTERNAL EMAIL - Please use Caution. ***

Jeremy,

Your proposal is fine, so long as we have your firm's reciprocal agreement also.

Best regards,
Dan

From: Edwards, Jeremy <Jeremy.Edwards@procopio.com>
Sent: Monday, February 12, 2024 4:39 PM
To: Daniel L. Shores <DShores@rfem.com>
Cc: Maddox, Steven <Steven.Maddox@procopio.com>; Garrison, Brett <Brett.Garrison@procopio.com>; Adam M. Nicolais <anicolais@rothwellfigg.com>
Subject: RE: [EXTERNAL] Hongene-Chemgenes IPRs

Dan,

The draft you sent me is fine. I will submit to the Panel later today or early tomorrow.

But it is not clear whether your agreement to "maintain confidentiality" is shorthand for agreeing to what I proposed regarding being bound and bound retroactively. Please indicate whether you believe there is a difference between what I proposed and what you are assenting to. I'll need clarity on this before producing the documents.

Sincerely,

Jeremy

JEREMY J. EDWARDS
PARTNER

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From: Daniel L. Shores <DShores@rfem.com>
Sent: Monday, February 12, 2024 3:41 PM
To: Edwards, Jeremy <Jeremy.Edwards@procopio.com>
Cc: Maddox, Steven <Steven.Maddox@procopio.com>; Garrison, Brett <Brett.Garrison@procopio.com>; Adam M. Nicolais <anicolais@rothwellfigg.com>
Subject: RE: [EXTERNAL] Hongene-Chemgenes IPRs

*** EXTERNAL EMAIL - Please use Caution. ***

Jeremy,
Our original proposal identified individual in-house counsel to facilitate their ability to review documents marked Attorneys' Eyes Only ("AEO"). But you refused to agree to an AEO designation and demanded that certain documents (including the subject documents) be designated "true" Outside Attorneys' Eyes Only ("OAEO").

We agreed in the interests of moving things along while reserving rights as previously stated, including all rights to challenge any over-designations. We therefore reverted to Section 2(D) of the default assuming you would agree since designating individuals for in-house AEO did not seem to make sense anymore. Hongene's personnel would be covered under original Section 2(A). The redline we sent was meant to capture the agreed changes compared against the default order.

Let me know if this doesn't clear things up. I am returning your draft with one additional tweak, clarifying each side's right to challenge the other Party's designation of documents. We left in the designation of individuals under Section 2(D) if you feel strongly about leaving it in. But feel free to revert back to default based on the explanation above.
We agree to maintain confidentiality and are fine with your draft email to the Board.
Best regards,
Dan

From: Edwards, Jeremy <Jeremy.Edwards@procopio.com>
Sent: Monday, February 12, 2024 1:43 PM
To: Daniel L. Shores <DShores@rfem.com>
Cc: Maddox, Steven <Steven.Maddox@procopio.com>; Garrison, Brett <Brett.Garrison@procopio.com>; Adam M. Nicolais <anicolais@rothwellfigg.com>
Subject: RE: [EXTERNAL] Hongene-Chemgenes IPRs

Dan,

I see now that the version you sent me on February 9 contained redlines proposed a change not reflected in redlines. Your proposal seems to be to revert to the default version of Paragraph 2(D)

regarding the identity of those who can receive information marked as "Protective Order Material." In the version you sent me on February 7, you proposed limiting that category of recipients to one in-house counsel designee, and gave a name. In response, in the version I sent you on February 8, I proposed changing 2(D) from one in-house counsel to one in-house person (not necessarily a lawyer), and gave a name. This is because the Hongene personnel managing this case are not lawyers. Thus, requiring the sole in-house designee to be a lawyer (i.e., as proposed in your original version and reflected in your most recent version, which is the default version) would be prejudicial and unworkable for Hongene in the event any Chemgenes Protective Order Material comes into play. Given that we are identifying a single person by name and restricting their use, and especially given that we have not sought discovery of any Chemgenes confidential information to date, we think handling designees the way Hongene proposed in my February 8 version is appropriate and fair. If you are insisting on the designee being a lawyer, and/or are insisting on having more than one in-house person with access to Protective Order Material, we will have to present this dispute to the Board with the submission.

I have attached a version that accepts all changes in your version from February 9 and makes Hongene's further revisions in redline. The two changes outside of Paragraph 2(D) are to correct a typo in paragraph 3, and to clarify paragraph 5 without changing the intended meaning.

Assuming we can reach agreement on the language of the protective order, Hongene would be willing to produce the SAB agreement and emails related to Dr. Baran's service on the Hongene SAB once the protective order is filed along with the joint request of the parties that it be entered, provided that your firm agrees that any recipient of confidential information is bound (a) by the protective order upon its submission, and not only upon its entry, and (b) retroactively to the date of the originally-submitted proposed protective order by any modified order later entered by the Panel.

Please let me know whether you agree.

Finally, here is proposed language for the submission:

Dear Panel,

We write on behalf of both parties in this case to jointly request entry of the attached protective order. The parties have agreed to its terms, which differ from the default protective order in some respects. For the Panel's convenience, attached are a clean version and a redline version reflecting the differences between the default protective order and the agreed protective order.

If the proposed protective order meets with the Panel's approval, the parties respectfully request that it be entered at the Panel's earliest convenience. The parties are available for a conference call to discuss this matter if the Panel so desires.

[end]

JEREMY J. EDWARDS

PARTNER

P. 202.830.0540 C. 410.627.6833 | jeremy.edwards@procopio.com
1901 L. Street, N.W., Suite 620, Washington, DC 20036
View Profile | **LinkedIn** | **procopio.com**

From: Daniel L. Shores <DShores@rfem.com>
Sent: Monday, February 12, 2024 12:08 PM
To: Edwards, Jeremy <Jeremy.Edwards@procopio.com>
Cc: Maddox, Steven <Steven.Maddox@procopio.com>; Garrison, Brett <Brett.Garrison@procopio.com>; Adam M. Nicolais <anicolais@rothwellfigg.com>
Subject: Re: [EXTERNAL] Hongene-Chemgenes IPRs

*** EXTERNAL EMAIL - Please use Caution. ***

Jeremy,

We do not oppose requesting entry of the agreed-upon protective order. Please send us (1) a draft of the correspondence to the Board seeking leave and (2) a draft of the motion for our review.

During the February 7 meet and confer in which you, Adam Nicolais and I attended, you stated that Hongene would agree to produce the documents under the agreed-upon protective order once filed and not upon approval from the Board. As discussed, the basis for this was our concern that more delay from the period of filing and approval risked not receiving the documents before Dr. Baran's Feb 20 deposition. Your email below appears to indicate that Hongene is now demanding the order be "in place."

Please confirm ASAP that you are still honoring your original agreement or now require the Board to enter the agreed-upon order before you produce the requested documents. If you are taking the latter position, let us know right away and we will request a conference with the Board.

Best regards,
Dan

From: "Edwards, Jeremy" <Jeremy.Edwards@procopio.com>
Date: Monday, February 12, 2024 at 8:00 AM
To: "Daniel L. Shores" <DShores@rfem.com>
Cc: "Maddox, Steven" <Steven.Maddox@procopio.com>, "Garrison, Brett" <Brett.Garrison@procopio.com>, "Adam M. Nicolais" <anicolais@rothwellfigg.com>
Subject: RE: [EXTERNAL] Hongene-Chemgenes IPRs

Dan,

Hongene does not intend to produce the documents without a protective order being in place.

Please let me know if you will join in, or object to, requesting entry of the protective order at this time.

Sincerely,

Jeremy

JEREMY J. EDWARDS
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1901 L. Street, N.W., Suite 620, Washington, DC 20036
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From: Daniel L. Shores <DShores@rfem.com>
Sent: Friday, February 9, 2024 12:25 PM
To: Edwards, Jeremy <Jeremy.Edwards@procopio.com>
Cc: Maddox, Steven <Steven.Maddox@procopio.com>; Garrison, Brett <Brett.Garrison@procopio.com>; Adam M. Nicolais <anicolais@rothwellfigg.com>
Subject: Re: [EXTERNAL] Hongene-Chemgenes IPRs

*** EXTERNAL EMAIL - Please use Caution. ***

Hi Jeremy,

We will agree to this subject to and without prejudice to our previous riders. Attached is the latest modified version of the PTAB Default Protective Order ("Order"). If you agree to the terms of the Order, then we request you produce the subject documents immediately. With regard to requesting leave to request entry of the Order, we've looked into this, and the routine is to file in connection with a motion to seal only. Page 3 of Scheduling Order. Therefore, since nothing confidential is currently being filed we do not think it's appropriate to seek leave from PTAB. Let us know if you have a different understanding. If not, we look forward to receiving the subject documents.

Thanks,
Dan

From: "Edwards, Jeremy" <Jeremy.Edwards@procopio.com>

Date: Thursday, February 8, 2024 at 9:37 PM
To: "Daniel L. Shores" <DShores@rfem.com>
Cc: "Maddox, Steven" <Steven.Maddox@procopio.com>, "Garrison, Brett" <Brett.Garrison@procopio.com>, "Adam M. Nicolais" <anicolais@rothwellfigg.com>
Subject: RE: [EXTERNAL] Hongene-Chemgenes IPRs

Dan,

If I'm understanding your email correctly, I think the only sticking point left is that Chemgenes wants its in-house designee to have access to OAEO information, whereas Hongene wants a "true" OAEO category under which such information does not go to any in-house designee.

Hongene feels that under the circumstances, there is some information in these documents that is so sensitive, and yet so irrelevant to any real issue in this case, that the risk of inevitable disclosure and the inability for a Chemgenes employee to "unlearn" it is too much to ask Hongene to take on.

There is little to be gained by seeking pre-agreement on, or pre-justification of, the proper confidentiality level of documents you have not seen yet. Rather, I think the way forward is to submit the draft PO to the Board as an agreed PO and request that it be entered. Hongene then produces the documents under the confidentiality designation(s) it deems appropriate. If Chemgenes disagrees with a designation, we will sort it out, or present it to the Board for a ruling, if needed. This way Hongene stays protected for the time being, you can get the documents before the deposition, and any disagreements can be sorted out in due course, and with better knowledge of the content of the documents.

How does that sound?

Sincerely,

Jeremy

JEREMY J. EDWARDS
PARTNER

P. 202.830.0540 C. 410.627.6833 | jeremy.edwards@procopio.com
1901 L. Street, N.W., Suite 620, Washington, DC 20036
View Profile | LinkedIn | procopio.com

From: Daniel L. Shores <DShores@rfem.com>
Sent: Thursday, February 8, 2024 3:08 PM
To: Edwards, Jeremy <Jeremy.Edwards@procopio.com>
Cc: Maddox, Steven <Steven.Maddox@procopio.com>; Garrison, Brett <Brett.Garrison@procopio.com>; Adam M. Nicolais <anicolais@rothwellfigg.com>
Subject: Re: [EXTERNAL] Hongene-Chemgenes IPRs

*** EXTERNAL EMAIL - Please use Caution. ***

Jeremy,

We are fine with this proposal, with the following riders:

First, we agree provided that: (1) we receive a copy of the Agreement relating to Dr. Baran's service on Hongene's Advisory Board; (2) we receive a copy of all emails between Hongene and Dr. Baran relating to this service (not just relating to the Agreement); (3) no documents relating to the foregoing are being withheld-if any documents are being withheld, please advise on what basis they are being withheld.

Second, could you please provide the basis for why these documents meet Attorney/Outside Counsel Eyes designation, i.e., are you representing that they are so commercially sensitive (e.g., trade secret information) that access by ChemGenes would create substantial risk of serious harm? As you may know, Attorney/Outside Counsel Eyes designations have been viewed as "drastic" approaches to document designation for documents that don't meet such standards. *See, e.g., Gillespie v. Charter Commc'ns,* 133 F. Supp. 3d 1195, 1201–02 (E.D. Mo. 2015).

We still feel the approach to designate a single person in house to have access is reasonable and standard. We should each maintain the ability to properly advise our clients and totally shielding such documents from client counsel would serve to greatly interfere with such counseling. Here, the existence of the Agreement, compensation amount, and other information has already been publicly disclosed without objection by Hongene. The referenced documents seem more appropriate to be produced under the "Protective Order Material" designation which would allow ChemGenes access. We are still willing to limit this access to these specific documents to Kevin O'Connor only if you feel that strongly about it (we have not seen the docs so don't know the level of sensitivity). Please advise as to your position and we will adjust the Protective Order unless you uniformly object and seek to over-designate these documents.

Third, we reserve all rights to object to improper document designations, and accepting this proposal does not preclude us from seeking and obtaining additional discovery relating to these and any other matters going forward.

Please advise. Thanks.

Best regards,

Dan

From: "Edwards, Jeremy" <Jeremy.Edwards@procopio.com>

Date: Thursday, February 8, 2024 at 9:36 AM
To: "Daniel L. Shores" <DShores@rfem.com>
Cc: "Maddox, Steven" <Steven.Maddox@procopio.com>, "Garrison, Brett" <Brett.Garrison@procopio.com>, "Adam M. Nicolais" <anicolais@rothwellfigg.com>
Subject: RE: [EXTERNAL] Hongene-Chemgenes IPRs

Dan,

There has been no "delay" on my part. I've been highly responsive and working with you and my client to respond to your request.

We continue to believe that the requested documents are not properly discoverable. We reserve the right to object and argue against further production.

In the interest of efficiency and minimizing disputes, however, Hongene can agree to produce the SAB agreement and related emails on a true outside counsel eyes only basis and subject to the attached revised protective order, which contains our redline revisions over yours.

Please let me know if Chemgenes will agree to this.

Sincerely,

Jeremy

JEREMY J. EDWARDS
PARTNER

P. 202.830.0540 C. 410.627.6833 | jeremy.edwards@procopio.com
1901 L. Street, N.W., Suite 620, Washington, DC 20036
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From: Daniel L. Shores <DShores@rfem.com>
Sent: Wednesday, February 7, 2024 7:06 PM
To: Edwards, Jeremy <Jeremy.Edwards@procopio.com>
Cc: Maddox, Steven <Steven.Maddox@procopio.com>; Garrison, Brett <Brett.Garrison@procopio.com>; Adam M. Nicolais <anicolais@rothwellfigg.com>
Subject: Re: [EXTERNAL] Hongene-Chemgenes IPRs

*** EXTERNAL EMAIL - Please use Caution. ***

Jeremy,

It is now more than 2 weeks after Dr. Baran's January 22, 2024 deposition and Hongene has still not produced any of the requested documents and has refused to confirm its willingness to voluntarily do so. You are well aware of Dr. Baran's upcoming February 20, 2024 deposition in the 885 IPR and there is plenty of time to provide these documents that you have in your possession well in advance.

Today you cited numerous bases for your delay, and referenced for the first time the upcoming Chinese New Year (starting in 3 days on February 10, 2024) as an additional and independent basis for Hongene's delay.

Under these circumstances, and without prejudice to our right to seek additional discovery including the SAB Minutes, we agree to accept a copy of the Agreement and Emails (*ref:* ChemGenes' 1/25/24 email) pursuant to the terms of the attached revised Default PTAB protective order. We propose the designated parties include outside counsel and a designated in-house counsel. Feel free to propose language you referenced regarding the limits of use.

These requests, which seek underlying documents relating to Hongene's agreement to pay Dr. Baran $70,000 during the pendency of these IPRs, are in the interest of justice because they (1) represent useful discovery regarding at least Dr. Baran's bias and Hongene's influence over Dr. Baran; (2) do not seek Hongene's litigation positions; (3) are not able to be discovered by ChemGenes through other means; (4) are simple and easily understood; and (5) are tailored in scope and not overly burdensome, satisfying all *Garmin* factors.

There remains no reasonable reason for your continued delay. Please either confirm, or send your proposed reasonable changes to, the Default protective order no later than tomorrow **February 8** and produce the Agreement and Emails no later than **close of business Friday, February 9.**

We reserve all rights to seek leave from the Board to move for the production of these documents and to re-call Dr. Baran for deposition if the documents are not timely provided.

Best regards,

Dan

From: "Edwards, Jeremy" <Jeremy.Edwards@procopio.com>
Date: Wednesday, February 7, 2024 at 12:21 PM
To: "Daniel L. Shores" <DShores@rfem.com>
Cc: "Maddox, Steven" <Steven.Maddox@procopio.com>, "Garrison, Brett" <Brett.Garrison@procopio.com>
Subject: [EXTERNAL] Hongene-Chemgenes IPRs

Dan,

Writing further to our call today and your request for production of the SAB documents. You mentioned on the call that in particular, you would like to know as soon as possible whether, when,

and under what conditions Hongene may be willing to produce the SAB contract between Hongene and Dr. Baran in advance of his deposition currently set for February 20.

As I mentioned, given your timing concern, I think it is a good idea move in parallel to try to reach a suitable arrangement. Hopefully we can avoid motion practice.

Accordingly, will Chemgenes agree to (a) maintain the SAB contract on an outside counsel eyes only basis and (b) use it solely for purposes of these three IPRs without publicly disclosing the SAB contract or any information contained therein that is not already public? Also, will Chemgenes agree to entry in all three IPRs of a protective order that tracks the default protective order appended to the Trial Practice Guide, with an additional provision expressly prohibiting the recipient of another party's confidential information from using that information for any purpose other than the IPRs?

I cannot yet say that Hongene would agree to this, but as I said, I'm trying to work in parallel to address your timing concern.

Of course, as I also mentioned, our willingness to try to negotiate an agreement regarding your discovery request is without waiver of any objection or argument that what Chemgenes seeks is not properly discoverable in these IPRs. As I mentioned before, if you have any authority to the contrary, I would be happy to consider it in parallel.

Sincerely,

Jeremy

JEREMY J. EDWARDS
PARTNER

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Wed Feb 07 2024 09:21:10

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Thu Feb 08 2024 06:35:47

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Thu Feb 08 2024 18:36:01

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Mon Feb 12 2024 05:00:31

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Mon Feb 12 2024 10:43:22

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Mon Feb 12 2024 13:39:05

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Tue Feb 13 2024 19:14:35

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