

Brent Batzer

From: Yixin Tang
Sent: Tuesday, June 3, 2025 7:07 PM
To: Justin Oakland; Brent Batzer; Shashank Upadhye; Bo Davis; Ty Wilson
Cc: Samuel T Lockner; Sun-Sezaby; Eric Findlay
Subject: RE: Nivagen v. Sun: 6/3 Meeting

Justin,

I don't think the words "a joint motion to stay" were ever uttered by anybody on today's call. I also think the phrase "willingness by Nivagen to stay the proceedings" is a stretch, and not what was discussed or shown by Nivagen's interrogatory response. During the videoconference, I offered to consider a request for a stay only after Sun Pharma has entered a so-called "Sotera" stipulation in the litigation to say that, should the PTAB institute IPR2025-00893 Sun requested, Sun will waive all defenses that were raised and/or could have been raised in Sun's IPR petition. Furthermore, I made it clear that in this case, such a stipulation must include a provision that bars Sun from double dipping using a commercial product as prior art when such a product is disclosed in a publication Sun has identified as prior art.

I also pointed out during today's discussion that filing a motion to stay carried a risk to Sun's position at the PTAB. In an effort to persuade the PTAB, Sun's IPR petition tried to downplay the significance of the upcoming trial date by saying that there is a pending motion to dismiss and transfer venue, and this motion "is particularly strong." If Sun files a motion to stay and the Court denies it, a "proceed as you were" ruling by the Court would blow apart Sun's "the motion to dismiss is particularly strong" argument. I urged Sun to file a letter with the Court to rule on the pending motion to dismiss and transfer venue (and on this point we can consider to joint this letter), but your team said something about such a letter is never done, and would not have any effect. All that is to say, Sun relied on the long-pending motion to emphasize to the PTAB a possibility that the Feb. 2026 trial date may be changed, and Sun's argument is based on some perceived ambiguity on how (and when) the Court would eventually rule on Sun's pending motion. Filing a motion to stay or urging the Court to rule on the pending motion would remove this ambiguity and doom the IPR petition more than it is already doomed (because Sun filed it so late, and has proceeded in the litigation so far). We will surely explain Sun's tactics to the PTAB, and also rely on the lack of any motion to stay or a letter to Court urging the resolution of the pending motion by Sun (along with Sun's refusal to file a proper *Sotera* stipulation as outlined above) as evidence that (1) Sun is not serious about winning on the IPR and (2) the IPR petition is designed to be duplicative, and not as a way to achieve efficiency.

On the deposition on claim construction issue: we had offered to wait until COB CT tomorrow for your team's decision to accept the June 13 date for Dr. Klibanov's deposition in-person. As discussed, we extend the offer of June 13 to include remote deposition, on the condition that your team will need to arrange for a location near San Diego CA, preferably Del Mar CA or near the UCSD campus, and a videographer, if you want the defending attorney to be on camera during the deposition. If you do not want to accept June 13, that's OK. You have until July 3 to take this deposition, if you still want it, once your schedule becomes clearer. During the videoconference I thought you would give me a definite answer today regarding June 13, but we can wait till COB CT tomorrow.

Nivagen's local counsel has entered appearance in the case. Please be sure to include them in any correspondence regarding the case going forward. Thanks.

Regards,

Yixin

From: Justin Oakland <joakland@carlsoncaspers.com>

Sent: Tuesday, June 3, 2025 6:13 PM

To: Yixin Tang <yixin@ipfdalaw.com>; Brent Batzer <brent@ipfdalaw.com>; Shashank Upadhye <shashank@ipfdalaw.com>

Cc: Samuel T Lockner <SLockner@carlsoncaspers.com>; Sun-Sezaby <Sun-Sezaby@carlsoncaspers.com>; Eric Findlay <efindlay@findlaycraft.com>

Subject: Nivagen v. Sun: 6/3 Meeting

Counsel,

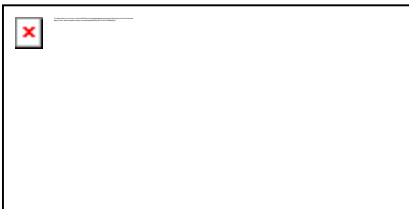
We write to memorialize today's discussion. Sun understood Nivagen's second supplemental response to Interrogatory No. 12 to suggest a willingness by Nivagen to stay the proceedings pending the PTAB's institution decision on Sun's IPR.

Sun raised the possibility of a joint motion to stay; however, Nivagen made clear that it would oppose any such motion. As such, Nivagen's reliance on the fact that Sun has not filed a motion to stay the proceedings pending the IPR decision for its alleged claim under Section 285 is without merit.

As discussed, we will follow up regarding proposed details for the potential deposition of Dr. Klebanov as our schedule becomes more clear.

Sun also anticipates receiving a letter from Nivagen that substantively addresses Sun's concerns with respect to Nivagen's responses and objections to Interrogatory No. 19 and Requests for Production Nos. 39-42 by the end of this week or early next week at the latest.

Best Regards,
Justin



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