

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SUN PHARMACEUTICALS INDUSTRIES INC.,
Petitioner

v.

NIVAGEN PHARMACEUTICALS, INC.,
Patent Owner

IPR2025-00893
Patent No. 11,878,076

DECLARATION OF BRENT A. BATZER
Exhibit 2028

I, Brent A. Batzer, make the following Declaration pursuant to 28 U.S.C. § 1746:

1. I am a partner with the firm Upadhye Tang LLP.
2. I provide this Declaration in connection with Patent Owner's Brief in Support of Discretionary Denial under 35 U.S.C. §314(a). Unless otherwise stated, the facts stated in this Declaration are based on my personal knowledge.
3. Ex2001 hereto is a true and correct copy of the docket sheet in *Nivagen, Inc. v. Sun Pharmaceuticals Industries, Inc.*, Civil Action No. 2:24-cv-36-RWS-RS (E.D. Tex.) (the “Nivagen lawsuit”)(printed on July 18, 2025).
4. Ex2002 hereto is a true and correct copy of D.I. 37, the Docket Control Order (scheduling order) in the Nivagen lawsuit.
5. Ex2003 hereto is a true and correct copy of Sun’s May 8, 2025 Amended Invalidity Contentions served in the Nivagen lawsuit.
6. Ex2004 hereto is a true and correct copy of D.I. 54, Joint Claim Construction and Prehearing Statement in the Nivagen lawsuit.
7. Ex2005 hereto is a true and correct copy of Sun’s Fourth Set of Requests for Production served upon Nivagen in the Nivagen lawsuit.
8. Ex2006 hereto is a true and correct copy of Sun’s Seventh Set of Interrogatories served upon Nivagen in the Nivagen lawsuit.
9. Ex2007 hereto is a true and correct copy of Sun’s Sixth Set of Requests for Admissions served upon Nivagen in the Nivagen lawsuit.

10. Ex2008 hereto is a true and correct copy of Sun's Motion for Letter Rogatory to Nobelpharma in the Nivagen lawsuit.
11. Ex2009 hereto is a true and correct copy of Nivagen's third-party subpoena to Blank Rome LLP in the Nivagen lawsuit.
12. Ex2010 hereto is a true and correct copy of Nivagen's third-party subpoena to Curia Global in the Nivagen lawsuit.
13. Ex2011 hereto is a true and correct copy of deposition notices served by each party in the Nivagen lawsuit.
14. Ex2012 hereto is a true and correct copy of expert confidentiality undertakings by disclosed experts in the Nivagen lawsuit.
15. Ex2013 hereto is a true and correct copy of an email chain regarding product sample production and the use of the information obtained from the samples in the Nivagen lawsuit.
16. Ex2014 hereto is a true and correct copy of Eastern District of Texas Patent Rule 4-1 disclosures exchanged between the parties on April 10, 2025 (proposed claim terms for construction) in the Nivagen lawsuit.
17. Ex2015 hereto is a true and correct copy of Eastern District of Texas Patent Rule 4-2 disclosures exchanged between the parties on May 1, 2025 (preliminary constructions and extrinsic evidence) in the Nivagen lawsuit.

18. Ex2016 hereto is a true and correct copy of E.D. Tx P.R. 4-3(b) disclosure (Declaration of Alexander Klibanov) served by Nivagen upon Sun on May 22, 2025 in the Nivagen lawsuit.

19. Ex2017 hereto is a true and correct copy of the public version of Nivagen's opening claim construction brief filed in the lawsuit as D.I. 58 (June 9, 2025) in the Nivagen lawsuit.

20. Ex2018 hereto is a true and correct copy of Sun's subpoena to Corbel Capital Partners served in the Nivagen lawsuit.

21. Ex2019 hereto is a true and correct copy of emails among litigation counsel regarding a potential *Sotera* stipulation that includes "commercial embodiments"-based patent invalidity theories.

22. Ex2020 hereto is a true and correct copy of an email chain dated June 3, 2025 among litigation counsel in the Nivagen lawsuit, regarding motion to stay, motion to dismiss or transfer venue, and the IPR Petition.

23. Ex2021 hereto is a true and correct copy of Exhibit B-1 ("608 Publication") served by Sun to Nivagen as part of Sun's May 8, 2025 Amended Invalidity Contentions disclosures, in the Nivagen lawsuit.

24. Ex2022 hereto is a true and correct copy of Exhibit B-2 ("Nobelbar") served by Sun to Nivagen as part of Sun's May 8, 2025 Amended Invalidity Contentions disclosures, in the Nivagen lawsuit.

25. Ex2023 hereto is a true and correct copy of Exhibit B-8 (“Hikma/DailyMed”) served by Sun to Nivagen as part of Sun’s May 8, 2025 Amended Invalidity Contentions disclosures, in the Nivagen lawsuit.
26. Ex2024 hereto is a true and correct copy of a Hikma press release, located at <https://www.hikma.com/media/xybpzxvf/us-brand-launch-press-release-final-26-june-2018.pdf/>
27. Ex2025 hereto is a true and correct copy of National Drug Code Directory search result for “0641-0476”, located at https://dps.fda.gov/ndc/searchresult?selection=finished_product&content=PRODUCTNDC&type=0641-0476
28. Ex2026 hereto is a true and correct copy of National Drug Code Directory search result for “0641-0477”, located at https://dps.fda.gov/ndc/searchresult?selection=finished_product&content=PRODUCTNDC&type=0641-0477
29. Ex2027 hereto is a true and correct copy of Sun’s October 22, 2024 Invalidity Contentions served in the Nivagen lawsuit.
30. No alterations have been made to any of the foregoing except for the required exhibit labels and page numbering, unless otherwise noted.

31. Sun served invalidity contentions and later amended the invalidity contentions twice: originally served them on October 22, 2024, then served amended contentions on February 7, 2025 and May 8, 2025.

32. The parties in the parallel litigation produced a total of at least 522,562 pages of documents bearing Bates number ranges SUNSZBY0000001-0191804 and NIVAGEN_PHENOBARB_0000001-0330758 (numerous documents are native Excel spreadsheets, so the actual printed page volume would be substantially higher), and obtained more than 10,500 pages of third-party discovery.

33. The parties exchanged privilege logs on April 17, 2025, with Nivagen sending a revised log on May 23, 2025. Nivagen's privilege log is 135 pages and Sun's privilege log is 561 pages long.

34. I am aware that willful false statements and the like are punishable by fine or imprisonment, or both. I make this declaration of my own personal knowledge, and all statements are true. If called to testify as to the truth of the matters stated herein, I could and would testify competently.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 18th day of July, 2025 at Chicago, IL

/s/Brent A Batzer

Brent A. Batzer
Reg. No. 66,160