

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

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4 GE HEALTHCARE, LTD.,

5 Petitioner,

6 v.

7 JOHNS HOPKINS UNIVERSITY,

8 Patent Owner.

9 Case No.: PRG2025-00059

10 U.S. Patent No. 12,115,233

11 -----
12 PTAB TELECONFERENCE

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(Appearances continued on following page)

1 A P P E A R A N C E S (CONT'D) :

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9 Christina D. Brown-Marshall, Ph.D.,
Fish Richardson

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1 JUDGE NEWMAN: So it is now time for the
2 conference call. This is a conference call in
3 PGR2025-00059 and IPR2026-00069. We are on the
4 record.

5 I am Judge Newman. Judge Wisz, W-I-S-Z,
6 is also with me. Judge Dennett is not
7 appearing today, so it's just us from the
8 panel. We will, of course, be informing
9 Judge Dennett about everything that's happening
10 on the conference call today and bringing her
11 up to speed.

12 For Petitioner, can I please have counsel
13 identify themselves and spell the last name,
14 please, for our court reporter.

15 MR. KUSHAN: Sure. Thank you, Your Honor.

16 This is Jeff Kushan, K-U-S-H-A-N, counsel
17 for Petitioner. With me is Lauren Katzeff,
18 K-A-T-Z-E-F-F.

19 JUDGE NEWMAN: And for Patent Owner?

20 MR. GALLO: Yes, Your Honor. This is
21 Christopher Gallo, G-A-L-L-O. And with me is
22 Eldora Ellison, E-L-L-I-S-O-N, and

1 Olga Partington, P-A-R-T-I-N-G-T-O-N.

2 And I believe we are also being joined by
3 my colleague Christina Brown-Marshall.

4 JUDGE NEWMAN: Ms. Marshall, are you on
5 the line?

6 Hello? Who has joined, please?

7 MS. BROWN-MARSHALL: Hello. This is
8 Christina Brown-Marshall of Fish & Richardson,
9 on behalf of Johns Hopkins University.

10 JUDGE NEWMAN: Great. Okay.

11 Is there anyone else on the line who has
12 not self-identified?

13 Perfect. Okay. So we have here
14 responding to -- we have a conference call here
15 today responding to an e-mail jointly sent by
16 the parties on July 22nd, regarding some
17 continuing efforts to comply with the motion
18 for discovery that was granted, and there's
19 some tension coming between the parties as an
20 inability to reach an in-point.

21 So I'd like to dig into that a little bit.
22 And as you -- let's just get into a little bit

1 of the background. But for Petitioner, as you
2 sum up your statements, could you please try
3 and identify with specificity what documents
4 you feel, number 1, exist, and number 2, have
5 not been produced in compliance with the order.

6 MR. KUSHAN: Thank you, Your Honor.

7 Let me start by pointing out that, you
8 know, in your order for discovery in Paper 19,
9 you instructed the parties to cooperate in
10 carrying out your order for additional
11 discovery. We've really been trying to do
12 that. We contacted them the day your order
13 came out and tried to engage from that point
14 forward to make sure that we wouldn't be in the
15 place we're in today.

16 Unfortunately, our opponents have declined
17 to work with us in a way that productively
18 complied with that order. And that order, as
19 you recall, was directed to producing materials
20 pertaining to the testing and FAP-imaging
21 agents that had been performed by Patent Owner.

22 The description of those materials is

1 found at page 2 to 3 of your order. So now,
2 unfortunately, we're coming up on taking a
3 deposition of their expert on Wednesday --

4 THE COURT REPORTER: Sir, it's a little
5 fast, and we're on the phone here. I'm going
6 to need you to slow down a little bit and speak
7 up.

8 MR. KUSHAN: Sorry. Of course.

9 So, unfortunately, we're approaching the
10 deposition of their expert on Wednesday of this
11 week, and we have our replies due on April --
12 on August 10.

13 So we identified three main problems with
14 the production as to why it's insufficient.
15 First, there's no experimental records of the
16 type normally kept by a research organization
17 of the class of JHU.

18 There are contemporaneous records of
19 scientists who performed the assays and created
20 the data that are addressed by Dr. Pomper's
21 declaration. There's a lot of output of some
22 numbers and plots. But there are no records,

1 kind of a carrying out of the experiments that
2 created that data.

3 There's no characterization --

4 JUDGE NEWMAN: Let me interrupt you for
5 just a second here. Are you talking about,
6 like, lab notebooks or --

7 (Crosstalk)

8 MR. KUSHAN: Any -- yes. So we actually
9 asked about the lab notebooks. They told us
10 they don't record the -- these types of records
11 in lab notebooks; they're recorded in
12 electronic records.

13 So they're -- we -- our focus has been the
14 same regardless of whether it's on paper or in
15 an electronic form. It's those contemporaneous
16 records that the scientists in preparing the
17 solutions and measuring the -- the
18 concentration, things like that. But, you
19 know, the records --

20 JUDGE NEWMAN: Sure.

21 MR. KUSHAN: -- that are kept by the
22 scientists when they perform their experiments,

1 what we --

2 (Crosstalk)

3 JUDGE NEWMAN: Thank you.

4 MR. KUSHAN: -- received -- yes.

5 So what we received were kind of tables of
6 data that are then plotted, and plots are
7 shown.

8 Now, I want to just flag one point. This
9 work was funded by the NIH -- or at least had
10 some NIH funding. That comes with a lot of
11 documentation obligations for the experiments,
12 and so it's surprising there were no records
13 beyond what they produced and the kind that we
14 just described.

15 They also don't report 17 chemical
16 structures of molecules that were tested. They
17 have these code names, but they have not given
18 us the chemical structures associated with the
19 coding. So we don't know what those molecules
20 are, but they apparently were responsive to the
21 discovery request.

22 Second kind of issue that we wanted to

1 flag was that it made redactions to some of the
2 responsive documents. For example, I'll read a
3 number if you want the -- you know, there's one
4 compilation document that starts with JHU2158,
5 and it's a series of plots of the tested
6 molecules, you know, with the curves on the
7 plots.

8 And there are two pages in the middle of
9 that that are redacted that have graph-sized
10 redactions in the middle of the -- of the
11 pages. And it's just, to us, we don't
12 understand what the basis could be for them to
13 redact those two plots out of a series of
14 experimental results.

15 We asked about that, and they claimed
16 relevance and contended it was privileged. And
17 we believe that's improper. We have a very
18 strict protective order in place that restricts
19 the information to outside counsel eyes only.

20 And finally, I just want to give you a
21 little bit of background on our efforts to
22 resolve the issues that we'd identified once we

1 received their production. And I just want to
2 make sure we're clear: When we began this
3 process, we had an initial request for
4 discovery, and we narrowed it at Your Honor's
5 urging. And then the parties briefed that
6 scope of discovery in the briefing that
7 occurred.

8 At page -- Paper 17, that's their
9 opposition briefs. They told you after doing
10 an initial investigation of this narrowed scope
11 of discovery that they have to speak to seven
12 people or review twenty-five lab notebooks.
13 They had an appendix with all the text or
14 documents that are implicated by the scope of
15 the discovery that we requested.

16 Shortly before they produced their
17 documents, they told us that -- and I'll just
18 say this as accurate as I can -- that the
19 FAP-specificity experiments described in
20 Dr. Pomper's declaration were not recorded in
21 lab notebooks but rather maintained using
22 electronic protocols of all the data files.

1 And when we got what they produced from
2 that review and description, it had none of
3 these contemporaneous experimental records that
4 I just -- I mentioned at the beginning of my
5 remarks. It just had these -- you know, output
6 of the final data in plots.

7 An issue then -- and here's where we have
8 the problem. We engaged them to try to resolve
9 the questions -- what did they look for, what
10 did they find, what did they produce -- just so
11 we understood whether they had any records and
12 to understand what the scope of their search
13 was. And they just told us that they are not
14 obligated to tell us that.

15 And that's really kind of this impasse,
16 that we can't get to find what they produced
17 and what they are representing is the
18 responsive production.

19 So the challenge for us right now is, as I
20 said, we're right on the cusp of deposing their
21 expert. We're right on the cusp of having, you
22 know, to prepare and file our replies; we don't

1 really have any more time in our window before
2 we hit these deadlines, and that means the
3 prejudice has already kind of happened to us.
4 We don't really see a -- a simple path forward.

5 And so we believe that this created a
6 situation that warrants exclusion of certain of
7 these records and -- I'm sorry -- certain of
8 the statements that are made by them in their
9 arguments and their paper and also the
10 declaration from Dr. VanBrocklin that addresses
11 this experimental work because we haven't been
12 able to get to the bottom of what's behind it.

13 But I'm happy to take these up in stages,
14 if you wish, to engage with what might be a
15 remedy at this point. But I just wanted to
16 give you an overview of what we've had to go
17 through to kind of get to where we are. And
18 unfortunately, it's not where we need to be.

19 I'm happy to kind of resolve or answer any
20 questions about our experience.

21 JUDGE NEWMAN: Thank you, Mr. Gallo [sic.]
22 Okay. For the purposes of this call, I

1 would like to not discuss any potential
2 exclusion of the data because that's an
3 entirely separate process.

4 But given -- given the -- I understand
5 what you're saying. I understand what kind of
6 documents you're looking for. The -- the issue
7 of redaction and molecules that were
8 produced -- or that were tested, apparently,
9 but not responsive, can you elaborate --

10 (Crosstalk)

11 MR. KUSHAN: Yeah, just that last point.
12 What we see are a number of basically code
13 names for molecules with results from testing
14 of them, but we don't have the chemical
15 structure of those molecules. There are 17 of
16 those, and many of them --

17 (Crosstalk)

18 JUDGE NEWMAN: Okay. Have some
19 chemicals --

20 (Crosstalk)

21 MR. KUSHAN: -- had -- they had -- yeah, go
22 ahead.

1 JUDGE NEWMAN: So code names were
2 produced, but there's no key to the
3 corresponding chemical structure?

4 MR. KUSHAN: Correct.

5 JUDGE NEWMAN: Okay. And those were
6 documents -- so we don't know whether those are
7 the ones that are actually produced in response
8 to what's listed in the patent, then; is that
9 correct?

10 MR. KUSHAN: Well, I think we've -- so
11 this is where it's challenging for us because
12 we don't know what's behind this
13 confidentiality. They produced these records,
14 which may be because they determined they are
15 responsive. But we don't know what the
16 structures are that correspond to these code
17 names.

18 And they -- and they -- again, they
19 withheld other pages on this, what they portray
20 as relevance objection. For some of the tested
21 molecules, we don't know what's behind the
22 redaction in those. And that's -- again, we're

1 in kind of the dark a little bit about some of
2 these aspects of what they've produced.

3 JUDGE NEWMAN: Yes, I understand that.

4 So in looking at Dr. VanBrocklin's
5 declaration, can you remind me which -- there
6 may have been more than one declaration. We're
7 looking at 2001 at this point?

8 MR. KUSHAN: 2029, I think, is the one.

9 JUDGE NEWMAN: 2029 is the relevant one?

10 MR. KUSHAN: Yes.

11 JUDGE NEWMAN: Okay. So -- and it's
12 paragraph 40-something, I believe.

13 MR. KUSHAN: Yes, it is.

14 JUDGE NEWMAN: Or 140 -- 149.

15 THE COURT REPORTER: I'm sorry.

16 Mr. Gallo, I'm going to have to ask Mr. Gallo
17 to speak up a little bit. Some of what he's
18 saying is being lost here with the -- this
19 back-and-forth.

20 MR. KUSHAN: It's -- just one
21 clarification. This is Mr. Kushan,
22 K-U-S-H-A-N.

1 THE COURT REPORTER: Thank you.

2 MR. KUSHAN: Mr. Gallo is counsel for
3 Hopkins.

4 JUDGE NEWMAN: I'm sorry. That was my
5 mistake earlier.

6 MR. KUSHAN: It's fine.

7 We're dealing with Exhibit -- the e-mail
8 that we sent, which is Exhibit 3003, has the
9 list of paragraphs of Dr. VanBrocklin's
10 Exhibit 2029 that pertained to this issue.

11 JUDGE NEWMAN: Right, so I think
12 it's 149 through 150 --

13 MR. KUSHAN: There's -- there's 117
14 to 124, 149, 187, 189 and 192.

15 JUDGE NEWMAN: Okay. So let me ask you
16 this question here: If I'm looking at
17 paragraph 118, which is some of these compounds
18 that were tested, are you able with the
19 information you have to link up the testing
20 data with the specific moiety that was tested,
21 testing moiety?

22 And for the court reporter, that's

1 M-O-I-E-T-Y.

2 MR. KUSHAN: The -- we can, for most of
3 the molecules, see results for those molecules
4 that are in the Pomper declaration. Not all of
5 them.

6 So we got all of them? Okay. Sorry.

7 So we -- we can see the plots of the data
8 for the molecules in that list from the Pomper
9 declaration. We don't have the records of
10 creation of the data relating to those plots.
11 That's part of the problem.

12 JUDGE NEWMAN: Okay. I understand that
13 part.

14 And then as far as the 17 code names, you
15 don't have anything other than the code names;
16 is that correct?

17 MR. KUSHAN: Correct.

18 JUDGE NEWMAN: So can you elaborate for
19 me --

20 MR. KUSHAN: Well --

21 JUDGE NEWMAN: -- for the record, what the
22 concern is there?

1 MR. KUSHAN: Sorry. I apologize.

2 We have the code names, and we have test
3 results from those molecules in the materials
4 that have been produced.

5 So what we have are molecules that were
6 tested, without knowing what their structures
7 are. So we don't know whether -- how they
8 relate to anything. But if the -- they
9 measured the results from testing these
10 molecules in assays, and that's what we have
11 alongside the code names.

12 JUDGE NEWMAN: Okay. So if I'm correct,
13 your concern might be that there is some other
14 kind of moiety that has similar results but
15 doesn't -- there might be a story to tell about
16 how that moiety doesn't actually match what the
17 Patent Owner is saying in the patent about the
18 patentability of a compound --

19 MR. KUSHAN: Yeah.

20 JUDGE NEWMAN: -- is that your interest in
21 looking at that?

22 MR. KUSHAN: Correct.

1 JUDGE NEWMAN: Okay.

2 MR. KUSHAN: All of the -- a lot -- most
3 of these code-named molecules have much lower
4 what's called "specificity" for that than the
5 ones that are the subject of
6 Dr. Pomper's 11 that he addressed in his
7 declaration.

8 JUDGE NEWMAN: Understood. Okay. I
9 believe this would be a good time to return to
10 Patent Owner now that I understand the context
11 of what exactly we're looking at.

12 So for Patent Owner, Mr. Gallo, would you
13 comment on those three categories of documents,
14 please.

15 MR. GALLO: Yes, Your Honor.

16 As -- as it goes to the 17 compounds for
17 which they're seeking structures, they have the
18 data; they have the underlying -- as Petitioner
19 stated, they have the underlying protocols for
20 all data and analyses of the data for all the
21 compounds that are in the Pomper declaration,
22 the 17 compounds.

1 And that's what the order is limited to:
2 the records and tests of the results from
3 Dr. Pomper's lab, described in
4 paragraphs 42 to 43 of his declaration, and
5 that's in Paper 19 at page 2 -- getting to
6 fully comply and produce all of the data that
7 it had that exists related to those compounds.

8 The information that Petitioner is seeking
9 is for compounds that are not in the Pomper
10 declaration, so we believe that the -- that the
11 information that they're seeking is beyond the
12 order.

13 As we stated in our motion, the -- the
14 data for the compounds in the Pomper -- in our
15 opposition to Petitioner's motion, the data was
16 intermingled with other compounds outside of
17 the declaration. But when we produced the
18 file, those were produced along with it.

19 And as it goes to the redacted
20 information, that was redacted because it goes
21 to a wholly unrelated project and is not within
22 the scope of the order. So that information

1 was redacted, and we don't believe the order
2 requires us to provide that information to
3 Petitioner.

4 JUDGE NEWMAN: All right. And then as to
5 the first category, the lack of actual
6 experimental records, would you comment on
7 that, Mr. Gallo?

8 MR. GALLO: Yes.

9 As we told Johns Hopkins -- I mean,
10 Petitioner -- over a month ago, as we further
11 began our collection and investigated further
12 in -- with the understanding that the scope of
13 the order was limited to the compounds in the
14 Pomper declaration, we learned that the --
15 there was no lab notebooks kept as -- with
16 respect to these experiments for the compounds
17 in the Pomper declaration; and it was just the
18 data file, which we have produced.

19 Petitioner did not comment at all when we
20 told them that there was no lab notebooks and
21 that there would be only electronic files and
22 is just now raising this.

1 So we don't see how there can be any
2 prejudice to them when they've known about this
3 for over a month, and we gave what exists.

4 JUDGE NEWMAN: All right. Did you have
5 any further comments that you'd like to make,
6 understanding that I am familiar -- we are
7 familiar with Patent Owner's position as
8 written in the e-mail of the 22nd?

9 MR. GALLO: Sure.

10 You know, as we state in our e-mail, we --
11 and I think we -- we have cooperated with
12 Petitioner. We've answered many of their
13 questions, which, you know, over 20 questions
14 that amount to unauthorized interrogatories; we
15 answered many of them.

16 And others just go way beyond what the
17 Board has ordered and are -- are basically a
18 fishing expedition, seeking information about
19 things wholly unrelated to the experiments in
20 the Pomper declaration, such as information
21 about submissions to the animal control
22 facility at Johns Hopkins, has nothing to do

1 with the assays, information about radiolabel
2 handling that also has nothing to do with the
3 data in these assays.

4 They sought the information under what --
5 underlying what Dr. VanBrocklin considered, and
6 we have provided that. So we believe that we
7 have fully complied.

8 And in terms of the redacted information,
9 the protective order doesn't entitle them --
10 Petitioner to materials outside of what was
11 ordered, and we believe that the Board could
12 review (indistinct) --

13 (Reporter clarification)

14 MR. GALLO: We believe that the Panel
15 could review in camera what has been redacted
16 as needed.

17 MR. KUSHAN: Your Honor --

18 JUDGE NEWMAN: Yes, Petitioner, please
19 respond if you'd like.

20 MR. KUSHAN: Yes. Just a few points.

21 First, the order related to the
22 experimental records associated with these

1 documents. And, you know, it wasn't an
2 instruction to go pluck out of these
3 experimental records, you know, bits that --
4 the way that you're describing them.

5 The experiments integrate, apparently, a
6 set of molecules that were tested alongside
7 these ones. And we're looking for the actual
8 documentation of what they did relating to that
9 experiment that gave rise to the data that was
10 then addressed.

11 So we have a disagreement. We think the
12 order is pretty clear about what -- what was
13 ordered to be produced.

14 It is not accurate what Mr. Gallo said
15 about us not responding. We've been trying to
16 understand what they have looked for to produce
17 these responsive records because we found it,
18 you know, difficult to believe that the only
19 thing in their possession were these kind of
20 end-of-the-road type of plots.

21 It just doesn't seem plausible, given what
22 we are familiar with, with the obligations of

1 the university to get funding to maintain
2 records about what the experiments --
3 experimental activities are.

4 And so the thing that he was referring to
5 was our efforts just to try to understand if
6 they had checked types of documents that are
7 typically found in a lab like this that would
8 be responsive records pertaining to the
9 experimental work that was done.

10 We weren't fishing for anything; we were
11 just trying to understand what was the scope of
12 their search. Because when they came to you
13 during briefing, they portrayed a very
14 significant burden and scale of documents
15 relating to things they would have to check.

16 And just it was such a stark contrast
17 between what came out of the production and
18 what they had forecasted, and that was based on
19 the same scope of discovery.

20 I think, you know, that's -- that's the
21 main issue. We've really been trying to deduce
22 what they did so we can understand --

1 understand, basically, did the records get
2 destroyed or are they just nonexistent anymore?
3 Or what -- what -- you know, and it's just it's
4 hard to document and distill it down into
5 precise things because we just don't know what
6 they did and what they withheld.

7 And that's fundamentally an issue that,
8 you know, parties typically resolve during a
9 discovery issue like this, that at least we
10 know what the basis of non- -- of the
11 nonexistence of certain records is.

12 And that's our we tried as best as we
13 could to resolve that question without having
14 to bring the Board into this, but we just
15 couldn't get any answers.

16 JUDGE NEWMAN: Yes, I understand that.

17 And, Patent Owner, this goes to you,
18 Mr. Gallo: Having done research in a lab, I
19 understand how experimental design happens, how
20 you plan things and how you set them up. I was
21 in the era of a lab notebook. But even if you
22 were to do it electronically, it does seem that

1 there would be some documents related to this.

2 Given that you say that you have searched
3 and haven't found them, would you be willing to
4 offer a witness declaration testifying to the
5 fact that such documents do not exist so that
6 we can draw a line in the sand to say that they
7 do not exist?

8 MR. GALLO: We would have to discuss that
9 with our client.

10 JUDGE NEWMAN: All right. Because that is
11 one arena -- one way, I think, that we could
12 satisfy this is to say that you have looked and
13 find no documents.

14 Now, of course, recognizing that that is
15 going to speak to the quality of the
16 document-keeping and the quality of the
17 experiment, I -- I do suggest that you do
18 confer with your client about that and kind of
19 the extent that they're willing to do that.

20 That -- that would be the inference that
21 we as a finder of fact would need to draw, if
22 those documents do not exist, if I have an

1 officer of the court telling me, we've done a
2 search and we can't find them.

3 But I would like a way to document that
4 for the record so that it's not appealed, for
5 one reason, to say that we have not -- we found
6 facts not substantiated, because I feel like we
7 are trying to substantiate on all sides of this
8 exactly what exists and what does not exist.

9 Do -- does either side have any proposal
10 for a different way to come to terms on this
11 now that you've had a bit more time to think
12 about it?

13 MR. KUSHAN: I -- sorry, Your Honor. This
14 is Jeff Kushan again.

15 I'm -- I'm open to any path that gets us
16 to a better place than we are right now. I
17 will tell you one significant challenge is that
18 we're scheduled to take the deposition of
19 Dr. VanBrocklin on Wednesday.

20 JUDGE NEWMAN: Yes, I understand that.

21 MR. KUSHAN: I -- I mention that just
22 because it's implausible that any path we take

1 is going to change the world as it exists today
2 relative to when that deposition starts.

3 And I don't want to have to drag
4 Dr. VanBrocklin back to another deposition
5 because -- try to defer that if -- if there is
6 a path where there will be a production or some
7 clarification of what had happened as far as
8 production.

9 But it's -- you see the dilemma I'm facing
10 right now. We're up against some deadlines,
11 so --

12 JUDGE NEWMAN: Yeah, I see that why --
13 (Crosstalk)

14 JUDGE NEWMAN: Yes. And I understand
15 that, and we did indicate that there may be a
16 short extension of discovery.

17 But in looking at -- at this information
18 that you've talked about today, so for
19 number 3, the redacted data, I think I have to
20 take Counsel's statement that it is irrelevant;
21 it does not fall within the information.

22 It certainly can't support the

1 information. But I think there's no reason
2 that, for an officer of the court, having done
3 a legitimate search, tells me that it's not
4 relevant. I believe that that's likely the
5 case, and I'm inclined to trust that. Of
6 course, we're going to confer as a panel and
7 think about this some more.

8 If there are no experimental records, then
9 Dr. VanBrocklin can't have reviewed them. So
10 that doesn't limit his declaration.

11 The 17 code names, I see that we could go
12 one of two ways: We could order their
13 production prior to the 29th; or we could
14 ask -- if we are inclined to go forward with
15 that, we can have Dr. VanBrocklin's deposition
16 extended, not have it on the 29th, and he be
17 rescheduled in the near future, and the reply
18 deadline would similarly be extended.

19 MR. KUSHAN: I'm -- I'm fine with that. I
20 don't know if Dr. VanBrocklin is already here,
21 so I just am sensitive to their -- their
22 expert's logistics.

1 MR. GALLO: Yes, Your Honor. That would
2 be prejudicial to Patent Owner.
3 Dr. VanBrocklin is in -- presently in
4 Washington D.C., ready for -- getting ready for
5 his deposition on the 29th.

6 And we -- we've repeatedly told Petitioner
7 that we are not withholding anything that was
8 within the scope of the order. We produced all
9 the data that they need to assess what they
10 need to assess that was in Dr. Pomper's
11 declaration; all of the compounds in the
12 declaration are accounted for.

13 And, you know, they said that they needed
14 this information to understand how the values
15 were measured, experimentally determined or
16 described in the experimental metrics that
17 inform the accuracy.

18 They have what they need to do that.
19 That's in their Paper 15 and I believe -- yeah,
20 their motion at page 5. And Dr. VanBrocklin
21 didn't rely on the -- any of
22 those 17 code-named compounds. Those are not

1 in the Pomper declaration.

2 And Ms. Brown-Marshall is on the line.

3 She can provide any further clarity here --

4 JUDGE NEWMAN: All right. I'm --

5 MR. GALLO: -- about the documents.

6 JUDGE NEWMAN: Thank you, Counsel.

7 I'm looking back at the order, and
8 Petitioner's description of the documents that
9 it seeks, paragraph 1, compound -- so including
10 positive/negative controls, sources of
11 compounds and reagents used in compound
12 selection criteria.

13 It seems impossible to me for the
14 Patent Owner to have complied in producing
15 documents about compound selection criteria
16 without identifying the compound itself for
17 those 17 compounds.

18 I do not think that you have complied. I
19 understand your point about Dr. Pomper not
20 having studied that data. But I do think a
21 fair question at deposition is, looking at the
22 data of these compounds, do you see anything

1 that contradicts Patent Owner's story about
2 what's patentable here?

3 So the names of those 17 compounds I am
4 inclined to order be produced. If it can
5 produce them in time for the Pomper
6 declaration, by 24 hours from now, Petitioner,
7 would that satisfy you?

8 MR. KUSHAN: We'll work with whatever
9 constraints you put on us, and we'll do that.
10 If they don't produce them, then I think it's
11 also fair to make an inference that they are
12 covered by the claims because that would -- we
13 think that data is actually undermining the
14 other arguments that are being made.

15 So it's -- yes, if -- if we can get them
16 by tomorrow, we will proceed with the
17 deposition on -- on those.

18 JUDGE NEWMAN: All right. Patent Owner,
19 if you would like to preserve Dr. VanBrocklin's
20 date, then I am inclined at this point to order
21 that you produce the names of
22 those 17 compounds in a way that they can be

1 correlated with the data you produced by end of
2 business tomorrow.

3 If you cannot do that, then we are likely
4 to need to postpone Dr. VanBrocklin's
5 deposition.

6 MR. GALLO: Okay. And just for clarity,
7 Your Honor, by "names," do you mean in terms of
8 the structures that can identify what those
9 compounds -- like the structure of the
10 compound?

11 JUDGE NEWMAN: Yes, the structure of the
12 compound --

13 (Crosstalk)

14 MR. GALLO: That's fine with me. Thank
15 you.

16 (Reporter clarification)

17 MR. GALLO: I was -- I was asking if the
18 structures of the compounds is what was being
19 ordered.

20 JUDGE NEWMAN: Petitioner, would the
21 structure of the compounds satisfy you? Is
22 there a way to connect --

1 (Crosstalk)

2 MR. KUSHAN: Yeah, as long as --

3 JUDGE NEWMAN: -- the structure of the
4 compounds --

5 (Crosstalk)

6 (Reporter clarification)

7 JUDGE NEWMAN: So what I would like to see
8 from Patent Owner is some sort of a key or
9 other e-mail identifying the structure of a
10 compound and correlating it with maybe a prior
11 production page saying this chemical compound
12 correlates to this data.

13 Is that something that can be produced?

14 MR. KUSHAN: I think if they correlate to
15 the code names and structure to code name,
16 that's -- that's what we need.

17 JUDGE NEWMAN: Is that possible for you to
18 do by tomorrow, Patent Owner?

19 MR. GALLO: We'll have to ask
20 Ms. Brown-Marshall, who's on the line, about
21 that.

22 MS. BROWN-MARSHALL: We'd have to

1 double-check the documents and run down a
2 couple of things, but I think it should be
3 doable.

4 JUDGE NEWMAN: Okay. With -- with that, I
5 believe we can proceed with -- with
6 Dr. Vanbrocklin's deposition if that is done.

7 If it is not done, would you all please
8 circle back with us tomorrow and let us know
9 that we still need to address this issue?

10 MR. GALLO: Yes, Your Honor.

11 JUDGE NEWMAN: You could also feel free to
12 let us know it has happened as well, which
13 would be appreciated.

14 MR. KUSHAN: Your Honor, the last part of
15 this question was whether they're going to
16 produce any other discovery before a
17 deadline -- our deadline that's coming up on
18 filing the reply. I just want to understand
19 kind of where we stand with that.

20 MR. GALLO: Your Honor, we complied with
21 the order by July 8th as we were ordered. We
22 produced the documents.

1 JUDGE NEWMAN: Okay. So you are saying --

2 (Crosstalk)

3 JUDGE NEWMAN: Mr. Gallo, you're saying
4 there are no other experimental records for
5 Category Number 1?

6 MR. GALLO: That is our --
7 Ms. Brown-Marshall can confirm, but that is our
8 understanding.

9 MS. BROWN-MARSHALL: Yes, Your Honor.
10 That's our understanding.

11 JUDGE NEWMAN: All right. Then I don't
12 think there's anything else left to produce.

13 Is there something specific that you're
14 thinking of, Petitioner?

15 MR. KUSHAN: No. I think we'll go with
16 what that representation is at this point.

17 JUDGE NEWMAN: Okay. Given that we have a
18 court reporter, I'm not inclined to send an
19 e-mail to confirm what we talked about here,
20 but I can if the parties would prefer.

21 But by tomorrow close of business, a code
22 chart or some kind of representation will be

1 sent connecting the 17 compounds' chemical
2 structure with the code names.

3 Is that clear with everyone?

4 MR. KUSHAN: Yes, Your Honor.

5 MR. GALLO: Yes.

6 JUDGE NEWMAN: Thank you. Okay.

7 All right. Then I am ready to adjourn.

8 Thank you very much for your time and
9 cooperation.

10 MR. GALLO: Thank you, Your Honor.

11 MR. KUSHAN: Thank you.

12 (Time noted: 5:07 p.m.)

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1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, NICHOLAS BUCKLEY, Certified Reporter
3 and Notary Public within and for the State of New
4 York do hereby certify:

5 That I am not related to any of the
6 parties to this action by blood or marriage; I am
7 not employed by or an attorney to any of the
8 parties to this action, and that I am in no way
9 interested, financially or otherwise, in the
10 outcome of this matter.

11
12 IN WITNESS WHEREOF, I have hereunto set my
13 hand this 3rd day of August, 2026

14
15
16 My commission expires:
17 July 7, 2027

18
19 Nicholas Buckley
20

21 Nicholas Buckley
22

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