UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED, Plaintiff, v. ABRAXIS BIOSCIENCE, INC., Defendant.	)	C.A. No. 06-438-GMS **REDACTED –** **PUBLIC VERSION**

DECLARATION OF DIANA B. KRUZE IN SUPPORT OF DEFENDANT ABRAXIS BIOSCIENCE, INC.'S MOTION TO DISMISS NEWLY ADDED CLAIMS

I, Diana B. Kruze, declare as follows:

1. I am an attorney admitted to practice in the State of California, and I am admitted *pro hac vice* in the above-captioned action. I am an associate with the law firm of Morrison & Foerster LLP, attorneys for Abraxis BioScience, Inc. ("Abraxis") in the above captioned action. I submit this declaration in support of Abraxis's Motion to Dismiss Newly Added Claims. I have personal knowledge of the matters set forth herein, and if called upon to do so, I could and would competently testify thereto.

2. On November 15, 2006, this Court issued a Scheduling Order setting the deadline for amending pleadings as March 30, 2007 and the fact discovery cut-off as July 30, 2007. On July 16, 2007, the Court extended the fact discovery cut-off to August 13, 2007.

3. In November 2006, Abraxis served Interrogatory No. 1 requesting a claim chart detailing Elan's infringement contentions regarding the '363 patent.

4. In December 2006, Elan responded to Interrogatory No.1, asserting that Abraxis infringed claims 1-3, 5, 12, and 15.

5. Elan supplemented its response to Interrogatory No. 1 for the first four times in January, March, May, and June 2007, respectively. In each of those supplemental responses, Elan only alleged infringement of claims 1-3, 5, 12, and 15.

6. Elan supplemented its response to Interrogatory No. 1 for the fifth time on September 28, 2007 by, among other things, adding a new assertion that Abraxis infringes '363 claims 4, 14, 16, and 17. (Elan's Fifth Amended Interrogatory Response, Ex. A at 7, 14, 16-17). In support of these allegations Elan cited two documents: ABRX 0150905 (claims 4, 16 and 17) and a public presentation given by Michael Hawkins in January 2006 (claim 14). (*Id.*) This presentation is available on the worldwide web.

7. In March 2007, Abraxis produced a document in this litigation bearing Bates numbers ABRX 0150898-ABRX 0150926. This is the document that Elan cites in support of its allegation that Abraxis infringes Claims 4, 16 and 17 in its Fifth Supplemental Responses.

8. Attached hereto as Exhibit 1 are true and correct copies of excerpted pages from Plaintiff Elan Pharma International Limited's Fifth Amended Answers and Objections to Defendant Abraxis's First Set of Interrogatories (No. 1), dated September 28, 2007.

9. Attached hereto as Exhibit 2 are true and correct copies of excerpted pages from Plaintiff Elan Pharma International Limited's Fourth Amended Answers

and Objections to Defendant Abraxis's First Set of Interrogatories (No. 1), dated June 8, 2007.

10. Attached hereto as Exhibit 3 is a true and correct copy of Plaintiff Elan Pharma International Limited's Second Set of Interrogatories (Nos. 9-11) and Requests for Production (Nos. 35-62), dated March 1, 2007. Document requests Nos. 60 and 61 refer to the same public presentation that Elan cites in support of its allegation that Abraxis infringes Claim 14 in its Fifth Supplemental Responses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 10th day of October, 2007 at Palo Alto, California.

Diana B. Kruze

CERTIFICATE OF SERVICE

I, Jeffrey T. Castellano, Esquire, hereby certify that on October 18, 2007, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

Steven J. Balick, Esquire
ASHBY & GEDDES
500 Delaware Avenue, 8th Floor
Wilmington, DE 19801

I further certify that on October 18, 2007**,** I caused a true and correct copy of the foregoing document to be served by e-mail on the above-listed counsel of record and on the following non-registered participants in the manner indicated:

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EXHIBITS 1 AND 2
REDACTED IN THEIR ENTIRETY

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED, Plaintiff, v. ABRAXIS BIOSCIENCE, INC., Defendant.	)	Case No. 06-438-GMS

PLAINTIFF ELAN PHARMA INTERNATIONAL LIMITED'S SECOND SET OF INTERROGATORIES (Nos. 9 -11) AND REQUESTS FOR PRODUCTION (Nos. 35 -62)

Plaintiff Elan Pharma International Limited ("Elan") hereby propounds the following Interrogatories and Requests for Production on Defendant Abraxis BioScience, Inc. ("Abraxis") pursuant to Fed. R. Civ. P. 33 and 34, respectively.

DEFINITIONS

In addition to the definitions set forth in the Federal Rules of Civil Procedure and the Local Rules for the District of Delaware, the terms listed below are defined as follows:

A. The connectives "and" and "or" shall be construed either disjunctively or conjunctively so as to acquire the broadest possible meaning.

B. The terms "any", "all", or "each" shall be construed as "any, all, and each."

C. The term "document" shall have the broadest meaning permitted by Rule 34(a) of the Federal Rules of Civil Procedure, and shall include, without limitation, any tangible recordation of information by any means and in any medium, including, but not limited to, information that is handwritten, typewritten, printed, recorded, filmed, stored on computer disks

Document Request No. 60

Produce an authentic copy of the presentation entitled "Abraxane: Nanoparticle platform delivers improved antitumor activity" given by Michael Hawkins, M.D., Chief Medical Officer American Bioscience, Inc. on January 24, 2006 at the National Institutes of Health in Bethesda, Maryland, including any transcripts and/or texts of the presentation.

Document Request No. 61

Produce all documents that support Dr. Hawkins' statement during the presentation entitled "Abraxane: Nanoparticle platform delivers improved antitumor activity" that the "zeta potential" of the human serum albumin keeps the paclitaxel in Abraxane® in an "amorphous non-crystalline state . . ."

Document Request No. 62

Produce all documents referring or relating to the use of bovine serum albumin as a component of a nanoparticle containing paclitaxel.

ASHBY & GEDDES

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Dated: March 1, 2007
178404.1

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of March, 2007, the attached **PLAINTIFF ELAN PHARMA INTERNATIONAL LIMITED'S SECOND SET OF INTERROGATORIES (Nos. 9-11) AND REQUESTS FOR PRODUCTION (Nos. 35-62)** was served upon the below-named counsel of record at the addresses and in the manner indicated:

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