IN THE 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

DEFENDANT ABRAXIS BIOSCIENCE, INC.'S ANSWERING BRIEF IN OPPOSITION TO ELAN'S CONDITIONAL MOTION FOR 'RESCISSION' OF AN ADVERSE INFERENCE

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Dated: July 18, 2008

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I. NATURE AND STAGE OF THE PROCEEDINGS

The jury returned a verdict in favor of Elan on direct infringement of the '363 patent (but not willfulness), validity, and (advisory) enforceability of the '363 and '025 patents, and awarded damages of $55,230,000. D.I. 613. The Court entered judgment on June 16, 2008. D.I. 614.

Abraxis has renewed its motions for judgment as a matter of law of no direct infringement, invalidity, unenforceability, and damages, and for a new trial, and has moved that the Court amend the judgment and find that Elan engaged in inequitable conduct. D.I. 633, 634. Elan has moved conditionally to rescind the Court's "adverse inference" infringement instruction in the event this Court or the Federal Circuit orders a new trial.

II. SUMMARY OF ARGUMENT

1. From the outset of the case, Abraxis made clear that it did not infringe because, among other things, the paclitaxel in Abraxane was amorphous, not crystalline. During discovery, Abraxis repeatedly sought documents relating to Elan's testing of Abraxane. These efforts eventually culminated in a motion to compel. At what it knew would be the final discovery conference, Elan fended off Abraxis's motion by making a series of representations about Elan's testing. The Court accepted these representations, but they were later proven to be false. The Court correctly found that the testing documents were improperly withheld and that Elan made false representations about them during the discovery conference.

2. The Court's instruction to the jury that it "may infer that the contents of these documents [were] unfavorable to Elan's case on infringement" (D.I. 612 at J.I. 4.3; D.I. 577 at 1, 2) is supported by ample legal authority. Elan's argument that Federal Rule of Civil Procedure 37(b) requires a violation of a court order is incorrect, as Rule 37(c) explicitly provides for issuance of an adverse inference without a court order in appropriate circumstances.

In any case, as the Court made clear at the October 2, 2007 discovery conference, it was the Court's order that these documents be produced.

3. Elan's request for "rescission" of the Court's adverse inference instruction is based on the same arguments Elan made and the Court rejected before and during trial, and Elan has cited no new reason why the Court's instruction was error. The Court found, based on the only logical inference under the circumstances, that the evidence Elan withheld was harmful to its infringement case and thus would corroborate Abraxis's own evidence of noninfringement. But the adverse inference instruction did not go far enough. At trial, as Abraxis predicted, Elan criticized Abraxis's XRPD experiments, while withholding from the jury Elan's own tests. Elan thus succeeded in concealing from the jury the truth — that the paclitaxel in Abraxane is amorphous, not crystalline — yet was free throughout the trial to criticize Abraxis's tests and argue the opposite of what Elan's own test results undoubtedly showed. The mild instruction that the jury "may" infer that the withheld documents were damaging to Elan permitted the jury to find otherwise, while Elan had free rein to challenge Abraxis's tests without revealing its own. The resulting jury verdict was a miscarriage of justice, and the proper remedy is not to withdraw the instruction, but to award Abraxis a new trial if JMOL is not entered in its favor.

III. STATEMENT OF FACTS

The facts underlying the adverse inference instruction have been previously described on multiple occasions. D.I. 467, 477, 497, 567, 571, 573, 592 (5/15/08 pre-trial conference transcript) at 68:3-97:24 (Exhibit A); Tr. 1195:8-1197:24, 1200:10-22.[1] Throughout the litigation, Abraxis repeatedly requested Elan's testing documents regarding Abraxane. In its First Set of Requests for Production, served in November 2006, Abraxis requested that Elan produce all documents that refer to Abraxis or Abraxane. D.I. 236, Ex. 23 (First Set of Doc

[1] Excerpts of Trial Transcripts are attached hereto as Exhibit B.

Requests), Request No. 74; *see also* Request Nos. 3, 4, 55, 66-67, 69, and 77. Abraxis also propounded an interrogatory requesting a detailed description of all "testing by Elan of Abraxane." D.I. 261, Ex. 3 (Interrogatory No. 29). During discovery, Abraxis made several oral and written requests asking for complete production and responses relating to Elan's testing of Abraxane. D.I. 236, Exs. 19-22, 30-33, 42. At the close of discovery, with Elan's responses still woefully inadequate, Abraxis moved to compel. D.I. 234-236, 259-261.

At the October 2007 discovery conference, which the Court had made clear would be the last discovery conference, Abraxis requested that the Court compel production of Elan's testing documents. D.I. 365 (Oct. 2, 2007 Hearing Tr.) at 82:10-86:5, 111:21-112:2 (Exhibit C). In response, Elan represented to the Court that it had produced all non-privileged testing documents and that the testing documents it was withholding were from consultants, not its testifying experts:

> [Mr. Scheve]: Now, what is really happening here is a veiled effort to get at my work product. Your honor entered an order denying the Rule 11 motion. We did testing before we filed this lawsuit. We met our obligations under Rule 11.
>
> *At the direction of counsel, we had consulting experts,* ***not testifiers,*** *consult with us and do testing before we filed this lawsuit.* And this is nothing but a veiled effort now of trying to pierce these privileges.

Id. at 87:15-22 (emphasis added).

Abraxis expressed concern that Elan's privilege log did not appear to reflect the testing conducted on behalf of Elan by its so-called "consultants." *Id.* at 89:7-11. When the Court directed Elan to respond to that concern (*id.* at 89:22-23), Elan represented that it had "preserved all the walls between consultants and testifiers." *Id.* at 90:4-9. Elan also represented that the testing evidence it was withholding *was* listed on the log, and reiterated that the testing evidence from its testifying experts was not being withheld:

> You know, it's called Presentation. It's on the privilege log. All I can tell you, Judge, is it's there. Constantly, every day, "You didn't do this, [ ] you didn't do that."
>
> It's there.
>
> Clearly, if one of our witnesses comes in and talks about some testing that he has done, he is going to testify to it. He is going to get all the testing he did on that topic. There is no ands, ifs or buts about that.

Id. at 89:24-90:7; *see also id.* at 90:15-18. The Court "accept[ed] [Mr. Scheve's] representation as an officer of the Court." *Id.* at 91:21-22, 92:18-20.

Abraxis later discovered that these representations were false. The day before his November 16, 2007 deposition, Abraxis learned that Dr. Brittain — a testifying expert — performed testing on Abraxane for the purposes of this litigation when Elan produced a 34-page privilege log listing 436 entries. The withheld documents were undated, and cryptically labeled "Test Data," "Lab Notebook," "Test Report," "Presentation," or "Image" "prepared in conjunction with the Elan-Abraxis litigation at request of counsel"; the purported privilege was identified only as "Attorney Mental Impression Work Product." DX508 (Exhibit D).

There is no way to square Elan's representations to the Court with the facts. Dr. Brittain confirmed at his deposition that he had tested Abraxane. D.I. 467, Ex. 8 at 6:10-7:2. Counsel blocked further inquiry, instructing Dr. Brittain not to answer questions regarding the type of studies he had performed, whether he had performed XRPD testing, and whether his studies concerned the question of whether XRPD was a reliable method for testing the paclitaxel in Abraxane. *Id.*, Ex. 8 at 6:10-7:13, 11:3-10, 18:7-13, 18:20-19:9. As a result, Abraxis was unable to inquire further about the contents of the privilege log it had received just the day before, or about the nature or results of Dr. Brittain's testing.

Based on Elan's misconduct in connection with its testing documents, Abraxis moved *in limine* to exclude Dr. Brittain's testimony criticizing Abraxis's XRPD testing, as well as all other evidence and argument criticizing Abraxis's tests. D.I. 465 at 5. During the pretrial conference, the Court indicated that it would not issue the requested remedy, but would be willing to consider an adverse inference instruction as well as other relief. D.I. 592 at 91:1-97:24. At the Court's request, Abraxis filed a proposed form of order. D.I. 567. Elan submitted a letter brief in opposition. D.I. 571. After Abraxis responded, D.I. 573, the Court ordered that the jury instructions would include an instruction that the jury "shall infer" that the withheld evidence would be harmful to Elan's case on infringement. D.I. 577. After further briefing and argument at trial, the Court issued its final instruction, with a modification that favored Elan — changing the "shall infer" to "may infer." Tr. 1563:8-1564:22; D.I. 612 at J.I. 4.3.

Despite numerous opportunities to present evidence that the subject matter of Dr. Brittain's testing was in fact different from his report, Elan has never done so. Instead it has offered only conclusory declarations and attorney argument (not evidence) that are contradicted by Dr. Brittain's sworn deposition testimony that he conducted testing on Abraxane. In addition, Elan made no effort, and certainly submitted no evidence, justifying its representations to the Court that "*At the direction of counsel, we had consulting experts,* ***not testifiers,*** *consult with us and do testing before we filed this lawsuit.*" D.I. 365 at 87:15-22. Nor has Elan explained its assurances to this Court that it "preserved all the walls between consultants and testifiers" (*id.* at 90:4-9) and that it had logged all testing documents it claimed as work product when it was secretly withholding more than 400 unlogged documents (*id.* at 90:15-18).

Although Elan frequently alludes to Dr. Brittain's original retention by Elan counsel William Sipio, not Baker Botts, Elan has never denied that lead and in-house counsel for

Elan were well aware of Dr. Brittain's testing when the false representations were made to the Court. In responding to Abraxis's Rule 11 motion, Mr. Scheve declared that Dr. Sipio "briefed me on the testing done on Abraxane® done by an independent expert at the request of counsel." D.I. 88, Ex. V ¶ 3. That expert was undoubtedly Dr. Brittain, a fact Elan has never denied. Mr. Bokar, Elan's in-house counsel, was sent a copy of Dr. Brittain's retention letter, which states he was retained in part for his expertise in "X-ray crystallography." DX186 (Exhibit E). In any case, Dr. Sipio was counsel of record and an integral member of Elan's litigation team. *E.g.*, D.I. 1 at 6. At his request, D.I. 498 at Ex. 1, he was routinely copied on case correspondence, and Elan designated him to review Abraxis information under the Protective Order, which allowed access only for purposes of the litigation. D.I. 135.

IV. ELAN'S EFFORT TO RELITIGATE THE ADVERSE INSTRUCTION MUST FAIL

Elan's effort to relitigate the Court's issuance of an adverse inference instruction should be rejected. Elan's disagreement with the instruction ignores the Court's order, the facts, and the law that makes clear why Elan had no basis for withholding of the testing documents and why the adverse inference instruction was proper.

A. The Court Correctly Found That Elan Had No Valid Work Product Claim

Elan argues in its brief that its assertions of privilege over Dr. Brittain's testing documents "have never, to this day, been shown by Abraxis or expressly found by the Court to be legally incorrect." D.I. 641 (Opening Brief) at 3. This argument is wrong, and ignores the Court's explicit ruling that Elan violated Rule 26 by withholding documents without a valid privilege claim:

> Whereas, based on the parties' briefing and argument, the Court finds that Elan's failure to produce all documents that Dr. Brittain "considered" on subjects of his expert testimony, specifically the

> documents related to testing that are listed on Elan's privilege log for Dr. Brittain produced shortly before his deposition, is a violation of Rule 26. *See Dyson Tech. v. Maytag Corp.*, 241 F.R.D. 247, 251 (D. Del. 2007) (all documents reviewed, reflected upon, read and/or used in formulating [the expert's] opinions" must be produced). In particular, Elan failed to meet its burden of demonstrating that the subject matter of the documents it withheld are different from the subject matter of Dr. Brittain's expert report. *See Schwab v. Philip Morris USA, Inc.*, 2006 U.S. Dist. LEXIS 11047, at *11 [(E.D.N.Y. March 20, 2006)](party resisting expert disclosure "bears the burden of showing that an expert did not consider certain documents in forming his opinion; this burden cannot generally be satisfied by the expert's representations alone"); *B.C.F. Oil Refining Inc. v. Consol. Ed. Co. of New York, Inc.*, 171 F.R.D. 57, 61 (S.D.N.Y. 1997) ("documents having no relation to the expert's role as an expert need not be produced but that any ambiguity of the role played by the expert when reviewing or generating documents should be resolved in favor of the party seeking discovery")

D.I. 577 at 1-2. In addition to ignoring the Court's order, Elan completely fails to address the cases cited in it. The reason for this is clear: it has no answer for its improper assertion of privilege.

B. Elan Has No Excuse For Its False Statements to the Court

One of the striking features of Elan's repeated arguments to the Court concerning the adverse inference is its repeated inability to justify its false representations to the Court at the October 2 discovery conference. As in prior briefing and argument, Elan in this motion again offers no explanation or justification. This conspicuous silence is not surprising. Elan's lead counsel, who made the representations, has never claimed he was unaware of the true facts. There has never been a suggestion of a mistake or an oversight. This Court recognized the seriousness of the misconduct, stating that it had considered issuing an order to show cause regarding contempt. D.I. 592 at 89:9-90:16.

The closest Elan comes to attempting to justify its conduct is by suggesting, in a footnote, that it relied on *U.S. v. 215.7 Acres of Land, More or Less, Situate in Kent County,*

State of Delaware, 719 F. Supp. 273 (D. Del. 1989). There is no evidence that Elan actually *relied* on this case, and Elan did not even cite it in its opposition to Abraxis's motion *in limine* to justify its decision to withhold the documents. In any event, the argument is meritless. The cited case was based on the earlier, more restrictive version of Rule 26. *See W. Res., Inc. v. Union Pac. R.R. Co.*, 2002 U.S. Dist. Lexis 1911 at *26 n.10 (D. Kan. Jan. 31, 2002). As Elan's experienced trial counsel must have been aware, under the modern version of the Rule one cannot withhold documents from testifying experts who earlier acted as consultants without clearly establishing that the consultancy concerned subject matter unrelated to the expert's report. *See supra* section IV.A. This Elan has never done.

C. An Adverse Inference Is Appropriate

Elan spends a large part of its brief arguing that it is improper to draw an adverse inference from the assertion of a privilege, but an inference from a *proper* assertion of privilege was not the basis for the Court's order. Rather, the Court found that Elan violated Rule 26 by withholding testing documents with an improper privilege claim, and that Elan made a series of false representations to the Court about these testing documents. D.I. 577 at 1, 2. Under the circumstances, an adverse inference was, and is, appropriate.

Elan incorrectly argues that the Court lacked authority to issue an adverse inference instruction because Elan did not violate "an existing order."[2] D.I. 641 at 4 n.1. While it is true that sanctions under Fed. R. Civ. P. 37**(b)** require violation of a Court order, subsection (c) — ignored by Elan — does not. This Court properly found that Elan should have

[2] Moreover, Elan violated a Court order when it withheld the Brittain testing documents that it also failed to timely log. D.I. 365 at 89:24 - 92: 24 (ordering Elan to produce all documents relating to Abraxis or Abraxane, including testing documents, which Elan's counsel averred had already been produced or logged). As even the authority relied upon by Elan makes clear, "courts have broadly interpreted what constitutes an 'order' for purposes of imposing sanctions," including for a party's failure to produce documents promised by a certain date. *Brandt v. Vulcan, Inc.*, 30 F.3d 752, 756 n.7 (7th Cir. 1994) (citing cases).

produced Dr. Brittain's testing documents under Fed. R. Civ. P 26(a)(2)(B)(ii) and that Elan's failure to produce them was improper. That impropriety subjected Elan to the sanctions contemplated by Fed. R. Civ. P. 37(c)(1), which include "inform[ing] the jury of the party's failure" and other appropriate sanctions, including those set forth in subsection (b)(2). Not one of the cases cited by Elan even addresses subsection (c).

Elan's purported authority addresses an older version of Fed. R. Civ. P. 37 that did not include the revision: "provid[ing] a self-executing sanction for failure to make a disclosure required by Rule 26(a), without need for a motion under subdivision (a)(2)(A)." Fed. R. Civ. P. 37, advisory committee's note to 1993 amendment of subdivision (c).

Elan also ignores that this Court has previously recognized that absence of an explicit court order is not a bar to an adverse inference instruction. *Mosel Vitelic Corp. v. Micron Tech., Inc.*, 162 F. Supp. 2d 307, 311 (D. Del. 2000) (Sleet, J.) (adverse inference instruction to be given where party failed to preserve evidence). Indeed, "adverse inference instructions are one of the least severe sanctions which the court can impose …." *Id.* at 315.

Elan misstates the circuit law when it argues that the Court was required to find bad faith before issuing the adverse inference instruction. Elan cites a case from the Second Circuit, *U.S. v. Seltzer*, 227 F.3d 36, 41 (2d Cir. 2000). The court in *Seltzer* actually rejected appellant's argument that a finding of bad faith was a prerequisite to the sanction imposed in that case. *Id.* at 41-42. Moreover, *Seltzer* quotes the relevant Third Circuit authority that Elan ignores: "'[a] court need not always find bad faith before sanctioning under its inherent powers.'" *Id.* at 41 (quoting *Republic of the Philippines v. Westinghouse Elec. Corp.*, 43 F.3d 65, 74 n.11 (3d Cir. 1995)). Indeed the Third Circuit has made clear that the sanction requiring evidence of bad faith is an award of attorneys' fees. *Westinghouse*, 43 F.3d at 74 n.11. For other

types of situations, bad faith is one of several factors for the Court to consider in determining whether and what sanctions are appropriate. *See generally Spear v. Commissioner*, 41 F.3d 103, 110-112 (3d Cir. 1994). "When a party does not provide information to another party to which that party is entitled, a court is certainly permitted to 'even out' the proceedings by shifting the burden of proof in a fair way even in the absence of bad faith." *Id.* at 112 (*dicta*). In any event, Elan's unsupported privilege assertion and false representations to the Court demonstrate that it acted in bad faith.

Finally, Elan's argument that the adverse inference served no "curative" purpose since neither party called Dr. Brittain to testify at trial is incorrect. Elan ignores the substantial prejudice, indeed miscarriage of justice, that Abraxis suffered from Elan wrongfully withholding documents that the Court found would be damaging to Elan's case on infringement, D.I. 577 at 1-2) — a central issue in the case. Abraxis was entitled to obtain these documents and to use them freely at trial as it would any other evidence, including in cross-examining Elan's other experts, with its own experts and during closing argument. Abraxis was severely prejudiced by being deprived of extensive test results which undoubtedly supported Abraxis on noninfringement, while Elan had carte blanche to criticize Abraxis's experiments without risk that its own testing could be used to undermine its arguments. The instruction permitting (but not requiring) that the jury infer that the withheld evidence was damaging to Elan's case fell far short of curing the prejudice to Abraxis, but Elan is incorrect that it served no purpose other than to punish Elan.

D. Elan Had Ample Opportunity to Be Heard

Elan complains that Abraxis "wait[ed] until the pre-trial conference to request an adverse inference." Elan Br. at 2. In fact, Elan was well aware that Abraxis was seeking an adverse inference instruction — such an instruction was part of Abraxis's proposed jury

instructions submitted with the pretrial order on April 7, more than a month before the pretrial conference. D.I. 509 at J.I. 4.3. Elan filed objections to that instruction, and even proposed its own countering adverse inference instruction. *Id.* In any event, in Abraxis's motion *in limine* No. 1, Abraxis sought even broader relief precluding Elan from "introducing evidence and testimony contending that Abraxis's XRPD testing methods were an inappropriate method for testing for crystallinity in Abraxane." D.I. 465 at 5.

The pretrial conference was hardly the last opportunity for Elan to research and brief the issue. Elan submitted a letter brief opposing the issuance of the order after the pretrial conference (D.I. 571), submitted a bench brief during trial concerning Dr. Brittain's testimony D.I. 603, and also argued the point again when the Court considered jury instructions at the close of trial Tr. 1410:23-1414:17. Thus, Elan had multiple opportunities to brief and argue the adverse inference instruction before and during trial.

V. CONCLUSION

The Court should deny Elan's conditional motion for "rescission" of the adverse inference instruction.

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DATED: July 18, 2008

CERTIFICATE OF SERVICE

I, Karen E. Keller, Esquire, hereby certify that on July 18, 2008, 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:

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I further certify that on July 18, 2008**,** I caused a true and correct copy of the foregoing document to be served by e-mail and hand delivery on the above-listed counsel of record and on the following non-registered participants in the manner indicated:

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

- - -

ELAN PHARMA INTERNATIONAL LIMITED,	:	Civil Action
Plaintiff,	:	
v.	:	
ABRAXIS BIOSCIENCE INC.,	:	
Defendant.	:	No. 06-438-GMS

- - -

Wilmington, Delaware
Thursday, May 15, 2008
9:30 a.m.
Conference

- - -

BEFORE: HONORABLE GREGORY M. SLEET, Chief Judge

APPEARANCES:

JOHN G. DAY, ESQ.
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GREGORY BOKAR, ESQ.
Counsel - Elan Drug Delivery

Counsel for Plaintiff

THE COURT: Yet your expert Brittain agrees with him.

MR. SCHEVE: Dr. Brittain didn't comment in any way on how the study was performed. All he looked at and commented -- and one of the things we understood, Your Honor, was, and counsel agreed yesterday, that one witness per topic. Dr. Brittain is not going to talk anything about ssNMR. All he did was, he was shown what Dr. Munson did and he said Dr. Munson is truly one of the experts in the world on this and I don't see that he did anything wrong. That's all he did.

It's a different issue about criticizing how the samples were prepared, loaded, how it was handled before, how it was handled afterwards.

If you have never done that in your life, how can you be a reliable expert to testify about any aspect of that?

That is our position.

THE COURT: I understand your position. I don't agree with it. I think it is telling that Dr. Brittain agrees with the criticism and that there was no scientific response to the declaration that was just discussed by Mr. Jacobs. That was whose declaration?

MR. JACOBS: Dr. Atwood's.

THE COURT: Dr. Atwood's declaration. It may be

the case, Mr. Scheve, with all due respect, that we have a fundamentally different view of what is an appropriate role and application by a federal judge of his or her gatekeeping function.

I would suggest to you that we need to be real careful, that is, we federal judges, about exclusion of evidence to the point that it can effectively, without real good reason, only when it's clear to me, at least, that's my standard, when it's clear, that the evidence is going to be unreliable, that the opinion is somehow going to be unreliable because the person is not qualified or because the methodology won't stand up to scrutiny.

I am not sure. But you will get a chance in front of that jury to find out what they think about it.

It's denied.

All right. Mr. Jacobs.

Let's take a stretch break. Then we will start on plaintiff's. For the record, I am going to deny No. 5, which is denominated No. 5, as out of order.

(Recess taken.)

THE COURT: Counsel, I have had a chance to reflect a little more on No. 2 and take a look back at my claim construction ruling. I am comfortable we are going to be able to deal with this in realtime. I am going to deny the motion.

Mr. Jacobs, your turn.

MR. JACOBS: Thank you, Your Honor.

Our first motion in limine, Your Honor, asks that the Court exclude Elan from in any fashion, whether by way of testimony, cross-examination, introducing exhibits, critiquing, criticizing, arguing against the validity of Abraxis's x-ray powder diffraction data about Abraxane.

At first blush, that sounds like a rather sweeping request. But in light of the history on this issue, as I was re-reading the motion, I was thinking it's maybe a little bit of a mild request.

I will mention something towards the end of this that we are also seeking on this issue.

Maybe to set the stage for this...

I note, first of all, that x-ray powder diffraction is the primary method that has been used for the last 20, 30 years to characterize pharmaceutical substances as to their crystallinity or amorphousness. X-ray powder diffraction is the technique that Elan used in the '684 patent, the parent to the '363. When it was saying we created crystalline nanoparticles, x-ray powder diffraction was the technique they used.

It's a year into the case, and we have seen no testing data from Elan whatsoever. This is last summer. We have seen no x-ray powder diffraction data about Abraxane.

We have seen nothing else, and we don't really have their infringement contention in any detail.

So we have filed first a written motion, and then you may recall the sequence, there was an oral motion that Your Honor held a hearing on the request, really the demands that we had made by way of our motions.

By the time of the hearing, Dr. Brittain has already been, if you will, designated as a testifying expert, and his expert report has been submitted. His expert report is a critique of x-ray powder diffraction as used by Abraxis to characterize Abraxane. He says x-ray powder diffraction wasn't the right tool, and he says that it was done wrong.

At the hearing, Mr. Walters, pressing our case for Elan's testing data -- by that time you may recall, from the very first case management conference, we articulated that amorphousness versus crystallinity was one of the central issues in the case. We have had the claim construction hearing where that has been a central issue in the case.

We press our insistence that Elan produce all testing data, and if they are going to claim work product and privilege, that they log that testing data.

Elan represents to the Court that it has all been logged and that there is other testing. They say, We

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have done other testing but it has all been done with consultants, and we maintained clear walls between consultants and testifying experts.

There is an exchange between the Court and Elan. The Court asks: You are saying this testing that you contend to be privileged has been identified as such on a log?

This is at Page 90 of the transcript.

And Elan says, Yes.

Then there is a discussion back and forth about what is testing. And Elan says, There has not been an experiment, a lab experiment...

The Court says, I accept your representation as an officer of the Court.

Then we actually take Dr. Brittain's deposition. And it turns out that Dr. Brittain, who again is going to testify about x-ray powder diffraction, has his own x-ray powder diffraction equipment, has done extensive testing. How do we know this? Because we have the privilege log.

Your Honor, if you haven't had a chance to actually look at the privilege log, it is a rather striking document. There are over 400 entries on it -- test results, test data, test reports, test, test, test, test, over and over again, produced the night before his deposition.

So at Dr. Brittain's deposition, we ask about

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the testing. We are blocked. Dr. Brittain is instructed not to answer about any of the testing that he conducted. And we hear this explanation that, well, that was a different subject. That was a different subject. That is the basis that Elan relied on for not producing to us buckets of testing data.

If I could just segue for a moment, we think what's really going on in this case is that they have buckets of testing data that confirm that Abraxane is amorphous and not crystalline, but they are arguing in this court that it's crystalline. And something about that just doesn't seem right.

So we have, honestly, Your Honor, we have a hook into this issue to try and get at the truth. And the hook is they have designated as a testifying expert someone who had done 400-documents-plus worth of, we think, x-ray powder diffraction testing of Abraxane, and they are relying on a subject matter distinction to justify their non-production.

The subject matter distinction doesn't work. It doesn't just not work in a technical sense. We are all raised as baby litigators to know that if you designate somebody as a testifying expert, everything that that testifying expert did gets produced. That's something we work on, we manage to when we are litigating our cases. We all know that basic rule.

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To now draw this subject matter distinction -- it turns out the cases say, yeah, if there is a true subject matter distinction, then you can have a two-headed expert. He can be a consultant, and that can be a consultancy, and he can be an expert, and that could be -- I will make up a word -- an "experty."

But you can't just sort of make it up out of whole cloth, and you can't justify non-production the way Elan has done by submitting a conclusory declaration that just simply says, different subject.

We deal in patent cases, we deal with Your Honor about subject matter scope all the time. When we have to waive the privilege for opinion of counsel, the Court has to adjudicate the boundaries of that. We know something about what subject matter is here. It can't be that Dr. Brittain's subject matter, when he is testing Abraxane, that that subject is different from his testimony about Abraxane. It can't be that Dr. Brittain, who we are darned sure did x-ray powder diffraction, that that subject is different from Dr. Brittain's proposed testimony about x-ray powder diffraction. And it can't be that that testing, which is about one of the basic issues in the case, crystallinity versus amorphousness, is on a different subject than what Dr. Brittain proposes to testify about, which is whether Abraxane is crystalline or not.

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So the subject matter distinction just doesn't make any sense. It would turn the rules on expert disclosure into -- as we said in our brief, this gave a red light-green light where you can just manipulate around the rules.

So we are here at the motion in limine stage. And we think that, we believe -- we infer from the non-production that this evidence would be helpful to us on the question of both XRPD methodology, actually, the use of XRPD at all, the methodology by which Abraxis did the XRPD that it did and on which we rely for our proof of amorphousness. We think that at the motion in limine stage -- I honestly thought, Your Honor, should we be talking to you about this, you ought to make them produce it now and we ought to figure out what that means for the trial and what kind of costs they would be imposing on us for having to re-do all the expert discovery. And I went through that thought process. And it just doesn't seem like that is the right way to proceed.

It isn't as if this should be a surprise to them.

In fact, in the post-expert deposition period, we had a lot of back-and-forth with Elan about, we can't believe you are really relying on distinction for Brittain. We think they kind of made this bed and now they need to lie

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in it.
That is our proposal to you, that they be barred, on the basis of this non-production, from critiquing in any way, by any evidentiary or argumentative means, Abraxis's x-ray powder diffraction.
I flagged for you at the beginning, there is something else we are going to ask of you in this connection when we get to jury instructions, which is an adverse inference, that the jury would be told about, and that we could rely on in opening statements to tell the jury that they can infer from Elan's non-production that the evidence was unfavorable to Elan.
Thank you, Your Honor.
Mr. Scheve.
MR. SCHEVE: Your Honor, my response is multiple pronged.
First, it's very important that Your Honor understand how Dr. Brittain first became involved. He was retained by an attorney whose name is William Sipio pursuant to a letter agreement between Mr. Sipio and Dr. Brittain.
Dr. Brittain agreed to provide consulting advice to Mr. Sipio as an attorney. That letter agreement was entered into in November of 2005.
What happened thereafter was consultation

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between Mr. Sipio and Dr. Brittain relating to assessment and evaluation of the merits, potential merits, of proceeding with this lawsuit, including some testing that was done. And the interaction was solely between Mr. Sipio and Dr. Brittain.
Clearly, the rules say there is no obligation to disclose consulting experts. And Mr. Brittain had his own consultant.
What this really boils down to, Your Honor, is going to a precise question of whether or not Your Honor is going to allow Abraxis to gain access to privileged work product material that was exchanged between Dr. Brittain and Mr. Sipio.
Now, I don't know, Your Honor, if I need to ask you for the opportunity to talk with you in camera, because for me to stand up and say what he didn't do or did do would be extracting the work product as to what was done and what wasn't done. In other words, for me to defend this and stand up and tell you what tests he did not do, it requires me to disclose what would otherwise be privileged.
The facts are that Steve Scheve, in August of 2007, approached Dr. Brittain and said, look, I want to talk with you about two specific issues: the doctrine of equivalents case, and I want you to look at this x-ray powder diffraction testing that was done. Do you have any

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opinions that you would be willing to offer in this case on those distinct issues?
THE COURT: Here is what I need you to address, this observation. And I want to read it. I want you to be clear on what I want you to address. That is at Page 2 of the reply by Abraxis. They write, in the second full paragraph: That Dr. Brittain was originally retained by Sipio, rather than Baker Botts -- let me start again. "That Dr. Brittain was originally retained by Sipio rather than Baker Botts is irrelevant. Not surprisingly, Elan has no authority that a party can avoid expert disclosure by the artifice of having one lawyer retain the expert as a 'consultant' and another lawyer for the same client later hire the same expert as a testifier."
That's what you need to talk about.
MR. SCHEVE: I am not disputing that, Judge, because I have not asked Dr. Brittain to offer any opinions relating to any testing he has done. I have asked him to offer opinions on other total completely different issues. And we have kept, as the case law says, very clear lines and demarcation between what he did in the context of his consultation with Mr. Brittain, which ended in June of 2007. And I came to him and I said, I don't know what you did with Mr. Brittain -- I have a sense of what you did with Mr. Brittain, but I am not here to talk to you about that. I am

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asking you now, do you have opinions on these two topics, about the technology that was utilized by Abraxis and about this doctrine of equivalents case? And he says, Yeah, I have some opinions on that. And I talked with him.
So the only two things that we intend to offer through him -- he is going to come testify about something he did testing on. I am not going to offer any of that.
Now, Mr. Jacobs says, quote, "We are darned sure he did x-ray powder diffraction."
THE COURT: He did say that.
MR. SCHEVE: He didn't do any x-ray powder diffraction on Abraxane in any work he did. I would like to see the proof that Mr. Jacobs has for supporting his statement, "We are darned sure he did x-ray powder diffraction."
He did not do x-ray powder diffraction of Abraxane. Why? Because x-ray powder diffraction of Abraxane, which is swamped with albumin, 130-nanometer particles, is incapable of giving you any meaningful information.
Now, I run the risk of waiving privilege by telling you that, Your Honor. But they are sitting there putting this out there as bait. And I am telling you, as an officer of the Court, he did not do x-ray powder diffraction of Abraxane.

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We asked him, do you have opinions about the technology that Abraxis used? And I want to talk with you about some doctrine of equivalents testing.

Now, Your Honor, to make Your Honor's job perhaps easier, because this goes right to the heart of work product, is their Motion in Limine No. 4, which is the expert report and the testimony we proffer of Dr. Stephen Byrn. Dr. Amiji, their expert, was approached by Abraxis, and he says in his report I am not an expert in crystallography. So they approached him and said, who do you consider to be the foremost experts out there in crystallography? And he writes a letter or e-mail back to Abraxis and gives them two names: a fellow from the University of California San Francisco, Dr. Stephen Byrn.

Dr. Byrn had been disclosed as an expert by Elan, and had been attending various depositions. And he supplemented his report. It's a seven-page supplement. And it was given to Ms. Evans the day before his deposition.

The relief now that's not in the motion -- the motion is to exclude Dr. Brittain. But what Mr. Jacobs referred to as the motion being mild in terms of the relief sought, what we have now got is a broad, sweeping request that no witness be able to testify about this. We had two other witnesses who were designated to be able to talk about these limitations. We thought that Dr. Brittain brought

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some particular experience to the table because he used to work with Bristol Myers Squibb, who manufactured Taxol, which is the only approved formulation of pacli --

THE COURT: Let me just correct you, and perhaps -- I am not sure if what you say, what you assert is correct or not. But the motion as styled, at least, the title, does seek, in the title, Abraxis does seek to exclude portions of Dr. Brittain's expert report regarding attacking of Abraxane and to bar related testimony and argument.

So I don't know whether it's fair to say that they have expanded unfairly the scope of their request. You may not agree, quite clearly, you wouldn't agree with that. But go ahead.

MR. SCHEVE: If I may, Your Honor.

THE COURT: Sure.

MR. SCHEVE: I want to make sure the record is clear that his broader-sounding request doesn't mean that we can't elicit this testimony from others that we have designated, again, with the goal of making it easier for the Court to address this. They have now taken the position we shouldn't be allowed to present Dr. Byrn. So it's, let's not let Dr. Brittain talk about it, and we are going to put you in a box and argue that you need to give up the stuff that was exchanged between Dr. Brittain and Mr. Sipio, which I will tell this Court did not involve x-ray powder

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diffraction of Abraxane, and we also don't want you to be able to present Dr. Byrn.

So these motions are really sort of tied together, Your Honor.

If we are able to put on Dr. Byrn, even if it's you got to produce him for another two hours because Ms. Evans made the decision she wasn't going to question him about the supplemental report, then we are in a position where we don't have to ask the Court to confront this attorney-client -- I should say work product issue. But they want to exclude everybody that is going to criticize the techniques that they relied upon, because -- and it gets to the heart of the case, Judge.

What Abraxis did was, they have a product that has nine parts albumin. It's this stuff that's taken from the body. It is itself amorphous. And these are very tiny particles. What they did is they only tested Abraxis as a lyophilized freeze-dried powder with that nine-to-one ratio. What they never did, and I mean assiduously avoided, was to reconstitute and then they use something called a centrifuge to separate the nanoparticles. They did that for purposes of characterizing to the FDA how much paclitaxel, how much of this protein is in the nanoparticles, but they have never tested those nanoparticles. And that's what our case is about. We have. And there is crystallinity there. And we

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will show it.

But they don't want the jury to hear from anybody about the flaws and the steps that they have failed to take to explore this.

I offer to Your Honor --

THE COURT: Isn't their complaint about Dr. Byrn -- it doesn't seek to exclude his testimony, I don't think, altogether.

MR. SCHEVE: I believe that's correct, Your Honor.

THE COURT: Go ahead.

MR. SCHEVE: They have not addressed the DOE portion of his testimony. They have simply focused on his giving any opinions or any related testimony about the limitations of x-ray powder diffraction. When you are trying to use it, the example I like to give is, Your Honor, my wife has a cooking thermometer. It doesn't get used very often. She would get mad at me if I said that. But if I tried to measure my body temperature with it, it is the wrong tool to measure my body temperature. It doesn't begin to log it until I am 150 degrees.

This case is going to get down to a question of, did they use the technology that could even measure it? And why didn't they go forward and separate those particles and look at the particles? Because they did it for other tests

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but never applied crystallinity.
So it's let's keep out Dr. Brittain, who was hired by Mr. Sipio. And I am not here saying this, you know, just because it's a different lawyer. That's never been our position. It's that we kept his role separate. He never was asked, has never done an x-ray powder diffraction of Abraxane.
He and Mr. Sipio did a lot of consulting, to understand various concepts. I came in this August and said, I am not here to talk with you about what you and Mr. Sipio did. I have got these two discrete issues. If that implicates the issue of whether I have got to give information over that's privileged, that deals with tests that do not involve x-ray, do not involve x-ray diffraction, then the simple solution is let's go to No. 4. If I can get that person in, I might be able to turn to my client here and take away this first motion in limine, so that you don't have to address the privilege issue. That is a substantial issue.
THE COURT: Let's talk about it.
MR. JACOBS: There was an expert. He was at a deposition. We could have voir-dired him on the scope of his other consultancy. Again, we deal with how to create a record around different subject matters all the time. We don't do that through in camera productions. We don't do

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that by claiming work product would be revealed by detailing the basis of the different subject matter.
We produce privilege logs all the time that are supposed to be sufficiently detailed to allow an examination of whether the privilege applies.
I am sort of working my way through the basics of litigation practice to why this argument should not be credited.
The privilege log is Exhibit 6 of the materials, Your Honor. It says testing, testing, testing.
THE COURT: I have it.
MR. JACOBS: Brittain's expertise is x-ray powder diffraction. So we are drawing inferences here. But we have no record evidence. We have an officer-of-the-Court representation. But forgive me, Your Honor, we have been there, done that, and that didn't work out very well.
So I think, as to Brittain, I think the record is what the record is. They submitted a declaration. They didn't meet their burden of proof. They had their chance to remedy this through back-and-forth in the winter. And that's where we are with Brittain.
On Byrn, one of our themes, as you will perhaps start to see this theme emerge right now, but it will become even more evident when we talk about Munson, is, following the bouncing ball, that, okay, we don't like Brittain, we

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have exposed him, he has run into trouble.
After opening expert reports on their case-in-chief are due, well after, the night before his deposition, we got a supplemental report on Byrn. Now we are supposed to take Byrn's testimony at trial critiquing x-ray powder diffraction, another theme that you will see in the remainder of our motions in limine, following the Court's rules.
We really have tried our best on our side to read the Court's pretrial order, the Court's case management order, and get our expert reports in on time, get our rebuttal expert reports in on time, tee up the depositions, et cetera. We get an expert report on an issue on which they bear the burden of proof well after the deadline. And absolutely, Your Honor, we said, we have had it up to here with all the other stuff that we are not arguing about. And we said, this is a non-event, this late expert report.
So we are moving to exclude Byrn. And we do have a shared understanding about the scope of our motion on Brittain. We want to bar critique of x-ray powder diffraction by Abraxis from any source, because they had their chance to do this right and they didn't.
MR. SCHEVE: Their expert, Dr. Atwood, submitted a report to us, an amended report on February 29th. By my calculation, that would be ten weeks after his deposition

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was taken and after the close of discovery.
I could defer to others as to how many documents showed up in expert reports that have never been presented, produced. In fact, was it just last week, how many new exhibits or new documents came in?
I find it interesting, Your Honor, that this claim about somehow we didn't comply, when we get to the discussion that they are also trying to prohibit us from offering any documents after March the 7th, March the 7th was what we interpreted to be the deadline for those parties with burdens of proof to come forward with their disclosures. We contacted Abraxis and said, do you understand that? No, we are not going to produce our invalidity stuff on March the 7th. Even though they had the burden of proof, they didn't produce it until March 21st, two weeks later.
Then we came to an agreement. And Ms. Glover will get into all of this. It is all to give you a sense, Your Honor, that this is strategic posturing, to try to prevent us from putting on our case. If the argument is, this was a late supplemental -- report it's only seven pages -- their own Dr. Amiji recommended this guy to them because he is the guy to go to in the United States, so let's posture it now. Let's just not take his deposition, even though we offered him up, and offer to produce him yet

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later on, and let's try to knock this out.
We also disclosed Dr. Berkland, Cory Berkland, and he was deposed. We understand that we got to narrow this down as to which witness is going to offer testimony on this. And we have an agreement that it's going to be one. But now it's a request, I don't want this testimony coming into the case.
THE COURT: Let me interrupt for a second. Why don't you sit for a second.
Dr. Byrn was deposed. Is that correct?
MR. JACOBS: Yes, he was, Your Honor.
THE COURT: But it was before he got this supplemental.
MR. JACOBS: The morning after. So we got the supplemental the night before.
THE COURT: I understand the reason for your request. But have you had, in spite of, or would you need more time, have you had an opportunity to adequately prepare, did you have an opportunity to adequately prepare for Dr. Byrn's deposition?
MS. EVANS: Your Honor, if I may, please, because I was the one who took Dr. Byrn's deposition.
Dr. Byrn's opening report, his report that he had first provided, was solely on invalidity and unenforceability. That was the only thing he opined on. We

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have attached that to our papers. He said this is what I have been asked to talk about. Nothing on infringement. Zero. Absolutely zero.
So, I mean, he talked about prior art invalidity. So I came, you know, to take his deposition. I had all the prior art references. I was all ready to go with all my exhibits to talk to him about what his report was about, which was prior art. There were other Elan experts, three other ones -- seven Elan experts talking about infringement in their opening expert reports. Dr. Byrn wasn't one of them. He was a rebuttal expert on invalidity and unenforceability.
So I arrived ready to take his deposition. An e-mail comes into my Blackberry at about 5-something, saying, oh, here's is a supplemental report for Dr. Byrn. Of course, I just had my Blackberry. I am staying at a hotel. By the time somebody from the office can get it and fax it to me, it is after 7:00 at night, and I have a deposition the next morning at 9.
I get this report. I don't have any exhibits. I don't have the attachments. I don't have any questioning prepared. I don't have copies of what he is referring to. I haven't had a chance to consult with my own experts to prepare examination on this. This is on the last day of expert discovery.

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We had asked for Dr. Byrn early. We wanted him in November. Elan said, no, no. He is only available the last day of expert discovery, the 14th.
Then they also say, Your Honor, that this new report on infringement by Dr. Byrn, it is based solely on documents that were available months before, that were available when the opening expert reports were due.
There is nothing new that is in Dr. Byrn's report. It's just that Elan decided, well, no, seven experts is not enough on infringement. We need an eighth.
So they basically sent this to me. I get it at 7:00 the night before. And, yes, Your Honor, I decided I could not conduct an adequate examination, getting this report, with no exhibits, with no ability, really, to meaningfully cross-examine the witness.
So I cross-examined him on what his timely served report was on, which was invalidity. And I did not cross-examine him on this new issue.
THE COURT: Mr. Jacobs.
MR. JACOBS: I left Mr. Scheve an opening and he took good advantage of it, in broadening the discussion to a whole range of issues.
I would like to make a couple of final points about Motion in Limine No. 1.
I think I have said to Your Honor that the

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Court's process of resolving discovery motions where attorneys appear and basically argue them out in front of Your Honor is the most efficient process that I have worked with in district courts, because we spend a lot of time restating the obvious when we file discovery motions in written form. But it does depend on counsel accurately describing to you what is going on in the form of representations to the Court.
THE COURT: I am rather persuaded on your position regarding Dr. Brittain.
But what I am interested in doing is, if I can, minimizing the prejudice that Abraxis has suffered by affording you another opportunity to have an informed discussion with Dr. Byrn.
I am reluctant to exclude, as you well know, Mr. Jacobs, in the hothouse of this kind of litigation, there are things that are sometimes missed. There are very able lawyers who are able to, you know, make, what is it, a sow's ear seem like a silk purse sometimes.
So I am reluctant to, usually, try to dig too deeply, because I just don't have the time. Then I would be ending up with a whole lot of rules to show causes as to why I shouldn't be holding lawyers in contempt, quite frankly, because when I read these papers, I made a notation: Serious matter. May need rule to show cause, Mr. Scheve,

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because these were direct statements that you made to me, if they turned out to be, as an officer of the Court -- this is the only way this system works. Judges have to be able to rely on the word of lawyers.

I am not making any findings. I am saying these thoughts occurred to me, that this was a very serious matter. We are not going to go there.

What I do want to do, though, is as I just indicated, and I will, order Dr. Byrn to appear at Ms. Evans's convenience, at a location designated by the defendant, at your cost, plaintiff's cost, for an additional deposition.

I am going to exclude, pursuant to Mr. Jacobs's request, Dr. Brittain's testimony to the extent that request -- you might want to particularize your request, Mr. Jacobs.

MR. JACOBS: So we are in a sort of funny position. Can I walk back a little bit? I am sorry for not answering your question directly.

THE COURT: Yes.

MR. JACOBS: We are in the odd position that if we can't get an exclusion of the testimony in the broadest sense --

THE COURT: You are referencing the jury instruction?

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MR. JACOBS: There is a point there. Let me put it all on the table, what the options are, and let's talk it through.

There is a long privilege log, testing data. They haven't produced the testing data. Do we get to examine Dr. Brittain if he were to testify: Dr. Brittain, you did all this testing. You haven't told the jury about it. Don't you think it might be interesting for them to hear about all that testing?

Do we do that? Do we get an adverse inference during instructions?

Brittain has fabulous admissions about x-ray powder diffraction and it being the gold standard for determining crystallinity. Do we get to introduce those admissions by way of his deposition testimony? That would seem to be difficult if we are going to bar him from talking about x-ray powder diffraction.

So we carefully designed our motion. If we don't get the broadest relief on this, I think we would rather have Brittain testify on x-ray powder diffraction and exclude Byrn.

I don't want to have to take a deposition in the last two weeks before trial. I do want these other opportunities to impeach, cross-examine, Dr. Brittain.

THE COURT: I am prepared to accede to that

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request. Would you put that in the form of an order?

MR. JACOBS: I will.

THE COURT: So that we are real clear, if I want to have a second thought about it, I can, and I will reconvene the parties on the phone if necessary.

Did you have a question, Mr. Scheve?

MR. SCHEVE: I am not quite sure I understood what was being proposed, Your Honor.

MR. JACOBS: Excluding Byrn, late, et cetera. Allowing Brittain to testify on x-ray powder diffraction. Full opportunity to cross-examine him on x-ray powder diffraction. No prohibition on asking him about undisclosed tests.

And we will ask you, and I don't know if you want to embrace this yet, but the adverse inference.

THE COURT: No, I didn't mean to embrace that yet. We can talk about that later.

MR. SCHEVE: Your Honor, that gets right to the heart of the work product privilege and the very sensitive nature about that.

THE COURT: If he didn't do x-ray powder diffraction, then that should end the matter. Right?

MR. SCHEVE: What I hear counsel saying is, and I do want to address, because, you know --

THE COURT: In other words -- and I will let you

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continue -- but I think Mr. Jacobs is still a little incredulous about what, in spite of your representations, I think you just need to say that, as to what Dr. Brittain did.

MR. SCHEVE: But if he didn't do x-ray powder diffraction of Abraxane, are they going to be able to make entry into the privileged relationship between him and Mr. Sipio on the test?

THE COURT: I don't think he seeks to do that.

MR. SCHEVE: I think I hear him saying, yes, he does.

THE COURT: I don't think so. But maybe I am wrong. I could be wrong.

MR. JACOBS: To be completely straight up, I have got the privilege log. I want to be able to ask Dr. Brittain, Dr. Brittain, you did a lot of testing on Abraxane, didn't you? It's on this privilege log, isn't it? You have not disclosed this testing in this trial, have you? Ladies and gentlemen, draw the inference you would like to draw from that nondisclosure.

Do you want me to justify it?

The rationale is, they should have produced it. It would create huge trial preparation problems if they produce it now and we have to go off and take Brittain's deposition and sort of penetrate what this was all about.

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So that's not the right answer. But just letting this proceed as if nothing happened, that can't be the right answer, either.

THE COURT: Wouldn't that, Mr. Scheve, be sort of, if I were to not accede to that, be a back-door way of letting you do exactly what I think is reasonably complained about? That is, the same client hiring, using the expert for two different purposes, with no meaningful subject matter distinction being offered? To really oversimplify it, perhaps, I think that's where we are. It sort of gets back to a concern that I shared with Abraxis regarding Sipio's role in this process, or someone like Sipio.

MR. SCHEVE: Your Honor, if I may. How could privileged information give rise to a negative inference? If it's truly privileged, how can he argue a negative inference from that?

If Mr. Sipio did --

THE COURT: I think he is saying the information should have been produced.

MR. SCHEVE: That gets to the question of the privilege.

THE COURT: Well, Mr. Jacobs, do you want to address that?

MR. JACOBS: I don't think I can say it better, Your Honor. There is no meaningful subject matter proof.

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It should have been produced. They didn't produce it. Now we get to deal with the world that they have handed up to us in the best way we can.

THE COURT: You should have produced.

MR. SCHEVE: I would only urge Your Honor, if I may, for the record, because the appellate court will need to see this as well, if he has not done x-ray powder diffraction, and I am not calling him -- I am not calling him to testify about anything that he did, I don't understand how they can draw a negative inference about that or why my client should be punished and let the jury be inferred that there is something negative. Because the testing -- again, it's assumed that these tests that were done were on Abraxane, as opposed to tests done on paclitaxel, tests done on --

THE COURT: Let's play through that a little bit. Dr. Brittain is on the stand, and he is asked by Mr. Jacobs, did you do any XRPD, x-ray powder diffraction tests? And he said no.

MR. JACOBS: I think I would just lay out a -- lay it out how I would do that. I would have the privilege log there and say, Dr. Brittain, this is a privilege log of documents that Elan has not produced in this litigation. You understand that? He would say yes.

I would say, the privilege log refers to

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testing, test data prepared in conjunction with the Elan-Abraxis litigation at the request of counsel. Do you see that, Dr. Brittain?

Yes, I see that.

So this testing was about issues in this litigation, wasn't it, Dr. Brittain?

Yes.

And I would say, You are an expert in x-ray powder diffraction, aren't you, Dr. Brittain?

And that's all the information we have about this, isn't it, Dr. Brittain? What we know is you are an expert in x-ray powder diffraction, you did testing, and it's not produced. Isn't that right, Dr. Brittain?

Yes.

Now, if Mr. Scheve wants to try to rehabilitate him by saying, was it about x-ray powder diffraction, we can see what happens next. I would be relying exclusively on what is in front of us by way of his testimony and the privilege log that they have produced.

THE COURT: And reassert, if you would, for us, you claim the right to do this again why?

MR. JACOBS: I claim the right to do this because once having declared Dr. Harry Brittain as a testifying expert on issues of infringement, crystallinity, testing of Abraxane, x-ray powder tests, diffraction testing

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of Abraxane -- parenthetically, you can see I am building a hierarchy of generality to granularity, because we have to pick our subject matter here -- infringement, crystallinity, testing, x-ray powder diffraction testing, once they designated him on those subjects, they should have produced anything that related in the largest sense, because that's what we do with experts. Anything that related to those subjects, testing, crystallinity, infringement, if that's what he did before Sipio or not, that's what they should have produced, and they didn't.

THE COURT: You maintain him being labeled, Sipio, a consultant expert, once he is re-labeled as a testifying expert, that strips that protection. You are saying that work product goes out the window.

MR. JACOBS: Precisely. Very well-understood. Of course, we read closely the Court's Dyson decision where you were dealing with kind of a species of this.

THE COURT: Write the order. Let me see it. If necessary, I will get back on the phone, if I feel that I want to hear further from you.

That will give me some additional time.

I have to say, Mr. Scheve, in all candor, that at this point I am tilting towards the Abraxis position.

We will leave it there for now.

All right. Next.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

- - -

ELAN PHARMA INTERNATIONAL LIMITED,	:	Civil Action
Plaintiff,	:	
v.	:	
ABRAXIS BIOSCIENCE INC.,	:	
Defendant.	:	No. 06-438-GMS

- - -

Wilmington, Delaware
Monday, June 9, 2008
8:30 a.m.
SIXTH DAY OF TRIAL

- - -

BEFORE: HONORABLE GREGORY M. SLEET, Chief Judge, and a Jury

APPEARANCES:

JOHN G. DAY, ESQ.
Ashby & Geddes
-and-
STEPHEN SCHEVE, ESQ.,
LINDA M. GLOVER, ESQ.,
JEFFREY SULLIVAN, ESQ.,
LISA A. CHIARINI, ESQ.
ROBERT RIDDLE, ESQ., and
PAUL FEHLNER, ESQ.
Baker Botts LLP
(Houston, TX)
-and-
GREGORY BOKAR, ESQ.
Counsel - Elan Drug Delivery

Counsel for Plaintiff

Page 1193

would be on crystallinity, when I have already represented to Your Honor he didn't test Abraxane using x-ray powder diffraction, or solid state NMR.

So his relationship was with Mr. Sipio. If they want to draw that inference, and, frankly, Your Honor, I don't believe, I think it's error and none of us want to come back, I don't know how they can draw an inference from a privilege log. But look at these entries. Lab notebooks, it's information to communicate resulting results of experiments.

If Your Honor wants briefs, I can show and this has been part of the problem in this lawsuit, we have heard about how much work there is. I can show you examples where they put something on their privilege log. It's still there. And then they inadvertently gave it to us. And there is nothing privileged in there other than it says, Entries of crystallinity, but it's still on the privilege log. I can go through it, if we have a further hearing, I can show you those sorts of materials.

All I am urging, Your Honor, our position, again, that this is error and neither side ought to be getting into stuff that is put on a privilege log.

Your Honor has rules that we have attempted to abide by. I would love to have been able to bring to Your Honor's attention these claims that a lab notebook is

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privileged. But Your Honor had said, I am not going to hear anymore discovery disputes. That's why we are where we are.

THE COURT: After a point, counsel, as all of you know, our resources are limited. We can only devote so much time to any one dispute. This case has, quite frankly -- I am not going to get on a soapbox this morning. In point of fact, this case has been one of the more litigious patent matters over which I have presided during my almost ten years on the Bench. And I have presided over a lot of patent cases.

It has been a disappointment in that regard, especially because we have such good lawyers here, especially lead counsel, to take nothing away from associate counsel and second seats and all that. But it makes it difficult, two very able advocates, who make reasonable appeals to the Court's rationale or at least hopefully to its intellect. I am going to try to sort through this a little bit. Most especially, the word "fairness" resonates with me, as some of you may know or not.

So, Mr. Jacobs, could you, just for a moment, address that issue that Mr. Scheve raises, the issue of, that this just isn't fair, Judge, because we didn't have the time, and even at the pretrial conference -- we could have said at our pretrial conference, I could have delved into what really happened here in these discovery disputes, what

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was -- who was really the bad actor? Was it both of you, my suspicion? Who deserves to suffer, as they say?

So...

MR. JACOBS: I don't want to try the Court's patience, regarding go --

THE COURT: Don't worry about trying the Court's patience. It is an important issue.

MR. JACOBS: Let me go through how we got to Motion in Limine No. 1.

Mr. Walters was here at a discovery conference. We had raised for Your Honor the fact that their privilege log seemed not to contain testing references on it. And that we had not gotten Elan's testing documents.

Elan's counsel stood before Your Honor and said, The privilege log is complete. I am tired of being, my figurative words for him, I am tired of being beat up about my privilege log.

THE COURT: And I expressed concern with that representation.

MR. JACOBS: He said the privilege log was complete and that we have maintained clear walls between consulting and testifying experts, as noted in the Court's order on Motion in Limine No. 1. Both of those representations were incorrect.

That was the predicate for then -- and at that

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hearing, the Court said, No more discovery disputes, and we understood that.

When Elan produced Dr. Brittain at his deposition, the night before we got this lengthy 466-reference log, I took that deposition, I examined Dr. Brittain on what he had done for Elan in testing. The only question he was allowed to answer was that he had tested Abraxane.

Every other question: What kind of tests did you do? What was the purpose of the testing? Did it relate to crystallinity? Did it relate to this? Did it relate to that? There was an instruction not to answer.

We wrote to Elan several times and said, You can't possibly do this; he is a testifying expert. It says on the log he was doing testing related to this litigation. You proceed with Dr. Brittain at your own risk. I scripted those words, Your Honor, because I wanted to be really clear to Elan very early on what the consequences of the assertion they were making with respect to Dr. Brittain were.

We then wrote our Motion in Limine. We said, Here's the history. Elan shouldn't be allowed to criticize our x-ray powder diffraction when there is all this testing evidence that suggested to us, based on the information we had then, Dr. Brittain had done precisely what we had done, used x-ray powder diffraction in various ways, whether on

Abraxane or a fraction of Abraxane or a sample, we didn't know. We knew only what we knew. We shifted the burden to them in that motion to demonstrate that the privilege was properly asserted.

They came forward with a declaration from Dr. Brittain. That declaration said no more than, What I did in the litigation was a different subject than what I am testifying to as an expert. It provided no underlying rationale for that distinction. It provided no subject matter basis. We argued that precise issue at the Motion in Limine hearing before Your Honor.

Your Honor observed that you had noted in the margin of one of the briefs the possibility of an order to show cause for contempt. Your Honor said, We are not going there, counsel. But I want to let Elan know that I view this as a very serious matter. And then we worked out, over the course of the Motion in Limine hearing, what's the right remedy here, given the violation of Federal Rule 26.

Then we proposed an order for the Court. Elan took a run at the proposed order with a letter brief. We responded to the letter brief. Then the Court adopted the proposed order, which, itself, lays out the rationale for the adverse inference that the Court is going to instruct the jury on.

There is none of that run up for this. They are

just showing up at trial and saying, Privilege log, privilege log. Look at these entries on Dr. Desai in particular.

Your Honor knows what these cases are like. Here is Elan's privilege log (indicating). These are huge cases, which where we over-sweep in documents to make sure we don't under-produce. Then we go through these documents, both sides, this is not unique to us, one by one, and we say, No proper assertion of attorney-client privilege. Then we have some back and forth.

Then, in this case, for example, with respect to communicate to patent counsel, our team went through each of those and confirmed that it was, in fact, communicated. It was, in fact, communicated.

I don't know how else, absent appointment of Special Masters and all those other things that we do to delve more deeply into this, I don't know how else to suggest this could have been addressed, Your Honor, given where we are. It is unfair to show up at trial and throw this up on the screen in front of the jury.

THE COURT: Last word, Mr. Scheve.

MR. SCHEVE: I will just address two points. I am pleased to hear they finally addressed the word "fairness" at the very end other than just a rehash.

Your Honor, the record needs to be clear. What

Dr. Brittain did was in his consultation with Mr. Sipio. His contract was to help Mr. Sipio understand some issues. He is continually characterizing what Mr. Brittain did, Dr. Brittain did, as Elan testing. And then they said, Well, you proceed with Dr. Brittain at your own risk.

I have reviewed the law on, Can an inference be drawn from the fact that things were put on privilege? And the law is, There can't be any inference drawn from that, which is what they have invited Your Honor to do. So we didn't put Dr. Brittain up, because if I had, I would hear on appeal it's waived, that the issue is waived.

We would simply say, Your Honor, we don't think it is appropriate either way for people to be instructed that there is an inference to be drawn when lawyers get information, look at it, and I don't doubt that they looked at stuff, although in one of the discovery conferences, Your Honor said, I don't know how a lab notebook can be claimed to be privileged. But they did it.

We put materials on a privilege log, and Your Honor has never been -- again, it's because Your Honor is burdened -- but we reached a point where there was no vehicle for either party to get this in front of you for review. Is this really privileged? You know, entry about, Well, these are results of experiments, but I plan to tell counsel about it. Of course, you can't hide facts by

saying, somehow cloaking it is something I think I am going to tell them in the future. Our point is if they are going to be able to do it with Dr. Brittain, and we think that is error, in fairness, how can they claim, shield from us experiments and claim that it wouldn't be fair for us to show the jury that they have done -- that they have shielded experiments under claims of privilege.

THE COURT: Let me think about this a bit. Is there anything else?

MR. JACOBS: One more fact that is useful, I think, Your Honor, to understanding the picture here.

DX-186 is the actual engagement letter with Dr. Brittain from Mr. Sipio.

THE COURT: Mr. Sipio is the fly in this ointment to a degree, I think, as I recall.

MR. JACOBS: Except two things, Your Honor. No. 1 it's cc Mr. Bokar, cc Mr. Bokar, and it states as follows, it's dated November 23, 2005: This letter will confirm that I have retained you as a consultant for your expertise in x-ray crystallography and other analytical techniques suitable for the characterization of chemical compounds present in human pharmaceutical compositions.

THE COURT: Are there any other issues that are more easily disposed than this?

MR. SCHEVE: They do plan to call Dr. Desai and

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

- - -

ELAN PHARMA INTERNATIONAL LIMITED,	:	Civil Action
Plaintiff,	:	
v.	:	
ABRAXIS BIOSCIENCE INC.,	:	
Defendant.	:	No. 06-438-GMS

- - -

Wilmington, Delaware
Tuesday, June 10, 2008
8:45 a.m.
SEVENTH DAY OF TRIAL

- - -

BEFORE: HONORABLE GREGORY M. SLEET, Chief Judge, and a Jury

APPEARANCES:

JOHN G. DAY, ESQ.
Ashby & Geddes
-and-
STEPHEN SCHEVE, ESQ.,
LINDA M. GLOVER, ESQ.,
JEFFREY SULLIVAN, ESQ.,
ROBERT RIDDLE, ESQ., and
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(Houston, TX)
-and-
GREGORY BOKAR, ESQ.
Counsel - Elan Drug Delivery

Counsel for Plaintiff

APPEARANCES CONTINUED:

ELENA C. NORMAN, ESQ., and
MICHELLE SHERETTA BUDICAK, ESQ.
Young Conaway Stargatt & Taylor, LLP
-and-
MICHAEL A. JACOBS, ESQ.,
EMILY A. EVANS, ESQ.,
ERIC S. WALTERS, ESQ.,
LISA CHIARINI, ESQ.,
DIANA KRUZE, ESQ., and
ERIK J. OLSON, ESQ.
Morrison & Foerster
(San Francisco, CA)
Counsel for Defendant

THE COURT: Good morning.
(Counsel respond "Good morning.")
THE COURT: I understand we have an issue.
MR. JACOBS: A couple of things, Your Honor.
THE COURT: I hope they are short.
MR. JACOBS: Two are short and one may take a few minutes. No. 1, we have reached a stipulation on a person of ordinary skill in the art.
THE COURT: Good. I was wondering whether we were going to hear about that mystic person.
MR. JACOBS: Procedurally, Your Honor, would you like Ms. Kruze to read it? It would have come up in Dr. Amiji's testimony. Ms. Kruze could just read the stipulation into the record, if that would be appropriate.
MR. SCHEVE: Fine.

MR. JACOBS: No. 2, documents in evidence. How do we work? I am still a little confused. I know we have heard several times how this is supposed to work but we are at the level of mechanics, understanding what is in and what isn't, especially documents that are --
THE COURT: All objections were overruled to documentary exhibits, unless raised again. I have not entertained any additional objections. So it's in.
MR. JACOBS: On the original exhibits list, all those exhibits are in evidence.
THE COURT: Are in. What you want the jury to consider is another matter. Is that where we are going with this?
MR. JACOBS: No. I think there are documents --
THE COURT: For your record, they are in.
MR. JACOBS: For closing --
THE COURT: That's evidence.
MR. JACOBS: Terrific.
THE COURT: Mr. Scheve, do you have any questions?
MR. SCHEVE: That's exactly what I have understood, Your Honor.
MR. JACOBS: Dr. Brittain, two alternative paths, from our standpoint.
No. 1, we put him on the stand, he is here in

the courtroom, by the way. We put him on the stand, and we examine him pursuant to the second Bench memo we filed yesterday, in which we elicit only -- I can hand Your Honor a copy.
THE COURT: I got it yesterday, you say?
MR. JACOBS: Yes. We didn't focus on it yesterday.
THE COURT: Have you seen the Bench memo, Mr. Scheve?
MR. SCHEVE: Yes.
MR. JACOBS: We gave it to them yesterday, Your Honor.
The main point of this Bench memo, Your Honor, is that when we ask him questions, we do not want him volunteering, we do not want counsel for Elan eliciting testimony beyond the specific and narrow facts that are already in the record from his deposition or from the documents.
THE COURT: You know, counsel and those in the well, you can sit. It seems like this is going to take a few minutes. There is no reason for you to have to stand.
Mr. Jacobs.
MR. JACOBS: There is only one question from the deposition that I need to ask him, which is, Did you perform studies on Abraxane? Beyond that, I don't believe counsel

for Elan should be allowed to elicit additional testimony about what he did because he was instructed not to answer a whole range of questions about what he actually did at his deposition.
Actually, the second path is that we do not put Dr. Brittain on the stand, and the Court explains to the jury what happened with the privilege log and why we are where we are. I prepared and gave to counsel for Elan yesterday a proposed statement from the Bench that would just lay out, very briefly, lay out exactly what happened. That way, we don't have to deal with uncertainties about what Dr. Brittain might say when he testifies on this issue.
THE COURT: I got to believe that Mr. Scheve probably doesn't want the jury hearing about that from me. Maybe I am wrong about that.
MR. SCHEVE: Well, after all day yesterday asking witnesses, What did you have for breakfast?, and hearing, Well, I had eggs right next to an order of amorphous paclitaxel contained in Abraxis, all day, and now to have counsel say, We really don't want any gratuitous answers, or to go beyond -- they are now the sponsoring witness, Your Honor. There is no expert report from him. If they are going to ask fact questions, you know, it's my decision, I would think, whether or not I wade into something. I will be very cautious about that. The idea

that counsel can say, in advance, that I am restricted to what I may ask --

THE COURT: I am not going to do that, Mr. Jacobs. You will have to object.

MR. JACOBS: To be clear, Mr. Scheve instructed Dr. Brittain at his deposition not to answer additional questions.

THE COURT: I think both sides know what the issue is with Dr. Brittain. We have had an extensive discussion about this. I am tired of it. Let's move on. Let's get this trial back underway.

Ms. Walker, bring in this jury.

MR. SCHEVE: I do have an issue, Your Honor. They have tendered something they want to either read to the jury or give to them that talks about your ruling that says, Your Honor has ruled --

THE COURT: That was the second path that he was just talking about. Right?

MR. SCHEVE: They have offered an instruction which would --

THE COURT: I just rejected --

MR. SCHEVE: It is a separate issue. On this inference, they have offered an instruction, and they also now want to read or show the jury, in writing, that Your Honor has found that Elan, my client, has willfully or

wrongfully --

THE COURT: We are not going to do that, either.

MR. SCHEVE: It would be two comments on the inference. That should be in the jury instructions.

THE COURT: That is where it will be.

MR. JACOBS: I need to know what you have decided on the jury instructions.

THE COURT: Are you talking about the final jury instructions?

MR. JACOBS: I am sorry, Your Honor. I thought you said to Mr. Scheve, on the jury instructions --

THE COURT: I am instructing this jury at this point on Dr. Brittain. I am going to give an instruction on the final jury instruction -- you are going to be trial lawyers and we are going to try this case with this witness on the stand. You will interpose objections. I will rule on those objections. It is not unduly complicated.

MS. KRUZE: Your Honor, shall I read into the record the person of ordinary skill?

THE COURT: Don't you want the jury to hear it?

MS. KRUZE: Yes.

THE COURT: I certainly would like to hear it. I think the jury would like to hear it.

We had a witness on the stand, Dr. Amiji.

Dr. Amiji, please.

Doctor, you are still under oath. Good morning.

(Jury enters courtroom at 9:07 a.m.)

THE COURT: Good morning on yet another hot day, ladies and gentlemen. Have a seat. You will be comfortable today, hopefully.

Ms. Kruze, you may continue with Dr. Amiji.

... MANSOOR AMIJI, having been previously sworn as a witness, was examined and testified further as follows...

THE COURT: Do you want to start out with a stipulation?

We have arrived at one of those stipulations I talked with you about in the preliminary instructions, that is an agreement, one of those rare events in this case between the parties. Ms. Kruze is now going to tell you who the ordinary person of skill in the art is, that is, give you the definition of this person you have heard about, this person of skill.

MS. KRUZE: The person of ordinary skill in the art would have a Ph.D. or the equivalent in pharmaceutical sciences, chemistry, chemical engineering, or biological sciences, and at least two years of practical experience in formulating drug compositions at the time the application for the '363 patent was filed.

Alternatively, the person of ordinary skill in

the art could be someone with a Master's degree in pharmaceutical sciences, or the equivalent, with two or more years of practical experience, specifically in the development of nanoparticulate pharmaceutical compositions.

THE COURT: Let me see counsel for just a second before I say what I am thinking about saying. It doesn't need to be on the record.

(Sidebar conference not reported.)

THE COURT: Perhaps Ms. Kruze will direct you to the place. You don't have to worry about having made notes as to that definition. It has been or will be provided to you.

DIRECT EXAMINATION CONTINUED

BY MS. KRUZE:

Q. Good morning, Dr. Amiji.

A. Good morning, Ms. Kruze.

Q. Yesterday we were discussing enablement of the patent relating to drug and surface modifier combinations. I believe where we left off was Defendant's Exhibit 193. This was the memo from Sarptodar and your comparison of that memo to the patent claims.

A. Yes.

Q. And we were discussing, did the patent applicants disclose, for example, that Tween 80 reached 3,000 nanometers?

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cross-examine Dr. Brittain on what Elan produced in discovery.

That would have not been seemly. It would not have been attractive to this jury, which thinks these matters proceed in an orderly fashion.

THE COURT: So you say there are certain things that did or did not happen, during the course of discovery, and that as a sanction for some things that did not happen, specifically with regard to the testing, the production of that information, that Abraxis is entitled to at least infer that something negative as a result of the failure of Elan to do what you contend it should have.

MR. JACOBS: Exactly. An area in which I might add, District Court's have broad discretion in managing the process leading up to trial. I made a strategic call, you are absolutely right, Your Honor, I did not want the Dr. Brittain testimony to spin out in circles on circles as to who did what to whom. I think that was in the interest of the process. I was obviously interested, motivated by the result as well. It shouldn't prejudice the order we have from the Court.

THE COURT: Do we have a proposal for the instruction?

MR. JACOBS: It's embodied in the jury instructions, Your Honor. There is also this proposed

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statement that I referred to before, which was another effort.

THE COURT: What about the instruction? Where is it in the instructions?

MR. JACOBS: It would be in the infringement section.

THE COURT: The folks in the well of the court and everyone can sit for a moment.

Mr. Scheve, I am going to give you a chance.

MR. SCHEVE: Thank you, Judge.

MR. JACOBS: It is in Abraxis's proposed instruction 4.3 on Page 48. I can hand it up.

THE COURT: I think I have a copy.

Maybe you better hand it up, on Page 48, there is no such instruction. I have parties proposed general instructions, clean version. And I have parties' proposed general instructions.

MR. JACOBS: May I hand it up?

THE COURT: Yes. Do you have this, Mr. Scheve?

MR. SCHEVE: I am sure my team does, Your Honor.

THE COURT: Somebody. Yes.

You know, it is interesting, Mr. Jacobs's, the title of what you handed me is parties' proposed general instructions. I have a document with the same title, but different Page 48s.

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MR. JACOBS: It is perhaps an older version.

THE COURT: It may be that I have an older version.

MR. JACOBS: Maybe 4.3 has remained. 4.3, for this purpose, Your Honor.

It's after Elan's proposed opinion on, proposed instruction on willfulness.

THE COURT: It's the same 4.3. This reads, for the record, "You have heard that Elan withheld the documents of Dr. Brittain's test listed in DX-508. You shall infer from Elan's non-production of Dr. Brittain's testing documents that these documents would have been unfavorable to Elan's case on infringement."

I have just been handed, in order to refresh my recollection, a copy of my order in regards to Abraxis's motions 1 and 4, which is, I think, the relevant order.

MR. JACOBS: Yes, it is, Your Honor.

THE COURT: At the very least, just for purposes of talking about this a little bit, I would think that it would be more appropriate to say that you may infer from Elan's non-production, not you shall infer. I don't think I can direct the jury to make an inference. I can council them that they may. They are the fact-finders. Wouldn't you agree with that?

MR. JACOBS: It was actually the "shall," the

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shall was in your order, Your Honor. And it was the shall that partly led us to not have to put a case on in front of them about the production. It's the last paragraph, I believe, Your Honor.

THE COURT: Well, it should have been "may," may infer. I don't think that I can -- if Mr. Scheve is right, he is right. I think he is double right -- I don't think I can instruct the jury that they shall draw a negative inference.

Mr. Scheve? Apart from your position on whether I should give this instruction at all.

MR. SCHEVE: Yes, sir. I agree with what Your Honor has said. The only other language is "you have heard evidence that." That is my position that they haven't heard it.

THE COURT: I was going to get to that. I understand why you write it this way.

I don't think I need to compound the error that I think exists in the order part, that is, in Paragraph 3 of the Court's order, where I did write "the Court will instruct the jury that it shall infer." That's incorrect, as a matter of law.

MR. JACOBS: Your Honor, if I may, let me give you what I think is the, as one of my math teachers used to say, the lemma for the dilemma.

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

- - -

ELAN PHARMA INTERNATIONAL LIMITED,	:	Civil Action
Plaintiff,	:	
v.	:	
ABRAXIS BIOSCIENCE INC.,	:	
Defendant.	:	No. 06-438-GMS

- - -

Wilmington, Delaware
Tuesday, October 2, 2007
9:30 a.m.

- - -

BEFORE: HONORABLE GREGORY M. SLEET, Chief Judge

APPEARANCES:

STEVEN J. BALICK, ESQ.
Ashby & Geddes
-and-
STEPHEN SCHEVE, ESQ.,
LINDA M. GLOVER, ESQ., and
JEFFREY D. SULLIVAN, ESQ. (New York, N.Y.)
Baker Botts LLP
(Houston, Texas)
-and-
GREGORY BOKAR, ESQ.
Counsel - Elan Drug Delivery

Counsel for Plaintiff

think, is they are entitled to know that --
MR. SCHEVE: If they want to know why did we select that date, we will respond.
MR. WALTERS: What constitutes conception.
THE COURT: And the support for that assertion, or those assertions. That's fair game.
MR. SCHEVE: Okay.
THE COURT: Counsel, here you go (handing documents to Mr. Walters).
MR. WALTERS: I had one additional interrogatory that also relates to several of the document requests. This is Interrogatory No. 29, and Document Requests 74, 75 and 76. It has to do with documents that refer to Abraxis or Abraxane and testing of Abraxane by Elan. This is an issue that came up in an earlier discovery conference. They asserted work product over all of the testing.
Since that discovery hearing, we have learned a couple of very interesting things. Very late in the litigation, Elan produced -- I believe these documents are marked restricted confidential. Is it acceptable to go ahead with this?
MR. SULLIVAN: We don't object.
MR. WALTERS: -- produced a number of documents showing that they had a program to try to copy Abraxane, and it failed. These came out at the very end, toward the very

end of document discovery. Part of that, they had people inside Elan characterizing Abraxane and attempting to use their grinding methodology that they have in their patents, maybe variations of what was in their patents, to produce it. And they couldn't do it.
And as part of this, we are very concerned that they have not produced all of the documents that they have that relate to Abraxis or Abraxane, including testing of Abraxane. I think they tried to characterize in the briefs, they just won't believe us when we say we did it. It is much more specific than that.
We have asked them -- part of what both parties did during document discovery is agreed to run searches of electronic databases using specific terms. Two of the terms were Abraxis and Abraxane. We have said, well, this doesn't look like enough documents based on what we think you have done.
THE COURT: We have had this issue come up before.
MR. WALTERS: It is new because we have learned all sorts of new facts, including that this program took place. We have asked them to -- they said they produced everything. Then just tell us, when you run your search, you know, the guys, the tech guys who run the search will have a number next to the search. Abraxis comes up in a

thousand documents, 2000 documents. Tell us how many.
They won't do it. When we look at the documents that they actually produced, which is just a handful of documents -- I will get back to that in a minute -- they refer to things that took place. There is a Gainesville meeting that is referenced where part of the program was developed to copy Abraxane. There is no documents about this Gainesville meeting. There is documents that refer to a development plan. There is no development plan that was produced.
And then the other piece of this that causes us some concern is that they only produced -- this program appears to have started sometime in 2005.
THE COURT: This program meaning the program to try to replicate --
MR. WALTERS: To try to replicate Abraxane. And it went on, it is a little hard to tell with the paper trail, but it went on for at least about a year. They originally budgeted over a million dollars and spent 87,000 after just a few months. We don't have the end point of it, which is basically one person -- the equivalent of one person working almost full time.
We have basically a couple dozen documents, most of which are little one- and two-line short e-mails of that project. It just doesn't add up.

Then there is also internal documents that we have cited in the briefing -- I could show you if you would like -- that refer to vials of Abraxane that they had on hand that they were using in the lab. And we don't have what they were using it for.
Then finally, there is one other piece, which is in the interrogatory response. We said, tell us about your testing of Abraxane. And they said, you know, if they hadn't conducted any testing of Abraxane or even any testing that they didn't claim was work product, it would be have been very easy: No testing of Abraxane. They didn't say that. They said Elan conducted no formal or extensive testing of Abraxane that is not work product.
If I may return to that interrogatory response, and there has been no testing, no formal or extensive testing.
One additional point and I will sit down, which is, their argument earlier was that, it's premature, it's work product. We are going to have our experts come forward with their reports. We have their expert report now, with some testing data. But they only want to show the jury the testing data that they like. We don't really think much of their testing data. But we think the jury ought to have the whole story. And they shouldn't be able to just pick and choose what data they show to the jury.

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They have relied on this argument that it's premature. This is all part of expert discovery. Here we are, it's expert discovery, and they should be producing their testing data that has been done by them and their experts and consultants.

THE COURT: Okay. Mr. Scheve.

MR. SCHEVE: Your memory is very good, Your Honor. This issue was raised in the past. My client --

THE COURT: My memory is actually lousy, but I remember this.

MR. SCHEVE: My client -- actually, Abraxis has a generic business. That is their primary business with regard to this drug. Within their company, I will bet my house that they have gone out and acquired products from others that are being viewed for a generic. There is no question, and they had the deposition of the three primary scientists of our company, and they went into it ad nauseam about what was this program. And it was fully discussed that they were considering, do we go generic or do we go 505, in other words, file a New Drug Application, in evaluating the various strategic routes to move forward.

And as the testimony was, the decision was made, quote, The market has moved past us and our product is already on the market, namely, Abraxane, we are not going to go out and make another one.

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There was one lab notebook, we gave it to them.

We have given them every single page, every single page, Your Honor. There is no more documentation. It was ended for business reasons.

Of the 80-some thousand, here are the five vials that remain unopen that we bought (indicating). They are about four thousand a vial. There is 20,000 of the expense of the 87. So we have spent, my client spent a total of $67,000 to evaluate the various approaches. They have never accused us of infringing their patents. I don't know what this is all about. But I will tell you, we have gone to our vendors, they have plugged into every data search every single document, every strand. We have given them 240 pages where the word Abraxane or Abraxis has been mentioned.

Now, what is really happening here is a veiled effort to get at my work product. Your Honor entered an order denying the Rule 11 motion. We did testing before we filed this lawsuit. We met our obligations under Rule 11.

At the direction of counsel, we had consulting experts, not testifiers, consult with us and do testing before we filed this lawsuit. And this is nothing but a veiled effort now of trying to pierce these privileges.

In terms of my client, Dr. Liversidge, who is one of the inventors, Dr. Gary Liversidge, who is one of the inventors, and the manager of my client's plant in King of

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Prussia, the head science guy, they have all stated under oath, no testing was done by my client on Abraxis. It didn't happen. They got every single piece of paper.

To the extent that there is privileged information from consulting experts, Your Honor, we stand on those privileges.

This lawsuit is about whether Abraxane infringes our patents. The fact that we bought some Abraxane and did, as every other company out there who is in the generic business, trying to think, this thing is going to come off patent in 2011 or whatever, is there a strategy we can employ, to suggest that is somehow nefarious ignores how this industry works.

They have got everything we have got, Judge, that is not privileged. Every single page.

MR. WALTERS: I did not hear Mr. Scheve respond to a number of the points that have caused us concern. How many documents showed up when they did a term search? Pretty easy thing to answer: Abraxis, Abraxane. If it is more than 240, then we have a problem. Why didn't the interrogatory response, instead of saying, on information and belief, which I forgot to mention, but it is important, on information and belief no formal or extensive testing, why not say, we have investigated it and there is no testing.

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We had ten depositions. We are not complaining about it. We took the depositions of the people that we thought -- the inventors and people like that. There are a lot of other names on these documents that show up involved in this program with Abraxane. It's not just, you know, the handful of people that we talked to. Elan is a big company.

In addition, you know, Mr. Scheve talked about testing that they did prior to the lawsuit, or at any time in the lawsuit. It is not on the privilege log. If they have some privileged testing, they haven't asserted the privilege, Your Honor. It is not on the log.

We raised this in the written motion. They talk about this privileged work product testing. At the same time they are developing a competing product and they say that there is a privilege. I would like to see that on a privilege log that supports it.

But more to the point, again, we are at the phase of expert discovery. They have come forward with their testing evidence, and we think the jury is entitled to see all of their testing evidence, not just what they handpick.

THE COURT: Could you respond first, Mr. Scheve, to that last one.

MR. SCHEVE: You know, it's called Presentation. It's on the privilege log. All I can tell you, Judge, is

MR. SCHEVE: We have dealt with this. If I can just remind you, my client's business is the nanoparticulate business. It is the one that started all this. What she wants is literally every piece of paper in my company that deals with nanoparticles. And the patents here deal with anticancer drugs. They deal with very specific compounds. She sent us an e-mail yesterday saying --

THE COURT: Hold on. I am not going to reconsider my ruling on this basis. In other words, what I am being reminded is I have ruled on this request. Simply because I ruled the way I did with regard to the two third-party issues that I ruled about today, I am not going to reconsider that motion. Okay.

MS. EVANS: All right.

THE COURT: That's the ruling.

MR. SCHEVE: Your Honor, could I just ask Your Honor to -- if they have provided it to us and I have overlooked it, I apologize. Ms. Evans or Mr. Walters said they provided every Desai notebook. Can I have an order that reflects they are to produce the lab notebook of Log Entry 110, Desai Notebook No. 0006, and Lab Notebook Temp-5719? If we have got it, I apologize.

THE COURT: Any problem with that?

MS. EVANS: No problem, Your Honor, because they have it.

MR. SCHEVE: And then lastly, Your Honor, for purposes of getting Dr. Soon-Shiong scheduled --

THE COURT: Do we have the dates?

MS. EVANS: It looks like the 15th, Your Honor, October 15th would be something that would be do-able.

THE COURT: Where would this take place?

MS. EVANS: It would take place at our offices in Los Angeles, where Mr. Soon-Shiong resides.

THE COURT: Mr. Scheve?

MR. SCHEVE: I will have to check, Your Honor. I have a firm -- I head up a department with my firm and I have a firm retreat that I have to sponsor. Could I get one or two alternative dates and we will work to come within those two or three dates?

THE COURT: I will leave that to counsel to work out.

MS. EVANS: We will work with Mr. Scheve on that.

MR. SCHEVE: If we need to go beyond the 30th of October, we are accommodating.

THE COURT: So counsel are aware, and your clients, except to implement an order or to further address an order that I have made today, there will be no further discovery disputes that this Court or any Judge in this building or any Court-appointed official outside of this

building will entertain. This is it. So speak now or forever hold that piece out there.

Okay? I will issue an order.

Yes.

MS. EVANS: I do have one thing I would like to raise, Your Honor.

THE COURT: Sure.

MS. EVANS: At least as to the testing that was presented in some of the eight expert reports, and if the other side will produce this, that would be all right, but we wanted to actually get the testing, the actual laboratory notebooks showing the testing and evaluation underlying documents. So we have been considering subpoenaing the testifying experts, Elan's testifying experts, for any documents showing testing or experimental work done on Abraxane. So we have been considering, we have been thinking about that this weekend, Your Honor. I wanted to preview that with Your Honor. If Elan will produce it in the absence of subpoena, that is fine. It may not be in their control since these are third parties.

We would, rather than just kind of getting the pre-digested report, we would like to see the raw data.

THE COURT: Mr. Scheve, are you able to respond to that?

MR. SCHEVE: Your Honor, I understand it is

fairly standard that you issue a notice and say please bring with you the following. Obviously, we want to protect whatever falls under the umbrella of privilege. I kind of expect to see that, because I am going to give them one that says give me any testing that you have got. I don't have a problem with that. I don't foresee a problem.

MS. EVANS: So do it by means of notice rather than subpoena.

MR. SCHEVE: Of experts?

THE COURT: My practice is certainly that if someone is going to proffer an expert, you just notice and attach a duces tecum attachment.

MS. EVANS: All right. Thank you.

THE COURT: Anything else?

MS. EVANS: No, sir.

THE COURT: I expect to hear from Mr. Jacobs in writing as to why he wasn't here today.

MS. EVANS: Yes, sir.

THE COURT: Good day.

(Court recessed at 12:05 p.m.)

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Reporter: Kevin Maurer

EXHIBIT D

Case No. 06-438-GMS
DX-508

Harry G. Brittain's Document Production Privilege Log (November 15, 2007)

Elan Pharmaceutical v. Abraxis Bioscience, Inc. Case No. 06-438-GMS

Log #	Doc. ID No.	Date	Type	Description	From	To	CC	Privilege
1.	TPP0005827		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
2.	TPP0005833		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
3.	TPP0005839		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
4.	TPP0005845		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
5.	TPP0005851		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
6.	TPP0005857		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
7.	TPP0005863		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
8.	TPP0005869		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
9.	TPP0005875		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
10.	TPP0005881		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
11.	TPP0005912		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
12.	TPP0005943		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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Log #	Doc. ID No.	Date	Type	Description	From	To	CC	Privilege
13.	TPP0005974		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
14.	TPP0006005		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
15.	TPP0006036		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
16.	TPP0006067		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
17.	TPP0006073		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
18.	TPP0006079		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
19.	TPP0006085		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
20.	TPP0006091		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
21.	TPP0006097		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
22.	TPP0006103		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
23.	TPP0006109		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
24.	TPP0006115		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
25.	TPP0006121		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
26.	TPP0006127		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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Log #	Doc. ID No.	Date	Type	Description	From	To	CC	Privilege
27.	TPP0006133		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
28.	TPP0006139		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
29.	TPP0006145		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
30.	TPP0006151		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
31.	TPP0006157		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
32.	TPP0006163		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
33.	TPP0006169		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
34.	TPP0006175		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
35.	TPP0006181		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
36.	TPP0006187		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
37.	TPP0006193		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
38.	TPP0006199		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
39.	TPP0006205		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
40.	TPP0006211		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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Log #	Doc. ID No.	Date	Type	Description	From	To	CC	Privilege
41.	TPP0006217		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
42.	TPP0006223		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
43.	TPP0006229		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
44.	TPP0006235		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
45.	TPP0006241		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
46.	TPP0006247		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
47.	TPP0006253		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
48.	TPP0006259		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
49.	TPP0006265		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
50.	TPP0006271		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
51.	TPP0006277		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
52.	TPP0006283		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
53.	TPP0006289		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
54.	TPP0006295		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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Log #	Doc. ID No.	Date	Type	Description	From	To	CC	Privilege
55.	TPP0006301		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
56.	TPP0006307		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
57.	TPP0006313		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
58.	TPP0006319		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
59.	TPP0006325		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
60.	TPP0006331		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
61.	TPP0006337		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
62.	TPP0006343		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
63.	TPP0006349		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
64.	TPP0006355		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
65.	TPP0006361		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
66.	TPP0006367		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
67.	TPP0006373		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
68.	TPP0006379		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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Log #	Doc. ID No.	Date	Type	Description	From	To	CC	Privilege
69.	TPP0006385		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
70.	TPP0006391		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
71.	TPP0006397		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
72.	TPP0006403		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
73.	TPP0006409		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
74.	TPP0006415		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
75.	TPP0006421		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
76.	TPP0006427		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
77.	TPP0006433		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
78.	TPP0006439		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
79.	TPP0006445		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
80.	TPP0006451		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
81.	TPP0006457		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
82.	TPP0006463		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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Log #	Doc. ID No.	Date	Type	Description	From	To	CC	Privilege
83.	TPP0006469		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
84.	TPP0006475		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
85.	TPP0006481		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
86.	TPP0006487		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
87.	TPP0006493		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
88.	TPP0006499		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
89.	TPP0006505		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
90.	TPP0006511		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
91.	TPP0006517		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
92.	TPP0006523		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
93.	TPP0006529		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
94.	TPP0006535		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
95.	TPP0006541		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
96.	TPP0006547		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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Log #	Doc. ID No.	Date	Type	Description	From	To	CC	Privilege
97.	TPP0006553		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
98.	TPP0006559		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
99.	TPP0006565		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
100.	TPP0006571		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
101.	TPP0006577		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
102.	TPP0006583		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
103.	TPP0006589		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
104.	TPP0006595		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
105.	TPP0006601		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
106.	TPP0006607		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
107.	TPP0006613		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
108.	TPP0006619		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
109.	TPP0006625		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
110.	TPP0006631		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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Log #	Doc. ID No.	Date	Type	Description	From	To	CC	Privilege
111.	TPP0006637		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
112.	TPP0006643		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
113.	TPP0006649		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
114.	TPP0006655		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
115.	TPP0006661		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
116.	TPP0006667		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
117.	TPP0006673		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
118.	TPP0006679		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
119.	TPP0006685		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
120.	TPP0006691		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
121.	TPP0006697		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
122.	TPP0006703		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
123.	TPP0006709		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
124.	TPP0006715		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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Log #	Doc. ID No.	Date	Type	Description	From	To	CC	Privilege
125.	TPP0006721		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
126.	TPP0006727		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
127.	TPP0006733		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
128.	TPP0006739		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
129.	TPP0006745		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
130.	TPP0006751		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
131.	TPP0006757		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
132.	TPP0006763		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
133.	TPP0006769		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
134.	TPP0006775		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
135.	TPP0006781		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
136.	TPP0006787		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
137.	TPP0006793		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
138.	TPP0006799		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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Log #	Doc. ID No.	Date	Type	Description	From	To	CC	Privilege
139.	TPP0006805		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
140.	TPP0006811		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
141.	TPP0006817		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
142.	TPP0006823		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
143.	TPP0006829		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
144.	TPP0006835		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
145.	TPP0006841		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
146.	TPP0006847		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
147.	TPP0006853		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
148.	TPP0006859		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
149.	TPP0006865		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
150.	TPP0006871		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
151.	TPP0006877		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
152.	TPP0006883		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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Log #	Doc. ID No.	Date	Type	Description	From	To	CC	Privilege
153.	TPP0006889		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
154.	TPP0006895		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
155.	TPP0006901		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
156.	TPP0006907		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
157.	TPP0006913		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
158.	TPP0006919		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
159.	TPP0006925		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
160.	TPP0006931		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
161.	TPP0006937		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
162.	TPP0006943		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
163.	TPP0006949		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
164.	TPP0006955		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
165.	TPP0006961		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
166.	TPP0006967		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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Log #	Doc. ID No.	Date	Type	Description	From	To	CC	Privilege
167.	TPP0006973		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
168.	TPP0006979		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
169.	TPP0006985		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
170.	TPP0006991		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
171.	TPP0006997		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
172.	TPP0007003		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
173.	TPP0007009		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
174.	TPP0007015		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
175.	TPP0007021		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
176.	TPP0007027		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
177.	TPP0007033		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
178.	TPP0007039		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
179.	TPP0007045		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
180.	TPP0007051		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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Log #	Doc. ID No.	Date	Type	Description	From	To	CC	Privilege
181.	TPP0007057		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
182.	TPP0007063		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
183.	TPP0007069		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
184.	TPP0007075		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
185.	TPP0007081		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
186.	TPP0007087		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
187.	TPP0007093		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
188.	TPP0007099		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
189.	TPP0007105		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
190.	TPP0007111		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
191.	TPP0007117		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
192.	TPP0007123		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
193.	TPP0007129		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
194.	TPP0007135		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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Log #	Doc. ID No.	Date	Type	Description	From	To	CC	Privilege
195.	TPP0007141		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
196.	TPP0007147		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
197.	TPP0007153		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
198.	TPP0007159		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
199.	TPP0007165		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
200.	TPP0007171		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
201.	TPP0007177		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
202.	TPP0007183		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
203.	TPP0007189		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
204.	TPP0007195		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
205.	TPP0007201		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
206.	TPP0007207		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
207.	TPP0007213		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
208.	TPP0007219		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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Log #	Doc. ID No.	Date	Type	Description	From	To	CC	Privilege
209.	TPP0007225		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
210.	TPP0007231		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
211.	TPP0007237		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
212.	TPP0007243		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
213.	TPP0007249		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
214.	TPP0007255		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
215.	TPP0007261		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
216.	TPP0007267		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
217.	TPP0007273		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
218.	TPP0007279		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
219.	TPP0007285		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
220.	TPP0007291		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
221.	TPP0007297		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
222.	TPP0007303		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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223.	TPP0007309		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
224.	TPP0007315		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
225.	TPP0007321		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
226.	TPP0007327		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
227.	TPP0007333		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
228.	TPP0007339		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
229.	TPP0007345		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
230.	TPP0007351		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
231.	TPP0007357		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
232.	TPP0007363		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
233.	TPP0007369		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
234.	TPP0007375		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
235.	TPP0007381		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
236.	TPP0007387		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
237.	TPP0007393		Test Data	Test data prepared in conjunction with the Elan-	Harry G. Brittain			Attorney Mental

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				Abraxis litigation at request of counsel.				Impression Work Product
238.	TPP0007399		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
239.	TPP0007405		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
240.	TPP0007411		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
241.	TPP0007417		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
242.	TPP0007423		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
243.	TPP0007429		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
244.	TPP0007435		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
245.	TPP0007441		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
246.	TPP0007447		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
247.	TPP0007453		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
248.	TPP0007459		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
249.	TPP0007465		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
250.	TPP0007471		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
251.	TPP0007477		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work

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								Product
252.	TPP0007483		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
253.	TPP0007489		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
254.	TPP0007495		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
255.	TPP0007501		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
256.	TPP0007507		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
257.	TPP0007513		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
258.	TPP0007519		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
259.	TPP0007525		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
260.	TPP0007531		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
261.	TPP0007537		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
262.	TPP0007543		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
263.	TPP0007549		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
264.	TPP0007555		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
265.	TPP0007561		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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266.	TPP0007567		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
267.	TPP0007573		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
268.	TPP0007579		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
269.	TPP0007585		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
270.	TPP0007591		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
271.	TPP0007597		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
272.	TPP0007603		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
273.	TPP0007609		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
274.	TPP0007615		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
275.	TPP0007621		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
276.	TPP0007627		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
277.	TPP0007633		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
278.	TPP0007639		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
279.	TPP0007645		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
280.	TPP0007651		Test Data	Test data prepared in conjunction with the Elan-	Harry G. Brittain			Attorney Mental

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				Abraxis litigation at request of counsel.				Impression Work Product
281.	TPP0007657		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
282.	TPP0007663		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
283.	TPP0007669		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
284.	TPP0007675		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
285.	TPP0007681		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
286.	TPP0007712		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
287.	TPP0007743		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
288.	TPP0007754		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
289.	TPP0007765		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
290.	TPP0007771		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
291.	TPP0007777		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
292.	TPP0007808		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
293.	TPP0007819		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
294.	TPP0007825		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work

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								Product
295.	TPP0007856		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
296.	TPP0007887		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
297.	TPP0007898		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
298.	TPP0007909		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
299.	TPP0007915		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
300.	TPP0007921		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
301.	TPP0007922		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
302.	TPP0007923		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
303.	TPP0007924		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
304.	TPP0007925		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
305.	TPP0007926		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
306.	TPP0007927		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
307.	TPP0007938		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
308.	TPP0007944		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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309.	TPP0007945		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
310.	TPP0007946		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
311.	TPP0007947		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
312.	TPP0007948		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
313.	TPP0007949		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
314.	TPP0007950		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
315.	TPP0007951		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
316.	TPP0007952		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
317.	TPP0007953		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
318.	TPP0007954		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
319.	TPP0007955		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
320.	TPP0007956		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
321.	TPP0007957		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
322.	TPP0007958		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
323.	TPP0007959		Test Data	Test data prepared in conjunction with the Elan-	Harry G. Brittain			Attorney Mental

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				Abraxis litigation at request of counsel.				Impression Work Product
324.	TPP0007990		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
325.	TPP0008021		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
326.	TPP0008032		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
327.	TPP0008043		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
328.	TPP0008049		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
329.	TPP0008055		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
330.	TPP0008086	1/31/2007	Invoice	Invoice for consulting work conducted in conjunction with the Elan-Abraxis litigation.	Harry G. Brittain			Attorney Mental Impression Work Product
331.	TPP0008087	2/28/2007	Invoice	Invoice for consulting work conducted in conjunction with the Elan-Abraxis litigation.	Harry G. Brittain			Attorney Mental Impression Work Product
332.	TPP0008088	4/2/2007	Invoice	Invoice for consulting work conducted in conjunction with the Elan-Abraxis litigation.	Harry G. Brittain			Attorney Mental Impression Work Product
333.	TPP0008090	4/30/2007	Invoice	Invoice for consulting work conducted in conjunction with the Elan-Abraxis litigation.	Harry G. Brittain			Attorney Mental Impression Work Product
334.	TPP0008091	5/31/2007	Invoice	Invoice for consulting work conducted in conjunction with the Elan-Abraxis litigation.	Harry G. Brittain			Attorney Mental Impression Work Product
335.	TPP0008092	7/31/2007	Invoice	Invoice for consulting work conducted in conjunction with the Elan-Abraxis litigation.	Harry G. Brittain			Attorney Mental Impression Work Product
336.	TPP0008096	4/25/2006	Lab Notebook	Laboratory notebook reflecting tests conducted in conjunction with the Elan-Abraxis litigation at the request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
337.	TPP0008152	3/1/2007	Lab Notebook	Laboratory notebook reflecting tests conducted in conjunction with the Elan-Abraxis litigation at the	Harry G. Brittain			Attorney Mental Impression Work

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				request of counsel.				Product
338.	TPP0008190		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
339.	TPP0008212		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
340.	TPP0008234		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
341.	TPP0008249		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
342.	TPP0008260		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
343.	TPP0008271		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
344.	TPP0008282		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
345.	TPP0008293		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
346.	TPP0008304		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
347.	TPP0008315		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
348.	TPP0008326		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
349.	TPP0008337		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
350.	TPP0008348		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
351.	TPP0008370		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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352.	TPP0008381		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
353.	TPP0008392		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
354.	TPP0008403		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
355.	TPP0008434		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
356.	TPP0008465		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
357.	TPP0008466		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
358.	TPP0008479		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
359.	TPP0008510		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
360.	TPP0008541		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
361.	TPP0008572		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
362.	TPP0008603		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
363.	TPP0008634		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
364.	TPP0008665		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
365.	TPP0008696		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
366.	TPP0008727		Test Data	Test data prepared in conjunction with the Elan-	Harry G. Brittain			Attorney Mental

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				Abraxis litigation at request of counsel.				Impression Work Product
367.	TPP0008758		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
368.	TPP0008789		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
369.	TPP0008820		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
370.	TPP0008851		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
371.	TPP0008852		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
372.	TPP0008853		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
373.	TPP0008854		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
374.	TPP0008855		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
375.	TPP0008856		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
376.	TPP0008857		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
377.	TPP0008858		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
378.	TPP0008859		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
379.	TPP0008860		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
380.	TPP0008861		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work

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								Product
381.	TPP0008862		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
382.	TPP0008863		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
383.	TPP0008864		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
384.	TPP0008865		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
385.	TPP0008866		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
386.	TPP0008867		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
387.	TPP0008868		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
388.	TPP0008869		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
389.	TPP0008870		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
390.	TPP0008871		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
391.	TPP0008872	3/23/2007	Presentation	Presentation prepared in conjunction with the Elan-Abraxis litigation at the reqquest of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
392.	TPP0008892	5/8/2006	Presentation	Presentation prepared in conjunction with the Elan-Abraxis litigation at the reqquest of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
393.	TPP0008900		Presentation	Presentation prepared in conjunction with the Elan-Abraxis litigation at the reqquest of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
394.	TPP0008908		Presentation	Presentation prepared in conjunction with the Elan-Abraxis litigation at the reqquest of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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395.	TPP0008923		Presentation	Presentation prepared in conjunction with the Elan-Abraxis litigation at the reqquest of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
396.	TPP0008961	4/24/2006	Lab Notebook	Laboratory notebook reflecting tests conducted in conjunction with the Elan-Abraxis litigation at the request of counsel.	Harry G. Brittain Julia Springer			Attorney Mental Impression Work Product
397.	TPP0008970	5/8/2006	Lab Notebook	Laboratory notebook reflecting tests conducted in conjunction with the Elan-Abraxis litigation at the request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
398.	TPP0008971	5/25/2006	Lab Notebook	Laboratory notebook reflecting tests conducted in conjunction with the Elan-Abraxis litigation at the request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
399.	TPP0008972		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
400.	TPP0009264		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
401.	TPP0009549		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
402.	TPP0009800		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
403.	TPP0010073		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
404.	TPP0010326		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
405.	TPP0010337		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
406.	TPP0010348		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
407.	TPP0010359		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
408.	TPP0010370		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
409.	TPP0010372		Test Data	Test data prepared in conjunction with the Elan-	Harry G. Brittain			Attorney Mental

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				Abraxis litigation at request of counsel.				Impression Work Product
410.	TPP0010374		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
411.	TPP0010376		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
412.	TPP0010389		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
413.	TPP0010392		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
414.	TPP0010395		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
415.	TPP0010398		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
416.	TPP0010401		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
417.	TPP0010404		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
418.	TPP0010407		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
419.	TPP0010410		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
420.	TPP0010413		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
421.	TPP0012166		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
422.	TPP0013307		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
423.	TPP0014454		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work

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								Product
424.	TPP0015680		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
425.	TPP0017495		Test Report	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G Brittain			Attorney Mental Impression Work Product
426.	TPP0017498		Test Report	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G Brittain			Attorney Mental Impression Work Product
427.	TPP0017501		Test Report	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G Brittain			Attorney Mental Impression Work Product
428.	TPP0017505		Test Report	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G Brittain			Attorney Mental Impression Work Product
429.	TPP0017510		Test Report	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G Brittain			Attorney Mental Impression Work Product
430.	TPP0017514		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
431.	TPP0017542		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
432.	TPP0017570		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
433.	TPP0017598		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
434.	TPP0017626		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
435.	TPP0017627		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
436.	TPP0017628		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
437.	TPP0017629		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product

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438.	TPP0017630		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
439.	TPP0017631		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
440.	TPP0017632		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
441.	TPP0017633		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
442.	TPP0017634		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
443.	TPP0017635		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
444.	TPP0017636		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
445.	TPP0017637		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
446.	TPP0017638		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
447.	TPP0017639		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
448.	TPP0017640		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
449.	TPP0017641		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
450.	TPP0017642		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
451.	TPP0017643		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
452.	TPP0017644		Image	Test data prepared in conjunction with the Elan-	Harry G. Brittain			Attorney Mental

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				Abraxis litigation at request of counsel.				Impression Work Product
453.	TPP0017645		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
454.	TPP0017646		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
455.	TPP0017647		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
456.	TPP0017648		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
457.	TPP0017649		Image	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
458.	TPP0017650		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
459.	TPP0017678		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
460.	TPP0017706		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
461.	TPP0017739		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
462.	TPP0017772		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
463.	TPP0017805		Test Data	Test data prepared in conjunction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
464.	TPP0017838		Test Data	Test data prepared in conjuction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
465.	TPP0017871		Test Data	Test data prepared in conjuction with the Elan-Abraxis litigation at request of counsel.	Harry G. Brittain			Attorney Mental Impression Work Product
466.	TPP0017904		Test Data	Test data prepared in conjuction with the Elan-Abraxis litigation at request of counsel.	Harry G Brittain			Attorney Mental Impression Work

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								Product

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EXHIBIT E

William J. Sipio, Ph.D., Esq.

Attorney Client Privileged Communication
Attorney Work-Product
Confidential

1375 Brentwood Road
Yardley, PA 19067
November 23, 2005

Harry Brittain, Ph.D.
Center for Pharmaceutical Physics
10 Charles Road
Milford, NJ 08848

Re: Engagement Letter - Consultation Services

Dear Dr. Brittain:

This letter will confirm that I have retained you as a consultant for your expertise in X-ray crystallography and other analytical techniques suitable for the characterization of chemical compound(s) present in human pharmaceutical compositions. You have agreed and I have accepted that the rate you will charge throughout the term of your consultancy will be three hundred fifty dollars ($350.00) per hour. This rate will be effective during any pre-litigation investigation, as well as any activities that will require your participation during litigation should it occur, including, but not limited to, depositions and trial appearances. Your statement should be forwarded to me at the above-identified address on a monthly basis. You have advised me that this fee rate is in accord with what you normally charge for such services.

You have agreed that until such time as you may be asked to testify, you will maintain in the strictest of confidence all aspects of this engagement including, but not limited to, all materials reviewed, generated or received by you or sent by you to me or by my client. You will refrain from speaking with anyone about this engagement and you agree to keep all communications between my client and yourself or between you and I as privileged.

Yours truly,

William J. Sipio, Ph.D., Esq.

cc: Gregory Bokar, Esq.

Case No. 06-438-GMS
DX-186