EXHIBIT A

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

RECKITT BENCKISER PHARMACEUTICALS, INC., et al.,	:	No. 1:13-cv-01461-RGA
	:	No. 1:13-cv-01674-RGA
Plaintiffs,	:	
v.	:	
PAR PHARMACEUTICALS INC., et al.,	:	
Defendants.	:	

Friday, December 13, 2013
1:30 p.m.

Rule 16
Chambers of Judge Richard G. Andrews

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE Richard G. Andrews,
United States District Court Judge

APPEARANCES:

WOMBLE CARLYLE SANDRIDGE RICE
BY: MARY W. BOURKE, ESQ.

-and-

TROUTMAN SANDERS LLP
BY: DANIEL LADOW, ESQ.
BY: TIMOTHY HEATON, ESQ.
BY: JAMES BOLLINGER, ESQ.

On behalf of Rickett Benckiser Pharmaceuticals, Inc.

time. Then you can get on to a schedule and you can create a little more time.

MR. FINEMAN: Your Honor, I need to speak from Par's perspective on this. Your Honor, this has a direct relationship to our trade secret claim. And I would direct Your Honor to defense counterclaims, Paragraphs 29 through 32 are the relevant ones, and I have to share with Your Honor my copy of --

THE COURT: I take it you're saying it like that because it's under seal?

MR. FINEMAN: No, Your Honor. I just --

THE COURT: Okay. And I don't have a copy. The way you were talking I thought you were working around the fact I'm not going to seal this transcript.

MR. FINEMAN: No. I can hand Your Honor a copy of this.

THE COURT: Why am I looking at this?

MR. FINEMAN: The relevant paragraphs 29 through 32 of the counterclaim describe the parties Par and plaintiffs'

discussions about gaining access to Par's ANDA and specifically in Paragraph 32, Your Honor, you will see that we have alleged that on August 2nd plaintiffs objected to the offer. They proposed additional modification to the offer and --

THE COURT: What are you talking about?

MR. PHILLIPS: The counterclaim.

MR. FINEMAN: It's on Page 21 of the document, Your Honor, which is Paragraph 32.

THE COURT: The counterclaim. Thank you, Mr. Phillips.

MR. FINEMAN: A few paragraphs before that are relevant, Your Honor, because they discuss the proposals on access to Par's ANDA. But the key language is the block quote at the bottom of Page 21 carrying on to 22 where it says MonoSol needs to be able to consider trade secret issues in addition to patent issues under the offer and request that and it goes on.

Your Honor, Par's perspective would be that we're happy to provide Your Honor

with more fulsome briefing on this at a later time. But we need the trade secret statement from plaintiffs as to what they contend would be the trade secrets allegedly misappropriate before they can have access to our ANDA.

THE COURT: I don't understand. You're the one who's bringing the trade secret claim.

MR. FINEMAN: It's a declaratory judgment --

THE COURT: I understand that.

MR. FINEMAN: -- that we haven't misappropriated anything. And if they contend that they have some trade secret that we misappropriated, we need to know from them before they have access to our confidential ANDA what trade secret we have allegedly misappropriated. And, Your Honor, we are happy to provide briefing on this because this is the way it works in trade secret cases.

I will concede, Your Honor, that it's not typically a DJ action. But the way it works is that a party claims that there's been alleged trade secret and before they get access

to the other party's confidential information, they have to say what that trade secret is. Otherwise, they can comb through the other party's information and work backwards as to what the trade secret is. That's why the law provides for the trade secret to be in advance.

Your Honor, we are happy to take this up separately and we're happy to brief it for Your Honor. And that's why we cannot provide the ANDA right now.

MR. LADOW: If I can say one thing and then --

THE COURT: Then your colleague who's chomping at the bit.

MR. LADOW: I just want to say these are some of the reasons why we were having some difficulty with the schedule. We didn't realize until this moment what the issue was about this and now we understand that they have this position that we can't even see the ANDA which I will let Tim speak to that.

MR. BICKHAM: Well, we precisely didn't bring a trade secret claim because we don't know what they're using or what technology

they're using in their product. As Mr. Fineman has said, there was a relationship between MonoSol my client and Par. That relationship ended and then they came out with a product with another -- with IntelGenX as a partner. And we don't know what technology they're using or may be using or are not using from MonoSol until we actually see the ANDA.

So the situation is completely reverse here. So we can't come up with our infringement contentions in the patent case without seeing the ANDA.

MR. FINEMAN: Your Honor, if I misspoke, I want to correct it. I --

MR. LADOW: Can I just say one thing before that? If there were a trade secret theft, it doesn't matter whether they identify information that they actually use in manufacturing. What matters is whether they took it or not. So I just don't see how that logically follows that they can get that kind of relief. In other words, that that issue will be determined by whether or not the Court finds they actually took something, not by them

telling us here is what we do.

By telling us here's what we do, that doesn't say that they took it. So that's not a basis for holding up the progress of the case with Watson and Alvogen and having the possibility of splintered schedules because they want to withhold their ANDA for this purpose. I'm sorry, Steve.

MR. FINEMAN: That's fine. Just to correct in case I misspoke, when I said relationship, I didn't mean prior relationship between the parties. I meant relationship between the trade secret action and the disclosure of the ANDA.

THE COURT: What is it you say is law in terms of this disclosure of --

MR. FINEMAN: As we understand it, Your Honor -- and like I said, we would like the opportunity to present this on record, not just our say so. Before they get to look at our confidential information and before they look at our ANDA and see what we do, we want to know that they're saying to us we need to be able to consider trade secret misappropriation. Well,

what is it that we misappropriated? What is the trade secret that you think we have before you look at our information? What did we allegedly misappropriate? Then you can go in and find out that it wasn't misappropriated.

THE COURT: Wouldn't that normally come up because unless they can say what they think -- has it ever come up in this context before where there's an ANDA? Because it seems like it would make sense if they filed you stole our trade secrets, then you said, no, we didn't. Then it would make sense you should say, well, you've allegedly stole trade secrets. Well, what trade secret did we steal? They should have to say it because if they can't articulate what it is you stole, then they shouldn't have filed suit. But they haven't filed suit.

MR. FINEMAN: But the problem is, Your Honor -- I know Your Honor typically permits argument from people in person. Mr. Lynch is on the phone. He can shed some better light on this than I could and if Your Honor will allow him to do so. But here is the

problem: They filed suit under Hatch-Waxman context which will give them access to our ANDA.

We have their position in writing that they want to look through our ANDA to try to find trade secret misappropriation. So if we don't file the DJ action and make the claim for no trade secret misappropriation, well then that whole procedure where they would have to identify the trade secret goes out the window because they would have had access to our ANDA under the Hatch-Waxman scheme. As I said, if Mr. Lynch can chime in with Your Honor's permission, I think he can probably elaborate it on this better.

MR. LYNCH: Thanks, Your Honor. Just very briefly, the declaratory judgment action identifies an existing dispute between the parties about whether Par is using MonoSol's trade secret. So because of the dynamics Mr. Fineman just identified, Par raised this to join the issue in this proceeding to have it resolved. Even though that's not a typical posture, the procedure for requiring the trade secret owner to identify the trade secret is

this concern or alleged that Par here has misappropriated, so I think this may be a pretty simple fix. Because we can simply ask MonoSol to identify the trade secret that supposedly may have been shared with Par and that MonoSol's concern is now being abused by Par, they would know what those are and identify the particularity that would take a procedure four to six weeks, then we can produce the ANDA at that time.

The other accommodation we could make to expedite this is to produce portions of the ANDA that we think would implicate this question, allow them to begin portions of that now and produce the balance of it once we have the identification of trade secrets that the law allows.

THE COURT: Mr. Ladow or Mr. Heaton?

MR. LADOW: Mr. Bickham.

THE COURT: Sorry, two Tims. Were you going to say something?

MR. BICKHAM: Well, we don't think that this potential trade secret issue should

hijack the patent case. And this procedure as far as identifying trade secret information, if that's to be briefed, that's to be briefed. It's something that we've never seen before. And we don't see a reason in this case for that to prevent the patent case from moving forward.

If we think there's a trade secret claim, then we're going to have to document that and bring it. We haven't done it. So to say that we're not going to be able to prosecute our patent case because of this doesn't make sense to us.

MR. LADOW: I will just add it's a fairly unusual situation. MonoSol, the holder of the information that provides the information, doesn't make the trade secret claim. They claim that they don't have it. And by claiming they don't have it, they can withhold information in the patent case that we need for our infringement contentions. That's a little Goldbergian for --

THE COURT: On the surface that doesn't make a lot of sense to me either. That doesn't necessarily mean it's not the law.

MR. FINEMAN: Let me clarify one point. We're not looking to hold up anything. If they believe that Par has misappropriated something -- the keyword is something -- identify with particularity what that something is. If they believe that has occurred, they should within a week be able to identify it.

MR. BICKHAM: I'm sorry. But we haven't said that we believe that they have taken anything. We didn't say that.

MR. FINEMAN: With all fairness, Your Honor, if they didn't believe that, there would have been no need for them to have wanted to review our ANDA for purposes of determining whether there's a trade secret misappropriation.

MR. BICKHAM: We --

THE COURT: I don't think we're accomplishing much here. Let's go back to where we were. And I guess it probably doesn't matter because Par is probably not a first filer. But if there's ever any delay here that causes a postponement of the 30-month stay, it's on Par.

So I'm not inclined to tell some of the defendants to produce their ANDAs quickly

and get going as long as Par is taking the position it's taking.

MR. PERKOWSKI: Not to interrupt, Your Honor, but Watson wouldn't mind moving forward while they work on this.

THE COURT: Well, you don't have to wait if you want to strike a deal with the plaintiffs on your own. But it doesn't make sense to me to be carving Par out here, there and everywhere.

MS. BOURKE: Your Honor, I guess I just have a question. We had proposed omitting the four paragraphs that are related to the default discovery standard. I don't know what Your Honor's preference is with that. We also provided a date and --

MR. PHILLIPS: But, Your Honor, the default standard is if the parties can't agree. That's the whole purpose of the default standard and we haven't agreed.

MS. BOURKE: I guess that's true.

THE COURT: Right. So is it basically the general gist here is just to omit Paragraphs G through J?