

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ABBVIE INC. et al.,

Defendants.

CIVIL ACTION

Case No. 14-cv-5151

**DECLARATION OF PERRY C. SIATIS IN SUPPORT OF ABBVIE DEFENDANTS’
OPPOSITION TO FTC’S MOTION TO COMPEL**

I, Perry C. Siatis, declare:

1. I am in-house counsel and Vice President of Biotherapeutics and Legal for AbbVie Inc. (“AbbVie”), and I am a member of the State Bar of Illinois. The facts stated in this declaration are based upon my personal knowledge. If called as a witness, I would competently testify to them.

2. I have approximately 15 years of legal experience involving complex commercial and intellectual property litigation. I have been employed by AbbVie since it separated from Abbott Laboratories (“Abbott”) on January 1, 2013, and before that I had been employed by Abbott since 2005. Between 2009 and 2012, I held the positions of Section Head of Intellectual Property Legal Strategy and Divisional Vice President of Intellectual Property Legal Strategy.

I. The Documents Identified as Privilege Challenge Nos. 20-30 Are Abbott’s Due Diligence Presentations Concerning the Potential Acquisition of Solvay Pharmaceuticals, and the Redacted Portions Contain or Request Legal Advice from Me or Other Abbott Lawyers

3. In 2009, Abbott agreed to acquire the Solvay Group’s pharmaceuticals business, which for simplicity I will refer to as “Solvay.” Abbott’s internal code names for the Solvay

acquisition were “Project Chocolate” or “Project Phoenix.” Before closing the acquisition, Abbott performed due diligence. I was one of the Abbott attorneys primarily responsible for providing legal advice to Abbott with respect to the acquisition and conducting and overseeing the due diligence that was related to legal issues on which I was to advise Abbott, which primarily included legal issues related to AndroGel.

4. Abbott created PowerPoint presentations relating to the due diligence. Many of these presentations contained legal advice that I or others in Abbott’s legal department provided, as well as requests for me or others in Abbott’s legal department to provide legal advice on issues that at the time still needed to be addressed.

5. I have reviewed Exhibit 1(C) to the FTC’s Motion to Compel the AbbVie Defendants to Produce Documents. I have also reviewed the unredacted and redacted versions of the documents identified as Privilege Challenge Nos. 20, 22-27, and 29-30 in Exhibit 1(C). These documents are due diligence PowerPoint presentations as described above. I have also reviewed the FTC’s memorandum in support of its Motion to Compel. Footnote 30 on page 8 of that memorandum says that the “specific redactions challenged by the FTC are identified by pinpoint citations in the ‘Redacted Document Column’ of Ex. 1(C), Challenge Nos. 20-30.” I have thus focused my review on the redactions contained within the pinpoint citations described in the “Redacted Document” column in Exhibit 1(C). Those redacted portions of Privilege Challenge Nos. 20 and 22-27, and 29-30 constitute legal advice and requests for legal advice from me or others in Abbott’s legal department who were involved in the due diligence regarding Solvay’s intellectual property, contractual commitments, and other similar legal questions. The redacted material is not “business information”—although the legal advice was on the subject of Solvay’s business.

6. More specifically, the following paragraphs explain on a document-by-document basis the general subject matter of the legal advice redacted from the pages identified in the “Redacted Document” column of Exhibit 1(C) for each of the documents identified as Privilege Challenge Nos. 20, 22-27, and 29-30.

a) Privilege Challenge No. 20: The redacted portion on page AGEL-PA-006-0000008 contains my mental impressions and legal advice about the patent protection for AndroGel. The redacted portions on page AGEL-PA-006-0000010 contain my and other in-house Abbott attorneys’ mental impressions and legal advice about the patent protection for AndroGel and Solvay’s legal obligations under various agreements.

b) Privilege Challenge No. 22: The redacted portion on page AGEL-PA-006-0000138 contains a request for legal advice to me and others in the Abbott legal department concerning Solvay’s contractual obligations related to its R&D and regulatory activities. The redacted portion on page AGEL-PA-006-0000139 under the “Diagnostics” heading contains a request for legal advice to me and others in the Abbott legal department concerning Solvay’s contractual obligations related to its diagnostic programs.

c) Privilege Challenge No. 23: The redacted portion on page AGEL-PA-006-0000145 contains requests for legal advice to me and others in the Abbott legal department concerning Solvay’s contractual obligations. The redacted portions on page AGEL-PA-006-0000152 contain requests for legal advice to me and others in the Abbott legal department concerning patent protection for some of Solvay’s products other than AndroGel.

d) Privilege Challenge No. 24: Except for the fifth bullet point under the “Follow-Up Required” heading, all of the redacted portions on page AGEL-PA-006-0000155

contain my and other in-house Abbott attorneys' mental impressions and legal advice about the patent protection for AndroGel and Solvay's legal obligations under various agreements.

e) Privilege Challenge No. 25: For this document, I have reviewed both the version attached to the FTC's motion (Bates-numbered AGEL-PA-006-0000165 to AGEL-PA-006-0000175) and the corrected redacted version (Bates-numbered AGEL-PA-006-0000165-R to AGEL-PA-006-0000175-R). In this paragraph, I will refer to the corrected version. The redacted portion on page AGEL-PA-006-0000165-R is the same as the redacted portion of Privilege Challenge No. 20, page AGEL-PA-006-0000008, which I discussed above in paragraph 6.a. The redacted portions on page AGEL-PA-006-0000167-R are the same as the redacted portions of Privilege Challenge No. 20, page AGEL-PA-006-0000010, which I also discussed above in paragraph 6.a.

f) Privilege Challenge No. 26: The redacted portion on page AGEL-PA-006-0000177 is the same as the redacted portion of Privilege Challenge No. 20, page AGEL-PA-006-0000008, which I discussed above in paragraph 6.a. The redacted portions on page AGEL-PA-006-0000180 are the same as some of the redacted portions of Privilege Challenge No. 20, page AGEL-PA-006-0000010, which I also discussed above in paragraph 6.a.

g) Privilege Challenge No. 27: The redacted portion on page AGEL-PA-006-0000190 is the same as the redacted portion of Privilege Challenge No. 20, page AGEL-PA-006-0000008, which I discussed above in paragraph 6.a. The redacted portions on page AGEL-PA-006-0000193 are the same as some of the redacted portions of Privilege Challenge No. 20, page AGEL-PA-006-0000010, which I also discussed above in paragraph 6.a.

h) Privilege Challenge Nos. 29 and 30: The redacted portions on pages AGEL-PA-006-0000212 and AGEL-PA-006-0000219 contain my and other in-house Abbott attorneys' legal advice regarding proceedings before the FDA.

7. Some of the redactions concern Solvay's existing agreements with other pharmaceutical companies. In January 2009, the FTC sued Solvay, alleging that some of those agreements were illegal "reverse payment" settlements. The portions of the documents described above which relate to those agreements were prepared by me or at my direction in anticipation of Abbott's becoming an interested party in that litigation upon the closing of its acquisition of Solvay.

II. The Documents Identified as Privilege Challenge Nos. 31-34 Contain Legal Advice and Attorney Work Product Exchanged Between Solvay Lawyers and Abbott Lawyers After Abbott and Solvay Entered into an Acquisition Agreement, in Furtherance of the Companies' Common Legal Interests

8. On September 26, 2009, Abbott and Solvay's parent entity signed an agreement for Abbott to acquire Solvay. In October 2009, Steve Gersten (Abbott's chief in-house regulatory counsel) and I, on behalf of Abbott, communicated with Shannon Klinger, then Solvay's general counsel, about legal issues related to AndroGel. Because Abbott had agreed to acquire Solvay, including Solvay's ownership interest in the '894 patent and its approved NDA for AndroGel, Abbott and Solvay shared a common legal interest with respect to AndroGel and any potential FDA or other regulatory proceedings regarding AndroGel. The purpose of the communications among Mr. Gersten, Ms. Klinger, and me was to allow Solvay and Abbott to share privileged information about ongoing and potential FDA proceedings involving AndroGel that were of interest to both companies.

9. As a part of the communications between counsel for Abbott and Solvay, Ms. Klinger shared confidential legal advice and attorney work product that Solvay created. Mr. Gersten and I also shared with Ms. Klinger confidential legal advice and attorney work product.

10. I have reviewed the documents identified in Exhibit 1(C) as Privilege Challenge Nos. 31-34. All of these documents are emails dated between October 2 and October 6, 2009, which contain the communications described above between Mr. Gersten and me, on behalf of Abbott, and Ms. Klinger, on behalf of Solvay. These emails contain both Solvay's and Abbott's confidential legal advice and attorney work product as described above. The purpose of the communications in Privilege Challenge Nos. 31-34 was to allow Abbott, as the acquiring party, and Solvay, as the acquired party, to share privileged information concerning their common interest in FDA regulatory issues relating to AndroGel.

11. The communications in Privilege Challenge Nos. 31-34 were also prepared in anticipation of a potential citizen petition to the FDA regarding testosterone gels, which Abbott filed in April 2010.

III. Requests for My Legal Advice Are Reflected in Privilege Challenge No. 19

12. I have reviewed Exhibit 1(B) to the FTC's Motion to Compel the AbbVie Defendants to Produce Documents. I have reviewed the original (unredacted) and redacted versions of the document identified in Exhibit 1(B) as Privilege Challenge No. 19 and characterized by the FTC as an "AbbVie Business Email." The redacted portion of the March 8, 2011 email from Jim Hynd to Catharine Sanders (the bottommost redaction on page AGEL-PA-006-0001386 is a request to seek legal advice from me. The person referred to in the redacted portion is me. The redacted portion of the August 9, 2011 email (the topmost message in the chain) is an attorney-client communication from Jim Hynd to me in which Mr. Hynd requested

my legal advice. The redacted portions of this document are not, as the FTC contends, a “business discussion” containing “business advice.”

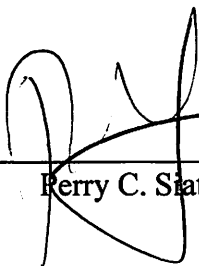
IV. Donna O’Connor Prepared AndroGel Forecasting Documents at My Request for Use in Conjunction with Litigations, and They Contain My Mental Impressions and Legal Analyses

13. In August 2011, I requested that Donna O’Connor or others working with Ms. O’Connor in Abbott’s forecasting department prepare forecasts regarding AndroGel under various parameters and assumptions that I provided. At that time, Abbott was prosecuting patent-infringement litigation against Teva, following Teva’s filing a paragraph IV certification regarding the ’894 patent. Abbott also expected at that time that Perrigo would file a similar paragraph IV certification, and there would then be a 45-day period in which Abbott could, if appropriate, commence patent litigation against Perrigo. I anticipated using the analyses that I requested in providing legal advice to Abbott with respect to these matters.

14. Ms. O’Connor or someone else working with her provided about seven PowerPoint presentations to me in response to my requests.

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

Executed on September 24, 2015.


Perry C. Statis