

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Allergan Inc.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civ. No. 09-333-SLR-LPS
	:	
Barr Laboratories Inc., et al.,	:	
	:	
Defendants.	:	

ORDER

At Wilmington this 18th day of August, 2010:

Having reviewed the parties' letter submissions and supporting declarations (D.I. 107-10, D.I. 128-30), and having conducted a discovery teleconference with the parties on August 5, 2010,

IT IS HEREBY ORDERED THAT:

1. Allergan has not waived the attorney-client privilege with respect to the documents at issue. Allergan had in place sufficient procedural protections to comply with its obligations to review materials for privilege prior to production. The amount of inadvertently-produced privileged materials is minuscule in comparison with the size of Allergan's overall production.
2. Defendants' request that Allergan be compelled to produce Exhibits 4, 5, 6, and 8 is DENIED. Each of these exhibits is a record of invention, provided to an attorney for purposes of securing primarily legal opinion, legal services, or assistance in a legal proceeding. *See* D.I. 130. Accordingly, these exhibits are privileged. *See In re Spalding Sports Worldwide, Inc.*, 203

F.3d 800, 805 (Fed. Cir. 2000) (“[A]n invention record constitutes a privileged communication, as long as it is provided to an attorney for the purpose of securing primarily legal opinion, or legal services, or assistance in a legal proceeding.”) (internal quotation marks omitted); *see also id.* at 806 (“[T]he inclusion of [technical information] does not render the document discoverable, because requests for legal advice on patentability or for legal services in preparing a patent application necessarily require the evaluation of technical information [A]n attorney cannot evaluate patentability or prepare a competent patent application without knowing the prior art and obtaining relevant technical information from the inventors.”).

3. Defendants’ request that Allergan be compelled to produced Exhibit 7 is GRANTED IN PART AND DENIED IN PART. Allergan does not assert that the first four pages (AGN-BAR-01161294-97) are privileged or otherwise protected from discovery. Accordingly, Allergan must produce these four pages. The remainder of Exhibit 7 (AGN-BAR-01161298-305) is protected attorney work product, prepared in connection with prior (*Pharmacia*) litigation. Accordingly, Allergan need not produce these pages of Exhibit 7.

4. Defendants’ request that Allergan be compelled to produce Exhibit 19 is GRANTED. Exhibit 19 is a single-page document that is a cover page to a literature search. Exhibit 19 contains no more information than would be included in an appropriate privilege log. (The Court does not express an opinion as to the privilege status of the substance of the literature search, only as to the status of the one-page document that has been put in front of the Court.)

Delaware counsel are reminded of their obligations to inform out-of-state counsel of this Order. To avoid the imposition of sanctions, counsel shall advise the Court immediately of any problems regarding compliance with this Order.

A handwritten signature in black ink, appearing to read "Carl P. A.", written over a horizontal line.

UNITED STATES DISTRICT JUDGE