

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

I-MAB BIOPHARMA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 22-276-CJB
)	
INHIBRX, INC. and BRENDAN)	
ECKELMAN,)	
)	
Defendants.)	

MEMORANDUM ORDER

In this case, Plaintiff I-Mab Biopharma (“I-Mab” or “Plaintiff”) brings trade secret misappropriation claims against Defendants Inhibrx, Inc. (“Inhibrx”) and Brendan Eckelman (“Dr. Eckelman” and collectively with Inhibrx, “Defendants”). Presently pending before the Court are the following motions: (1) Defendants’ motion to exclude certain opinions offered by Plaintiff’s licensing expert Dr. Ashley Stevens (the “Stevens *Daubert* Motion”), (D.I. 356), and (2) Defendants’ motion to exclude certain opinions offered by Plaintiff’s forensic expert Mr. Daniel Roffman (the “Roffman *Daubert* Motion”), (D.I. 357). I-Mab opposes the Motions. For the reasons set forth below, the Stevens *Daubert* Motion is DENIED and the Roffman *Daubert* Motion is DENIED.¹

I. BACKGROUND

I-Mab commenced this action on March 1, 2022. (D.I. 2) The operative First Amended Complaint (“FAC”), filed on May 12, 2022, contains two causes of action, both for trade secret misappropriation against both Defendants: Count I, which alleges a violation of the federal

¹ The parties have jointly consented to the Court’s jurisdiction to conduct all proceedings in this case, including trial, the entry of final judgment and all post-trial proceedings. (D.I. 89)

Defend Trade Secrets Act, and Count II, which alleges a violation of the Delaware Uniform Trade Secrets Act. (D.I. 49 at ¶¶ 175-201) Plaintiff asserts that Defendants misappropriated nine trade secrets (that correspond to molecules designed to treat cancer). (*See, e.g., id.* at ¶¶ 50, 59-70; D.I. 337, ex. 6 at 7-23; *see also* D.I. 367 at 7 n.6; D.I. 408 at 15 n.14)

Defendants filed the instant Motions on June 14, 2024. (*See* D.I. 336) The Motions were fully briefed as of July 24, 2024. (D.I. 386) Trial is set for October 28, 2024. (D.I. 301 at 2)

The Court here writes primarily for the parties, and so any additional facts relevant to this Memorandum Order will be discussed in Section III below.

II. STANDARD OF REVIEW

The Court has frequently set out the relevant standard of review for assessing a motion, like this one, filed pursuant to Federal Rule of Evidence 702 (“Rule 702”) and *Daubert v. Merrell Dow Pharms, Inc.*, 509 U.S. 579 (1993). One such instance came in *Integra LifeScis. Corp. v. HyperBranch Med. Tech., Inc.*, Civil Action No. 15-819-LPS-CJB, 2018 WL 1785033, at *1-2 (D. Del. Apr. 4, 2018). The Court incorporates by reference those legal standards set out in *Integra*, and will follow them herein. To the extent that additional related legal principles regarding Rule 702 and *Daubert* are relevant, the Court will set those out in Section III.

III. DISCUSSION

The Court will first take up the Stevens *Daubert* Motion, and will then turn to the Roffman *Daubert* Motion.

A. The Stevens *Daubert* Motion

With the Stevens *Daubert* Motion, Defendants argue that two categories of opinions of Dr. Stevens should be excluded. The Court will address these categories of opinions in turn.

1. Opinions on the Comparability of Agreements

In his report, Mr. Stevens identifies “comparable agreements[,]” which consist of a list of eight agreements provided to him by Plaintiff’s damages expert Mr. John Bone (in addition to agreements identified in an “Intron Health” report). (D.I. 337, ex. 44 at ¶ 185) Defendants assert that Dr. Stevens’ opinion on the comparability of these agreements should be excluded because he did not himself identify or review any of these agreements. (D.I. 336 at 37 (citing D.I. 337, ex. 38 at 22, 102; D.I. 337, ex. 33 at 216-17, 224)) According to Defendants, Dr. Stevens failed to conduct an analysis of the agreements (i.e., in the area of his expertise) and instead just adopted Mr. Bone’s conclusions, which is unreasonable and unreliable. (*Id.*)

The Court does not agree. While Dr. Stevens’ discussion of these agreements was not exactly robust, it did include the following explanation:

These eight deals are from the 2019-2021 timeframe, and are for oncology drugs, monoclonal antibodies, and bispecific antibodies. Based on my experience, seven of these deals reflect the payments terms a biotechnology start up could expect to get from a big pharma company. The one exception is the Mereo Biopharma / Oncologie deal, which is not a deal between a start up and a big pharma company. Instead that appears to be a collaboration agreement among start-ups for a drug with a limited market.

(D.I. 372, ex. 34 at ¶ 186; *see also id.*, ex. 35 at ¶ 24 (Dr. Stevens noting that when he searches for comparable transactions in the biotechnology/biopharma field, he considers a variety of factors, depending on the circumstances, including the date of the transaction, the nature of the drug, and the parties to the transaction)) As the Court explained in its opinion regarding Defendants’ motion to exclude certain opinions of Mr. Bone, given the circumstances at play relating to these agreements, any failure on the part of Dr. Stevens to consider particular aspects of them will be best addressed by cross-examination, not by exclusion. (D.I. 448 at 5-6)

2. Assumptions of Use

Dr. Stevens’ opening report includes the following sentence: “The current dispute concerns the extent of Inhibrx’s and Dr. Eckelman’s improper acquisition and use of I-Mab’s trade secret information and damages that should be awarded to I-Mab due to that improper acquisition and use” (“paragraph 158”). (D.I. 337, ex. 44 at ¶ 158) Defendants argue that paragraph 158 should be excluded because in it, Dr. Stevens assumes both improper use and acquisition for purposes of his report (but he did not include any citations or support for this assumption). (D.I. 336 at 38)

The Court notes that there is nothing inherently wrong with an expert assuming liability when assessing damages-related questions (so long as liability is established independently). *FinancialApps, LLC v. Envestnet, Inc.*, Civil Action No. 19-1337-GBW-CJB, 2023 WL 6037242, at *2 n.2 (D. Del. Sept. 13, 2023). But in any event, Plaintiff responds by noting that Dr. Stevens does not intend to and did not “affirmatively opine that Defendants used I-Mab’s trade secrets . . . [and] so he has no opinions to preclude on that topic.” (D.I. 367 at 39) In light of Plaintiff’s response, the Court will simply deny as moot this portion of the Stevens *Daubert* Motion.

B. The Roffman *Daubert* Motion

With the Roffman *Daubert* Motion, Defendants argue that three categories of opinions of Mr. Roffman should be excluded. The Court will address these categories in turn.

1. Opinions on Dr. Eckelman Opening Documents Other than C-17

In his report, Mr. Roffman explains that a metadata field known as kMDLastOpenedDate stores information about the date and time a file was last opened, but that the Time Machine Backup that Mr. Roffman utilized did not contain the relevant kMDLastOpenedDate data. (D.I. 337, ex. 48 at ¶ 71) Nevertheless, Mr. Roffman opines that his analysis of Time Machine

Backups revealed 117 unique files “that were modified after they were created and prior to February 2022” which is “typically associated with someone opening and modifying a file.” (*Id.* at ¶ 73) During his deposition, Mr. Roffman testified that one document, Arbitration Exhibit C-17 (“C-17”), had kMDLastOpenedDate metadata showing that the document was opened on February 25, 2022. (*Id.*, ex. 49 at 127-28) Defendants first seek to exclude Mr. Roffman from “testifying that any documents for which he reviewed metadata other than C-17 were or could have been opened by Dr. Eckelman, as the metadata that he provided with his report shows only that one document [i.e., C-17] could have been opened.” (D.I. 336 at 39; *see also* D.I. 386 at 20)

The Court will not exclude Mr. Roffman’s testimony on this basis. Mr. Roffman seems to say that he did not have relevant kMDLastOpenedDate metadata for at least certain files (though apparently he did for C-17)—but that *other* metadata information regarding the 117 unique files led him to believe that they were opened and modified. (D.I. 337, ex. 48 at ¶¶ 73, 75)² While Defendants’ expert counters that there is another explanation for the metadata that Mr. Roffman examined (i.e., one that does not lead to the conclusion that Dr. Eckelman accessed these files), (D.I. 387, ex. 7 at ¶¶ 75-77), the Court has no basis to conclude that Mr. Roffman’s opinion is unreliable, *see Brand Design Co., Inc. v. Rite Aid Corp.*, CIVIL ACTION NO. 22-1174, 2024 WL 643141, at *4 (E.D. Pa. Feb. 14, 2024) (finding that the movant did not demonstrate that the expert’s conclusions were erroneous or otherwise unreliable and that reasonable experts might disagree regarding certain of the expert’s assumptions, and thus “[t]his

² While Defendants seem to suggest that Mr. Roffman had kMDLastOpenedDate metadata for all of these 117 files, (D.I. 386 at 20), that is not clear to the Court from the cited exhibit or the cited paragraph in Mr. Roffman’s report, (D.I. 337, ex. 48, at ex. 2; *id.*, ex. 48 at ¶ 71).

kind of battle-of-the-experts is a quintessential example of a dispute that cannot be resolved by a *Daubert* motion”).

2. Opinions on Duplication of Files

Mr. Roffman opines that the forensic evidence demonstrates that Dr. Eckelman moved and copied files with the same file name to different file paths. (D.I. 372, ex. 36 at ¶¶ 53, 64, 74-79) Defendants’ next argument is that “Mr. Roffman should [] be excluded from offering any opinions that files with the same file names but different hash values or Relativity IDs are multiple files on Dr. Eckelman’s laptop or hard drive rather than multiple identifications of the same file.” (D.I. 336 at 39-40) In support, Defendants point to Mr. Roffman’s testimony in which he explained that the C-17 file “appears twice in counsel’s list of what potentially contains trade secrets, and so that’s why we have two different versions here. So the file C-17, it’s only on the hard drive once but we have two different versions of C-17.” (D.I. 337, ex. 49 at 125 (*cited in* D.I. 336 at 39)) Defendants assert that this statement means that some of the duplication identified by Mr. Roffman was not caused by Dr. Eckelman, but instead “was caused by [Mr. Roffman’s] own analysis methods” (and that the issue is not limited to C-17). (D.I. 336 at 39)

Defendants’ vague arguments here were difficult to understand. And they do not provide a basis on which to exclude Mr. Roffman’s opinions. Defendants only identify one specific document that this issue seems to pertain to (i.e., C-17). Mr. Roffman testified that there are certain files that were copied to two places and then backed up 44 times, resulting in 88 copies of the document. (D.I. 372, ex. 37 at 137) If Defendants think that this is the case because of “the manner in which I-Mab’s counsel identified the files for” Mr. Roffman’s report—instead of due

to any actions by Dr. Eckelman—they can cross examine Mr. Roffman on that front. (D.I. 386 at 20)

3. Opinions on I-Mab’s Divestiture and Reasonable Measures Taken by I-Mab Hangzhou and I-Mab Shanghai

Finally, Defendants argue that Mr. Roffman’s opinions regarding Plaintiff’s divestiture and reasonable measures taken by I-Mab Hangzhou and I-Mab Shanghai to protect the trade secrets at issue should be excluded. This is purportedly because Mr. Roffman relies solely on cherry-picked portions of Plaintiff’s Rule 30(b)(6) testimony. (D.I. 336 at 40 (citing D.I. 337, ex. 50 at ¶ 4)) However, in light of the Court’s ruling that the October 2024 trial should cover events occurring prior to, but not later than, the date of the divestiture, the Court does not understand how post-divestiture reasonable measures are relevant to the conduct that will be at issue during trial. (*See, e.g.*, D.I. 420 at 18-19) Therefore, this portion of the Roffman *Daubert* Motion is denied as moot.

IV. CONCLUSION

For the foregoing reasons, the Stevens *Daubert* Motion is DENIED and the Roffman *Daubert* Motion is DENIED.

Because this Memorandum Order may contain confidential information, it has been released under seal, pending review by the parties to allow them to submit a single, jointly proposed, redacted version (if necessary) of the Memorandum Order. Any such redacted version shall be submitted no later than **October 16, 2024** for review by the Court. It should be accompanied by a motion for redaction that shows that the presumption of public access to judicial records has been rebutted with respect to the proposed redacted material, by including a factually-detailed explanation as to how that material is the “kind of information that courts will

protect and that disclosure will work a clearly defined and serious injury to the party seeking closure.” *In re Avandia Mktg., Sales Pracs. & Prods. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019) (internal quotation marks and citation omitted). The Court will subsequently issue a publicly-available version of its Memorandum Order.

Dated: October 11, 2024


Christopher J. Burke
UNITED STATES MAGISTRATE JUDGE