

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN ANTIVENOM
COMPOSITIONS AND PRODUCTS
CONTAINING THE SAME**

Inv. No. 337-TA-903

**ORDER NO. 22: GRANTING NOVAK DRUCE CONNOLLY BOVE + QUIGG'S
MOTION TO QUASH SUBPOENA**

(May 8, 2014)

On April 21, 2014, non-party Novak Druce Connolly Bove + Quigg LLP ("Novak Druce")¹ moved (903-015) to quash a subpoena *duces tecum* served on it by Respondents Laboratorios Silanes S.A. de C.V. and Instituto Bioclon S.A. de C.V. (collectively, "Silanes"). On May 1, 2014, Silanes opposed the motion and the Commission Investigative Staff filed a response in support of quashing the subpoena.

Novak Druce seeks to quash Silanes' subpoena on the grounds that the documents it seeks are protected by the work product doctrine. Specifically, Novak Druce argues that any potentially responsive documents in its possession (*i.e.*, prior art to the '414 patent) were searched for, evaluated, selected, and compiled in anticipation of this Investigation. (Mot. at 4-8 (noting that Novak-Druce did not begin its attorney-client relationship with Veteria until after BTG's complaint was filed and that it did not search for or compile any prior art references with respect to the '414 patent before the filing of BTG's complaint).) Novak Druce further asserts Silanes has failed to establish that [1] it has a "substantial need" for the requested information;

¹ Novak Druce represented Respondents Veteria Labs S.A. de C.V. and BioVeteria Life Sciences LLC (collectively, "Veteria") in this Investigation. Veteria was terminated from the Investigation on March 11, 2014. (*See* Order No. 14 (Mar. 11, 2014); Notice of Comm'n Determination Not to Review an Initial Determination Partially Terminating the Investigation Based on a Withdrawal of the Compl. (Apr. 1, 2014).)

[2] obtaining the information through other means would cause “undue hardship;” and [3] the information sought is not opinion work product. (*Id.* at 8-11.) In addition, Novak Druce contends the discovery sought by Silanes from a non-party, opposing law firm is unreasonable and unduly burdensome given the availability of the documents sought from other sources. (*Id.* at 11-13.)

Silanes argues that the prior art references it seeks are documents “drawn from publically available sources” and as such, “were clearly not ‘*prepared in anticipation of litigation*’ with respect to this Investigation, and are, therefore not protected from discovery under the work product doctrine.” (Opp. at 4-5 (emphasis original).) Silanes asserts that “even if privilege does attach,” Novak Druce “waived any privilege that may have attached to its prior-art references . . . by producing at least a portion of them to other parties in this Investigation.” (*Id.* at 8.) Silanes further contends that Novak Druce has failed to meet its burden of proving the burdensome nature of the subpoena. (*Id.* at 10-11.)

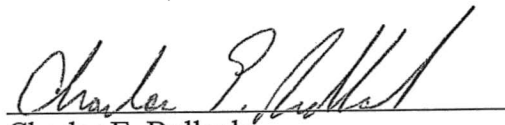
Staff agrees with Novak Druce that the subpoena should be quashed. Staff submits that the prior art sought by Silanes was collected by Novak Druce in anticipation of litigation (*i.e.*, this Investigation) and thus, is work product protected from discovery. (Staff Resp. at 3-4.) Staff does not believe the documents sought by Silanes fall into any of the exceptions to the work product doctrine. (*Id.* at 5 (“In the Staff’s view, it is [*sic*] does not appear to be either ‘necessary’ or ‘justified’ for the prior art collected as a result of the efforts of counsel at Novak Druce to be turned over to counsel for Silanes.”).)

Having reviewed the pleadings and the exhibits attached thereto, the undersigned finds Novak Druce’s and Staff’s arguments persuasive. Accordingly, Novak Druce’s motion to quash (903-015) is hereby granted.

Within seven days of the date of this document, each party shall submit to the Office of the Administrative Law Judges a statement as to whether or not it seeks to have any portion of this document deleted from the public version. The parties' submissions may be made by facsimile and/or hard copy by the aforementioned date.

Any party seeking to have any portion of this document deleted from the public version thereof must submit to this office a copy of this document with red brackets indicating any portion asserted to contain confidential business information. The parties' submissions concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED.

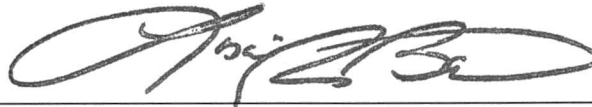

Charles E. Bullock
Chief Administrative Law Judge

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PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC VERSION ORDER NO. 22** has been served by hand upon the Commission Investigative Attorney, **Brian Koo, Esq.**, and the following parties as indicated, on **MAY 20 2014**



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