

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIAGENENTECH, INC., *et al.*,

No. C 08-4909 SI

Plaintiffs,

**ORDER RE: PROTECTIVE ORDER**

v.

SANOFI-AVENTIS DEUTSCHLAND GMBH,

Defendant.  

---

This order resolves the parties' disputes regarding the protective order.<sup>1</sup> First, the parties disagree about whether information produced in this litigation should be available for use in the related ICC arbitration. The Court agrees with defendant that it is in the interest of efficiency that information exchanged under the protective order should be usable in the related arbitration, and the parties can cooperate to maintain the confidential nature of documents and information made available in that proceeding. Accordingly, the Court ADOPTS defendant's proposed language.

Second, the parties offer competing provisions regarding a prosecution bar. Plaintiffs' version is broader in terms of the information covered by the prosecution bar, but narrower in that it would only apply to prosecution on behalf of the parties to this litigation, while defendant's version would bar prosecution on behalf of any client. The Court ADOPTS plaintiffs' proposal for the reasons stated in plaintiffs' papers.

Third, the parties disagree about whether a party should be permitted to object to disclosure of protected information to consultants after the initial objection period has passed if the objection is based

---

<sup>1</sup> The parties' letter briefs are found at Docket Nos. 147, 150-52, 155, 158 & 159.

1 upon later-discovered information. The Court finds that defendant's proposal is reasonable and should  
2 not be susceptible to abuse since the objection can only be raised if the newly-discovered information  
3 could not have been obtained previously by reasonable diligent efforts. Accordingly the Court  
4 ADOPTS defendant's proposal.

5 The parties are directed to file a protective order reflecting the above no later than **August 5,**  
6 **2009.**

7

8 **IT IS SO ORDERED.**

9

10 Dated: July 31, 2009



SUSAN ILLSTON  
United States District Judge

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28