

United States District Court  
For the Northern District of California

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  
28

E-FILED on 2/7/13

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

HOLOGIC, INC. CYTYC CORPORATION  
and HOLOGIC L.P.,  
  
                                Plaintiffs,  
  
                                v.  
  
SENORX, INC.,  
  
                                Defendant.

No. C-08-0133 RMW

**ORDER DENYING-IN-PART AND  
GRANTING-IN-PART PLAINTIFFS'  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL PORTIONS OF  
PLAINTIFFS' OPPOSITION AND  
EXHIBITS IN SUPPORT OF  
OPPOSITION TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

[Re: Dkt. No. 530]

Plaintiffs moved to file under seal portions of plaintiffs' opposition and exhibits to the Declaration of Maulik Shah in support of plaintiffs' opposition to defendant's motion for summary judgment.

**Exhibits 5, 6, 7, and 12:** Having reviewed the entirety of Exhibits 5, 6, 7, and 12 the court finds nothing contained therein that is in fact "privileged or protectable as a trade secret or otherwise entitled to protection under the law." Civ. L.R. 79-5(a). Pursuant to the local rule, "[a] stipulation,

ORDER DENYING-IN-PART AND GRANTING-IN-PART PLAINTIFFS' ADMINISTRATIVE MOTION TO FILE UNDER SEAL PORTIONS OF PLAINTIFFS' OPPOSITION AND EXHIBITS IN SUPPORT OF OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT—No. C-08-0133 RMW  
ALG

1 or a blanket protective order that allows a party to designate documents as sealable, will not suffice  
2 to allow the filing of documents under seal" for that reason alone. The court does not agree with  
3 SenoRx, *see* Dkt. No. 534, that Dr. Arthur's deposition testimony, expert report, or supplemental  
4 expert report contain any confidential business information. Further, the court disagrees with  
5 SenoRx, *see* Dkt. No. 534, that the excerpt from the deposition of Padraic O'Brien, which pertains  
6 primarily to secondary considerations of non-obviousness, particularly long felt need in the industry,  
7 contains any confidential or proprietary information. Accordingly, the court **DENIES plaintiffs'**  
8 **sealing motion with respect to Exhibits 5-7 and 12** to the Declaration of Maulik Shah in support  
9 of plaintiffs' opposition, with leave to re-file if any particular lines of these exhibits contain trade  
10 secrets or otherwise privileged or legally protectable information.

11 **Exhibit 9:** Having reviewed the designated portions of Exhibit 9 the court finds nothing  
12 contained therein that is in fact "privileged or protectable as a trade secret or otherwise entitled to  
13 protection under the law." Civ. L.R. 79-5(a). Pursuant to the local rule, "[a] stipulation, or a blanket  
14 protective order that allows a party to designate documents as sealable, will not suffice to allow the  
15 filing of documents under seal" for that reason alone. The court does not agree with SenoRx, *see*  
16 Dkt. No. 534, that the designated portions of Dr. Beron's expert report contain any confidential  
17 business information.

18 Plaintiffs additionally designated paragraphs 56 and 57 of Exhibit 9 as "internal competitive  
19 information of Hologic." Again, the court disagrees that these paragraphs contain privileged or  
20 otherwise legally protectable information. These statements go toward demonstrating a "long-felt,  
21 but unmet need for the claimed invention," and the content thereof appears to be public information.  
22 *See, e.g.*, U.S. Patent 6,482,142 col.2 ll.44-53. Accordingly, the court **DENIES plaintiffs' sealing**  
23 **motion with respect to all designated portions of Exhibit 9**, with leave to re-file if the parties can  
24 identify why any of this information is, in fact, legally protectable.

25 **Exhibit 21:** Exhibit 21 is a written opinion from SenoRx's attorney to SenoRx, which is  
26 privileged attorney work product and thus sealable. Civ. L.R. 79-5(a). Accordingly, the court  
27 GRANTS plaintiffs' motion to seal Exhibit 21.

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  
28

DATED: February 7, 2013

*Ronald M. Whyte*  
RONALD M. WHYTE  
United States District Judge