



August 20, 2008

Decision: PMPRB-07-D1-PENLAC

- **Motion for Production; and**
- **Leave to File Reply Evidence**

**IN THE MATTER OF the *Patent Act* R.S.C. 1985, c. P-4,
as amended**

**AND IN THE MATTER OF sanofi-aventis Canada Inc.
(the "Respondent") and the medicine "Penlac Nail Lacquer"**

Board Order

This is the decision of the Penlac hearing panel (the "Panel") on a motion brought by Board Staff for the production of documents in this proceeding and for leave to file reply evidence in relation thereto (the "Motion").

The Panel, having heard the parties on the Motion and having decided to grant a variation on the relief sought on the Motion, hereby orders that:

Production of Documents

1. The Respondent shall produce to Board Staff such data and protocols used in the production of the studies referred in these proceedings as Trials 312 and 313 (the "Data") as are in the possession, power or control of the Respondent, and in this regard, the Respondent shall use its best efforts to obtain the Data from any affiliated or related entities or other persons that the Respondent might reasonably expect to have the Data in their possession, power or control.
2. The Respondent shall file an affidavit in this proceeding with respect to the Data that are in its possession, power or control, and with respect to its efforts to obtain the Data in accordance with paragraph 1 hereof.

Reply Evidence

3. Board Staff shall have leave to file Reply Evidence pertaining to the Data.
4. The Respondent shall have the right to file evidence that responds to any evidence that might be filed by Board Staff in accordance with paragraph 3.

Schedule

5. The events discussed in this Order shall be completed according to the following schedule:

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|------|--|--------------------|
| i) | Production of the Data by the Respondent: | September 26, 2008 |
| ii) | Respondent's Affidavit in accordance with paragraph 2: | September 26, 2008 |
| iii) | Reply Evidence: | October 20, 2008 |
| iv) | Responding Evidence: | November 17, 2008 |
| v) | Hearing: | December 8, 2008 |

Board Members: Dr. Brien G. Benoit
Mary Catherine Lindberg
Anne La Forest

Board Counsel: Gordon Cameron

Appearances

For Board Staff: Kirsten Crain, Counsel

For the Respondent:
Martin Mason, Counsel
Graham Ragan, Counsel

Original signed by
Sylvie Dupont
Secretary of the Board