



Try, Try Again: District Court Orders Quarreling Parties to Reach Agreement Concerning Scope of FDA and Patent Prosecution Bar Without Court Intervention

March 12, 2026

Reading Time : **1 min**

By: Jonathan James Underwood, Rubén H. Muñoz

The District of New Jersey recently denied the litigants' request for a briefing schedule to resolve a dispute about a proposed discovery confidentiality order, and also denied extending the deadlines for the defendants' invalidity and non-infringement contentions. At issue was the scope of the FDA and patent prosecution bars in the confidentiality order.

The parties wrote to the court on the due date for the confidentiality order, which was also the day before the defendants' contentions were due, to seek extensions to the case deadlines and to provide proposed dates for briefing the dispute. According to the letter, the parties had been "working diligently" but had reached an impasse about the scope of the FDA and patent prosecution bars. The parties' proposals included requiring the defendants to serve their contentions on the day after the court resolved the dispute and entered a confidentiality order. Furthermore, the parties proposed adjusting subsequent case deadlines accordingly.

The court rejected the parties' request, and explained that it expected counsel to resolve issues such as patent prosecution bars without the court's assistance. The court granted the parties additional time to submit a fully consented confidentiality order but did not adjust the other case deadlines. Instead, the court explained that under the local patent rules, a party could produce any discovery and disclosures that the party deemed to be confidential as outside counsel's attorney's eyes only.

Practice Tip

Courts typically have busy dockets, often with heavy workloads to manage to keep cases progressing. With less time available for courts to resolve disputes, parties should pick their battles carefully. Parties should make every possible effort to resolve discovery disputes, including disputes over the terms of a confidentiality order, before seeking the court's assistance. In cases where the litigants are sophisticated and the issues are well-trodden, judicial efficiency counsels against intervening in what are likely the more routine aspects of discovery.

Tanabe Pharma Corp. f/k/a Mitsubishi Tanabe Pharma Corp. v. Shanghai Auzone Bio. Tech. Co., Ltd., No. 2-25-cv-03326 (D.N.J. Mar. 4, 2026)

Categories

Patent Litigation

Patent Infringement

Patent Law

[Subscribe to the IP Newsflash Blog Series >](#)

© 2026 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. Attorney advertising. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. Prior results do not guarantee a similar outcome. Akin is the practicing name of Akin Gump LLP, a New York limited liability partnership authorized and regulated by the Solicitors Regulation Authority under number 267321. A list of the partners is available for inspection at Eighth Floor, Ten Bishops Square, London E1 6EG. For more information about Akin Gump LLP, Akin Gump Strauss Hauer & Feld LLP and

other associated entities under which the Akin Gump network operates worldwide, please see our Legal Notices page.