

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

CEPHALON, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 15-404-GMS
)	
APOTEX, INC. and APOTEX CORP.,)	
)	
Defendants.)	

[PROPOSED] SCHEDULING ORDER

This _____ day of _____ 20____, the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) and Other Initial Disclosures.** Unless otherwise agreed to by the parties, they shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) and on or before February 10, 2016.
2. **Joinder of other Parties and Amendment of Pleadings.** Unless otherwise agreed to by the parties, all motions to join other parties shall be filed on or before April 11, 2016 and all motions to amend the pleadings shall be filed on or before June 10, 2016.
3. **Markman Claim Construction Hearing.** The Court construed the terms of the patents-in-suit in C.A. No. 13-2046-GMS and the ruling from that action shall apply here.
4. **Discovery.** The parties' document production shall be substantially completed on or before June 17, 2016. All fact discovery in this case shall be initiated so that it will be completed on or before July 29, 2016. Opening expert reports on issues on which a party bears

the burden of proof shall be served on or before September 16, 2016. Rebuttal expert reports shall be served on or before October 19, 2016. Reply expert reports only as to objective indicia of nonobviousness, if raised, shall be served on or before November 4, 2016. Expert Discovery in this case shall be initiated so that it will be completed on or before January 27, 2017.

a. **Discovery and Scheduling Matters.** Should counsel find they are unable to resolve a discovery¹ or scheduling matter, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the teleconference, the parties shall file with the court, via electronic means (CM/ECF), a **Joint Letter Agenda**, which is **non-argumentative**, not to exceed two (2) pages outlining the issue(s) in dispute. A sample letter can be located on this court's website at www.ded.uscourts.gov. After the parties have had three (3) discovery teleconferences, a party will be required to show good cause why the court should permit another discovery teleconference as to that party. Should the court find further briefing necessary upon conclusion of the telephone conference, unless otherwise directed, the party seeking relief shall file with the court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no more than **TWO PAGES**. The party seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

b. **Discovery Limitations.** The parties agree to adhere to the limitations on discovery set forth in the Federal Rules of Civil Procedure, the Local Rules, and Paragraph 4(e) of the Court's Default Discovery Standard, except as further ordered by the Court, and except

¹ Unless the court otherwise orders, should counsel be unable to agree on the discovery of paper and electronic documents, the court's "Default Standard for Discovery, Including Discovery of Electronically Stored Information" ("ESI") shall govern.

that:

- i. **Requests for Admission:** Each party shall be limited to fifty (50) requests for each defendant group, except for the purpose of authenticity.
- ii. **Fact Depositions:** Each party shall be limited to ten (10) fact depositions. A deposition taken pursuant to Federal Rule of Civil Procedure 30(b)(6) shall count as a single deposition toward the 10-deposition limit despite the number of deposition topics. Each deposition will be limited to 7 hours in length of on-the-record time. Each 7 hours of on-the-record time of testimony pursuant to Federal Rule of Civil Procedure 30(b)(6) shall count as one deposition. The parties will discuss and work together in good faith concerning any requests to adjust the length of any particular deposition in excess of the limits described above. For any deposition conducted in a language other than English, each hour of on-the-record time will be counted as one half hour for purposes of the above limits. The parties each reserve their right to seek relief from the Court to limit the length of any particular deposition or take depositions in excess of the limits described above.
- iii. **Third-Party Subpoenas:** Any party which serves a subpoena upon a third party will simultaneously serve a copy of such subpoena upon every other party. Moreover, any party that receives documents from a third party pursuant to a subpoena will reproduce those documents to

the other parties within ten (10) days. Where reproduction of documents within the above time frame is not possible, the party that received the documents will provide immediate notice to the other parties and the issue will be resolved by the parties on a case-by-case basis.

- iv. **Expert Depositions:** The parties agree that expert depositions will not count towards the fact deposition limits defined above. The parties agree that each expert deposition will be limited to 7 hours in length of on-the-record time per issue addressed by an expert. For example, if an expert is testifying as to validity and infringement, each issue will be subject to a separate 7 hour length. The parties will work together in good faith to determine the length of time for each expert deposition after expert reports have been served.

5. **Confidential Information and Papers filed under Seal.** Should counsel find it will be necessary to apply to the court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the court within ten days from the date of this order. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

6. **Settlement Conference.** Pursuant to 28 U.S.C. § 636, this matter is referred to the United States Magistrate Judge for the purpose of exploring the possibility of a settlement. The parties shall wait to be contacted by the assigned United States Magistrate Judge.

7. **Applications by Motion.** Except as provided in this Scheduling Order or for

matters relating to scheduling, any application to the Court shall be by written motion filed, via electronic means (CM/ECF). Unless otherwise requested by the Court, counsel shall **not** deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

8. **Oral Argument.** If the Court believes that oral argument is necessary, the Court will schedule a hearing Pursuant to District of Delaware Local Rule 7.1.4.

9. **Pretrial Conference.** On March 30, 2017, beginning at 10:00 a.m., the Court will hold a Pretrial Conference via teleconference with counsel. Unless otherwise ordered by the Court, the parties should assume that filing the Joint Pretrial Order satisfies the pretrial disclosure requirement in Federal Rule of Civil Procedure 26(a)(3). A sample form of Pretrial Order can be located on this court's website at www.ded.uscourts.gov. Thirty (30) days before the Joint Proposed Pretrial Order is due, Plaintiff's counsel shall forward to defendant's counsel a draft of the pretrial order containing the information Plaintiff proposes to include in the draft. Defendant's counsel shall, in turn, provide to Plaintiff's counsel any comments on the Plaintiff's draft, as well as the information defendant proposes to include in the proposed pretrial order.

Motions in limine²: NO MOTIONS IN LIMINE SHALL BE FILED; instead, the parties shall be prepared to address their evidentiary issues at the Pretrial Conference and during trial (before and after the trial day). The parties shall file with the court the joint Proposed Final Pretrial Order in accordance with the terms and with the information required by the form of Final Pretrial Order, which can be located on this court's website at www.ded.uscourts.gov on or before February 27, 2017.

10. **Trial.** This matter is scheduled for a 5-day (jury or bench) bench trial beginning

²The parties should simply list, in an Exhibit to be attached to the Pretrial order, the issues under a heading such as "Plaintiff's [name of party] List of Evidentiary Issues It Intends To Raise."

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