

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET
P.O. BOX 1347
WILMINGTON, DELAWARE 19899-1347

(302) 658-9200
(302) 658-3989 FAX

DEREK J. FAHNESTOCK
(302) 351-9347
dfahnestock@mnat.com

December 19, 2018

The Honorable Leonard P. Stark
U.S. District Court
for the District of Delaware
844 North King Street
Wilmington, DE 19801

VIA ELECTRONIC FILING

Re: *Bayer HealthCare LLC, et al. v. Teva Pharmaceuticals USA, Inc., et al.,*
C.A. No. 16-1221 (LPS)(Consolidated)

Bayer HealthCare LLC, et al. v. Apotex Inc., et al., C.A. No. 18-1465 (LPS)

Dear Chief Judge Stark:

We write on behalf of Plaintiffs Bayer HealthCare LLC and Bayer HealthCare Pharmaceuticals, Inc. (collectively, “Bayer”) and Defendants Apotex Inc. and Apotex Corp. (“Apotex”) concerning the above captioned cases.¹ The parties respectfully request that Court consolidate the cases for all purposes, with a trial in November 2019 or shortly thereafter. A proposed Amended Scheduling and Consolidation Order is attached as Exhibit A.

On December 16, 2016, and March 18, 2017, Bayer sued Apotex for infringement of U.S. Patent Nos. 8,637,553 (the “’553 patent”) and 9,458,107 (the “’107 patent”) in C.A. Nos. 16-1222 and 17-334, respectively. See C.A. No. 16-1222-LPS, D.I. 1; C.A. 17-334-LPS, D.I. 1. The Orange Book lists the ’553 and ’107 patents in connection with Bayer’s Stivarga® product. On December 12, 2017, the Court consolidated those cases with C.A. No. 16-1221. See C.A. No. 16-1221, D.I. 26. Trial in C.A. No. 16-1221 is scheduled to begin on June 10, 2019.

On November 9, 2018, Bayer sued Apotex in a related case for infringement of U.S. Patent No. 9,957,232 (the “’232 patent”). See C.A. No. 18-1465-LPS, D.I. 1. The Orange Book also lists the ’232 patent in connection with Stivarga®.

¹ Teva Pharmaceuticals USA, Inc. (“Teva”), was formerly a party to C.A. No. 16-1221. However, Bayer and Teva settled and dismissed all claims and counterclaims against each other, leaving Apotex as the only remaining Defendant group. See D.I. 99.

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Given the inter-relationship between the two cases, the parties respectfully submit that it would be most efficient for the Court and the parties to consolidate C.A. Nos. 16-1221 and 18-1465 for all purposes, vacate the June 2019 trial date for C.A. No. 16-1221, and hold a single trial for the new consolidated action in November 2019 or shortly thereafter, as the Court's calendar permits. The proposed Amended Scheduling and Consolidation Order includes the relevant deadlines.

The parties are available to discuss further should the Court desire.

Respectfully,

/s/ Derek J. Fahnestock

Derek J. Fahnestock (#3208)

DJF:nf

Enclosure

cc: Clerk of Court (by hand delivery)
All Counsel of Record (by e-mail)