

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

BAYER HEALTHCARE LLC and BAYER	)	
HEALTHCARE PHARMACEUTICALS	)	
INC.,	)	
	)	
Plaintiffs,	)	
	)	C.A. No. 16-1221 (LPS)
v.	)	CONSOLIDATED
	)	
TEVA PHARMACEUTICALS USA, INC.,	)	
et al.,	)	
	)	
Defendants.	)	
<hr/>		
BAYER HEALTHCARE LLC and BAYER	)	
HEALTHCARE PHARMACEUTICALS	)	
INC.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 18-1465 (LPS)
	)	
APOTEX INC. and APOTEX CORP.,	)	
	)	
Defendants.	)	

~~**PROPOSED**~~ **AMENDED SCHEDULING AND CONSOLIDATION ORDER**

This 28<sup>th</sup> day of December 2018, the Court having conducted a Case Management Conference/Rule 16 scheduling and planning conference pursuant to Local Rule 16.1 and Judge Stark's Revised Procedures for Managing Patent Cases (which is posted at <http://www.del.uscourts.gov>; see Chambers, Judge Leonard P. Stark, Patent Cases) on \_\_\_\_\_, and the parties having determined after discussion that these matters cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

*(LPS)*

IT IS ORDERED that:

1. Case No. 16-cv-1221-LPS (consolidated) and Case No. 18-cv-1465-LPS are hereby consolidated for all purposes, including for trial, pursuant to Fed. R. Civ. P. 42(a). All filings shall be made only in Case No. 16-cv-1221-LPS (consolidated).

2. Rule 26(a)(1) Initial Disclosures and E-Discovery Default Standard. The parties have made their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) as to the U.S. Patent No. 8,637,553 (the '553 patent) and U.S. Patent No. 9,458,107 ("the '107 patent). Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) as to U.S. Patent No. 9,957,232 ("the '232 patent") within ten (10) business days of the date of this Order.

3. Joinder of Other Parties and Amendment of Pleadings. The deadline for motions to join other parties or amend or supplement the pleadings with respect to the '553 and '107 patents has already passed. As to the '232 patent, all motions to join other parties, and to amend or supplement the pleadings, as well as any similar motions, shall be filed on or before **January 11, 2019**.

4. Application to Court for Protective Order. On December 20, 2017, the Court entered the parties' Stipulated Protective Order in Case No. 16-cv-1221 (D.I. 32). That Order shall govern the consolidated actions, including Case No. 18-cv-1465-LPS.

5. Papers Filed Under Seal. In accordance with section G of the Administrative Procedures Governing Filing and Service by Electronic Means, a redacted version of any sealed document shall be filed electronically within seven (7) days of the filing of the sealed document.

Should any party intend to request to seal or redact all or any portion of a transcript of a court proceeding (including a teleconference), such party should expressly note that intent at the start of the court proceeding. Should the party subsequently choose to make a request for sealing

or redaction, it must, promptly after the completion of the transcript, file with the Court a motion for sealing/redaction, and include as attachments (1) a copy of the complete transcript highlighted so the Court can easily identify and read the text proposed to be sealed/redacted, and (2) a copy of the proposed redacted/sealed transcript. With their request, the party seeking redactions must demonstrate why there is good cause for the redactions and why disclosure of the redacted material would work a clearly defined and serious injury to the party seeking redaction.

6. Courtesy Copies. Other than with respect to “discovery matters,” which are governed by paragraph 8(g), and the final pretrial order, which is governed by paragraph 16, the parties shall provide to the Court two (2) courtesy copies of all briefs and one (1) courtesy copy of any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal.

7. ADR Process. This matter is has already been referred to Magistrate Judge Burke to explore the possibility of alternative dispute resolution. *See* C.A. 16-cv-1221-LPS, D.I. 22 (Order Setting Mediation Conference).

8. Discovery. Unless otherwise ordered by the Court, the limitations on discovery set forth in Local Rule 26.1 shall be strictly observed.

a. Discovery Cut Off. The parties dispute whether the deadline for fact discovery for the '553 and '107 patents has elapsed; to the extent there is an issue that requires Court attention, the parties will raise it with the Court. All fact discovery in this case relating to the '232 patent shall be completed by April 15, 2019.

b. Document and Sample Production. Production of documents and samples relating to the '232 patent shall be completed on a rolling basis and in time to complete fact discovery by April 15, 2019.

c. Requests for Admission. A maximum of **ten (10)** requests for admission relating to the '232 patent are permitted for each side.

d. Interrogatories.

i. A maximum of **ten (10)** interrogatories, including contention interrogatories, relating to the '232 patent are permitted for each side.

ii. The Court encourages the parties to serve and respond to contention interrogatories early in the case. In the absence of agreement among the parties, contention interrogatories, if filed, shall first be addressed by the party with the burden of proof. The adequacy of all interrogatory answers will be judged by the level of detail each party provides; i.e., the more detail a party provides, the more detail a party shall receive.

e. Depositions.

i. Limitation on Deposition Discovery. As to the '232 patent, each side shall be entitled to no more than four (4) depositions of fact witnesses pursuant to Rule 30(b)(1), and one (1) deposition notice pursuant to Rule 30(b)(6). If a deponent testifies wholly or substantially through an interpreter, the party taking the deposition

shall be permitted, on a pro rata basis, 1.5 hours of deposition time for each hour spent testifying through the interpreter.

- ii. Location of Depositions. The parties shall meet and confer regarding the locations of depositions, taking into account convenience for the deponent.
- f. Disclosure of Expert Testimony.
  - i. Expert Reports. For the party who has the initial burden of proof on the subject matter (for Plaintiffs, infringement, and for Defendants, any invalidity defense(s)), the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before **May 15, 2019**. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before **July 24, 2019**. Reply expert reports limited to Defendants' responses on objective indicia of nonobviousness are due on or before **August 21, 2019**. For clarity, in the event that Defendants raise a defense based on obviousness or obviousness-type double patenting, Defendants need not address evidence of secondary considerations in its opening round of expert reports; rather, secondary considerations shall be addressed by Plaintiffs in the second round of expert reports, and Defendants shall respond to such evidence in the reply round of expert reports. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the

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