

# EXHIBIT A

**From:** [Grossman, Dov](#)  
**To:** [Kouyoumdjian, Philip Y.](#)  
**Cc:** [Genderson, Bruce](#); [Perlman, Adam](#); [Rydstrom, Jessica](#); [Bowers, Seth](#); [Picozzi, Ben](#); [Ruzich, Richard T.](#); [Scott, Ian](#); [araucci@MNAT.com](#)  
**Subject:** RE: Stivarga Schedule  
**Date:** Monday, March 25, 2019 9:43:19 AM

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Phil,

I write in advance of our meet-and-confer call on Tuesday at 11:00 am ET. A dial in number is below. Again, please make sure that Apotex's local counsel is on the call.

As reflected in my prior email correspondence, you had previously represented that Apotex had unexpired samples of its ANDA Product and that you would produce them in connection with this litigation. Bayer relied on that representation in agreeing to the schedule in this action—including Bayer's agreement to consolidate the suit concerning the '232 patent with the existing case involving the '553 and '107 patents—as well as the scope of discovery regarding the '232 patent. You subsequently informed me on March 12, 2019 that Apotex, in fact, did not have unexpired samples of its ANDA Product. I understand that you have taken a different position about what you represented, and I do not intend to debate that point here. I will note, however, that you informed us just last week that Apotex's samples expired in March 2018, which was months before the parties even began negotiating the revised schedule and long before you notified us in March 2019 that Apotex only had expired samples of its ANDA Product. Yet Apotex had known since our letter in August 2018 regarding the '232 patent that Bayer's intention was to obtain unexpired samples of the ANDA Product and test them.

Nevertheless, we have asked you whether Apotex would produce new samples of its ANDA Product so that we may test them. You have refused to do so. We asked (on the March 12 call) whether you would treat the expired samples as representative of the unexpired product, but you would not agree to that either. We asked when Apotex planned to prepare additional samples of its ANDA Product, but apparently that will not be done any time in the near future. We further inquired on what basis you believe you can challenge infringement while simultaneously refusing to provide us with unexpired samples of Apotex's ANDA Product, but you have not directly answered that question.

In light of the foregoing, there appear to be two options. The first is that, given the sequence of events here, Apotex should produce samples of its ANDA Product; if it refuses to do so, then Apotex should be barred from challenging infringement of the '232 patent. The second possibility, as an alternative, is that the litigation involving the '232 patent should be severed from the remainder of the case, and then stayed until which point in time Apotex produces new samples of its ANDA Product. Apotex would give Bayer advance notice of when it intends to produce such samples to allow Bayer time to prepare to test them, and then Apotex would immediately provide samples to Bayer once they are ready. The results of such testing would then set the course for what next steps would be necessary to resolve the dispute between Bayer and Apotex regarding the '232 patent.

Please be prepared to address these discovery/scheduling issues during the parties' call. Should Apotex fail to agree to produce unexpired samples of the ANDA Product during that call, we intend to promptly raise these issues with the Court.

Please use the following dial in number:

888-759-6037  
2024345812

Regards,  
Dov

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**From:** Kouyoumdjian, Philip Y. [mailto:[pkouyoumdjian@taftlaw.com](mailto:pkouyoumdjian@taftlaw.com)]  
**Sent:** Friday, March 22, 2019 4:39 PM  
**To:** Grossman, Dov <[DGrossman@wc.com](mailto:DGrossman@wc.com)>  
**Cc:** Genderson, Bruce <[BGenderson@wc.com](mailto:BGenderson@wc.com)>; Perlman, Adam <[APerlman@wc.com](mailto:APerlman@wc.com)>; Rydstrom, Jessica <[JRydstrom@wc.com](mailto:JRydstrom@wc.com)>; Bowers, Seth <[SBowers@wc.com](mailto:SBowers@wc.com)>; Picozzi, Ben <[BPicozzi@wc.com](mailto:BPicozzi@wc.com)>; Ruzich, Richard T. <[rruzich@taftlaw.com](mailto:rruzich@taftlaw.com)>; Scott, Ian <[iscott@taftlaw.com](mailto:iscott@taftlaw.com)>; araucci@MNAT.com  
**Subject:** RE: Stivarga Schedule

Dov, we will be available on Tuesday at 11 am.

## Taft /

**Philip Y. Kouyoumdjian** / Partner  
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**From:** Grossman, Dov <[DGrossman@wc.com](mailto:DGrossman@wc.com)>

**Sent:** Friday, March 22, 2019 4:06 PM

**To:** Kouyoumdjian, Philip Y. <[pkouyoumdjian@taftlaw.com](mailto:pkouyoumdjian@taftlaw.com)>

**Cc:** Genderson, Bruce <[BGenderson@wc.com](mailto:BGenderson@wc.com)>; Perlman, Adam <[APerlman@wc.com](mailto:APerlman@wc.com)>; Rydstrom, Jessica <[JRydstrom@wc.com](mailto:JRydstrom@wc.com)>; Bowers, Seth <[SBowers@wc.com](mailto:SBowers@wc.com)>; Picozzi, Ben <[BPicozzi@wc.com](mailto:BPicozzi@wc.com)>; Ruzich, Richard T. <[rruzich@taftlaw.com](mailto:rruzich@taftlaw.com)>; Scott, Ian <[iscott@taftlaw.com](mailto:iscott@taftlaw.com)>; [araucci@MNAT.com](mailto:araucci@MNAT.com)

**Subject:** RE: Stivarga Schedule

Phil - I am not available Monday but could do other times on Tuesday after 1030 am.

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**From:** "Kouyoumdjian, Philip Y." <[pkouyoumdjian@taftlaw.com](mailto:pkouyoumdjian@taftlaw.com)>

**Sent:** Mar 22, 2019 3:56 PM

**To:** "Grossman, Dov" <[DGrossman@wc.com](mailto:DGrossman@wc.com)>

**Cc:** "Genderson, Bruce" <[BGenderson@wc.com](mailto:BGenderson@wc.com)>; "Perlman, Adam" <[APerlman@wc.com](mailto:APerlman@wc.com)>; "Rydstrom, Jessica" <[JRydstrom@wc.com](mailto:JRydstrom@wc.com)>; "Bowers, Seth" <[SBowers@wc.com](mailto:SBowers@wc.com)>; "Picozzi, Ben" <[BPicozzi@wc.com](mailto:BPicozzi@wc.com)>; "Ruzich, Richard T." <[rruzich@taftlaw.com](mailto:rruzich@taftlaw.com)>; "Scott, Ian" <[iscott@taftlaw.com](mailto:iscott@taftlaw.com)>; "Raucci, Anthony D." <[araucci@MNAT.com](mailto:araucci@MNAT.com)>

**Subject:** RE: Stivarga Schedule

Dov,

Are you available on Monday for the m&c?

Best,

Phil

Taft /

Philip Y. Kouyoumdjian / Partner

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**From:** Grossman, Dov <[DGrossman@wc.com](mailto:DGrossman@wc.com)>

**Sent:** Friday, March 22, 2019 2:20 PM

**To:** Kouyoumdjian, Philip Y. <[pkouyoumdjian@taftlaw.com](mailto:pkouyoumdjian@taftlaw.com)>

**Cc:** Genderson, Bruce <[BGenderson@wc.com](mailto:BGenderson@wc.com)>; Perlman, Adam <[APerlman@wc.com](mailto:APerlman@wc.com)>; Rydstrom, Jessica <[JRydstrom@wc.com](mailto:JRydstrom@wc.com)>; Bowers, Seth <[SBowers@wc.com](mailto:SBowers@wc.com)>; Picozzi, Ben <[BPicozzi@wc.com](mailto:BPicozzi@wc.com)>; Ruzich, Richard T. <[rruzich@taftlaw.com](mailto:rruzich@taftlaw.com)>; Scott, Ian <[iscott@taftlaw.com](mailto:iscott@taftlaw.com)>; Raucci, Anthony D. <[araucci@MNAT.com](mailto:araucci@MNAT.com)>

**Subject:** RE: Stivarga Schedule

Phil,

Please let us know whether you are available for a meet and confer call with local counsel on Tuesday at 1:30 pm ET. We would like to discuss next steps given Apotex's positions and representations with respect to unexpired samples of its ANDA Product.

Regards,

Dov

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**From:** "Kouyoumdjian, Philip Y." <[pkouyoumdjian@taftlaw.com](mailto:pkouyoumdjian@taftlaw.com)> <<mailto:pkouyoumdjian@taftlaw.com>>>

**Sent:** Mar 22, 2019 11:53 AM

**To:** "Grossman, Dov" <[DGrossman@wc.com](mailto:DGrossman@wc.com)> <<mailto:DGrossman@wc.com>>>

**Cc:** "Genderson, Bruce" <[BGenderson@wc.com](mailto:BGenderson@wc.com)> <<mailto:BGenderson@wc.com>>>; "Perlman, Adam" <[APerlman@wc.com](mailto:APerlman@wc.com)> <<mailto:APerlman@wc.com>>>; "Rydstrom, Jessica" <[JRydstrom@wc.com](mailto:JRydstrom@wc.com)> <<mailto:JRydstrom@wc.com>>>; "Bowers, Seth" <[SBowers@wc.com](mailto:SBowers@wc.com)> <<mailto:SBowers@wc.com>>>; "Picozzi, Ben" <[BPicozzi@wc.com](mailto:BPicozzi@wc.com)> <<mailto:BPicozzi@wc.com>>>; "Ruzich, Richard T." <[rruzich@taftlaw.com](mailto:rruzich@taftlaw.com)> <<mailto:rruzich@taftlaw.com>>>; "Scott, Ian" <[iscott@taftlaw.com](mailto:iscott@taftlaw.com)> <<mailto:iscott@taftlaw.com>>>

**Subject:** RE: Stivarga Schedule

Dov,

We have already addressed your first question. Your request that Apotex make new, unexpired product is unreasonable and is completely outside the scope of Apotex's discovery obligations. As we have discussed, Apotex is in the process of providing you with samples of each of the three expired batches of its ANDA product.

Regarding your second inquiry, we understand that no new ANDA product is scheduled to be prepared. We have reached out to our client to confirm this.

Best,

Phil

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**From:** Grossman, Dov <[DGrossman@wc.com](mailto:DGrossman@wc.com)> <<mailto:DGrossman@wc.com>>>

**Sent:** Thursday, March 21, 2019 11:46 AM

To: Kouyoumdjian, Philip Y. <[pkouyoumdjian@taftlaw.com](mailto:pkouyoumdjian@taftlaw.com)<<mailto:pkouyoumdjian@taftlaw.com>>>  
Cc: Genderson, Bruce <[BGenderson@wc.com](mailto:BGenderson@wc.com)<<mailto:BGenderson@wc.com>>>; Perlman, Adam <[APerlman@wc.com](mailto:APerlman@wc.com)<<mailto:APerlman@wc.com>>>; Rydstrom, Jessica <[JRydstrom@wc.com](mailto:JRydstrom@wc.com)<<mailto:JRydstrom@wc.com>>>; Bowers, Seth <[SBowers@wc.com](mailto:SBowers@wc.com)<<mailto:SBowers@wc.com>>>; Picozzi, Ben <[BPicozzi@wc.com](mailto:BPicozzi@wc.com)<<mailto:BPicozzi@wc.com>>>; Ruzich, Richard T. <[rruzich@taftlaw.com](mailto:rruzich@taftlaw.com)<<mailto:rruzich@taftlaw.com>>>; Scott, Ian <[iscott@taftlaw.com](mailto:iscott@taftlaw.com)<<mailto:iscott@taftlaw.com>>>  
Subject: RE: Stivarga Schedule

Phil,

We have some follow-up questions in light of your email:

1) Am I correct that Apotex will not prepare new samples of its ANDA Product now so that we may test them? If so, what is the basis for Apotex's refusal?

2) If Apotex will not prepare new samples of its ANDA Product now, when does Apotex anticipate it will prepare new samples of its ANDA Product?

Please let us know the answers promptly, and no later than the end of this week, so that we can determine how to proceed given Apotex's prior representations.

Regards,  
Dov

From: Kouyoumdjian, Philip Y. [<mailto:pkouyoumdjian@taftlaw.com>]  
Sent: Wednesday, March 20, 2019 10:35 AM  
To: Grossman, Dov <[DGrossman@wc.com](mailto:DGrossman@wc.com)<<mailto:DGrossman@wc.com>>>>  
Cc: Genderson, Bruce <[BGenderson@wc.com](mailto:BGenderson@wc.com)<<mailto:BGenderson@wc.com>>>>; Perlman, Adam <[APerlman@wc.com](mailto:APerlman@wc.com)<<mailto:APerlman@wc.com>>>>; Rydstrom, Jessica <[JRydstrom@wc.com](mailto:JRydstrom@wc.com)<<mailto:JRydstrom@wc.com>>>>; Bowers, Seth <[SBowers@wc.com](mailto:SBowers@wc.com)<<mailto:SBowers@wc.com>>>>; Picozzi, Ben <[BPicozzi@wc.com](mailto:BPicozzi@wc.com)<<mailto:BPicozzi@wc.com>>>>; Ruzich, Richard T. <[rruzich@taftlaw.com](mailto:rruzich@taftlaw.com)<<mailto:rruzich@taftlaw.com>>>>; Scott, Ian <[iscott@taftlaw.com](mailto:iscott@taftlaw.com)<<mailto:iscott@taftlaw.com>>>>  
Subject: RE: Stivarga Schedule

Dov,

In our response to your March 14 email, we requested a meet and confer if you intended to seek to bar Apotex from contesting infringement. We do not agree that responding to the three questions in your email of March 15 is a necessary precursor to holding this meet and confer.

In the spirit of cooperation, however, we provide the following responses:

1) On what date did Apotex's samples of its ANDA Product expire?

RESPONSE: March 2018.

2) What criteria are being used to determine whether the samples of Apotex's ANDA Product are expired and who set/determined those criteria?

RESPONSE: See, e.g., <https://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm366082.pdf>

3) On what basis do you believe you can contest infringement with respect to the '232 patent and yet fail to provide us with unexpired samples of Apotex's ANDA Product?

RESPONSE: This inquiry is an improper contention interrogatory to which we have already responded. See Apotex's responses to Plaintiffs' First Set of Interrogatories with respect to the '232 patent. Apotex reserves its right to supplement these and other responses.

We are available to meet and confer on these issues.

Best,  
Phil

From: Grossman, Dov <[DGrossman@wc.com](mailto:DGrossman@wc.com)<<mailto:DGrossman@wc.com>>>>  
Sent: Friday, March 15, 2019 8:28 AM  
To: Kouyoumdjian, Philip Y.  
<[pkouyoumdjian@taftlaw.com](mailto:pkouyoumdjian@taftlaw.com)<<mailto:pkouyoumdjian@taftlaw.com>>>>



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