

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BAYER HEALTHCARE LLC and BAYER)	
HEALTHCARE PHARMACEUTICALS INC.,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 16-1221 (LPS)
)	CONSOLIDATED
APOTEX, CORP. and APOTEX, INC., et al.,)	
)	
Defendants.)	

JOINT STATUS REPORT

Pursuant to the Court’s Order dated April 20, 2020, the parties provide the following joint status report regarding the above-captioned consolidated case:

1. In light of the current state of emergency, the parties submit that the June 22, 2020 trial will need to be rescheduled. The parties note the following: (a) two of Bayer’s testifying experts are senior citizens, one of whom is located in the United Kingdom; (b) the spouse of one of Bayer’s expert witnesses, in addition to being a senior citizen, has significant underlying health conditions that place her at great risk should she become infected with COVID-19; (c) a Bayer fact witness and an in-house Bayer counsel responsible for managing the litigation are located in Germany. The parties recognize that these issues present health risks and considerable logistical complications (including due to restrictions on international travel) that interfere with trial preparation and render unrealistic the possibility of commencing trial as scheduled.

2. With regard to rescheduling the trial, Apotex has filed a Paragraph III certification to a blocking patent that is listed in the Orange Book and does not expire until June 28, 2022. See D.I. 135. Given this fact, Bayer believes that in order to allow time for the current public

health situation to stabilize, trial should be scheduled for a date in May-June 2021, other than during the weeks of May 31 and June 7. Bayer's understanding is that the Court may have availability in its calendar during that timeframe. While Bayer appreciates Apotex's willingness to move the trial to August 2020 (as discussed below), Bayer respectfully submits that the time for a decision and mandate on appeal is not typically taken into account for purposes of setting a trial date—rather, the determinative factor is the timing of any stays or paragraph III certifications that affect FDA approval—and notes that there would be plenty of time for the Court to issue a decision well before June 2022 if the trial were held a full year earlier, in May-June 2021. Bayer also is concerned that the health situation is unlikely to stabilize in sufficient time to allow its senior citizen experts to safely attend an August 2020 trial, nor is there any certainty that international travel restrictions will be lifted in time. As such, Bayer submits that concerns regarding the public health emergency and the impediments to trial preparation should take precedence over Apotex's preferences to have both a district court and Federal Circuit decision by June 2022.

3. While Apotex is ready and able to maintain the currently-scheduled June 2020 trial dates, in the spirit of cooperation and to accommodate Bayer's witnesses, Apotex is willing to reschedule the trial to a later date. Apotex believes that it would be reasonable to reschedule the trial to a date beginning in August 2020. This would allow for an appellate decision mandate, if necessary, to be issued before the June 28, 2022 expiration of Bayer's 7,351,834 patent, and would lower the risk of potentially postponing this trial for the third time if a potential recurrence of the COVID-19 pandemic takes place during the winter flu season or even in May-June of next year. Apotex respectfully requests potential dates available in the Court's schedule beginning in August of 2020. To the extent trial is rescheduled to another date on or

around August 2020, but public health issues remain, Apotex would of course be amenable to further accommodations. To that end, Apotex proposes maintaining June 22nd as a date for a status call with the Court regardless of any rescheduled trial dates.

4. The parties are available at the Court's convenience to discuss rescheduling.

5. This matter is currently set for a five-day bench trial. D.I. 140. The parties request twelve hours per side for their trial presentations, subject to the Court's schedule.

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April 24, 2020