

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GEMAK TRUST,

Plaintiff,

v.

CHURCH & DWIGHT CO., INC.,

Defendant.

C.A. No. 18-1854-RGA

JURY TRIAL DEMANDED

~~PROPOSED~~ **SCHEDULING ORDER**

This ⁴3rd day of December, 2019, the Court having conducted an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1 (b), and 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)/ Paragraph 3 Initial Disclosures.** Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) **within ten (10) days of the date of this Order.**

The parties shall also make the following disclosures:

- a. Identification of Accused Products and Asserted Patents. Pursuant to Paragraph 4(a) of the Default Standard, by **December 10, 2019**, Plaintiff shall specifically identify the accused products and the asserted patents they assert are infringed by Defendant, and produce the file history for each asserted patent.

- b. Core Technical Documents. Pursuant to Paragraph 4(b) of the Default Standard, Defendant shall produce to Plaintiff, by **January 17, 2020**, core technical documents related to the accused products, including but not limited to operation manuals, product literature, schematics, and specifications.
- c. Infringement Contentions. Pursuant to Paragraph 4(c) of the Default Standard, Plaintiff shall produce to Defendant an initial claim chart relating each accused product to the asserted claims each product allegedly infringes by **February 10, 2020**.
- d. Invalidity Contentions. Pursuant to Paragraph 4(d) of the Default Discovery Standard, Defendant shall produce to Plaintiff its initial invalidity contentions for each asserted claim, as well as the related invalidating references (e.g., publications, manuals and patents) by **March 11, 2020**.

2. **Joinder of Other Parties and Amendment of Pleadings.** All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before **January 10, 2020**.

3. **Discovery.**
- a. **E-Service.** The parties agree that e-mail service shall be used for all purposes.
 - b. **Fact Discovery Cut Off.** All fact discovery in this case shall be initiated so that it will be completed on or before **September 4, 2020**.

c. **Document Production.** Document production shall be substantially complete by or before **May 1, 2020**.

d. **Requests for Admission.** A maximum of 50 requests for admission are permitted for each side, with the exception of requests for admission directed to the authentication of evidence, on which there is no limit.

e. **Interrogatories.** Plaintiff may serve 5 common interrogatories on Church & Dwight and Reckitt Benckiser.¹ Plaintiff may additionally serve up to 20 interrogatories on each defendant. Defendants Church & Dwight and Reckitt Benckiser may serve 5 common interrogatories on Plaintiff. Each defendant may additionally serve up to 20 interrogatories on Plaintiff.

f. **Depositions.**

i. **Limitation on Hours for Deposition Discovery.** Each party in each respective case is limited to a total of 70 hours of taking testimony by deposition upon oral examination. For purposes of clarity, Plaintiff is limited to a total of 70 hours of deposition testimony in each case (i.e., a maximum of 140 total hours). However, to the extent Plaintiff takes testimony of third-party witnesses, and such testimony may be used in both cases, the time spent associated with such testimony shall apply to Plaintiff's 70-hour limit in each case, and not just the case in which the deposition was noticed or subpoenaed. To the extent either Church & Dwight or Reckitt Benckiser take testimony of third-party witnesses, and the other defendant intends to use such testimony in its own case, the time spent associated with such testimony shall apply to each defendant's 70-hour limit, and not just the case in which the deposition was

¹ Reckitt Benckiser is the defendant in C.A. No. 18-1855-RGA, *GEMAK Trust v. Reckitt Benckiser LLC*.

noticed or subpoenaed. For the GEMAK Trustees, Gerald and Elizabeth Hinton, Defendants Church & Dwight and Reckitt Benckiser agree to make a good faith effort to attempt to coordinate to take a single joint Rule 30(b)(1) deposition of each trustee, without prejudice to taking a 30(b)(6) deposition of GEMAK Trust.

ii. **Location of Depositions.** Any party or representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district. Exceptions to this general rule may be made by order of the Court or by agreement of the parties. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

g. **Discovery Matters and Disputes Relating to Protective Orders.** Should counsel find they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall contact the Court's Case Manager to schedule an in-person conference/argument. Unless otherwise ordered, by no later than forty-eight hours prior to the conference/argument, the party seeking relief shall file with the Court a letter, not to exceed three pages, outlining the issues in dispute and its position on those issues. By no later than twenty-four hours prior to the conference/argument, any party opposing the application for relief may file a letter, not to exceed three pages, outlining that party's reasons for its opposition. Should any document(s) be filed under seal, a courtesy copy of the sealed document(s) must be provided to the Court within one hour of e-filing the document(s).

If a discovery-related motion is filed without leave of the Court, it will be denied without prejudice to the moving party's right to bring the dispute to the Court through the discovery matters procedures set forth in this Order.

4. **Application to Court for Protective Order**. 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, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court **within twenty-one (21) days from the date of this Order**. Should counsel be unable to reach an agreement on a proposed form of order, counsel must follow the provisions of Paragraph 3(g) above.

Any proposed protective order must include the following paragraph:

Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated as confidential pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

5. **Papers Filed Under Seal**. When filing papers under seal, counsel shall deliver to the Clerk an original and one copy of the papers. A redacted version of any sealed document shall be filed electronically within seven days of the filing of the sealed document.

6. **Courtesy Copies**. The parties shall provide to the Court two courtesy copies of all briefs and one 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. **Claim Construction Issue Identification**. On or before **March 18, 2020**, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction

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