

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Kowa Company, Ltd.,
Kowa Pharmaceuticals America, Inc., and
Nissan Chemical Industries, Ltd.,

Plaintiffs,

v.

Aurobindo Pharma Limited and
Aurobindo Pharma USA Inc.,

Defendants.

Civil Action No. 14-CV-2497 (PAC)

Kowa Company, Ltd.,
Kowa Pharmaceuticals America, Inc., and
Nissan Chemical Industries, Ltd.,

Plaintiffs,

v.

Amneal Pharmaceuticals, LLC,

Defendants.

Civil Action No. 14-CV-2758 (PAC)

Kowa Company, Ltd.,
Kowa Pharmaceuticals America, Inc., and
Nissan Chemical Industries, Ltd.,

Plaintiffs,

v.

Mylan Inc. and Mylan Pharmaceuticals
Inc.,

Defendants.

Civil Action No. 14-CV-2647 (PAC)

Kowa Company, Ltd.,
Kowa Pharmaceuticals America, Inc., and
Nissan Chemical Industries, Ltd.,

Plaintiffs,

v.

Zydus Pharmaceuticals (USA) Inc., and
Cadila Healthcare Ltd. (dba Zydus Cadila),

Defendants.

Civil Action No. 14-CV-2760 (PAC)

Kowa Company, Ltd.,
Kowa Pharmaceuticals America, Inc., and
Nissan Chemical Industries, Ltd.,

Plaintiffs,

v.

Orient Pharma Co., Ltd.,

Defendants.

Civil Action No. 14-CV-2759 (PAC)

Kowa Company, Ltd.,
Kowa Pharmaceuticals America, Inc., and
Nissan Chemical Industries, Ltd.,

Plaintiffs,

v.

Sawai USA, Inc., and
Sawai Pharmaceutical Co., Ltd.,

Defendants.

Civil Action No. 14-CV-5575 (PAC)

CIVIL CASE MANAGEMENT PLAN AND SCHEDULING ORDER

This Civil Case Management Plan, submitted in accordance with Rule 26(f), Fed. R. Civ. P., is adopted as the Scheduling Order of this Court in accordance with Rule

16(f), Fed. R. Civ. P.

1. All parties do not consent to conducting all further proceedings before a Magistrate Judge, including motions and trial. 28 U.S.C. § 636(c).
2. This case is not to be tried to a jury.
3. **Defendants' Proposal:** Parties may file amended pleadings or additional parties may be joined without leave of the Court on or before May 11, 2015.

Plaintiffs' Proposal: Parties may file amended pleadings or additional parties may be joined without leave of the Court on or before February 15, 2015.

Amended pleadings may not be filed and additional parties may not be joined thereafter without leave of Court.

4. Initial disclosures pursuant to Rules 26(a)(1), Fed. R. Civ. P., shall be completed no later than October 20, 2014.
5. All fact discovery shall be completed no later than October 5, 2015.
6. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. The following interim deadlines may be extended by the written consent of all parties without application to the Court, provided all fact discovery is completed by the date set forth in paragraph 5 above:
 - a. Initial requests for production of documents to be served not later than November 20, 2014.
 - b. **Defendants' Proposal:**

Document production of documents written in a foreign language shall be substantially complete by no later than February 5, 2015; document production of documents written in the English language shall be substantially complete by no later than March 27, 2015. Until a protective order is entered in this case, all documents and translations produced will be produced and maintained on an "outside attorney's eyes only" basis.

Plaintiffs' Proposal:

This provision is not necessary. Document production will be ongoing in good faith during fact discovery. Alternatively, plaintiffs propose the following alternative: Document production shall be substantially complete by June 5, 2015.

Protective Order:

The parties shall propose a protective order to the Court on or before November 20, 2014. Documents to be produced will be produced in accordance with the Protective Order adopted by the Court.

- c. Interrogatories to be served not later than September 4, 2015. The parties may commence serving Local Civil Rule 33.3(a) interrogatories on October 20, 2014. Defendants shall be permitted to serve up to 25 joint interrogatories on Plaintiffs. In addition, each Defendant shall be permitted to serve up to 10 individual interrogatories on Plaintiffs. Plaintiffs shall be permitted to serve up to 25 interrogatories on each Defendant (for clarity, e.g., Mylan Inc. and Mylan Pharmaceuticals Inc. shall be treated collectively as a single Defendant).

Defendants' Position:

Defendants believe that there is discrete factual information in Plaintiffs' possession, and which particularly will not require a need for later supplementation, that will bear on its invalidity defenses, such that an interrogatory is the most efficient means to secure the information (e.g., the circumstances relating to the conception of the invention(s) alleged in the asserted patents (and the date of such conception); and the reduction to practice of such invention; the basis for Plaintiffs' assertion that a particular party has standing to assert a patent at the time the Complaint was filed). Defendants likewise recognize that Plaintiffs may determine that there is information regarding Defendants' products as defined by the ANDA where it may be more efficient to secure an interrogatory response. In such circumstances, securing this information early may obviate the need for further avenues of discovery in the case and thus represent the most efficient way to secure the information.

After the disclosure of Preliminary Infringement and Invalidity Contentions, the parties are permitted to serve contention interrogatories seeking information responsive to those Contentions (i.e., Defendants may serve an interrogatory seeking Plaintiffs' contentions regarding issues related to validity, and Plaintiffs may serve an interrogatory seeking Defendants' contentions regarding non-infringement).

Plaintiffs' Position:¹

Contention interrogatories shall comply with Local Rule 33.3(c).

d. Depositions of fact witnesses to be completed by October 5, 2015.²

e. **Defendants' Proposal:**

Requests to Admit shall be limited to 50 per party (and, *e.g.*, the two Mylan defendants are to each be treated as a single party), to be served not later than September 30, 2015.

Plaintiffs' Position:

Requests to Admit should be governed by Fed. R. Civ. P. 36, and should be served by no later than September 5, 2015.

7. **Expert Discovery:**

¹ Plaintiffs note that this joint document is being submitted as a single, joint submission for the convenience of the Court. Plaintiffs note, though, that defendants have insisted on including various arguments on several topics, which plaintiffs do not believe are properly included in a proposed case management and discovery order. Rather than further unduly and prematurely burdening the Court, plaintiffs are refraining from including arguments on issues that plaintiffs do not believe are necessary or proper to include in a proposed case management and scheduling order.

² **Defendants' Additional Proposal:** Defendants note that there are a large number of inventors listed on the asserted patents who reside in a foreign country and may testify in a foreign language. As the Court is undoubtedly aware, it is difficult to schedule witnesses for depositions overseas, particularly in Japan, where depositions for all U.S. litigation is restricted to one or two small rooms at the U.S. Embassy in Tokyo or Osaka. It is Defendants' experience that a failure to meet and confer and resolve these issues very early in the case will result in delaying the schedule. (For example, there is no reason for the parties to wait to learn whether Plaintiffs' counsel represents the named inventors; and if so, whether the parties can reach agreement about whether the inventors will be deposed in the U.S.). These are issues that can be discussed now and need not wait for resolution. Thus, Defendants propose that the Court instruct Defendants and Plaintiffs to meet and confer regarding logistics and scheduling of depositions of witnesses who currently reside in a foreign country by no later than November 3, 2014, with a status report to be filed by November 7. If the parties are unable to agree on such provisions, Defendants expect to promptly ask the court for assistance with the foreign depositions.

Plaintiffs' Position: Singling out one aspect of complicated discovery is unnecessary and premature. Plaintiffs intend to cooperate in discovery and expect Defendants to do the same, and attempt to resolve any issues in good faith if and when they arise.

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