

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

In re Sitagliptin Phosphate ('708 & '921)  
Patent Litigation

C.A. No. 19-md-2902-RGA

MERCK SHARP & DOHME CORP.,

*Plaintiff,*

v.

C.A. No. 19-1489-RGA

MYLAN PHARMACEUTICALS INC.,

*Defendants.*

~~PROPOSED~~ SCHEDULING ORDER

This 23 day of August, 2019, the ~~Court~~ <sup>parties</sup> having ~~conducted~~ <sup>waived</sup> an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b),<sup>1</sup> and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

<sup>1</sup> This Order follows substantively identical scheduling orders dated June 28, 2019, in related actions, C.A. Nos. 19-310-RGA, 19-311-RGA, 19-312-RGA, 19-314-RGA, 19-316-RGA, 19-317-RGA, 19-318-RGA, 19-320-RGA, 19-321-RGA, and 19-347-RGA, involving the same products and patents. The parties have agreed that the schedule in the related actions should apply in this action. This Order thus provides for the same due dates as the scheduling orders in the related actions, but has been edited to account for due dates that have already passed.

Additionally, on August 8, 2019, the Judicial Panel on Multidistrict Litigation ordered the centralization of this action, the related actions, and *Merck Sharp & Dohme Corp. v. Mylan Pharmaceuticals Inc. et al.*, Case No. 19-cv-101-IMK (N.D. W. Va.), to the U.S. District Court for the District of Delaware for coordinated and consolidated proceedings. See Transfer Order, *In re Sitagliptin Phosphate ('708 & '921) Patent Litigation*, MDL No. 2902 (J.P.M.L. Aug. 8, 2019), ECF No. 56.

IT IS ORDERED that:

1. Rule 26(a)(1) Initial Disclosures. The parties have agreed to exchange their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) and Paragraph 3 of the Delaware Default Standard for Discovery on or before August 20, 2019.

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 February 14, 2020.

3. Discovery.

a. Fact Discovery Cut Off. All fact discovery in this case shall be initiated so that it will be completed on or before November 20, 2020.

b. Document Production. Document production shall be substantially complete by February 21, 2020.

c. Contentions. The parties shall make their initial disclosures under Paragraphs 3 and 4 in accordance with the Court's Default Standard for Discovery, Including Discovery of Electronically Stored Information ("the Default Standard").

- i. Plaintiff shall make its disclosures under Paragraph 4(a) of the Default Standard by August 20, 2019.
- ii. Defendant shall produce its core technical documents under Paragraph 4(b) of the Default Standard by August 23, 2019. At the same time Defendant produces its core technical documents, Defendant shall also produce the DMF for the sitagliptin API used in its proposed ANDA products, to the extent it is in Defendant's possession, custody, or control, or if Defendant able to obtain the DMF pursuant to a contractual right to the DMF with the DMF holder. If Defendant not in possession, custody,

or control of the DMF, and is not able to obtain the DMF pursuant to a contractual right with the DMF holder, the Defendant shall inform Plaintiff of that fact and identify the DMF holder at the same time it produces their core technical documents.

- iii. Plaintiff shall make its disclosure under Paragraph 4(c) of the Default Standard within 30 days after receiving Defendant's disclosure under Paragraph 4(b) of the Default Standard;
- iv. Defendant shall make its disclosures under Paragraph 4(d) of the Default Standard within 30 days after receiving Plaintiff's disclosure under Paragraph 4(c) of the Default Standard.
- v. The parties shall exchange supplemental infringement and invalidity contentions on October 14, 2020.

d. Samples. At the same time Defendant produces its core technical documents, Defendant shall also disclose to Plaintiff whether it is able to produce reasonable quantities of unexpired samples (unexpired as of the entry of this Scheduling Order) of its ANDA products and API to the extent such samples are in Defendant's possession, custody, or control, or if Defendant can obtain such samples pursuant to a contractual right with a supplier. On or before August 27, 2019, Defendant shall produce reasonable quantities of unexpired samples (unexpired as of the entry of this Scheduling Order) of the ANDA products and API to the extent such samples are in Defendant's possession, custody, or control, or if Defendants can obtain such samples due to a contractual right with a supplier. To the extent that Defendant is unable to produce such samples on or before August 27, 2019, Defendant shall inform Plaintiff at the same time Defendant produces its core technical documents and confer with Plaintiff as to a

reasonable extension of time to produce such samples. For clarity, if Defendant does not have unexpired samples (unexpired as of the entry of this Scheduling Order) of their ANDA Product and API in their possession, custody, or control, and cannot obtain such samples pursuant to a contractual right with a supplier, Defendant shall inform Plaintiff of those facts at the same time it produces its core technical documents.

e. Requests for Admission. Plaintiff may serve up to **15** requests for admission on the Defendant Groups collectively.<sup>2</sup> To the extent that a request for admission is served on the Defendant Groups collectively, that request for admission shall count as one request for admission even if multiple parties provide a distinct response. The Defendant Groups collectively may jointly serve up to **15** requests for admission on Plaintiff. In addition, each Defendant Group may serve on Plaintiff up to **15** individualized requests for admission, and Plaintiff may serve on each Defendant Group up to **15** individualized requests for admission. Any additional requests for admission may only be served with leave of Court. Any requests for admission directed to the authentication of documents are excluded from the limitations above.

f. Interrogatories. Plaintiff may serve up to **15** interrogatories on the Defendant Groups collectively. To the extent that an interrogatory is served on the Defendant Groups collectively, that interrogatory shall count as one interrogatory even if multiple parties provide a distinct response. The Defendant Groups collectively may jointly serve up to **15** interrogatories

---

<sup>2</sup> The Defendant Groups (in this action and the related actions) are: (1) Alvogen Pine Brook LLC F/K/A Alvogen Pine Brook, Inc. and Alvogen Malta Operations Ltd.; (2) Anchen Pharmaceuticals, Inc. and Par Pharmaceutical, Inc.; (3) Apotex Inc. and Apotex Corp.; (4) Lupin Limited and Lupin Pharmaceuticals, Inc.; (5) Macleods Pharmaceuticals Limited and Macleods Pharma USA, Inc.; (6) Mylan Pharmaceuticals, Inc.; (7) Sandoz Inc.; (8) Sun Pharma Global FZE and Sun Pharmaceutical Industries Ltd.; (9) Teva Pharmaceuticals USA, Inc.; (10) Torrent Pharmaceuticals Limited and Torrent Pharma Inc.; (11) Watson Laboratories, Inc. and Teva Pharmaceuticals USA, Inc.; (12) Wockhardt Bio AG and Wockhardt USA LLC; and (13) Zydus Pharmaceuticals (USA) Inc. and Cadila Healthcare Ltd.

on Plaintiff. In addition, each Defendant Group may serve on Plaintiff up to **10** individualized interrogatories, and Plaintiff may serve on each Defendant Group up to **10** individualized interrogatories. Any additional interrogatories may only be served with leave of Court.

g. Depositions.

i. Limitation on Hours for Deposition Discovery. Plaintiff is limited to 50 hours of taking fact deposition testimony upon oral examination per Defendant Group, including testimony of former Defendant Group employees.<sup>3</sup> The Defendant Groups collectively are limited to 130 hours of taking fact deposition testimony upon oral examination, including testimony of former Plaintiff employees. Any deposition lasting less than 5 hours will count as 5 hours against the total time of the side taking the deposition. These hour limits on fact depositions may be increased by Court order upon good cause shown. Depositions of inventors of the patents-in-suit who are designated as 30(b)(6) witnesses will be limited to 10 hours per inventor. Depositions of inventors of the patents-in-suit who are not designated as 30(b)(6) witnesses will be limited to 7 hours per inventor. Separate and apart from these hour limits on fact depositions, Plaintiff may depose each witness offered as an expert by a Defendant Group, and the Defendant Groups collectively may depose each witness offered as an expert by Plaintiff. If a deponent testifies wholly or substantially through an interpreter, the party taking the deposition shall be permitted, on a pro rata basis, two hours of deposition time for each hour spent testifying through the interpreter. For clarity, the hour limitations described in this paragraph do not apply to depositions of third-parties or expert witnesses.

ii. Location of Depositions. The parties shall meet and confer regarding the locations of depositions, taking into account convenience for the deponent.

---

<sup>3</sup> To the extent the same individual is deposed for more than one Defendant Group, there shall be a single deposition.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.