

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE: SITAGLIPTIN PHOSPHATE ('708
& '921) PATENT LITIGATION

MDL No. 19-2902-RGA

C.A. Nos. 19-310-RGA,
19-311-RGA,
19-312-RGA,
19-313-RGA,
19-314-RGA,
19-316-RGA,
19-317-RGA,
19-318-RGA,
19-319-RGA,
19-320-RGA,
19-321-RGA,
19-347-RGA,
19-872-RGA,
19-1489-RGA

**PLAINTIFF MERCK SHARP & DOHME CORP.'S
RESPONSES AND OBJECTIONS TO DEFENDANTS'
FIRST SET OF JOINT INTERROGATORIES (NOS. 1-10)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff Merck Sharp & Dohme Corp. ("Merck"), by undersigned counsel, hereby objects and responds as follows to Defendants' First Set of Joint Interrogatories.

GENERAL OBJECTIONS

Pursuant to D. Del. LR 26.1, Merck provides the following General Objections. These objections form a part of, and are hereby incorporated into, the response to each and every interrogatory set forth below. Nothing in those responses, including any failure to recite a specific objection in response to a particular interrogatory, should be construed as a waiver of any of these General Objections.

1. Merck objects to each interrogatory, definition, and instruction to the extent that it purports to impose obligations or responsibilities different from or in excess of those imposed by

the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware, or any other applicable rule, law, doctrine or accepted practice. Merck will interpret and respond to the interrogatories in good faith and in accordance with the rules.

2. Merck objects to each interrogatory, definition, and instruction to the extent that it calls for the disclosure of information or documents that are privileged or otherwise protected from discovery pursuant to the attorney-client privilege, the accountant-client privilege, the common-interest privilege, the work product doctrine, or any other applicable privilege, protection, or immunity. Merck does not agree to provide such information or documents protected from discovery and will withhold or redact information or documents on that basis. If protected information or documents are inadvertently provided in response to the interrogatories, pursuant to the parties' Stipulated Protective Order, D.I. 12, No. 19-md-2902-RGA, and Federal Rule of Evidence 502, the production of such information or documents shall not constitute a waiver of Merck's rights to assert the applicability of any privilege, protection, or immunity to the information or documents, to seek the return of such material, or to object to the use of such material at any stage of the action or in any other action or proceeding. Merck will comply with the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware in identifying privileged material, but Merck specifically objects to identifying on a privilege log communications between Merck and its litigation counsel, or documents or electronically stored information that were created after December 13, 2010, which was the date of the first Patent Certification Notice pursuant to Section 505(j)(2)(B)(ii) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 355(j)(2)(B)(ii), received by Merck indicating that a generic pharmaceutical company intended to market a sitagliptin product before the expiry of patents protecting Januvia®, Janumet®, Janumet® XR, and will not log such

documents. Merck further objects to logging documents or electronically stored information related to other United States or foreign litigations, as well as documents or electronically stored information related to foreign patent office proceedings or foreign regulatory filings or approvals, on the grounds that such materials are not relevant to the subject matter of this litigation and that logging them would be unduly burdensome, and will not log such documents or electronically stored information.

3. Merck objects to Defendants' Instruction No. 10 to the extent that it requires logging of more information than required by the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the District of Delaware, or any other applicable rules. Merck will comply and identify privileged material in a manner consistent with the foregoing rules.

4. Merck objects to Defendants' requests to the extent that they call for disclosure of trade secret, proprietary, personal, commercially sensitive, third-party confidential, or other confidential information. Merck will only disclose confidential information, including trade secret, proprietary, personal, commercially sensitive, third-party confidential, or other confidential information, that is responsive, relevant, and not otherwise protected, pursuant to the stipulated protective order, D.I. 12, No. 19-md-2902-RGA, and/or D. Del. LR 26.2. Merck may withhold information or documents on this basis, and Merck may redact confidential information from documents that it has otherwise agreed to produce.

5. Merck may, in response to certain of Defendants' interrogatories, refer to or produce documents from custodians or non-custodial sources located outside the United States. Foreign privacy laws, over which Merck has no control, may have a substantial impact on the nature and extent of information or documents that Merck can disclose or produce from such

sources. Merck objects to the interrogatories to the extent that they call for production of information from any jurisdiction outside that United States that (i) pertains to a specific individual that can be linked to that individual; or (ii) is reasonably believed by Merck to contain information about or pertaining to a specific individual that can be linked to that individual and that reveals race, ethnic origin, sexual orientation, political opinions, religious or philosophical beliefs, trade union or political party membership or that concerns an individual's health. Merck is withholding such documents or information on this basis and will redact such information from any documents that it produces in this action.

6. Merck objects to each interrogatory, definition, and instruction to the extent that it seeks "any" or "all" information responsive to the interrogatory. Such demands are unduly burdensome and overly broad, and they seek documents that are not relevant to the claim or defense of any party or proportional to the needs of the case considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Merck's search for responsive information will be limited to the non-custodial sources and custodians identified by Merck, agreed to by the parties, or ordered by the Court. Absent such agreement or order, Merck will not search for or produce documents from any other source or location. Additionally, Merck incorporates by reference all objections set forth in the General Objections of Merck's Responses and Objections to Defendants' First Set of Joint Requests for the Production of Documents and Things to Plaintiff (Nos. 1–107), which are incorporated herein by reference, and will not search for or produce documents created outside of the date restrictions set forth therein.

7. Merck objects to each interrogatory, definition, and instruction as overly broad and unduly burdensome to the extent that it purports to require Merck to search for and produce electronic documents without reasonable limitations upon the scope of information to be searched or the content of the material to be searched for. Merck will use reasonable diligence to respond to the interrogatories based on information and/or documents in its possession, custody, or control, based on a reasonable search of those files that are reasonably accessible and in which such information or documents ordinarily would be found and of files of those individuals whom Merck reasonably believes are most likely to have responsive documents and/or information about the specific matters at issue.

8. Merck objects to each interrogatory, definition, and instruction to the extent that it seeks information that is unreasonably cumulative or duplicative, that is publicly available, that is already known to Defendants or Defendants' counsel, that is of no greater burden for Defendants to ascertain than Merck, or that is ascertainable from some other source that is more convenient, less burdensome, or less expensive, that is otherwise more appropriately obtained from another party, and/or to the extent that compliance would be unduly burdensome, expensive, or oppressive. Unless otherwise indicated specifically below, Merck will not provide any such information or documents.

9. Merck objects to each interrogatory incorporating or calling for a subjective judgment that information "concerns" a particular issue, "supports" a particular issue, or "refutes" a particular issue. By their subjective nature, such interrogatories are vague and ambiguous. Such interrogatories also intrude upon the attorney-work product protection by seeking an identification of the information that counsel considers relevant to a particular issue. To the extent that such interrogatories seek "all" information, they also are overly broad and

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