

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED THERAPEUTICS)
CORPORATION,)
)
Plaintiff,)
)
v.) C.A. No. 20-755 (RGA)
)
LIQUIDIA TECHNOLOGIES, INC.,)
)
Defendant.)

SCHEDULING ORDER

This 31 day of July, 2020, 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)(1) 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) on or before **August 14, 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 **June 4, 2021**.
3. Discovery.
 - a. Discovery Cut Off. All fact discovery in this case shall be initiated so that it will be completed on or before **September 17, 2021**.
 - b. Document production. Document production shall be substantially complete by **June 18, 2021**.

c. Requests for Admission. A maximum of 40 requests for admission are permitted for each side. These limitations do not apply to requests for admission directed to the authentication of documents under Federal Rule of Evidence 901 or the business record exception under Federal Rule of Evidence 803(6), subject to objections to undue burden.

d. Interrogatories. A maximum of 25 interrogatories, including contention interrogatories, are permitted for each side.

e. Depositions.

i. Limitation on Hours for Deposition Discovery of Fact Witnesses. Each side is limited to a total of 100 hours of taking testimony by deposition upon oral examination. Individual depositions, including Rule 30(b)(6) depositions, are limited to seven (7) hours. For clarity, the hours limitations described in this paragraph do not apply to expert witnesses.

ii. Location of Depositions. Any party or representative (officer, director, managing agent, or 30(b)(6) designee) of a party filing a civil action in this district 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 cross-claimant or third-party plaintiff shall be considered as having filed an action in this Court for the purposes of this provision.

iii. Remote Depositions. Should it become infeasible to conduct in-person depositions of a fact or expert witness due to safety, personal health, and/or public health concerns, (e.g., as resulting from a pandemic or other such emergency), the party offering the witness for deposition shall make the witness available for remote deposition via videoconference. The parties shall meet and confer 30 days in advance of, or as soon as possible

following notice of, any remote deposition to determine the procedures by which the deposition shall be conducted.

f. 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 seven business days prior to the conference/argument, any 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 five business days 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 opposition. A party should include with its letter a proposed order with a detailed issue-by-issue ruling such that, should the Court agree with the party on a particular issue, the Court could sign the proposed order as to that issue, and the opposing party would be able to understand what it needs to do, and by when, to comply with the Court's order. Any proposed order shall be e-mailed, in Word format, simultaneously with filing to rga_civil@ded.uscourts.gov.

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.

g. Miscellaneous Discovery Matters.

i. Unless otherwise agreed to by the parties or as set forth herein, the parties agree to follow the Court's Default Standard. The parties agree to the timetable for initial patent disclosures as set forth in the chart attached as **Exhibit A**.

ii. The parties agree to modify the Default Standard such that: Paragraph 3 disclosures will be due on **August 31, 2020**; Paragraph 4(a) obligations will be due on **August 31, 2020**; Paragraph 4(b) obligations concerning the production of Defendant's core technical documents will be due on **September 11, 2020**; Paragraph 4(c) obligations will be due on **October 16, 2020**; and Paragraph 4(d) obligations will be due on **November 13, 2020**.

iii. The parties agree to reasonably cooperate to arrive at an agreed upon list of metadata fields, not to exceed the list of fields identified in Paragraph 5(e).

iv. On March 30, 2020, Liquidia filed petitions to institute *Inter Partes* Review proceedings with respect to both U.S. Patent No. 9,593,066, and U.S. Patent No. 9,604,901. Plaintiff does not yet have a comprehensive understanding of Defendant's accused NDA product, and therefore cannot advise whether it expects to institute any further litigation within the next year. As Plaintiff's U.S. Patent No. 10,716,793 issued on July 21, 2020, Defendant does not yet have a comprehensive understanding of Plaintiff's claims regarding the '793 patent, and therefore cannot advise whether it expects to file any further *Inter Partes* Review proceedings concerning the '793 patent within the next year.

v. Narrowing of the Asserted Claims and Prior Art References. The parties shall meet and confer regarding asserted claims and prior art narrowing, including limits on the number of Plaintiff's asserted claims and Defendant's asserted prior art references or combinations and any other relevant issue. The parties shall raise any unresolved issues with the Court pursuant to the provisions of Paragraph 3(f), above, so as to be resolved sufficiently ahead of each deadline set forth below.

vi. Within twenty-one days of the Court's Order on claim construction, or if no claim construction is requested, on **July 1, 2021**, Plaintiff shall serve an

election of asserted claims, not to exceed a limit agreed upon by the parties or ordered by the Court.

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 ten 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(f) 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 the required number of copies as directed in paragraph 6. 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 **December 4, 2020**, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction;

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