

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AMARIN PHARMA, INC., AMARIN
PHARMACEUTICALS IRELAND
LIMITED, MOCHIDA
PHARMACEUTICAL CO., LTD.,

Plaintiffs,

v.

HIKMA PHARMACEUTICALS USA INC.,
HIKMA PHARMACEUTICALS PLC, AND
HEALTH NET, LLC,

Defendants.

C.A. No. 20-1630-RGA-JLH

~~PROPOSED~~ SCHEDULING ORDER

This 4 day of May, 2021, ~~the Court having conducted an initial scheduling conference pursuant to Federal Rule of Civil Procedure 16(b) and 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;~~¹

IT IS HEREBY ORDERED that:

1. Rule 26(a)(1) Initial Disclosures and E-Discovery Default/Standard. The parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) and Paragraph 3 of the Court's Default Standard for Discovery, Including Discovery of Electronically Stored Information (the "Default Standard") within five days of the date the Court enters this Order. The parties have reviewed the Court's Default Standard, which is posted at

¹ ~~Defendant Health Net, LLC submits this proposed scheduling order without prejudice to its pending motions to dismiss and to sever (D.I. 30 and D.I. 32) and its request that the submission~~

<http://www.ded.uscourts.gov> (see Other Resources, Default Standard for Discovery) and is incorporated herein by reference.

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 **November 22, 2021**. Unless otherwise ordered by the Court, any motion to join a party or motion to amend the pleadings shall be made pursuant to the procedures set forth in Paragraphs 8(i) and 9.

3. 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 by **May 18, 2021**. Should counsel be unable to reach an agreement on a proposed form of order, counsel must follow the provisions of Paragraph 8(i) below.

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 "confidential" [the parties should list any other level of designation, such as "highly confidential," which may be provided for in the protective order] 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.

4. Papers and Proceedings Under Seal. In accordance with Section G of the Revised Administrative Procedures Governing Filing and Service by Electronic Means, a redacted version of any sealed document shall be filed electronically within seven days of the filing of the sealed document.

Should any party intend to request to seal or redact all or any portion of a transcript of a court proceeding (including a teleconference), such party should expressly note that intent at the

start of the court proceeding. Should any party subsequently choose to make a request for sealing or redaction, it must, promptly after the completion of the transcript, file with the Court a motion for sealing/redaction, and include as attachments (1) a copy of the complete transcript highlighted so the Court can easily identify and read the text proposed to be sealed/redacted, and (2) a copy of the proposed redacted/sealed transcript. With their request, the party seeking redactions must demonstrate why there is good cause for the redactions and why disclosures of the redacted material would work a clearly defined and serious injury to the party seeking redaction.

5. Courtesy Copies. The parties shall provide to the Court two courtesy copies of all briefs and 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. All courtesy copies shall be double-sided.

6. ADR Process. Having discussed the ADR process during the scheduling conference, the Court will schedule one or more teleconferences to discuss ADR with the parties during the pendency of this case.

7. Disclosures. Absent agreement among the parties, and approval of the Court:

(a) By **June 21, 2021**, Plaintiffs² shall identify the accused product(s), including accused methods and systems, and their damages model (separately as to each defendant), as well as the asserted patent(s) that the accused product(s) allegedly infringe(s). Separately, with respect to each Defendant, Plaintiffs shall identify all acts by each respective Defendant that Plaintiffs contend induce infringement of any asserted patent. Plaintiffs shall also produce the file history for each asserted patent.

² For purposes of this Scheduling Order, Plaintiff and Defendant are defined as set forth in the Default Standard for Discovery, Including Discovery of Electronically Stored Information (“ESI”), ¶ 4.

(b) By **July 19, 2021**, Defendant Hikma shall produce core technical documents related to the accused product(s), sufficient to show how the accused product(s) work(s), including but not limited to non-publicly available operation manuals, product literature, schematics, and specifications. Defendant Hikma shall also produce sales figures for the accused product(s).

(c) By **August 30, 2021**, Plaintiffs shall produce an initial claim chart relating each known accused product to the asserted claims each such product allegedly infringes as well as a chart identifying whether any Defendant induces infringement of that step and, if so, how.

(d) By **October 12, 2021**, Defendants shall produce their initial invalidity contentions for each asserted claim, as well as the known related invalidating references.

(e) By **June 20, 2022**, Plaintiffs shall provide, separately for each Defendant, final infringement contentions.

(f) By **July 19, 2022**, Defendants shall provide final invalidity contentions.

8. Discovery. Unless otherwise ordered by the Court or agreed to by the parties, the limitations on discovery set forth in the Federal Rules and Local Rule 26.1 shall be observed.

(a) Discovery Cut Off. All fact discovery in this case shall be initiated so that it will be completed on or before **August 18, 2022**.

(b) Document Production. Document production shall be substantially complete by **May 20, 2022**. ~~[Health Net's Position: Plaintiff must indicate which documents it contends are relevant to its claims against Health Net within 30 days of this deadline. For any documents produced after this deadline, Plaintiff must indicate which documents it contends are relevant to its claims against Health Net within 10 days of any such production.] [Plaintiffs' Position: There is no need to treat Hikma and Health Net any differently with respect to document~~

production, and Plaintiffs should not be required to provide additional information to Health Net that is over and above what is required by the Federal Rules.}

(c) Requests for Admission. Plaintiffs may serve up to 40 requests for admission on each Defendant Group.³ Each Defendant Group may serve up to 40 individual requests for admission on Plaintiffs.

(d) There is no limit on the number of requests for admission the parties may serve to establish the authenticity of documents.

(e) Interrogatories.

i. Plaintiffs may serve up to 10 common interrogatories on Defendants, to which each Defendant Group will respond separately. Additionally, Plaintiffs may serve up to 15 additional individual interrogatories on each Defendant Group. Defendants may serve up to 10 common interrogatories on Plaintiffs. Additionally, each Defendant Group may serve up to 15 additional individual interrogatories on Plaintiffs.

ii. The Court encourages the parties to serve and respond to contention interrogatories early in the case. In the absence of agreement among the parties, contention interrogatories, if filed, shall first be addressed by the party with the burden of proof. The adequacy of all interrogatory answers shall be judged by the level of detail each party provides (*i.e.*, the more detail a party provides, the more detail a party shall receive).

(f) Depositions.

i. Limitation on Hours for Deposition discovery. Plaintiffs may take 35 hours of party, third party, and Rule 30(b)(6) deposition testimony per Defendant Group, plus

³ Hikma (collectively, Hikma Pharmaceuticals USA Inc. and Hikma Pharmaceuticals PLC) and Health Net, LLC are each a separate Defendant Group. Each Defendant Group shall be considered as a single “party” to this action.

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