

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ALLERGAN, INC.,

Plaintiff,

v.

TEVA PHARMACEUTICALS USA, INC.,
et al.,

Defendants.

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Case No. 2:15-cv-1455-WCB
LEAD CASE

ORDER

On September 8, 2017, following the trial of this case, plaintiff Allergan, Inc., filed a letter with the Court announcing that Allergan had recently assigned its rights to a number of patents, including the patents at issue in this case, to the Saint Regis Mohawk Tribe. Allergan stated that it now has an exclusive license to the patents-in-suit and added that it “expects to join the Tribe as a co-plaintiff in due course.” Dkt. No. 480-1.

After not receiving a motion from Allergan for a month, the Court on October 6, 2017, entered an order directing Allergan to submit information regarding the assignment to the Tribe by October 10, 2017, and directing the parties to file briefs addressing the question whether the Tribe should be added as a co-plaintiff or whether the assignment transaction should be disregarded as a sham by October 13, 2017. Dkt. No. 503. Later that day, the defendants filed what they styled Defendants’ Notice Regarding Allergan’s Document Production According to the Court’s October 6, 2017 Order (Dkt. No. 503). Dkt. No. 504. In that filing, the defendants sought to ensure that they would receive copies of the materials submitted by Allergan. In addition, the defendants listed nine categories of documents that they believed Allergan should produce in response to the

Court's October 6 order and indicated that, "in the event evaluation of Allergan's production reveals the necessity," they would be requesting leave to conduct Rule 30(b)(6) or limited Rule 30(b)(1) depositions directed to the nature of Allergan's transaction with the Tribe. The defendants also requested "leave to file a letter seeking relief from the October 13 filing and allowing Defendants to conduct such depositions on an expedited basis." Id. at 2.

On October 9, 2017, Allergan filed Plaintiff's Response to Defendants' Notice Regarding Document Production According to the Court's October 6, 2017 Order. Dkt. No. 505. That filing contained a selection of documents regarding the assignment transaction. Dkt. Nos. 505, 506. In addition, Allergan noted that it had sought the defendants' consent to a motion to add the Tribe as a co-plaintiff pursuant to Federal Rule of Civil Procedure 25(c), but that the defendants had not consented to such a motion. Dkt. No. 505, at 2. Allergan stated that it would file an opposed motion to add the Tribe as a co-plaintiff by the October 13 deadline that the Court set for the parties to file their briefs addressing the issue of whether the Tribe should be joined. Allergan also stated that would produce "all the materials identified in the Court's Order 6 order by October 10, and produce to the Court contemporaneously with this filing the assignment and license documents already provided to Defendants." Id. at 2-3.

In light of the parties' recent filings, the Court directs as follows:

1. It is not entirely clear from Allergan's latest filing whether it has provided, or intends to provide, the defendants with all of the materials that it has provided and/or will provide to the Court. The Court directs that Allergan do so, to ensure that the defendants have all the same information that is supplied to the Court.
2. The assignment of the patents-in-suit to the Tribe refers to "good and valuable consideration" for the assignment. Dkt. No. 505-1, Ex. A at 1. As part of its submission to be

made on October 10, 2017, Allergan is directed to identify what that “good and valuable consideration” consisted of and to provide documentary evidence confirming the payment by the Tribe of any such consideration for the assignment of the patents.

3. As for the defendants’ requests for further materials and the opportunity to conduct depositions, the Court denies those requests. The Court does not believe that such procedures are necessary to decide what the Court needs to decide with respect to the question whether the Tribe should be added as a party.

4. The Court also denies the defendants’ request to file a letter seeking relief from the October 13 date for filing briefs addressing the question whether the Tribe should be added as a co-plaintiff or whether the assignment transaction should be disregarded as a sham.

5. In light of the further submissions by the parties, the Court directs that the briefs that are scheduled to be filed by October 13, 2017, be filed by 2 p.m. Central Time on that day. Based on a review of the briefs, the Court will determine by the close of business on October 13 whether a hearing will be needed.

6. If a hearing is needed, the Court will so advise the parties. In the event that the Court orders a hearing to be held, it will be held in Washington, D.C., on October 16, 2017.

IT IS SO ORDERED.

SIGNED this 10th day of October, 2017.



WILLIAM C. BRYSON
UNITED STATES CIRCUIT JUDGE