

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GENENTECH, INC., CITY OF HOPE, and)
HOFFMANN-LA ROCHE INC.,)
)
Plaintiffs,)

v.)

C.A. No. 18-095-CFC

CELLTRION, INC., CELLTRION)
HEALTHCARE CO., LTD., TEVA)
PHARMACEUTICALS USA, INC., and)
TEVA PHARMACEUTICALS)
INTERNATIONAL GMBH,)
)
Defendants.)

GENENTECH, INC., CITY OF HOPE, and)
HOFFMANN-LA ROCHE INC.,)
)
Plaintiffs,)

v.)

C.A. No. 18-1025-CFC

CELLTRION, INC., CELLTRION)
HEALTHCARE CO., LTD., TEVA)
PHARMACEUTICALS USA, INC., and)
TEVA PHARMACEUTICALS)
INTERNATIONAL GMBH,)
)
Defendants.)

~~PROPOSED~~ ORDER FOR DISCOVERY,
INCLUDING DISCOVERY OF ELECTRONICALLY STORED INFORMATION
("ESI")

After conferring on these matters, the Parties hereby stipulate to the following protocol
for electronic discovery:

1. General Provisions

a. Non-ESI. The Parties¹ agree that, unless specified herein, nothing in this Order changes the Parties' obligations under the Federal Rules of Civil Procedure to search for, collect, and produce non-ESI information. Such non-ESI information, including but not limited to paper, will be produced in electronic form, rendered text searchable to the extent possible, e.g., via OCR, by the Producing Party,² and include any file folders and/or labels.

b. Cooperation. Parties are expected to reach agreements cooperatively on how to conduct discovery under Fed. R. Civ. P. 26-36. The Parties shall promptly meet and confer as frequently as appropriate to negotiate in good faith to resolve any disputes that arise under this Document Production Protocol.

c. Proportionality. Parties are expected to use reasonable, good faith and proportional efforts to preserve, identify and produce relevant information.³ This includes identifying appropriate limits to discovery, including limits on custodians, identification of relevant subject matter, time periods for discovery and other parameters to limit and guide preservation and discovery issues.

d. Preservation of Discoverable Information. A Party has a common law obligation to take reasonable and proportional steps to preserve discoverable information in the Party's possession, custody or control.

¹ "Parties" means or refers collectively to the named Plaintiffs and Defendants in the above-captioned matter.

² "Producing Party" refers to a Party from which production of the information at issue is sought.

³ Information can originate in any form, including ESI and paper, and is not limited to information created or stored electronically.

(i) Absent a showing of good cause by the Requesting Party,⁴ the Parties shall not be required to modify, on a going-forward basis, the procedures used by them in the ordinary course of business to back up and archive data; provided, however, that the Parties shall preserve the non-duplicative discoverable information currently in their possession, custody or control.

(ii) Absent a showing of good cause by the Requesting Party, the categories of ESI identified in Schedule A attached hereto need not be preserved.

e. Privilege.

(i) The Parties are to confer on the nature and scope of privilege logs for the case, including whether categories of information may be excluded from any logging requirements and whether alternatives to document-by-document logs can be exchanged.

(ii) With respect to information generated after July 31, 2017, the date that Celltrion announced the filing of its aBLA, Parties are not required to include any such information in privilege logs.

(iii) Unless otherwise agreed to by the Parties or ordered by the Court, the Parties will exchange privilege logs no later than 30 days after the substantial completion of document production.

(iv) With respect to information generated at the direction of Trial Counsel⁵ or communications with Trial Counsel, parties are not required to include any such information or communications in privilege logs.

⁴ “Requesting Party” refers to a Party seeking production of the information at issue.

⁵ “Trial Counsel” means, for Plaintiffs, Wilmer Cutler Pickering Hale & Dorr LLP, Durie Tangri LLP, and Morris Nichols Arsht & Tunnell LLP, and for Defendants, Goodwin Procter LLP and Shaw Keller LLP.

(v) Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

2. Initial Discovery Conference. On July 24, 2018, counsel for the Parties participated in a telephone conference pursuant to the Court's Order Re: Case Management in Civil Cases and as required by the Fed. R. Civ. P. 26(f). (Case No. 18-cv-1025, D.I. 37; Case No. 1025, D.I. 10.)

3. Notice. The Parties shall make a good faith effort to identify in a timely fashion any issues that the Parties become aware of relating to: (i) any ESI (by type, date, custodian, electronic system or other criteria) that a Party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(C)(i); (ii) third-party discovery under Fed. R. Civ. P. 45 and otherwise, including the timing and sequencing of such discovery; or (iii) production of information subject to privacy protections, including information that may need to be produced from outside of the United States and subject to foreign laws.

4. Initial Discovery in Patent Litigation.

a. As expressed in the Parties' Joint Status Report (Case No. 18-cv-95, D.I. 46), given the Parties' exchanges under the BPCIA, the Parties shall forgo the initial discovery in patent litigation provided under Delaware Default Discovery Standard Rule 4. Any final supplementation of contentions shall occur by the close of fact discovery, or as otherwise ordered by the Court.

b. Absent a showing of good cause, follow-up discovery shall be limited to a term of 6 years before the filing of the Complaint, except that discovery related to asserted prior art, asserted objective indicia of non-obviousness, or the conception and reduction to practice of the inventions claimed in any patent-in-suit shall not be so limited.

5. Specific E-Discovery Issues.

a. On-site inspection of electronic media. Such an inspection shall not be permitted absent a demonstration by the Requesting Party of specific need and good cause.

b. ESI Search methodology.

(i) Search terms. If the Producing Party elects to use search terms to locate potentially responsive ESI, it shall disclose the search terms to the Requesting Party. Absent a showing of good cause, a Requesting Party may request no more than ten (10) additional terms in total to be used in connection with the electronic search(es), with such additional terms to be provided within seven (7) days of receipt of the Producing Party's disclosure of search terms. The search terms proposed by the Requesting Party shall be narrowly tailored to the particular issues in the case. Focused terms, rather than over-broad terms (e.g., product and company names), shall be employed. The Parties acknowledge that there may be certain instances where the volume of ESI is particularly high. The Parties agree that in the event of a claim that a particular search term or combination of terms is too burdensome, the Parties will exchange information showing the number of "hits" for each such term or combination of terms, and agree to work in good faith to resolve such issues on a case-by-case basis. The Parties shall meet and confer on any modifications to the requesting Parties' proposed terms (including with respect to translation issues) needed to improve their efficacy in locating discoverable information and in excluding information that is not

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