

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HOLOGIC, INC., a Delaware corporation; and
CYTYC SURGICAL PRODUCTS, LLC, a
Massachusetts limited liability company,

Plaintiffs,

v.

MINERVA SURGICAL, INC., a Delaware
corporation,

Defendant.

C.A. No. 20-925-JFB-SRF

SCHEDULING ORDER

This rd23 day of October, 2020, the Court having conducted an initial Rule 16 scheduling and planning conference pursuant to Federal Rule of Civil Procedure 16(b) and Local Rule 16.1 on September 22, 2020, 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. **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 December 17, 2020.

2. **Discovery.**

All discovery exchanged in *Hologic, Inc. v. Minerva Surgical, Inc.*, No. 15-1031-JFB-SRF (D. Del.) (the "First Action") and *Minerva Surgical, Inc. v. Hologic, Inc.*, No. 18-cv-00217-JFB-SRF (D. Del.) is deemed to have been exchanged in this action.

All discovery in this case shall be initiated so that it will be completed on or before December 30, 2020.

a. 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) within five (5) days of the date of this Order.

b. E-Discovery Default Standard. If they have not already done so, the parties are to review the Default Standard for Discovery of Electronic Documents, which is posted on Magistrate Judge Fallon's section of the Court's website (<http://www.ded.uscourts.gov>) under the "Guidelines" tab, and is incorporated herein by reference with the following deadlines:

i. The parties shall make their disclosures under Default Standard for Discovery, Paragraph 3, within five (5) days of the date of this Order.

ii. Identification of Accused Products. By October 19, 2020, Plaintiffs will provide disclosures under Default Standard for Discovery, Paragraph 4.a.

iii. Core Technical Documents. By November 2, 2020, Defendant must produce core technical documents in accordance with Default Standard for Discovery, Paragraph 4.b.

iv. Infringement Contentions. By November 23, 2020, Plaintiffs will provide disclosures under Default Standard for Discovery, Paragraph 4.c.

v. Invalidity Contentions. ~~[Hologic's Proposal: Because Defendant is estopped from asserting invalidity, Defendant need not provide disclosures under Default Standard for Discovery, Paragraph 4.d. Alternatively, if the Court is inclined to include such a date: Defendant will provide disclosures under Default Standard for Discovery, Paragraph 4.d, within ten (10) days after all appeals from the First Action are exhausted.]~~ ^{SRF} ~~[Minerva's Proposal: Defendant must serve initial invalidity contentions thirty (30) days after all appeals from the First Action are exhausted].~~

c. Document Production. Document production shall be completed on or before December 14, 2020.

d. Interrogatories. A maximum of 2 interrogatories shall be served by each party to any other party.

e. Contention Interrogatories. In the absence of agreement among the parties, contention interrogatories, if filed, shall first be addressed by the party with the burden of proof no later than the date established for the completion of document production, with the responsive answers due within thirty (30) days thereof. The adequacy of all such 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. Requests for Admission. A maximum of 10 requests for admission shall be served by each party to any other party.

g. Depositions.

i. Timing. In the absence of agreement among the parties or by order of the Court, no deposition (other than those noticed under Fed. R. Civ. P. 30(b)(6)) shall be scheduled prior to the completion of document production.

ii. Limitation on Hours for Deposition Discovery. Each side is limited to a maximum of 15 hours for taking fact depositions and a maximum four persons.

iii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this District Court 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. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an

action in this Court for the purpose of this provision. In view of the COVID-19 pandemic, depositions may be taken by videoconference.

h. Disclosure of Expert Testimony.

[**Hologic's Proposal:** The expert reports from the First Action are deemed to have been served in this action, and the experts may testify in this action based on those reports.] [**Minerva's Proposal:** Omit the sentence Hologic proposes regarding expert reports from the First Action.]

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i. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before January 18, 2021.

ii. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before February 8, 2021.

iii. Reply expert reports from the party with the initial burden of proof are due on or before February 22, 2021.

iv. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition.

v. Expert discovery, including any depositions of expert witnesses, must be completed by March 8, 2021.

vi. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

i. Fact Witnesses to be Called at Trial.

i. By February 22, 2021, each party shall serve on the other parties a list of each fact witness (including any expert witness who is also expected to give fact testimony), who has previously been disclosed during discovery and that it intends to call at trial.

ii. By March 1, 2021, each party shall serve a list of each rebuttal fact witness that it intends to call at trial.

iii. The parties shall have the right to depose any such fact witnesses who have not previously been deposed in this case. Such deposition shall be held by March 29, 2021, and shall be limited to three (3) hours per side in the aggregate unless extended by agreement of the parties or upon order of the Court upon good cause shown.

j. Discovery Matters and Disputes Relating to Protective Orders.

i. Should counsel find they are unable to resolve a discovery matter or those other matters covered by this paragraph,¹ the moving party (*i.e.*, the party seeking relief from the Court) shall file a “[Joint] Motion for Teleconference To Resolve [Protective Order or Discovery] Dispute.” The suggested text for this motion can be found in Magistrate Judge Fallon’s section of the Court’s website in the “Forms” tab, under the heading “Discovery Matters–Motion to Resolve Discovery Disputes.”

ii. The Court will thereafter order a discovery telephone conference and deadlines for submissions. On the date set by the Court, generally not less than seventy-two (72) hours prior to the conference, excluding weekends and holidays, the party seeking relief shall file with the Court a letter, not to exceed four (4) pages, in no less than 12-point font, outlining the

¹ Counsel are expected to *verbally* discuss the issues/concerns before seeking the Court’s intervention.

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