

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PURDUE PHARMA L.P.,)	
PURDUE PHARMACEUTICALS L.P.,)	
and RHODES TECHNOLOGIES,)	
)	
Plaintiffs,)	C.A. No. 15-cv-13099-FDS
v.)	(Lead Docket No.)
)	
COLLEGIUM PHARMACEUTICAL, INC.,)	
)	
Defendant.)	
)	

STIPULATION AND ~~PROPOSED~~ ORDER

WHEREAS Plaintiffs Purdue Pharma L.P., Purdue Pharmaceuticals L.P. (collectively, “Purdue”), and Rhodes Technologies (collectively, “Plaintiffs”) have asserted infringement of U.S. Patent Nos. 9,073,933 (the “933 patent”); 9,522,919 (the “919 patent”); 10,407,434 (the “434 patent”); and 9,693,961 (the “961 patent”) (collectively, the “patents in suit”) against Defendant Collegium Pharmaceutical, Inc. (“Defendant”) in the above-referenced litigation;

WHEREAS on September 15, 2019, Plaintiffs and their debtor affiliates each commenced a voluntary bankruptcy case under chapter 11 of title 11 of the United States Code (11 U.S.C. § 101 et seq.) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) (the “Purdue Bankruptcy Proceedings,” Lead Case No. 19-bk-23649);

WHEREAS on April 1, 2021, the Court entered a Scheduling Order in the above-referenced litigation through the close of expert discovery (Dkt. 253);

WHEREAS on September 17, 2021, the Bankruptcy Court approved the Twelfth

Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors (the “Plan of Reorganization”) (19-bk-23649, Dkt. 3786; 3787);

WHEREAS on November 16, 2021, Plaintiffs and Defendant filed a stipulation and proposed order to temporarily suspend all litigation activity in this action (subject to certain exceptions) until January 31, 2022 and to amend the existing Scheduling Order deadlines (Dkt. 305), and on November 17, 2021, the Court so ordered the stipulation (Dkt. 306);

WHEREAS the Bankruptcy Court’s order approving the Plan of Reorganization was appealed to the United States District Court for the Southern District of New York (Lead Case No. 21-cv-07532), and on December 16, 2021, the United States District Court vacated that confirmation order (21-cv-07532, Dkt. 301);

WHEREAS on January 7, 2022, the United States District Court certified its order for interlocutory appeal, on the condition that the application to the United States Court of Appeals for the Second Circuit for an appeal must be filed on an expedited basis, and that the application must include a request that the appeal be considered on an expedited basis (21-cv-07532, Dkt. 305);

WHEREAS on January 18, 2022, Plaintiffs and their debtor affiliates petitioned the Second Circuit for leave to appeal the United States District Court’s order, and included a request for the appeal to be considered on an expedited basis (*In re Pharma L.P. et al*, Lead Case No. 22-85 (2d Cir.), Dkt. 1);

WHEREAS on January 27, 2022, the Second Circuit issued an order (1) granting the petitions for leave to appeal and the requests to expedite the appeals, (2) further ordering the following accelerated briefing schedule wherein the joint appendix and final briefs are due on

March 28, 2022; and (3) notifying the parties that “[t]he Court will schedule oral argument the week of April 25, 2022, or as soon thereafter as practicable” (22-85, Dkt. 219 at 2);

WHEREAS on February 8, 2022, the Court ordered a temporary suspension of all litigation activity in this action until at least February 28, 2022, and thereafter until further order of the Court (Dkt. 310);

WHEREAS on February 17, 2022, Purdue filed a notice of appeal of PGR2018-00048 in the United States Court of Appeals For The Federal Circuit (the “Federal Circuit”) of the Final Written Decision and denial of Purdue’s request to terminate the PGR concerning the ’961 patent. (Purdue Pharma L.P. v. Collegium Pharmaceutical Inc., C.A. No. 2022-1482, D.I. 1 (Fed. Cir.);

WHEREAS on March 15, 2022, the Court held a telephonic status conference and ordered counsel in this case to confer regarding a short-term extension of the case management schedule going forward and to submit a proposal by April 4, 2022;

WHEREAS on April 4, 2022, the parties submitted a stipulation and proposed order to amend the existing Scheduling Order deadlines and to stay (a) Case No. 17-cv-11814 concerning the ’961 patent, (b) Defendant’s Motion to Strike the Supplemental Declaration of Panayiotis Constantinides, and (c) the Court’s *Markman* decision concerning the disputed claim terms of the ’961 patent, pending resolution of Purdue’s appeal of PGR2018-00048 to the Federal Circuit (Dkt. 314), and on April 5, 2022, the Court so ordered the stipulation (Dkt. 317);

WHEREAS on April 29, 2022, the Second Circuit held oral argument on the petition filed by Plaintiffs and their debtor affiliates, and a decision on that petition is expected to issue

in the next three months;

WHEREAS on August 17, 2022, the Court scheduled a telephonic status conference for November 16, 2022;

WHEREAS, on November 7, 2022, the parties submitted a stipulation and proposed order to further amend the existing Scheduling Order deadlines by approximately 90 days (Dkt. 326), and stated that “the parties agree that, at this time, a temporary suspension of the existing case management schedule is appropriate in anticipation of the Second Circuit’s decision on the petition filed by Plaintiffs and their debtor affiliates” and “respectfully request[ed] that the telephonic status conference scheduled for November 16, 2022 be adjourned until the week of February 13-17, 2023 (*i.e.*, approximately 90 days later, subject to the Court’s availability and approval)” (*id.* at 4–5), and on November 17, 2022 the Court so ordered the stipulation (Dkt. 328);

WHEREAS, on November 17, 2022, the Court rescheduled the telephonic status conference to February 15, 2023 at 2:00pm (Dkt. 329);

WHEREAS the Second Circuit has not yet issued its decision on the petition filed by Plaintiffs and their debtor affiliates;

WHEREAS the parties agree that, at this time, a continuation of the temporary suspension of the existing case management schedule is appropriate in anticipation of the Second Circuit’s decision on the petition filed by Plaintiffs and their debtor affiliates;

IT IS HEREBY STIPULATED AND AGREED by the parties, subject to the approval of the Court:

1. The existing Scheduling Order deadlines are amended as follows:

Event	Current Deadline	Amended Deadline (approximately 90 days later)
Close of Fact Discovery	May 4, 2023	August 2, 2023
Parties' Opening Expert Disclosures	June 15, 2023	September 13, 2023
Parties' Rebuttal Expert Disclosures	July 27, 2023	October 25, 2023
Deposition of Parties' Trial Experts	August 24, 2023	November 22, 2023

2. Plaintiffs and Defendant respectfully request that the telephonic status conference scheduled for February 15, 2023 be adjourned until the week of May 15-19, 2023 (*i.e.*, approximately 90 days later, subject to the Court's availability and approval).

3. Plaintiffs and Defendant agree this stipulation and proposed order has no impact on non-party discovery.

4. Plaintiffs and Defendant agree this stipulation and proposed order will not be used to argue for further suspensions or extensions of the case schedule.

5. Plaintiffs and Defendant agree this stipulation and proposed order will not be used to argue for or against any requests for injunctive relief.

AGREED AND STIPULATED TO:

Date: February 8, 2023

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