

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

HONORABLE THOMAS J. MCAVOY

UNIFORM PRETRIAL SCHEDULING ORDER

Novartis Pharma AG, et al.

Civil No. **20-CV-690**

vs.

TJM/CFH

Regeneron Pharmaceuticals, Inc.

Counsel for all parties having reported on the status of this action as directed by the Court, and the Court having considered the positions of the respective counsel regarding a schedule for the progression of the case,

IT IS ORDERED that:

(1) **THE DEADLINES SET IN THIS SCHEDULING ORDER SUPERSEDE THE DEADLINES SET FORTH IN FED. R. CIV. P.26(a)(3) AND ARE FIRM AND WILL NOT BE EXTENDED, EVEN BY STIPULATION OF THE PARTIES, ABSENT GOOD CAUSE. See Fed. R. Civ. P. 16(b).**

(2) **VENUE MOTIONS** are to be filed **within sixty (60) days of the date of this Order** following the procedures set forth in Local Rule 7.1 (a)(2) and are to be made returnable before the assigned Magistrate Judge.

(3) **JURISDICTION MOTIONS** are to be filed **within sixty (60) days of the date of this Order** following the procedures set forth in Local Rule 7.1 (a)(1) (unless a party who is not an attorney is appearing pro se, in which case L.R. 7.1 (b)(2) should be followed) and are to be made returnable before Judge McAvoy.

(4) **JOINDER OF PARTIES:** Any motion to join any person as a party to this action shall be made on or before **September 15, 2021**.

(5) **AMENDMENT OF PLEADINGS:** Any motion to amend any pleading in this action shall be made on or before **September 15, 2021**.

(6) **STATUS REPORT:** The parties are directed to file a status report on or before [N/A].

(7) **PATENT DISCLOSURES:** Parties are to follow the procedures set forth in Local Patent Rule 3 as modified in Attachment A of this order.

(8) **CLAIM CONSTRUCTION PROCEDURES:** Parties are to follow the procedures set forth in Local Patent Rule 4 as modified in Attachment A of this order.

(9) **POST CLAIM CONSTRUCTION PROCEDURES:** Parties are to follow the procedures set forth in Local Patent Rule 5 as modified in Attachment A of this order.

(10) **DISCOVERY:**

All discovery in this matter, including expert depositions, must be **completed** within **90 days** following the issuance of the court's decision on claim construction. See Local Patent Rule 5.5 as modified in Attachment A of this order.

(A) **Opening Expert Reports:**

A party expecting to offer expert testimony on issues other than claim construction on which it bears the burden of proof, including damages, shall disclose and serve upon all parties the name, address and *curriculum vitae* of any expert witness expected to testify at trial, together with a list of publications authored by him or her within the past ten years, and a list of cases in which the expert has given deposition or trial testimony during the past four years, together with a report as required under Fed. R. Civ. P. 26(a)(2)(B), **within 5 days following the issuance of the Court's decision on claim construction.** See Local Patent Rule 5.3 as modified in Attachment A of this order.

(B) **Responsive Expert Reports:**

A party expecting to offer responsive expert testimony on issues on which the opposing party bears the burden of proof shall disclose and serve upon all parties the name, address and *curriculum vitae* of any expert witness expected to testify at trial, together with a list of publications authored by him or her within the past ten years, and a list of cases in which the expert has given deposition or trial testimony during the past four years, together with a report as required under Fed. R. Civ. P. 26(a)(2)(B), **within days following the issuance of the Court's decision on claim construction.** See Local Patent Rule 5.3 as modified in Attachment A of this order.

(i) No **deposition of experts** shall be taken until **after** the exchange of the expert reports.

(ii) Motions to preclude expert witness testimony must be filed and served on or before the motion deadline as set forth in Paragraph (11) below

(C) **Failure to comply:** The failure to comply with the deadlines set forth in Subparagraph (A) above may result in the imposition of sanctions, including the preclusion of testimony, pursuant to Fed. R. Civ. P. 16(f).

(D) **Unavailability of Expert witness:** In order to avoid the possibility of the unavailability of an expert witness at the time set for trial, counsel may preserve the testimony of such witness as outlined in Paragraph (15) below for use at trial. In the absence of same, the trial will proceed without such testimony.

(11) **MOTIONS:** All dispositive motions in the case shall be filed within days following the issuance of the Court's decision on claim construction. See Local Patent Rule 5.6 as modified in Attachment A of this order.

(A) **Non-Dispositive Motions:** Non-dispositive motions (except venue motions-discussed in Paragraph (2) above-and motions for injunctive relief) shall **NOT** be filed until after a conference with the Magistrate Judge, which is to be arranged through the Courtroom Clerk assigned to the Magistrate Judge. Before requesting such a conference to resolve discovery disputes, the parties must have complied with Local Rule 7.1 (d).

Non-dispositive motions, including discovery motions, shall be filed in accordance with Local Rule 7.1 (b)(2) and, except for motions for injunctive relief, shall be made returnable before the assigned Magistrate Judge. Motions for injunctive relief shall be made returnable before Judge McAvoy unless the case has been referred to a Magistrate Judge pursuant to 28 U.S.C. § 636(c) ("consent" jurisdiction).

(B) **Dispositive Motions:** Dispositive motions shall be filed in accordance with Local Rule 7.1(b) and shall be made returnable before Judge McAvoy, unless the case has been assigned to a Magistrate Judge on consent of the parties pursuant to 28 U.S.C. § 636(c).

(12) **TRIAL DATES:**

(A) **TRIAL READY DATE:**

(i) **When no dispositive motion is filed**, the motion filing deadline becomes the trial ready date. The Court will issue a notice scheduling a Trial Date. Counsel may contact Judge McAvoy's Courtroom Clerk, at any time, to request that the Court schedule a settlement conference or trial date.

(ii) **When a dispositive motion is filed and the motion filing deadline has expired**, the case is marked trial ready upon issuance of the motion decision. After issuance of the Court's decision on the

motion, Judge McAvoy's Courtroom Clerk will issue a notice scheduling a Trial Date.

(iii) **When a dispositive motion is filed and the motion filing deadline HAS NOT expired**, the case will continue on the pretrial schedule previously set in the Rule 16 Uniform Pretrial Scheduling Order. Any request for an extension of the Rule 16 Uniform Pretrial Order deadline(s) should be addressed by the assigned Magistrate Judge.

(B) **TRIAL DATE:** It is anticipated that the trial will take approximately to complete. This is a **jury** trial.

(13) **SETTLEMENT CONFERENCE:** A settlement conference pursuant to Fed. R. Civ. P. 16(d) may be scheduled by the Court prior to the trial or as requested by the parties. In addition to counsel, a representative of each party with **full settlement authority** shall attend the settlement conference, or be available by telephone.

Prior to the settlement conference the parties are to have initiated settlement discussions. Plaintiff shall submit **realistic demand** to defendant at least ten days before the conference, and defendant shall respond at least three days before the conference and shall submit a counteroffer, if appropriate. Failure to comply with these directions may result in sanctions.

(14) **ASSESSMENT OF JUROR COSTS:** The parties are advised that pursuant to Local Rule 47.3, whenever any civil action scheduled for a jury trial is postponed, settled, or otherwise disposed of in advance of the actual trial, then, except for good cause shown, all juror costs, including Marshal's fees, mileage, and per diem, shall be assessed against the parties and/or their counsel as directed by the Court, unless the Court and the Clerk's Office are notified at least one full business day prior to the day on which the action is scheduled for trial in time to advise the jurors that it will be unnecessary for them to attend.

(15) **PRETRIAL SUBMISSIONS:**

Mandatory Fed. R. Civ. P. 26(a)(3) Disclosures (Jury and Non-Jury Cases)

(i) **Not later than thirty days before the Trial Date** (as defined in paragraph 9(A) above) counsel shall provide to all other parties **and** electronically file with the Court the disclosures required under Fed. R. Civ. P. 26(a)(3).

NOTE: The unavailability of any witness, expert or otherwise, will not be grounds for a continuance. In order to the possibility of going forward with the trial without the testimony of an unavailable witness, counsel where appropriate shall preserve same before the trial ready

date by written or video-taped deposition for possible use at trial. Please refer to the attached instruction sheet for use of video-taped depositions.

Those initial pretrial disclosures must include the following:

- (i) The name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;
- (ii) The designation of those witnesses whose testimony is expected to be presented by means of a deposition (including video-taped deposition), specifically identifying the pertinent portions of the deposition testimony to be offered; and
- (iii) An identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

(B) Within fourteen days after service of the Rule 26(a)(3) initial pretrial disclosures, any party served with such Rule 26(a)(3) disclosures shall serve and electronically file with the court a list of any objections to the proposed use of deposition testimony designated by another party and objections to the admissibility of exhibits described in the initial disclosures, together with a summary of the grounds for objection.

Note: All objections not disclosed in a timely manner in accordance with this rule, other than objections under Fed. R. Evid. 402 and 403, are waived unless excused by the Court for good cause.

(C) Non-Jury Trials: Fourteen (14) days before the Trial Date, counsel shall electronically file with the court their joint pretrial stipulation (see subparagraph A below) and all depositions (including video-taped depositions) to be used at trial (see subparagraph D below). In addition to this and the required mandatory pretrial disclosures referenced above (i.e., witness, deposition excerpt, and exhibit lists), **fourteen (14) days before the Trial Date** counsel for each party shall electronically file with the court, with a copy to opposing counsel, **(1)** prepared findings of fact and conclusions of law; **(2)** a letter brief concerning any evidentiary issues (see subparagraph C below); and **(3)** a trial brief (see subparagraph E below).



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