

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

EXELA PHARMA SCIENCES, LLC,

Plaintiff,

v.

ETON PHARMACEUTICALS, INC.,

Defendant.

C.A. No.: 20-365-MN

PATENT FORM SCHEDULING ORDER (ANDA)

This 26th day of August, 2020, ~~the Court having conducted an initial~~ ^{MN}
~~Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b), 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 HEREBY ORDERED that:

1. Rule 26(a)(1) Initial Disclosures and E-Discovery Default Standard.

The parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) on or before **September 4, 2020**. The parties have reviewed the Court's Default Standard for Discovery, Including Discovery of Electronically Stored Information ("ESI"), which is posted at <http://www.ded.uscourts.gov> (*see* Other Resources, Default Standard for Discovery) and is incorporated herein by reference.

(a) Per paragraph 3 of the Default Standard for Discovery, the parties shall serve Initial Discovery Disclosures on or before **September 4, 2020**.

(b) Per Paragraph 4(b) of the Default Standard for Discovery, Defendant shall produce its ANDA and product samples on or before **September 4, 2020**.

(c) Per Paragraph 4(a) of the Default Standard for Discovery, Plaintiff shall Identify the Accused Products and Asserted Patents and produce file histories on or before **September 4, 2020**.

(d) Per Paragraph 4(c) of the Default Standard for Discovery, Plaintiff shall serve its Initial Infringement Claim Chart on or before **November 20, 2020**.

(e) Per Paragraph 4(d) of the Default Standard for Discovery, Defendant shall serve its Initial Invalidity Contentions and Accompanying Document Production on or before **January 8, 2021**.

2. 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 **May 21, 2021**. Unless otherwise ordered by the Court, any motion to join a party or motion to amend the pleadings shall be made pursuant to the procedures set forth in Paragraphs 7(g) and 8.

3. Application to Court for Protective Order. Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court on or before **September 18, 2020**. Should counsel be unable to reach an agreement on a proposed form of order, counsel must follow the provisions of Paragraph 7(g) below.

Any proposed protective order must include the following paragraph:

Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated "confidential" [the parties should list any other level of designation, such as "highly confidential," which may be provided for in the protective order]

pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

4. Papers Filed Under Seal. In accordance with section G of the Revised Administrative Procedures Governing Filing and Service by Electronic Means, a redacted version of any sealed document shall be filed electronically within seven (7) days of the filing of the sealed document.

5. Courtesy Copies. The parties shall provide to the Court two (2) courtesy copies of all briefs and any other document filed in support of any briefs (*i.e.*, appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal. All courtesy copies shall be double-sided.

6. ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution.

7. Discovery. Unless otherwise ordered by the Court or agreed to by parties, the limitations on discovery set forth in the Federal Rules shall be strictly observed.

(a) Discovery Cut Off. All fact discovery in this case shall be initiated so that it will be completed on or before **July 30, 2021**.

(b) Document Production. Document production shall be substantially complete **April 9, 2021**.

(c) Requests for Admission. A maximum of 40 requests for admission are permitted for each side.

i. There is no limit on the number of requests for admission the parties may serve to establish the authenticity of documents.

(d) Interrogatories.

i. A maximum of 25 interrogatories, including contention interrogatories, are permitted for each side.

ii. The Court encourages the parties to serve and respond to contention interrogatories early in the case. In the absence of agreement among the parties, contention interrogatories, if filed, shall first be addressed by the party with the burden of proof. The adequacy of all 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).

(e) Depositions.

i. Limitation on Hours for Deposition Discovery (fact witnesses).

Each side is limited to a total of 70 hours of party, third party, and Rule 30(b)(6) deposition testimony. All depositions shall be limited in accordance with Fed. R. Civ. P. 30 to 1 day of 7 hours per witness. Each side is limited to a total time of 14 hours of Rule 30(b)(6) depositions which shall count towards the total limit of 70 hours of deposition testimony per side.

ii. 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 light of the out-of-the-ordinary challenges brought on by COVID-19, the parties will negotiate in good faith regarding the means and/or location of depositions to minimize the inconvenience and health risks to the parties and the deponent(s), including representatives of the parties and other witnesses for either party or third-party witnesses.

(f) Disclosure of Expert Testimony.

i. Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule of Civil Procedure 26(a)(2) disclosure of expert testimony is due on or before **August 13, 2021**. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before **September 10, 2021**. Objective indicia of non-obviousness, if any, will be addressed in the first instance in Plaintiff's rebuttal expert reports. Reply expert reports from the party with the initial burden of proof are due on or before **October 8, 2021**. Defendant's reply expert reports will include any response to Plaintiff's expert disclosure regarding objective indicia of non-obviousness. 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. All expert discovery shall be completed by **November 5, 2021**.

ii. Expert Report Supplementation. The parties agree they will not permit expert declarations to be filed in connection with motions briefing (including case-dispositive motions).

iii. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than **November 19, 2021**. Briefing will be presented pursuant to the Court's Local Rules, with the exception of the briefing schedule. Answering Briefs shall be filed on or before **December 10, 2021** and Reply Briefs shall be filed on or before **December 23, 2021**.

(g) Discovery Matters and Disputes Relating to Protective Orders.

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