

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JANSSEN BIOTECH, INC. and
NEW YORK UNIVERSITY

Plaintiffs,

vs.

CELLTRION HEALTHCARE CO., LTD.,
CELLTRION, INC., and
HOSPIRA, INC.

Defendants.

Civil Action No. 1:15-cv-10698
Civil Action No. 1:16-cv-11117

JOINT STIPULATION AND [PROPOSED] ORDER REGARDING PRE-TRIAL DATES

WHEREAS, the Court's February 17, 2016 Scheduling Order (Dkt. 124) requires the parties to file a pretrial memorandum pursuant to Local Rule 16.5(d) by January 12, 2017, and trial briefs pursuant to Local Rule 16.5(f) by February 2, 2017;

WHEREAS, the Court's October 7, 2016 Order (Dkt. 260) requires the parties to additionally file, by January 12, 2017, "motions in limine and supporting memoranda," "[a]ny stipulations," "[p]roposed voir dire questions," witness lists, exhibit lists, "[p]roposed jury instructions, with authority," and "[a] proposed special verdict form";

WHEREAS, the same Order (Dkt. 260) sets a pretrial conference for January 24, 2017 (and the following day, if necessary), a final pretrial conference for February 8, 2017 (and the following day, if necessary), and commencement of trial for February 13, 2017;

WHEREAS, pursuant to a December 13, 2016 Joint Stipulation (Dkt. 308) and subsequent Order regarding the same (Dkt. 321), the deadline to exchange pretrial disclosures required by Fed. R. Civ. P. 26(a)(3) is January 4, 2017; the deadline to exchange any objections

to pretrial disclosures pursuant to Fed. R. Civ. P. 26(a)(3) is January 10, 2017; and all other deadlines set forth in the Court's previous orders presently remain in place;

WHEREAS, following the summary judgment hearing held on December 21–22, 2016, the parties agreed to a briefing schedule for (1) supplemental summary judgment briefing “addressing whether a reasonable jury could find that Hospira is, with Celltrion Healthcare Co., Ltd. and Celltrion Inc., liable for inducing patent infringement under 35 U.S.C. §271(b) on theories of joint enterprise, agency, or contract” (*see* Dkt. 327, 328), (2) Defendants' *Daubert* motion regarding two of Plaintiffs' expert witnesses, and (3) Plaintiffs' motion *in limine* regarding one of Defendants' expert witnesses, which schedule set deadlines for briefs for the foregoing items on January 3, January 12, and January 17, 2017;

WHEREAS, following the summary judgment hearing held on December 21–22, 2016, the Court indicated that it would endeavor to address the supplemental summary judgment briefing, Defendants' *Daubert* motion, and Plaintiffs' motion *in limine* during the pretrial conference scheduled for January 24–25, 2017 (*see* 12/22/16 Conference Tr. at 4–5);

WHEREAS, the parties have met and conferred regarding pretrial exchanges and submissions and have reached certain agreements that they believe will maximize efficiency with respect to the same, for the Court and for the parties, and divide the issues to be addressed by the Court in advance of trial between the two pretrial conferences scheduled for January 24–25, 2017 and February 8–9, 2017;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED that:

1. The parties will exchange witness lists and exhibit lists (with exhibits identified by number) pursuant to Fed. R. Civ. P. 26(a)(3) by January 4, 2017, consistent with the December 13, 2016 Joint Stipulation (Dkt. 308) and subsequent Order regarding the same (Dkt.

321); when exchanging witness lists, the parties will make a good-faith effort to identify those witnesses whom they expect, or will seek, to call live at trial;

2. Documents to be used solely for impeachment need not be included on the lists of trial exhibits or disclosed in advance of being used at trial;

3. Exhibit lists need not include demonstrative exhibits;

4. Exhibits solely related to an injunctive relief hearing, if necessary, need not be included on the lists of trial exhibits exchanged on January 4, 2017;

5. The parties will exchange any objections to witnesses by January 10, 2017;

6. The parties will serve supplemental exhibit lists and copies of exhibits, labeled with exhibit numbers, by January 30, 2017, which will include updated lists of exhibits expected to be used at the liability trial and preliminary lists of exhibits pertinent to the hearing on injunctive relief;

7. The parties will file their proposed exhibit lists for the liability trial by February 6, 2017;

8. The parties will file their proposed exhibit lists for the hearing on injunctive relief by February 20, 2017;

9. The parties will raise and seek resolution of objections to trial exhibits under a procedure whereby:

- a) the parties shall identify, by witness, the trial exhibits by number that they expect to use on direct examination by 6:00 p.m. two calendar days before the direct examination is expected to take place;
- b) objections to exhibits shall be provided no later than 9:00 am the day before their intended use;
- c) the parties shall meet and confer in an attempt to resolve any objections to the exhibits that are expected to be used during direct examination;
- d) if good faith efforts to resolve the objections fail, the party objecting to the exhibit(s) shall bring its objections to the Court's attention prior to the witness being called to testify;

10. Deposition designations (to be read or played from video) will be identified and exchanged under a procedure whereby:

- a) the parties shall serve by January 19, 2017 deposition designations for any witness who has not been identified as a witness who will be called live at trial;
- b) any objections and counter-designations to deposition designations shall be served by January 26, 2017;
- c) any objections to counter-designations and any counter-counter-designations shall be served by February 1, 2017;
- d) any objections to counter-counter-designations shall be served by February 3, 2017;
- e) no deposition designations shall be required for witnesses identified as ones who will be called to testify live at trial, with the exception that if a fact witness previously identified as one who will be called to testify live is subsequently no longer so identified, the parties may designate testimony from such witness upon reasonable notice;

11. The parties will exchange proposed jury instructions, special verdict forms, and voir dire questions by January 19, 2017, will meet and confer thereafter in an effort to identify and narrow disputed issues with respect to the same, and will file their respective proposed jury instructions, special verdict forms, and voir dire questions by February 1, 2017;

12. All other deadlines set forth in the Court's previous orders shall remain in place.

Dated: January 4, 2017

/s/Andrea L. Martin

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Dated: January 4, 2017

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IT IS SO ORDERED.

Dated: _____

Hon. Mark L. Wolf
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, Andrea L. Martin, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 4, 2017.

/s/Andrea L. Martin, Esq.
Andrea L. Martin, Esq.