

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

JANSSEN BIOTECH, INC.,

Plaintiff,

v.

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

Defendants.

Civil Action No. 1:17-cv-11008-MLW

JANSSEN'S MOTION TO BEGIN TRIAL ON AUGUST 6, 2018

For the purposes of planning by counsel and witnesses, Janssen respectfully submits this motion for a scheduling order specifying a date certain on which trial in this action will begin.

Janssen proposes that the date be Monday, August 6, 2018. Prior to bringing this motion, Janssen discussed the matter with Defendants. Defendants agreed that setting a date certain for the beginning of trial would be appropriate so as to alleviate uncertainty for counsel and witnesses. However, Defendants have taken the position that trial should not start until August 13, 2018. Janssen believes that August 6, 2018 is a more reasonable date.

The current case schedule calls for three weeks of pretrial hearings to take place from June 11-29, 2018. Dkt. No. 176. It goes on to state that “[p]roceedings will resume on July 30, 2018, with hearings on outstanding issues, if any, to be decided, and trial to follow immediately thereafter” and that “[t]he parties are ordered to reserve July 30, 2018 through October 1, 2018 for final pre-trial activities and trial.” *Id.* Although the parties and their counsel have reserved these dates as ordered, the parties are in agreement that for purposes of planning their own and their witnesses’ travel schedules, it would be beneficial to specify a date certain when the trial

itself is scheduled to begin. This is especially so since, as the Court knows, witnesses will be coming from out of the country – Switzerland, Ireland and South Korea.

Janssen believes that scheduling trial to begin on August 6, 2018 is reasonable. An August 6 start date would leave four full weeks – three weeks in June (June 11-29) and one additional week if necessary (July 30-August 3) – for pretrial hearings to be completed. Before informing Janssen that they objected to an August 6 trial date, Defendants never suggested that more time was needed for pretrial hearings than is called for by the current case schedule. On the contrary, in their scheduling proposals of February 2, 2018, both parties agreed that three weeks would be sufficient for pretrial proceedings. *See* Dkt. No. 164 (Defendants); Dkt. No. 165 (Janssen). Defendants initially suggested that “[h]earings regarding summary judgment, *Daubert* motions, motions in limine, and jury instructions” begin on August 6, 2018 and that trial should begin *three weeks* later, on August 27, 2018. Dkt. No. 164 at 2. Janssen agreed with Defendants that three weeks should be reserved for pretrial proceedings, but suggested that these proceedings take place in June so that trial could begin promptly at the beginning of August. Dkt. No. 165 at 3. On February 2, 2018, the Court indicated that it would adopt Janssen’s proposal and hold pretrial hearings in June and that is reflected in the current schedule. *See* Feb. 2, 2018 Tr. at 21-22; Dkt. No. 176.

Only one thing has changed since Defendants suggested on February 2, 2018 that three weeks would be sufficient for pretrial hearings: Defendants sought and obtained Janssen’s consent to file an untimely summary judgment motion on a liability issue, ensnarement. Dkt. No. 203. In response to Defendants’ initial request for consent, Janssen asked for more information on what other motions Defendants intended to file in order to ascertain whether “there is enough room in the schedule for an untimely motion for summary judgment on

liability.” *See* Exhibit A at 1. In response, Defendants represented to Janssen that “[g]iven the amount of time the Court has set aside *in June* to hear motions, we do not believe there will be any problem fitting this motion into the schedule.” *Id.* (emphasis added). On this basis, Janssen consented to Defendants’ request. *See* Dkt. No. 203.

In light of Defendants’ representations in connection with their recent motion for leave, Janssen does not see how they can dispute that pretrial hearings can be completed in June. If pretrial hearings are completed in June, then trial could begin the week of July 30, when proceedings resume. Nevertheless, to be conservative and to allow for unexpected matters, Janssen requests that trial be scheduled to begin on a firm date one week later, on August 6, 2018. Janssen believes that allowing two full additional weeks for pretrial proceedings, as Defendants propose, is unnecessary.

Janssen understands that the Court typically selects juries on Mondays and that the Court typically sits a half day for jury trials. Based on that anticipated schedule, Janssen proposes that jury selection be set for Monday, August 6, with openings and testimony beginning on Tuesday, August 7. But whatever date the Court prefers, Janssen understands that the parties agree that the Court should set a firm date on which trial will begin.

Dated: April 23, 2018

/s/ Alison C. Casey

Heather B. Repicky BBO #663347
Alison C. Casey BBO# 688253
NUTTER MCCLENNEN & FISH LLP
Seaport West
155 Seaport Boulevard
Boston, Massachusetts 02210
Tel.: (617) 439-2000
Fax: (617) 310-9000
hrepicky@nutter.com

acasey@nutter.com

PATTERSON BELKNAP WEBB & TYLER
LLP

Gregory L. Diskant (*pro hac vice*)

Irena Royzman (*pro hac vice*)

Aron Fischer (*pro hac vice*)

Andrew D. Cohen (*pro hac vice*)

1133 Avenue of the Americas

New York, New York 10036

Tel: (212) 336-2000

Fax: (212) 336-2222

gldiskant@pbwt.com

afischer@pbwt.com

acohen@pbwt.com

Attorneys for Janssen Biotech, Inc.

LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(A)(2), I certify that Plaintiff's counsel conferred with Defendants' counsel on the subject of this motion; Defendants agree with Plaintiff with respect to its request to set a date certain for trial to begin, but Defendants oppose Plaintiff's proposed trial date of August 6, 2018.

/s/ Alison C. Casey _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed through the electronic filing system and served electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Alison C. Casey _____

3844233.1

EXHIBIT A

Fischer, Aron (x2363)

From: Sanford, Gregory B. <gregory.sanford@kirkland.com>
Sent: Friday, March 30, 2018 9:14 AM
To: Fischer, Aron (x2363); Cutri, Elizabeth A.; _cg Celltrion Internal
Cc: Alison Casey; Heather B. Repicky; #Hospira-Infliximab; inflixWS; Andrea L. Martin; dkelly@burnslev.com
Subject: RE: Janssen v. Celltrion

Aron,

As Liz mentioned, there is quite a bit of time and discovery remaining between now and the deadlines for filing motions and we have not decided what motions in limine, Daubert, and summary judgment motions we intend to file in May. Given the amount of time the Court has set aside in June to hear motions, we do not believe there will be any problem fitting this motion into the schedule. Please let us know Janssen's position on the requests for leave to file the motion, to permit up to 30 pages, and to set a briefing schedule. We remain willing to discuss this with you today if you would like.

Gregory B. Sanford

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 2744
F +1 312 862 2200

gregory.sanford@kirkland.com

From: Fischer, Aron (x2363) <afischer@pbwt.com>
Sent: Friday, March 30, 2018 6:08 AM
To: Cutri, Elizabeth A. <elizabeth.cutri@kirkland.com>; _cg Celltrion Internal <CelltrionInternal@pbwt.com>
Cc: Alison Casey <ACasey@nutter.com>; Heather B. Repicky <HRepicky@nutter.com>; #Hospira-Infliximab <Hospira-Infliximab@kirkland.com>; inflixWS <inflixWS@winston.com>; Andrea L. Martin <amartin@burnslev.com>; dkelly@burnslev.com
Subject: RE: Janssen v. Celltrion

Liz,

The reason we need to know what other motions you are filing is that we are concerned whether there is enough room in the schedule for an untimely motion for summary judgment on liability, and that depends on what else is on the schedule. I find it unlikely that you have no idea what motions you are planning to file. Please provide the information that you have.

Thanks
Aron

Aron Fischer
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036-6710
t: 212-336-2363
f: 212-336-1240
afischer@pbwt.com

From: Cutri, Elizabeth A. [<mailto:elizabeth.cutri@kirkland.com>]
Sent: Friday, March 30, 2018 1:30 AM
To: Fischer, Aron (x2363); _cg Celltrion Internal
Cc: Alison Casey; Heather B. Repicky; #Hospira-Infliximab; inflixWS; Andrea L. Martin; dkelly@burnslev.com
Subject: RE: Janssen v. Celltrion

Aron,

As you know, discovery is ongoing. Janssen has not completed its expert reports, and no experts have been deposed. We are still considering what summary judgment, *Daubert*, and *in limine* motions Defendants will file in May. We do not see why that should hold up the ensnarement motion or the motion for leave though. Please let us know Janssen's position on the requests for leave to file the motion, to permit up to 30 pages, and to set a briefing schedule. We remain willing to discuss on Friday if you would like.

Regards,
Liz

Elizabeth Cutri

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 7160
F +1 312 862 2200

elizabeth.cutri@kirkland.com

From: Fischer, Aron (x2363) <afischer@pbwt.com>
Sent: Thursday, March 29, 2018 3:45 PM
To: Cutri, Elizabeth A. <elizabeth.cutri@kirkland.com>; _cg Celltrion Internal <CelltrionInternal@pbwt.com>
Cc: Alison Casey <ACasey@nutter.com>; Heather B. Repicky <HRepicky@nutter.com>; #Hospira-Infliximab <Hospira-Infliximab@kirkland.com>; inflixWS <infixWS@winston.com>; Andrea L. Martin <amartin@burnslev.com>; dkelly@burnslev.com
Subject: RE: Janssen v. Celltrion

Liz,

You're correct that we would oppose the underlying motion. In order to decide what our position will be on leave to file, we need to know more about what else is on the agenda for June. Please let us know what, if any, additional motions for summary judgment, motion to exclude experts, and *in limine* motions you intend to file this May.

Thanks
Aron

Aron Fischer
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036-6710
t: 212-336-2363
f: 212-336-1240
afischer@pbwt.com

From: Cutri, Elizabeth A. [<mailto:elizabeth.cutri@kirkland.com>]
Sent: Thursday, March 29, 2018 4:19 PM
To: _cg Celltrion Internal
Cc: Alison Casey; Heather B. Repicky; #Hospira-Infliximab; inflixWS; Andrea L. Martin; dkelly@burnslev.com
Subject: Janssen v. Celltrion

Counsel,

Defendants intend to file a motion seeking leave to file a motion for summary judgment of noninfringement based on ensnarement. We plan to request that the Court set a briefing schedule and hear the motion during the week of June 11. We also intend to ask for up to 30 pages for our opening brief. We expect Janssen would oppose the summary judgment motion, but please let us know Janssen's position on the motion for leave by Monday morning. If you would like to discuss, we are available on Friday.

Regards,
Liz

Elizabeth Cutri

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 7160
F +1 312 862 2200

elizabeth.cutri@kirkland.com

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