

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

AMGEN, INC., et al.,

Plaintiffs,

v.

ADELLO BIOLOGICS LLC,

Defendant.

Civil Action No.: 18-3347 (CCC)

SCHEDULING ORDER

THIS MATTER having come before the Court for the entry of a scheduling order pursuant to Rule 16 of the Federal Rules of Civil Procedure; and the Court having considered the parties' proposed discovery schedule; and for good cause shown:

IT IS on this 22nd day of June 2018,

ORDERED THAT:

I. DISCLOSURES

1. Fed. R. Civ P. 26 initial disclosures are to be exchanged on or before **June 25, 2018**.

II. SCHEDULING

2. By **August 3, 2018**, Plaintiff shall serve Disclosure of Asserted Claims and Infringement Contentions, including the production of all documents required under L. Pat. R. 3.2.
3. By **October 2, 2018**, Defendant shall serve its written basis for its Non-Infringement Contentions and related document production as required by L. Pat. R. 3.2A.
4. By **October 2, 2018**, Defendant shall serve the written basis for its Invalidity Contentions, including disclosures required under L. Pat. R. 3.3, and production of documents required under L. Pat. R. 3.4.

5. By **November 1, 2018**, Plaintiff shall serve its Responses to Invalidity Contentions and related production of documents required under L. Pat. R. 3.4A.

6. Not later than **November 15, 2018**, the parties are to exchange proposed terms for claim construction pursuant to L. Pat. R. 4.1(a).

7. Not later than **December 6, 2018**, the parties shall simultaneously exchange preliminary proposed claim constructions and supporting evidence, in accordance with L. Pat. R. 4.2(a) and (b).

8. By **December 6, 2018**, the parties shall identify all intrinsic evidence and all references from the specification or prosecution history that support its preliminary proposed construction and designate any supporting extrinsic evidence.

9. By **December 20, 2018**, the parties shall exchange an identification of all intrinsic evidence and extrinsic evidence that each party intends to rely upon to oppose any other party's proposed construction.

10. On or before **December 28, 2018**, the parties shall meet-and-confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement.

11. Not later than **January 7, 2019**, the parties shall complete and file a Joint Claim Construction and Prehearing Statement and accompanying documents, in accordance with L. Pat. R. 4.3.

12. By **January 25, 2019**, the parties shall substantially complete document production.

13. By **February 6, 2019**, the parties shall complete all discovery relating to claim construction, including any depositions with respect to claim construction of any witnesses, other than experts, identified in the Preliminary Claim Construction statement or Joint Claim Construction and Prehearing Statement.

Claim Construction Submissions

14. By **February 21, 2019**, the parties shall file their opening *Markman* briefs and any evidence supporting claim construction, including experts' certifications or declarations in accordance with L. Pat. R. 4.5(a).

15. By **March 25, 2019**, any discovery from an expert witness who submitted a certification or declaration shall be concluded, in accordance with L. Pat. R. 4.5(b).

16. Not later than **April 22, 2019**, the parties shall file responding *Markman* briefs and any evidence supporting claim construction, including any responding experts' certifications or declarations, in accordance with L. Pat. R. 4.5(c).

17. By **May 6, 2019**, the parties shall confer in accordance with L. Pat. R. 4.6 to propose to the Court a schedule for a Claim Construction Hearing, to the extent the parties or the Court believe a hearing is necessary for construction of the claims at issue.

18. The parties shall produce opinions of counsel and associated disclosures, if they choose to rely upon them, by **July 1, 2019** in accordance with L. Pat. R. 3.8.

Discovery and Motion Practice

19. Any motions to join parties or amend pleadings, whether by third-party complaint or amended pleadings, shall be filed by **November 1, 2018**.

20. All fact discovery shall be complete by **August 1, 2019**. Requests for additional time to conduct discovery will be considered under the "good cause" standard of Rule 16.

21. Any discovery or case management dispute shall be raised informally as provided for in Local Civil Rule 37.1, following an actual meet-and-confer by the parties. If the parties are unable to agree, a short letter may be emailed to chambers at mf_orders@njd.uscourts.gov indicating that there is a dispute and the subject matter of the dispute. Detailed, multi-page letters should **not** be submitted. Upon receipt of any such letter, the Court will attempt to schedule a telephone conference within 24 hours to discuss the details of the dispute and make a more specific plan for how it should be addressed (e.g., formal motion, informal briefing, in-court meet and confer, etc.). Any letter submitted should be **double spaced**.

22. Dispositive motion deadlines will be set as the case proceeds. Any party that wishes to file a dispositive motion shall request a pre-motion conference with the Magistrate Judge. No motions are to be filed without permission from this Court.

23. No objections to questions posed at depositions shall be made other than as to lack of foundation, form, or privilege. See Fed. R. Civ. P. 32(d)(3)(A). No instruction not to answer shall be given unless a privilege is implicated.

III. EXPERTS

24. All expert reports on behalf of the party having the burden of proof on the issue shall be delivered by **September 2, 2019**.

25. All rebuttal expert reports shall be delivered by **October 17, 2019**.

26. All reply expert reports shall be delivered by **November 18, 2019**.
27. All expert discovery shall be completed by **January 20, 2020**.

IV. PRETRIAL CONFERENCE

28. A final pretrial conference shall be conducted pursuant to Federal Rule of Civil Procedure 16(d) at **TO BE DETERMINED**. All pretrial submissions must be served upon the Court **forty-eight (48) hours** prior to the final pretrial conference.

V. FUTURE CONFERENCES

29. There shall be an conferences before the Undersigned on the following dates and times:

***August 16, 2018, at 3:30 p.m. (via telephone)**

*** October 23, 2018, at 10:30 a.m. (in-person)**

*** December 6, 2018, at 3:30 p.m. (via telephone)**

****When the conference is scheduled by phone, Plaintiff is directed to arrange and initiate the call.***

30. The Court may, from time-to-time, schedule conferences as may be required, either *sua sponte* or at the request of any party.

31. Counsel should be prepared to discuss settlement at every conference with the Court. The senior attorney in charge of the case must attend all settlement conferences and clients with full settlement authority must either attend the conference or be immediately available by telephone.

VI. MISCELLANEOUS

32. If a party seeks to file information under seal, the party shall: (1) refer to Local Civil Rule 5.3(c); and (2) contact the Chambers of the undersigned for instructions regarding the format for presenting such a motion. The parties are reminded that the Local Civil Rules contemplate that the sealing of materials will be done in the least restrictive means available. See L. Civ. R. 5.3(c)(2). As a result, the Court will *not*, absent extreme circumstances, seal lengthy documents in their entirety.

33. The parties should submit any proposed discovery confidentiality order and proposed ESI order by **June 29, 2018**. Any confidentiality order submitted must strictly comply with Local Civil Rule 5.3. Any such form of order must be accompanied by an affidavit or attorney certification filed electronically under the designation “affidavit/certification in support

of discovery confidentiality order.” The affidavit or attorney certification shall describe (a) the nature of the materials to be kept confidential, (b) the legitimate private or public interests which warrant confidentiality and (c) the clearly defined and serious injury that would result should the order not be entered. Any such order must be clearly designated “**Discovery Confidentiality Order.**” See L. Civ. R. 5.3.

34. Any disputes over the entry of a discovery confidentiality order should be raised with the Undersigned pursuant to Local Civil Rule 37.1 following a good faith effort to meet and confer. See L. Civ. R. 5.3(b)(5); L. Civ. R. 37.1. The absence of a discovery confidentiality order is not a sufficient basis to withhold discovery. Pending the entry of a discovery confidentiality order and/or during the pendency of any dispute relating to the entry of a discovery confidentiality order, discovery shall proceed on a temporary attorney’s eyes only basis.

35. A copy of every pleading, document, or written communication with the Court shall be served on all other parties to the action. Any such communication that does not recite or contain a certification of such service may be disregarded by the Court.

FAILURE TO FOLLOW THIS ORDER MAY RESULT IN THE IMPOSITION OF SANCTIONS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 16 AND 37.

s/ Mark Falk
MARK FALK
United States Magistrate Judge