

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

BRISTOL-MYERS SQUIBB CO. and  
E. R. SQUIBB & SONS, L.L.C.,

Plaintiffs,

v.

ASTRAZENECA PHARMACEUTICALS  
LP and ASTRAZENECA UK LTD.,

Defendants.

C.A. No. 22-346-MFK

**JURY TRIAL DEMANDED**

**SCHEDULING ORDER**

This 10th day of May, 2022, the Court having conducted an initial 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. Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) by **JUNE 3, 2022**. If they have not already done so, the parties are to review the District of Delaware'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.

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 **DECEMBER 30, 2022**. 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 6(g) and 7.

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 by **JUNE 3, 2022**. Should counsel be unable to reach an agreement on a proposed form of order, counsel must follow the provisions of Paragraph 6(g) below.

4. Papers Filed Under Seal. In accordance with section G of the District of Delaware's 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. Disclosures. Absent agreement among the parties, and approval of the Court:

(a) By **JUNE 3, 2022**, Plaintiffs shall identify the accused product(s), including accused methods and systems, and its damages model, as well as the asserted patent(s) that the accused product(s) allegedly infringe(s). Plaintiffs shall also produce the file history for each asserted patent.

(b) By **JUNE 17, 2022**, Defendants shall produce core technical documents related to the accused product(s), sufficient to show how the accused product(s) work(s), including but not limited to non-publicly available operation manuals, product literature, schematics, and specifications. Defendants shall also produce sales figures for the accused product(s).

(c) By **JULY 8, 2022**, Plaintiffs shall produce an initial claim chart relating each known accused product to the asserted claims each such product allegedly infringes. Plaintiffs will narrow the number of asserted claims for all asserted patents to no more than 50

total asserted claims overall.

(d) By **JULY 22, 2022**, Defendants shall produce initial non-infringement contentions and initial invalidity contentions for each asserted claim, as well as the known related invalidating references. Defendants will narrow the asserted invalidity grounds for all asserted patents to no more than 50 total prior art and non-prior art grounds overall.

(e) By **MAY 5, 2023**, Plaintiffs shall provide final infringement contentions. By the deadline for submitting final infringement contentions or within 7 days of the claim construction order, whichever is later, Plaintiffs will narrow the number of asserted claims for all asserted patents to no more than 20 total asserted claims overall.

(f) By **MAY 19, 2023**, Defendants shall provide final invalidity contentions. By the deadline for submitting final invalidity contentions or within 7 days after Plaintiffs narrow the number of asserted claims as described in paragraph 5(e) above, whichever is later, Defendants will narrow the asserted invalidity grounds for all asserted patents to no more than 25 total prior art and non-prior art grounds overall.

6. 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) Fact Discovery Cut Off. All fact discovery in this case shall be initiated so that it will be completed on or before **JUNE 16, 2023**.

(b) Document Production. Document production shall be substantially complete by **DECEMBER 16, 2022**.

(c) Requests for Admission. There is no maximum number of requests for admission permitted for each side.

(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. Each side is limited to a total of 120 hours of taking testimony of fact witnesses by deposition upon oral examination.

(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 **JULY 28, 2023**. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party, including identification of opinions related to secondary considerations of nonobviousness, is due on or before **AUGUST 25, 2023**. Reply expert reports from the party with the initial burden of proof are due on or before **SEPTEMBER 22, 2023**. 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.

ii. 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 the deadline for dispositive motions set forth herein, unless

otherwise ordered by the Court. Briefing on such motions is subject to the page limits set out in connection with briefing of case dispositive motions.

iii. Expert Discovery Cut-Off. All expert discovery in this case shall be initiated so that it will be completed on or before **OCTOBER 27, 2023**.

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

i. Should counsel find, after a reasonable effort pursuant to District of Delaware Local Rule 7.1.1 that they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties shall notify the Court's staff and request how to proceed forward, whether by letter briefs or otherwise.

ii. Unless the Court sets a different schedule or orders that the dispute be heard without briefing, the party seeking relief shall file with the Court a letter, not to exceed three (3) pages, outlining the issues in dispute and its position on those issues. Within three business days of the initial letter being filed, any party opposing the application for relief may file a letter, not to exceed three (3) pages, outlining that party's reasons for its opposition.

7. Motions to Amend / Motions to Strike.

(a) Any motion to amend (including a motion for leave to amend) a pleading or any motion to strike any pleading or other document shall be made pursuant to the discovery dispute procedure set forth in Paragraph 6(g) above.

(b) Any such motion shall attach the proposed amended pleading as well as a "redline" comparison to the prior pleading or attach the document to be stricken.

8. Technology Tutorials. The parties' technology tutorials shall be submitted on or before **MARCH 17, 2023**, unless both parties agree to forgo submission of technology tutorials.

9. Claim Construction Issue Identification. On **OCTOBER 7, 2022**, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction. On

**OCTOBER 28, 2022**, the parties shall exchange their proposed claim construction of those term(s)/phrase(s). This document will not be filed with the Court. Subsequent to exchanging that list, the parties will meet and confer to prepare a Joint Claim Construction Chart to be submitted on **JANUARY 27, 2023**, one week before Plaintiffs' opening claim construction brief is filed. The parties' Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue, and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A separate JOINT APPENDIX OF INTRINSIC EVIDENCE (including copies of the patent(s) at issue) shall be filed along with the Joint Claim Construction Chart.

10. Claim Construction Briefing. The Parties shall refer to any intrinsic evidence by name and cite to it by Joint Appendix page number in their respective claim construction briefs. The parties shall refer to any extrinsic evidence submitted with their brief by Exhibit Number or Letter. On **FEBRUARY 3, 2023**, Plaintiffs shall file their opening claim construction brief along with any extrinsic evidence relied on in that brief attached as exhibits to an attorney declaration. On **FEBRUARY 17, 2023**, Defendants shall file their Answering Claim Construction Brief along with any extrinsic evidence relied on in that brief attached as exhibits to an attorney declaration. On **MARCH 3, 2023**, Plaintiffs shall file their Reply Claim Construction Brief along with any extrinsic evidence relied on in that brief attached as exhibits to an attorney declaration

11. Hearing on Claim Construction. Beginning at **10:30** Eastern time on **APRIL 7, 2023**, the Court will hear argument on claim construction. The parties need not include any general summaries of the law relating to claim construction in their presentations to the Court. The parties shall notify the Court, by joint letter submission, no later than **MARCH 17, 2023**, the amount of time they are requesting be allocated to them for the hearing.

12. Case Dispositive Motions.

(a) All case dispositive motions, an opening brief, and affidavits, if any, in support of the motion shall be served and filed on or before **NOVEMBER 10, 2023**. Briefing will be presented pursuant to the District of Delaware's Local Rules. No case dispositive motion under Rule 56 may be filed more than ten (10) days before the above date without leave of the Court.

(b) Concise Statement of Facts Requirement. Any motion for summary judgment shall be accompanied by a separate concise statement, not to exceed six (6) pages, which details each material fact which the moving party contends is essential for the Court's resolution of the summary judgment motion (not the entire case) and as to which the moving party contends there is no genuine issue to be tried. Each fact shall be set forth in a separate numbered paragraph and shall be supported by specific citation(s) to the record.

Any party opposing the motion shall include with its opposing papers a response to the moving party's concise statement, not to exceed six (6) pages, which admits or disputes the facts set forth in the moving party's concise statement on a paragraph-by-paragraph basis. To the extent a fact is disputed, the basis of the dispute shall be supported by specific citation(s) to the record. Failure to respond to a fact presented in the moving party's concise statement of facts shall indicate that fact is not in dispute for purposes of summary judgment. The party opposing the motion may also include with its opposing papers a separate concise statement, not to exceed four (4) pages, which sets forth material facts as to which the opposing party contends there is a genuine issue to be tried. Each fact asserted by the opposing party shall also be set forth in a separate numbered paragraph and shall be supported by specific citation(s) to the record.

The moving party shall include with its reply papers a response to the opposing party's concise statement of facts, not to exceed four (4) pages, on a paragraph-by-paragraph basis. Failure to respond to a fact presented in the opposing party's concise statement of facts shall

indicate that fact remains in dispute for purposes of summary judgment.

(c) Page limits combined with *Daubert* motion page limits. Each party is permitted to file as many case dispositive motions as desired provided, however, that each ***SIDE*** will be limited to a combined total of 40 pages for all opening briefs, a combined total of 40 pages for all answering briefs, and a combined total of 20 pages for all reply briefs regardless of the number of case dispositive motions that are filed. In the event that a party files, in addition to a case dispositive motion, a *Daubert* motion to exclude or preclude all or any portion of an expert's testimony, the total amount of pages permitted for all case dispositive and *Daubert* motions shall be increased to 50 pages for all opening briefs, 50 pages for all answering briefs, and 25 pages for all reply briefs for each ***SIDE***.

13. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion. Any non-dispositive motion should contain the statement required by District of Delaware Local Rule 7.1.1.

14. Motions in Limine. Any motions in limine must be filed and served no later than fourteen (14) days before the final pretrial conference; any responses must be filed and served no later than seven (7) days before the final pretrial conference. Absent prior leave of court, motions in limine are limited to a total of 15 pages per side, and responses to motions in limine are likewise limited to a total of 15 pages per side. Separate in limine requests and responses may be combined in a single filing.

15. Pretrial Conference. On **APRIL 12, 2024**, the Court will hold a pretrial conference in Court with counsel beginning at **10:00 AM ET**. Unless otherwise ordered by the Court, the parties should assume that filing the pretrial order satisfies the pretrial disclosure requirement of Federal Rule of Civil Procedure 26(a)(3). The parties shall file with the Court the




joint proposed final pretrial order in compliance with Judge Kennelly's Final Pretrial Order Requirements<sup>1</sup> by **MARCH 26, 2024**. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Exhibit A for the preparation of the joint proposed final pretrial order.

16. Trial. This matter is scheduled for a five (5) day jury trial beginning at 9:30 a.m. on **APRIL 22, 2024**, with the subsequent trial days beginning at 9:00 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

17. Judgment on Verdict and Post-Trial Status Report. Within seven (7) days after a jury returns a verdict in any portion of a jury trial, the parties shall jointly submit a form of order to enter judgment on the verdict. At the same time, the parties shall submit a joint status report, indicating among other things how the case should proceed and listing any post-trial motions each party intends to file.

18. Post-Trial Motions. Unless otherwise ordered by the Court, all **SIDES** are limited to a maximum of 20 pages of opening briefs, 20 pages of answering briefs, and 10 pages of reply briefs relating to any post-trial motions filed by that side, no matter how many such motions are filed.

  
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The Honorable Matthew F. Kennelly  
United States District Judge

<sup>1</sup> <https://www.ilnd.uscourts.gov/assets/documents/forms/judges/KENNELLY/FinalPretrialOrder.pdf>

## EXHIBIT A

EVENT	DEADLINE
Exchange Initial Disclosures	June 3, 2022
Submit Proposed Protective Order	June 3, 2022
Plaintiffs identify accused products, damages model, and produces file histories	June 3, 2022
Defendants produce core technical documents and sales figures related to accused products	June 17, 2022
Plaintiffs' Initial Infringement Contentions	July 8, 2022
Defendants' Initial Non-Infringement, Unenforceability, and Invalidity Contentions	July 22, 2022
Exchange list of terms to construe	Oct. 7, 2022
Exchange proposed constructions	Oct. 28, 2022
Substantial Completion of Document Production	Dec. 16, 2022
Joinder of Parties and Amendment of Pleadings	Dec. 30, 2022
Joint Claim Construction Chart	Jan. 27, 2023
Plaintiffs' Opening Claim Construction Brief	Feb. 3, 2023
Defendants' Answering Claim Construction Brief	Feb. 17, 2023
Plaintiffs' Reply Claim Construction Brief	Mar. 3, 2023
Deadline for Technology Tutorial	Mar. 17, 2023
Claim Construction Hearing	Apr. 5, 2023
Plaintiffs' Final Infringement Contentions	May 5, 2023
Defendants' Final Invalidity Contentions and Non-Infringement Contentions	May 19, 2023
Close of Fact Discovery	June 16, 2023
Opening Expert Reports	July 28, 2023
Rebuttal Expert Reports	Aug. 25, 2023
Reply Expert Reports	Sep. 22, 2023
Close of Expert Discovery	Oct. 27, 2023
Summary Judgment/ <i>Daubert</i> Motions	Nov. 10, 2023
Answer to Summary Judgment/ <i>Daubert</i> Motions	Dec. 8, 2023
Reply to Summary Judgment/ <i>Daubert</i> Motions	Dec. 22, 2023
Plaintiffs Provide Draft Joint Proposed Pretrial Order	Mar. 5, 2024
Defendants Provide Comments and Edits to Draft Joint Proposed	Mar. 12, 2024
Meet and Confer to Discuss Pretrial Order	Mar. 19, 2024
File Joint Proposed Pretrial Order	Mar. 26, 2024

<b>Motions in Limine</b>	Mar. 27, 2024
<b>Responses to Motions in Limine</b>	April 3, 2024
<b>Pre-Trial Conference</b>	April 10, 2024
<b>Jury Trial (5 days)</b>	April 22, 2024