

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

AMGEN INC.  
and AMGEN MANUFACTURING,  
LIMITED,

Plaintiffs,

V.

SANDOZ INC.,

Defendant.

Civil Action No. 1:23-cv-02406-CPO-EAP

## AMENDED SCHEDULING ORDER

This matter having come before the Court during an initial scheduling conference on August 16, 2023 and a status conference on August 31, 2023; pursuant to Fed. R. Civ. P. 16; and the Court having conferred with counsel concerning the timely completion of discovery; and upon instruction from the Court regarding the entry of the within Order (ECF No. 122) and during the August 31, 2023 status conference;

IT IS on this 5th day of September, 2023,

ORDERED that:

1. Discovery in this case will not be conducted in phases.
2. The parties will supplement the disclosures required by Fed. R. Civ. P. 26(a)(1)

no later than November 30, 2023.

3. Collectively, Amgen Inc. and Amgen Manufacturing Limited (“Amgen”) may serve 25 requests for admission (exclusive of requests directed at authenticating documents). Sandoz Inc. (“Sandoz”) may serve 25 requests for admission (exclusive of requests directed at

authenticating documents).<sup>1</sup>

4. Collectively, Amgen may serve 25 interrogatories. Sandoz may serve 25 interrogatories. To the extent a party seeks leave to serve additional interrogatories, that party may make an application to the Court.

5. There shall be no limits on the number of requests for production.

6. Depositions of persons in their individual capacity includes, but is not necessarily limited to, depositions taken pursuant to Fed. R. Civ. P. 30(b)(1), Fed. R. Civ. P. 45, or under any Hague Convention procedures or letters rogatory.

7. A deposition shall be limited to seven (7) hours of testimony per witness. Counsel for Amgen and Sandoz will cooperate in the scheduling of party depositions and make reasonable efforts to schedule such depositions within the time period requested by the party taking the deposition.

8. Counsel for Amgen and Sandoz agree to accept service by email of deposition notices for the parties and current employees of the parties. Acceptance of deposition notices or subpoenas by counsel does not waive any defense other than objections to service.

9. Amgen may collectively take 100 total hours of fact depositions of no more than 15 total persons in their individual capacity and/or under Fed. R. Civ. P. 30(b)(6). Sandoz may take 100 total hours of fact deposition of no more than 15 total persons in their individual capacity and/or under Fed. R. Civ. P. 30(b)(6). To the extent a party seeks leave for additional deposition time and/or witnesses, that party may make an application to the Court.

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<sup>1</sup> On August 23, 2023, the Court adopted the parties' stipulation and entered an order dismissing without prejudice Sandoz GmbH, LEK Pharmaceuticals D.D., Novartis AG, and Novartis Pharmaceuticals Production D.O.O. (collectively, "Foreign Defendants") and amending the case caption to reflect the same, and further specifying certain discovery agreements. ECF No. 131. Similarly, this Amended Case Management Order reflects that Sandoz Inc. is now the sole defendant.

10. With respect to expedited discovery that may be necessary for preliminary injunction briefing, each party should produce all declarants (fact and expert) for deposition in accordance with the schedule provided in the Proposed Case Schedule. Any depositions related to preliminary injunction proceedings shall be limited to one deposition per declarant. However, if a witness submits a second declaration in a reply or a sur-reply, an additional deposition is permitted but shall be limited to only the topics raised in such second declaration.

11. If a person is designated under Fed. R. Civ. P. 30(b)(6) to address more than 10 topics, the parties shall confer in a good faith and attempt to agree on a procedure for or informally resolve requests for deviations from the Fed. R. Civ. P. 30(d).

12. Amgen and Sandoz agree that service by electronic means shall be allowed as set forth in Fed. R. Civ. P. 5(b)(2)(E) and that such service shall be complete upon transmission, provided that the sender does not receive any indication that such electronic transmission was unsuccessful. Service by electronic means shall be considered the same as hand delivery for purposes of calculating the time to respond. Documents served on Amgen shall be sent to the following email addresses: AmgenDmab@sidley.com; walsh-dmab-amgen@walsh.law. Documents served on Sandoz shall be sent to the following email addresses: MoFo-Sandoz-Denosumab@mofo.com; eabraham@hillwallack.com; wmurtha@hillwallack.com. For any deposition of a witness who testifies substantially with the assistance of a translator, only half of the time of such depositions shall be counted against a party's totals, and as a result, depositions where a translator is used substantially may be conducted over the course of multiple days.

13. Counsel taking the deposition of any foreign witness will be responsible for providing a translator, and Counsel for the deposed foreign witness may also retain a separate translator. Foreign language documents produced in response to a request for production must

be produced 30 days in advance of the close of fact discovery, in order to allow time for translations and review. The producing party shall produce English translations of foreign language documents that are kept in the ordinary course of business.

14. Any fact witnesses controlled by a party or affiliate shall be produced for deposition related to the preliminary injunction in the United States in person or via video conference in London, U.K., Spain, the Netherlands, or another European country permitting participation in depositions conducted pursuant to litigation in the United States. Following the preliminary injunction phase, the Court may further consider the required location of depositions not related to the preliminary injunction phase.

15. The Court will address any request for bifurcation after any decision on Amgen's motion for a preliminary injunction.

16. Amgen shall begin producing documents responsive to Sandoz's identified expedited discovery requests on issues including irreparable harm by no later than August 25, 2023. The parties shall substantially complete production of documents responsive to the identified expedited discovery requests by no later than September 1, 2023.

17. Sandoz shall identify invalidity contentions on which it intends to rely in its opposition to Amgen's preliminary injunction motion for the claims identified in Amgen's response to Sandoz's Interrogatory No. 1 no later than September 8, 2023, the date on which Amgen's preliminary injunction motion is due.

18. Amgen shall make declarants identified in its preliminary injunction motion available for deposition beginning on or about September 15, 2023.

19. Sandoz shall make declarants identified in its opposition to Amgen's preliminary injunction motion available for deposition beginning on or about October 6, 2023.

20. Amgen shall serve its Disclosure of Asserted Claims and Infringement Contentions pursuant to L. Pat. R. 3.1 and a Document Production Accompanying Disclosure pursuant to L. Pat. R. 3.2 no later than January 17, 2024.

21. Sandoz shall serve its Non-Infringement Contentions pursuant to L. Pat. R. 3.2A, Invalidity Contentions pursuant to L. Pat. R. 3.3, and a Document Production Accompanying Invalidity Contentions pursuant to L. Pat. R. 3.4 no later than March 4, 2024.

22. Amgen shall serve its Response to Sandoz's Invalidity Contentions pursuant to L. Pat. R. 3.4A no later than March 18, 2024.<sup>2</sup>

23. The parties shall exchange proposed terms for construction pursuant to L. Pat. R. 4.1(a) no later than March 29, 2024.

24. The parties shall exchange Preliminary Claim Constructions and Supporting Evidence pursuant to L. Pat. R. 4.2( a) & (b) no later than April 19, 2024.

25. The parties shall exchange intrinsic and extrinsic evidence opposing the other party's proposed constructions pursuant to L. Pat R. 4.2(c) no later than May 3, 2024.

26. The parties shall submit their Amended Joint Claim Construction and Pre-Hearing Statement pursuant to L. Pat. R. 4.3 no later than June 3, 2024.

27. The parties shall complete fact discovery related to claim construction no later than July 1, 2024.

28. The parties shall serve and file opening *Markman* submissions pursuant to L. Pat. R. 4.5(a) no later than July 18, 2024.

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<sup>2</sup> The Court approved the January 17, 2023 (L. Pat. R. 3.1 and 3.2 Disclosures), March 4, 2023 (L. Pat. R. 3.3 and 3.4 Disclosures) and March 18, 2023 (L. Pat. R. 3.4A Disclosures) deadlines identified in footnote 2 of the August 4, 2023 Case Management Order. *See* Aug. 16, 2023 Hrg Tr. at 66:22-25; *see also* ECF No. 99-1 at 3 n. 2. The remaining deadlines pursuant to the Local Patent Rules in this Proposed Order are calculated based on the dates ordered by the Court.

29. The parties shall complete expert discovery regarding *Markman* issues pursuant to L. Pat. R. 4.5(b) no later than August 17, 2024.

30. The parties shall serve and file responsive *Markman* submissions pursuant to L. Pat. R. 4.5(c) no later than September 16, 2024.

31. The parties shall propose a Markman hearing schedule to the Court no later than September 30, 2024.

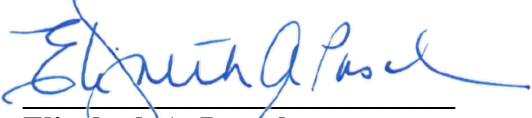
32. The parties shall file motions to amend or to add parties no later than October 17, 2024.

33. Parties intending to rely upon advice of counsel shall make required disclosures pursuant to L. Pat. R. 3.8 no later than 30 days after the Court's claim construction order.

34. All further dates shall be set by subsequent Order.

35. The Court shall hold telephonic status conferences as follows:

- a. September 12, 2023 at 3:30 p.m.
- b. October 12, 2023 at 3:30 p.m.

  
Elizabeth A. Pascal  
United State Magistrate Judge

## Appendix A – Proposed Case Schedule

Event	Proposed Date <sup>3</sup>
Amgen to Submit [Proposed] Amended Case Management Order	<b>August 25, 2023</b>
Amgen to begin producing documents responsive to Sandoz identified discovery requests on irreparable harm issues	<b>August 25, 2023</b>
Sandoz to Identify Invalidity Contentions for PI	<b>September 8, 2023</b>
Amgen Preliminary Injunction Motion Due	<b>September 8, 2023</b>
Amgen to Make Declarants Identified in PI Motion Available For Deposition	Beginning on or about September 15, 2023
Sandoz Preliminary Injunction Opposition Brief Due	<b>October 3, 2023</b>
Sandoz to Make Declarants Identified in PI Opposition Available For Deposition	Beginning on or about October 6, 2023
Amgen Preliminary Injunction Reply Brief Due	<b>October 16, 2023</b>
Amgen Disclosure of Asserted Claims and Infringement Contentions (L. Pat. R. 3.1) and Document Production Accompanying Disclosure (L. Pat. R. 3.2)	<b>January 17, 2024</b>
Sandoz Non-Infringement Contentions (L. Pat. R. 3.2A) and Invalidity Contentions (L. Pat. R. 3.3) and Document Production Accompanying Invalidity Contentions (L. Pat. R. 3.4)	<b>March 4, 2024</b>
Amgen Response to Sandoz Invalidity Contentions (L. Pat. R. 3.4A)	<b>March 18, 2024</b>
Disclosure of list of claim terms to be construed (L. Pat. R. 4.1(a))	March 29, 2024
Disclosure of proposed preliminary claim constructions and supporting intrinsic and extrinsic evidence (L. Pat. R. 4.2(a), (b))	April 19, 2024
Disclosure of opposing intrinsic and extrinsic evidence (L. Pat. R. 4.2(c))	May 3, 2024
Joint submission of Joint Claim Construction and Prehearing Statement (L. Pat. R. 4.3)	June 3, 2024
Completion of claim construction discovery (L. Pat. R. 4.4)	July 1, 2024
Opening claim construction briefs and support evidence and expert declarations (L. Pat. R. 4.5(a))	July 18, 2024
Parties' completion of expert discovery related to opening claim construction briefs (L. Pat. R. 4.5(b))	August 17, 2024
Responsive claim construction briefs (L. Pat. R. 4.5(c))	September 16, 2024
Counsel shall confer and propose a schedule for claim construction hearing (L. Pat. R. 4.6)	September 30, 2024
Deadline to file motions to amend or to add parties	October 17, 2024
Parties intending to rely upon advice of counsel to make required disclosures (L. Pat. R. 3.8)	30 days after claim construction order
Close of fact discovery, including depositions	To Be Determined After Preliminary Injunction Proceedings
Opening expert reports for party having burden of proof	To Be Determined After Preliminary Injunction Proceedings

<sup>3</sup> Dates in boldface type have previously been set by the Court.

Responsive expert reports	To Be Determined After Preliminary Injunction Proceedings
Reply expert reports	To Be Determined After Preliminary Injunction Proceedings
Close of expert discovery including depositions	To Be Determined After Preliminary Injunction Proceedings
Parties file opening dispositive motions, Daubert motions and motions in limine	To Be Determined After Preliminary Injunction Proceedings
Responses to dispositive motions, Daubert motions and motions in limine	To Be Determined After Preliminary Injunction Proceedings
Parties exchange exhibit lists and deposition designations	To Be Determined After Preliminary Injunction Proceedings
Objections to exhibit lists and counter deposition designations/objections	To Be Determined After Preliminary Injunction Proceedings
Objections to rebuttal designations	To Be Determined After Preliminary Injunction Proceedings
Parties' submission of Joint Pretrial Order	To Be Determined After Preliminary Injunction Proceedings
Parties' submission of proposed findings of fact and conclusions of law to the Court	To Be Determined After Preliminary Injunction Proceedings
Pretrial Conference	To Be Determined After Preliminary Injunction Proceedings
Hearing on dispositive motions, Daubert motions and motions in limine	To Be Determined After Preliminary Injunction Proceedings
Decision on dispositive motions, Daubert motions and motions in limine	To Be Determined After Preliminary Injunction Proceedings
Trial	To Be Determined After Preliminary Injunction Proceedings
Deadline for parties to submit opening post-trial briefs	To Be Determined After Preliminary Injunction Proceedings
Deadline for parties to submit updated finding of facts and conclusion of law	To Be Determined After Preliminary Injunction Proceedings
Deadline for parties to submit responsive post-trial briefs	To Be Determined After Preliminary Injunction Proceedings
Closing arguments	To Be Determined After Preliminary Injunction Proceedings