

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

NOVARTIS PHARMACEUTICALS
CORPORATION,

Plaintiff,

v

APOTEX INC. and APOTEX CORP.,

Defendants.

CIVIL ACTION

NO. 18-1038-LPS

NOVARTIS PHARMACEUTICALS
CORPORATION,

Plaintiff,

v

TEVA PHARMACEUTICALS USA, INC. and
ACTAVIS ELIZABETH LLC,

Defendants.

CIVIL ACTION NO.

18-1039-LPS

NOVARTIS PHARMACEUTICALS
CORPORATION,

Plaintiff,

v

SUN PHARMACEUTICAL INDUSTRIES LTD,
et al.,

Defendants.

CIVIL ACTION

NO. 18-1040-LPS

Wilmington, Delaware

Tuesday, October 16, 2018

Discovery and Scheduling Telephone Conference

BEFORE: HONORABLE LEONARD P. STARK, Chief Judge

(Captions continued on Page 2)

Brian P. Gaffigan
Official Court Reporter

NOVARTIS PHARMACEUTICALS :
CORPORATION, : CIVIL ACTION
:
Plaintiff, :
v :
:
ACCORD HEALTHCARE, INC., LTD, et al., :
:
Defendants. : NO. 18-1043-LPS

APPEARANCES:

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and

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25 Pharma Global FZE

1 paragraph 16, if plaintiffs come to believe there is a
2 specific concern later on, they can raise that with us. And
3 if we can't agree, we will go to Your Honor.

4 THE COURT: All right. Thank you.

5 So in the proposed protective order, and I will
6 give you a week, so the same deadline as next, as the other,
7 as the scheduling to get your revised submission in, in
8 that proposal next week, I do authorize the inclusion of
9 something along the lines of what the defendants have
10 proposed in paragraph 16, but I have a little bit more
11 guidance for you on that.

12 I'm more comfortable with something along the
13 lines of the first sentence, the "without prior written
14 approval, no party may disclose the protected information of
15 any defendant to another defendant." I'm more comfortable
16 with that than the second sentence which talks about "use"
17 and "reliance" and "introducing into evidence," all of which
18 strike me as concepts more relating to summary judgment if
19 we were to have it and, more importantly, trial. I don't
20 think in a protective order I should really be addressing
21 what is going to happen at trial and what evidence could be
22 admitted. We can evaluate all of that much better, much
23 more concretely in and around the time of the pretrial
24 conference when, among other things, we'll know which
25 defendants are still here and are actually going to trial.

1 In addition, I think paragraph 16 needs to
2 explicitly say something about a court order could, of
3 course, modify this, and should expressly reference that
4 the parties do need to meet and confer if the plaintiffs
5 are making a request to have some particular exception
6 from paragraph 16.

7 I think you all, with that guidance, can write
8 language that will reasonably balance the competing
9 interests here. It's always a difficult balance, but I
10 don't think plaintiffs should be per se precluded with no
11 ability to ask for an exception to use one defendant's
12 information even against another.

13 On the other hand, the defendants I recognize
14 are competitors with one another, and there is a real risk
15 of competitive harm to their information falling into the
16 hands of competitors, even outside counsel who might
17 inadvertently misuse that in advising their own client.

18 It seems that this is not really going to be a
19 ripe dispute until around the time expert reports are being
20 prepared. The parties should be meeting and conferring on
21 numerous issues between now and then, and plaintiffs
22 reasonably should be able to see this coming. And so I
23 don't think this is going to lead to an inordinate number of
24 emergent disputes in front of me, and I certainly hope not.

25 I've got to run in a minute, but are there any

1 questions about that from plaintiff?

2 MR. TRENCHARD: No, Your Honor. Thank you very
3 much.

4 THE COURT: And from defendants?

5 MR. KATZENELLENBOGEN: No, Your Honor. Thank
6 you very much.

7 THE COURT: Thank you very much. We'll look for
8 your submissions next week.

9
10 (Telephone conference ends at 4:07 p.m.)

11
12 I hereby certify the foregoing is a true and accurate
13 transcript from my stenographic notes in the proceeding.

14 /s/ Brian P. Gaffigan
15 Official Court Reporter
16 U.S. District Court
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