IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THE DOW CHEMICAL COMPANY, Plaintiff, v. NOVA CHEMICALS CORPORATION (CANADA), and NOVA CHEMICALS INC. (DELAWARE), Defendants.	)	C.A. No. 05-737 (JJF) **JURY TRIAL DEMANDED**

NOVA'S ANSWERING BRIEF TO DOW'S CROSS-MOTION, IN THE ALTERNATIVE, TO BIFURCATE AND STAY DISCOVERY ON NOVA'S ANTITRUST COUNTERCLAIMS

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Dated: February 4, 2008
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TABLE OF AUTHORITIES

CASES

Agfa Corp. v. Creo Products Inc.
451 F.3d 1366 (Fed. Cir. 2006).....1

Gardco Mfg., Inc. v. Herst Lighting, Co.,
820 F.2d 1209 (Fed. Cir. 1987).....1

McKesson Information Solutions, Inc. v. Bridge Medical, Inc.,
2006 WL 1652518 (E.D.Cal. 2006).....1

OTHER AUTHORITIES

Fed. R. Civ. Pro. Rule 26.....1

NOVA Chemicals Corporation and NOVA Chemicals, Inc. (collectively "NOVA") does not oppose Dow Chemical Company's ("Dow") motion to bifurcate and stay discovery on NOVA's antitrust counterclaims (D.I. 43) to the extent the stay does not limit discovery to which NOVA would otherwise be entitled under Fed. R. Civ. Pro. Rule 26 for its affirmative defenses, patent counterclaims, and non-antitrust prayers for relief. NOVA has also previously proposed bifurcation of Dow's willfulness claim. (D.I. 28 ¶4.)

For the same reasons of economy identified by Dow (D.I. 44, p. 29), NOVA further proposes that the patent trial be bifurcated to first address NOVA's inequitable conduct defenses and counterclaims. *Gardco Mfg., Inc. v. Herst Lighting, Co.*, 820 F.2d 1209, 1213 (Fed. Cir. 1987) (permissible to try inequitable conduct claim first); *Agfa Corp. v. Creo Products Inc.* 451 F.3d 1366, 1372-73 (Fed. Cir. 2006) (bench trial proper even if some overlap with issues that go to a jury). Trying inequitable conduct first has been effective to obviate the need to impanel a jury. *McKesson Information Solutions, Inc. v. Bridge Medical, Inc.*, 2006 WL 1652518, *1 (E.D.Cal. 2006) (*aff'd* 487 F.3d 897 (Fed. Cir. 2007), rehearing en banc denied (Jul 10, 2007)).

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CERTIFICATE OF SERVICE

I, Kenneth L. Dorsney, hereby certify that on February 4, 2008, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I hereby certify that on February 4, 2008, the attached document was Electronically Mailed to the following person(s):

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