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**

JOINT STIPULATION AND ORDER TO FILE AMENDED ANSWER AND COUNTERCLAIMS AND TO BIFURCATE AND STAY ANTITRUST CLAIMS

WHEREAS, on January 11, 2008, Defendants Nova Chemicals Corporation (Canada) and Nova Chemicals Inc. (Delaware) ("Nova") moved for leave to file an amended answer and counterclaims (D.I. 40, 41), which included, *inter alia*, antitrust counterclaims (Counts VII and VIII) and a notice that the motion would be presented to the Court on February 8, 2008;

WHEREAS, on January 31, 2008, Plaintiff The Dow Chemical Company ("Dow") opposed Nova's motion to amend and cross-moved to bifurcate and stay discovery on Nova's antitrust counterclaims (D.I. 43, 44);

WHEREAS, on February 4, 2008, Nova filed its reply (D.I. 47) and did not oppose Dow's cross-motion to the extent that it would not limit Nova's discovery on its affirmative defenses, patent counterclaims, and non-antitrust claims (D.I. 46);

WHEREAS, counsel for the parties have since conferred regarding the substance of Nova's motion for leave (D.I. 40, 41) and Dow's cross-motion (D.I. 43);

WHEREAS, Dow consents to the filing of Nova's amended answer and counterclaims, which Nova filed on January 11, 2008 (D.I. 40, Ex. A);

WHEREAS, the parties agree to bifurcation of Nova's antitrust counterclaims (Counts VII and VIII) (*see* D.I. 40, Ex. A) and to stay Dow's answer, discovery, and trial on Nova's antitrust counterclaims until after trial and resolution by the district court of the patent infringement, validity and enforceability issues ;

WHEREAS, Nova's response (D.I. 46) to Dow's cross-motion for bifurcation (D.I. 43) proposed that trial of the inequitable conduct issues should precede trial of the other patent issues, and the parties agree that this is a matter to be resolved by the Court at a later point in time; and

WHEREAS, Nova proposed bifurcation of discovery and trial of willfulness in the proposed Scheduling Order pending before the Court (D.I. 28) and Dow opposed that proposal, the parties now agree that discovery and trial of willfulness will be bifurcated and take place after trial on the patent infringement, validity, and enforceability issues.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the parties, subject to the approval of the Court, that:

(1) Nova's amended answer and counterclaims filed on January 11, 2008 (D.I. 40, Ex. A) shall be deemed filed and served as of the date of this order, and Dow will timely respond except as to matters dealt with in paragraph 2 below; and

(2) Nova's antitrust counterclaims (Counts VII and VIII) (*see* D.I. 40, Ex. A) are bifurcated and Dow's answer, discovery, and trial relating to the allegations in Nova's antitrust counterclaims are stayed until after resolution by the district court of the patent infringement, validity, and enforceability issues.

(3) The parties will defer until a later point in time raising the issue of whether a trial on inequitable conduct should precede the trial of infringement and validity.

(4) Discovery and trial of willfulness will be bifurcated and take place after trial on the patent infringement, validity, and enforceability issues.

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SO ORDERED this 6 day of February 2008.

United States District Judge

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