IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED,	)	
Plaintiff,	)	
v.	)	C.A. No. 06-438-GMS
ABRAXIS BIOSCIENCE, INC.,	)	
Defendant.	)	

SCHEDULING ORDER

This _____ day of _____, 2006, the Court having conducted a Rule 16 Scheduling Conference pursuant to Local Rule 16.2(b) on November 6, 2006, 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 ORDERED that:

1. **Rule 26(a) Initial Disclosures.** Unless otherwise agreed to by the parties, they shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) on or before **November 16, 2006.**

2. **Joinder of other Parties and Amendment of Pleadings.** All motions to join other parties shall be filed on or before **January 15, 2007**. All motions to amend the pleadings shall be filed on or before **March 30, 2007**.

3. **Reliance Upon Advice of Counsel.** Defendant shall inform plaintiff whether it intends to rely upon advice of counsel as a defense to willful infringement no later than **March 16, 2007**. If defendant elects to rely on advice of counsel as a defense to willful

infringement, defendant shall produce any such opinions on which defendant intends to rely to plaintiff no later than **March 16, 2007.**

4. ***Markman* Claim Construction Hearing.** A *Markman* claim construction hearing shall be held on **July 24, 2007** at **10:00 a.m.** The *Markman* hearing is scheduled for one-half day. The parties shall meet and confer regarding narrowing and reducing the number of claim construction issues on or before **March 21, 2007**. On or before **April 20, 2007**, the parties shall submit a Final Joint Claim Chart which shall include citations to intrinsic evidence. The parties shall exchange opening claim construction briefs on **May 11, 2007**, and the answering claim construction briefs on **June 22, 2007**.

5. **Discovery.** All fact discovery in this case shall be initiated so that it will be completed on or before **July 30, 2007**. Expert Discovery in this case shall be initiated so that it will be completed on or before **November 30, 2007**. The parties shall exchange opening expert reports on **September 14, 2007**, and answering expert reports on **October 15, 2007**.

a. **Discovery and Scheduling Matters**. Should counsel find they are unable to resolve a discovery or scheduling matter, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the conference, the parties shall file with the court, via electronic means (CM/ECF), a **joint, non-argumentative** letter agenda not to exceed two (2) pages outlining the issue(s) in dispute. A sample letter can be located on this Court's website at www.ded.uscourts.gov. Should the Court find further briefing necessary upon conclusion of the telephone conference, unless otherwise directed, the party seeking relief shall file with the court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no

more than **TWO PAGES**. The party seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

6. **Confidential Information and Papers filed under Seal**. 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, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court on or before **November 30. 2006**. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

If after making a diligent effort the parties are unable to agree on the contents of the joint proposed protective order, then they shall follow the dispute resolution process outlined in paragraph 5(a).

7. **Settlement Conference**. Pursuant to 28 U.S.C. §636, this matter is referred to the United States Magistrate for the purpose of exploring the possibility of a settlement.

8. **Summary Judgment Motions**. Prior to filing any summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief shall be no longer than five (5) pages and shall be filed with the Court no later than **December 4, 2007**. Answering briefs shall be no longer than five (5) pages and filed with the Court no later than **December 11, 2007**. Reply letter briefs shall be no longer than three (3) pages and filed with the Court on or before **December 14, 2007**. The Court shall hold a Status Teleconference to hear oral argument and to determine whether the filing of any motion for summary judgment will be permitted on **December 20, 2007** at **10:00 a.m.** Unless the Court directs otherwise, no letter requests to file a motion for summary judgment may be filed at a time

before the dates set forth in paragraph 8, except as discussed at the Rule 16 Scheduling Conference on November 6, 2006.

9. **Case Dispositive Motions**. All case dispositive motions and an opening brief and affidavits, if any, in support of the motion shall be served and filed within 28 days after the entry of an Order by the Court permitting such motion. Briefing shall be pursuant to the Court's Local Rules, unless the parties agree to an alternative briefing schedule with the consent of the Court. Any such agreement shall be in writing and filed with the Court for the Court's approval. Any requests for extensions of time asset forth in this Scheduling Order **must** be accompanied by an explanation or your request will be denied.

10. **Applications by Motion**. Except as provided in this Scheduling Order or for matters relating to scheduling, any application to the Court shall be by written motion filed, via electronic means (CM/ECF). Unless otherwise requested by the Court, counsel shall **not** deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

11. **Oral Argument**. If the Court believes that oral argument is necessary, the Court will schedule a hearing Pursuant to Local Rule 7.1.4.

12. **Pretrial Conference.** On **May 5, 2008,** beginning at **10:00 a.m.**, the Court will hold a Pretrial Conference in Chambers with counsel. Unless otherwise ordered by the Court, the parties should assume that filing the Joint Pretrial Order (a sample form of Pretrial Order can be located on this Court's website at www.ded.uscourts.gov) satisfies the pretrial disclosure requirement in Federal Rule of Procedure 26(a)(3). Thirty (30) days before the joint proposed pretrial order is due plaintiff's counsel shall forward to defendant's counsel a draft of the pretrial order containing the information plaintiff proposes to include in the draft.

Defendant's counsel shall, in turn, provide to plaintiff's counsel any comments on the plaintiff's draft as well as the information defendant proposes to include in the proposed pretrial order. Motions *in limine*: No party shall file more than ten (10) motions *in limine*. Briefs (opening, answering and reply) on all motions *in limine* shall be served and filed by **April 7, 2008**. The parties shall file with the Court the joint proposed pretrial order on or before close of business on **April 7, 2008**.

13. **Trial.** This matter is scheduled for a ten (10) day jury trial beginning at **9:00 a.m**. on **June 2, 2008**.

14. **Scheduling.** The parties shall contact chambers, at (302) 573-6470, only in situations where scheduling relief is sought, and only then when ALL participating counsel are on the line for purposes of selecting a new date.

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UNITED STATES DISTRICT JUDGE

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