IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

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ZYMOGENETICS, INC., a Washington Corporation,,	:	CIVIL ACTION
Plaintiff,	:	
vs.	:	
BRISTOL-MYERS SQUIBB CO., a Delaware Corporation, and DOES 1 through 100,	:	
Defendants.	:	NO. 06-500 SLR

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Wilmington, Delaware
Thursday, March 13, 2008
8:30 o'clock, a.m.

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BEFORE: HONORABLE SUE L. ROBINSON, U.S.D.C.J.

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APPEARANCES:

POTTER, ANDERSON & CORROON
BY: PHILIP A. ROVNER, ESQ.

-and-

Valerie J. Gunning
Official Court Reporter

APPEARANCES (Continued):

FITZPATRICK CELLA HARPER & SCINTO
BY: SCOTT K. REED, ESQ.,
COLLEEN TRACY, ESQ. and
CHRISTOPHER P. BORELLO, ESQ.
(New York, New York)

Counsel for Plaintiff

RICHARDS, LAYTON & FINGER
BY: FREDERICK L. COTTRELL, III, ESQ. and
KELLY E. FARNAN, ESQ.

-and-

KING & SPALDING LLP
BY: PAUL J. ANDRE, ESQ.
(Redwood Shores, California)

Counsel for Defendants

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P R O C E E D I N G S

(REPORTER'S NOTE: The following telephone conference was held in chambers, beginning at 8:30 a.m.)

THE COURT: Good morning, counsel. This is Judge Robinson and Valerie is here as our Court Reporter. It would be helpful if you identified yourselves when you spoke so that the transcript is somewhat clear.

I've looked through the papers, and the way this case is scheduled now, your last brief in the summary judgment motion practice is due to be filed on July 7. There's a pretrial conference the following week, on July 14, and a jury trial a month later.

I have a proposal for you. If, in fact, you want that trial date, I have a proposal for you that may allow us to go forward with that trial date. If you all really don't want that trial date, I will not bother sharing my thoughts with you.

So let's hear from plaintiff's counsel.

MR. ANDRE: Your Honor, this is Paul Andre.

We would like to keep the trial date, if possible. You know, we wouldn't mind if it slipped a month or so, but we don't want it to go too much past that.

THE COURT: Defendants' counsel?

MR. REED: Your Honor, this is Scott Reed, from Bristol.

Yes. We noted the date that your Honor noted as well, which was the July 7th date for the final papers to be submitted, and we did look back at Judge Jordan's schedule and it looked to us like he basic he had about -- about five months from there to trial in his original schedule.

Now, our interim dates have moved at the parties' request and with Judge Thynge's blessing, so we didn't think it was realistic to have a final set of papers submitted on July 7th and then, in effect, go to trial a little over a month later. We thought that the trial date would be pushed back to give your Honor sufficient time to decide summary judgment and Markman and the like, and for us, we view this as Markman and summary judgment as critical to this particular case.

THE COURT: All right. Well, then, I will share my thoughts with you, because I'm interested to see whether this would work anyway. So far, it hasn't been successful, but maybe you all will actually pay attention to what I say and write and follow my directions, which lawyers in other cases don't seem able to do.

Obviously, you can't fully brief summary judgment motions and expect me to decide them in a week, so this is my proposition: That we keep the May 16th date, but

instead of filing motions and briefs, you can file the motion. I know the case law.

What I want, what I would want in support of your motion, is simply a paragraph-by-paragraph, fact-by-fact list of all the facts the movant believes are undisputed with a citation to the record, and obviously you'll have to file appendices. Two weeks later, the movant would have to respond just with a paragraph-by-paragraph responsive listing of the fats that are either undisputed or, if they are disputed, the record cite that would point me to that, and then, on June 20th, at 9:00 a.m., we would have an oral argument of sorts, one on claim construction, and the other on whether summary judgment should proceed, because there are disputed facts, because there are no disputed facts, or whether, because there are disputed facts, we should simply go to trial.

And at that point I would either allow further briefing or I would grant summary judgment. If I allowed further briefing, then the trial date would go away and we'd have to reschedule something further out.

So that's my proposition, and I would obviously put it in writing, to see whether we, in fact, can save this trial date with some semblance of common sense and reasonableness thrown in.

Are you willing to accept the challenge?

MR. REED: Well, your Honor, let me thank you for the proposal, and it's certainly something we should consider. I guess the other aspect of this is, I wondered whether, with Mr. Andre's noting that the trial might be put back a month, if we were to keep the schedule that the parties had agreed to, would it be possible for us to consider when your Honor would be able to try the case, maintaining the existing schedule?

So, in other words, everything up to July 7th staying as it is and then just seeing how far out it would, in fact, have to go and whether the plaintiffs would be willing to move it a month or two months or three months, however long it would need to be.

THE COURT: Well, I'm still going to make you go through this exercise because, quite frankly, the motion practice in these patent cases is overwhelming. I've got a law clerk who is going to be out on maternity leave, and I am not confident that I'm going to be able to manage this anyway. So if you are trying to avoid a foreshortened process, moving the trial date isn't going to help you.

So really your choice is trying to keep this trial date, or if you want me to move it out, I will try to find a date, but you are still going to have to go through the process.

So I will look.

MR. ANDRE: Your Honor, this is Paul Andre.

Your proposal sounds quite reasonable to us. We would, in fact, think that would be very appropriate to go this way. Just reduce the amount of paper coming through your Honor's court would streamline the issues quite a bit.

The only issue I have, unfortunately, on that June 20th, I have a trial -- my last week of trial in Texas. The following week I'm available, but that day was just a conflict for me.

MR. COTTRELL: Your Honor, it's Fred Cottrell, for Bristol-Myers.

While we have you on the phone, we understand your Honor's procedure and we'll certainly follow it. But while we have you on the phone, does your Honor have any time, you know, a month or two past August? Let's say September, October? We just were not quite sure on your Honor's schedule.

THE COURT: Well, if you're asking for a trial assuming there will be full-fledged briefing, then it would be October at the earliest, that I would even look for a date.

MR. ANDRE: You described briefing it out with the paragraph-by-paragraph submission. It really makes a

lot of sense in this case, because I agree with your Honor -- this is Paul Andre. I'm sorry.

I agree with your Honor, in these patent cases, the summary judgment can be quite involved. In many cases I don't think they're justified to be filed just because there are so many issues of fact that come up in these type of cases.

THE COURT: How long would this trial be if all the issues -- well, I never give trials more than two weeks, but would this be one that would require two weeks if all the issues were involved?

MR. REED: Yes. I would think if all the issues are involved, you'd be looking at a week to ten days, your Honor.

THE COURT: And who is this speaking?

MR. REED: Scott Reed.

THE COURT: All right.

MR. ANDRE: Your Honor, this is Paul Andre.

I think we could do it in seven court days.

THE COURT: All right. Well, I do have time in October. You'll be double-booked, to some extent, with another patent trial, but that basically can't be helped. The question is whether you all are available, and that would be starting the week of October 20th.

MR. ANDRE: This is Paul Andre, your Honor.

That's okay with us.

MR. REED: That's fine with us, your Honor, as well. Scott Reed.

THE COURT: All right. So October 20th.

Let me go back and give you a pretrial date. And I'm looking at October 7th or 8th, at 4:30.

MR. REED: Scott Reed.

Either of those are fine for us, your Honor.

THE COURT: Well, let's do it October 7th. That's a Tuesday.

MR. REED: Okay.

THE COURT: So I guess what we need -- I mean, on the one hand, I'm a little confused about where claim construction is. I didn't sign off on postponing the joint claim chart. You filed a stipulation until we have this telephone conference. And I guess the question is, if I want you to go through this exercise, the question is whether you want to go through how we stagger my requirements with your just going through the exercise of filing full briefing. Briefing has to be done by July 7th.

So I guess what needs to happen is anyone that wants to file a motion on May 16th does with full briefing and appendices, but, in addition, files the statement that I'm going to explain and want.

Two weeks later, before full responses are due, we'll have the foreshortened responses due. And then I guess I would still like to have oral argument on that, and only after that oral argument would I have the responding party respond with all the papers. I'm not sure that makes sense. I'm trying to find my way to a better way of handling these cases.

So how about June 27th at 9:00 a.m. for claim construction and discussion about the statements of fact that I've required?

MR. ANDRE: Fine, your Honor. That works for us.

MR. REED: Your Honor, that's fine.

THE COURT: All right. And at that time, I should be able from the bench to let you all know, or certainly within a day or two of that, whether I will require the nonmoving party to respond fully in briefing, and briefing will still be done in July, and I will have August and September to decide these motions before the pretrial in October.

So I think it will work out. I will try to issue an order to memorialize this conversation that is clear enough for you all to be able to follow.

Are there any other issues besides being slightly confused about this that we should address this

morning?

MR. ANDRE: Nothing for plaintiff, your Honor.

MR. REED: None for defendant, your Honor.

THE COURT: All right. I will try to get this out in the next day or two. If my recollection isn't consistent with your understanding, don't hesitate to get us all on the phone again to make sure that we're all on the same page.

Counsel, thank you for your time this morning.

(Counsel respond "Thank you, your Honor.")

(Telephone conference concluded at 8:46 a.m.)

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