IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

RECKITT BENCKISER PHARMACEUTICALS, INC., et al.,	:	No. 1:13-cv-01461-RGA
	:	No. 1:13-cv-01674-RGA
Plaintiffs,	:	
v.	:	
PAR PHARMACEUTICALS INC., et al.,	:	
Defendants.	:	

Friday, December 13, 2013
1:30 p.m.

Rule 16
Chambers of Judge Richard G. Andrews

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE Richard G. Andrews,
United States District Court Judge

APPEARANCES:

WOMBLE CARLYLE SANDRIDGE RICE
BY: MARY W. BOURKE, ESQ.

-and-

TROUTMAN SANDERS LLP
BY: DANIEL LADOW, ESQ.
BY: TIMOTHY HEATON, ESQ.
BY: JAMES BOLLINGER, ESQ.

On behalf of Rickett Benckiser Pharmaceuticals, Inc.

APPEARANCES CONTINUED:

STEPTOE & JOHNSON LLP
BY: TIMOTHY BICKHAM, ESQ.
BY: JAMES HIBEY, ESQ.

On behalf of MonoSol Rx LLC

PHILLIPS, GOLDMAN & SPENCE, P.A.
BY: JOHN PHILLIPS, ESQ.
-and-

WINSTON & STRAWN LLP
BY: PETER PERKOWSKI, ESQ.

On behalf of Watson Laboratories, Inc.

RICHARDS, LAYTON & FINGER, P.A.
BY: STEVEN FINEMAN, ESQ.
-and-

LATHAM & WATKINS LLP
BY: JAMES LYNCH, ESQ.
BY: JENNIFER SAIONZ, ESQ.

On behalf of Par Pharmaceutical Inc. and IntelGenX Technologies Corp.

BAYARD, P.A.
BY: STEPHEN BRAUERMAN, ESQ.
On behalf of LTS Lohmann

SHAW KELLER LLP
JEFFREY CASTELLANO, ESQ.
-and-

LEYDIG, VOIT & MAYER, LTD.
BY: STEVEN SKLAR, ESQ.
BY: GREGORY BAYS, ESQ.
On behalf of Alvogen

THE COURT: Are there two cases or three cases here?

MS. BOURKE: Three.

THE COURT: Does somebody have a copy of what was submitted in relation to Alvogen?

MS. BOURKE: We did not submit a scheduling order because Alvogen -- because the complaint was filed last week.

THE COURT: All right. Well, we have these cases, Reckitt Benckiser Pharmaceuticals vs. Par, No. 13-1461 and Reckitt Benckiser vs. Watson, No. 13-1674 and I guess these were sitting in with Reckitt Benckiser vs. Alvogen which is somewhere after 13-1674. So who's here, Ms. Bourke?

MS. BOURKE: Yes, for the plaintiff and I have with me from the Troutman Sanders firm Daniel Ladow, Jim Bollinger down at the end of the table and Tim Heaton representing the Reckitt plaintiffs. I also have with me Tim Bickham and Jim Hibey from the Steptoe Johnson firm representing MonoSol.

THE COURT: All right. Hold on a

second. Oh, yes, okay. Well, welcome to you all. And, Mr. Phillips?

MR. PHILLIPS: Good afternoon, Your Honor. I'm here for Watson and with me is Peter Perkowski from Winston & Strawn in Chicago.

MR. PERKOWSKI: Good afternoon, Your Honor.

THE COURT: Good afternoon. Mr. Fineman?

MR. FINEMAN: Good afternoon, Your Honor. I'm here on behalf of Par and IntelGenX. And sitting to my left is Jennifer Saionz from Latham & Watkins and we also have Jim Lynch from Latham & Watkins on the phone.

THE COURT: All right. Mr. Brauerman, I haven't seen you in a while. Good afternoon.

MR. BRAUERMAN: Good afternoon. I'm here on behalf of LTS Lohmann Therapy Systems.

THE COURT: So that's actually a defendant in the 13-1461?

MR. BRAUERMAN: Yes, Your Honor.

THE COURT: Mr. Castellano?

MR. CASTELLANO: Good afternoon, Your Honor. I'm here for Alvogen. And on the phone are Steven Sklar and Gregory Bays from Leydig, Voit & Mayer firm.

THE COURT: Good afternoon to those of you who are on the phone. So I have two proposed scheduling orders but I guess it's worthwhile just talking to make sure that I have a decent understanding of what the relationship of these three cases is.

Are each of these basically generic defendants involving the exact same patents?

MS. BOURKE: Your Honor, these are ANDA cases, yes, that's correct. I would say that they are not the typical ANDA case. And the reason for that is it is a unique technology. It is not your typical tablet or capsule. It is a film technology which you put the drug on the film and then you administer it sublingually which, therefore, implicates more than just the generic manufacturer in the ANDA. I should say it implicates more than just the

generic company but also can implicate the manufacturers of the film technology which is why you have multiple defendants in these cases.

And I will let my colleagues explain it further, but that's in part why we had such a difficult time in reaching agreement on the discovery limits in deposition, which I apologize and --

THE COURT: No, no. I'm just looking at it and I recognize LTS Lohmann Therapy as being in the medical field and I know Par is. Is IntelGenX Technologies the film company or something?

MR. LADOW: Your Honor, if you wish, we can speak for plaintiffs. But I don't know if, Steven, you want to handle that.

MR. FINEMAN: They are our co-developing partner, Your Honor.

THE COURT: So they're a film company but they have a deal with you on this particular thing?

MS. SAIONZ: They're a drug development company.

THE COURT: Okay.

MR. LADOW: Your Honor, just to amplify it, insofar as this new film technology is involved and it's not just compressing a tablet, companies who are involved in manufacturing the film which may or may not be the generic drug company of the film are implicated in the case. We believed based on publicly available information that LTS Lohmann was manufacturing this for Par and for IntelGenX. They have told us that they're not and that they are providing us with a letter to that effect, so they may be out of the case.

THE COURT: In one of these cases, is there a motion to dismiss some defendant based on maybe some idea related to what you just told me?

MR. LADOW: No, Your Honor. There's a motion by Watson to dismiss only -- not the 271(e)(2) and (4) counts but the 271(a) declaratory judgment count in that case on both patents. So it wouldn't dismiss the defendant. It would just dismiss a DJ count. And I'm just going to say with respect to Watson and Par, we

don't have any of their information yet.

We don't know in Alvogen who is actually manufacturing for them. And what Mary was referring to before about the manufacturers, this may lead to other parties and --

THE COURT: Okay. That's what I thought you were suggesting. So bearing in mind, not that I understand everything that's been said, so I understand there's a certain complexity as to how many defendants there are and maybe the technology is of a different kind that I've seen before. But in terms of all three suits, it's the same patent or patents that are at issue, right?

MR. LADOW: Yes, Your Honor.

THE COURT: Is it one patent or multiple patents?

MR. LADOW: Right now the present status is that two patents, the same two patents, have been asserted against all of the defendants in each case. Recently another patent, the '514 patent, which we provided a copy to the defendants earlier in the week, that issued last Tuesday. It's an Orange Book listed

the same day. We already received a Paragraph 4 certification from Alvogen on that patent. We don't know when we will get one from Par and from Watson, but we're expecting that third patent to be amended into the case as well.

THE COURT: All right. Without committing Par and Watson to doing anything they haven't already done, is it the general sense that there's going to end up being three patents in the same case for each of these cases?

MR. LADOW: At least three, Your Honor. There are a number of additional patents that have been publicized but not yet issued, at least a dozen of those, so we're not sure exactly which ones are going to be issued and then asserted in the case, so that adds additional level of complexity.

THE COURT: I guess just because they're publicized gives no hint as to when they might or might not be issued. Presumably the plaintiff actually has some hints. But in terms of the casual observer of the defendant, it's up to you to say when these things are actually issued or --

MR. LADOW: No, Your Honor. So it really depends on where it is in the Patent Office process. If it gets to a certain point in the process, if you have a notice of allowance that you may expect a certain amount of time for the patent to issue, but it doesn't always happen that way. But there are other patents that are being applied for. They are at different stages of the process, and there are also patents that have already been issued which potentially additional patents could come into the suit that have already been issued, but they aren't listed in the Orange Book.

MS. BOURKE: You can process patents which you can't list in the Orange Book.

THE COURT: Okay. I believe you. Well, maybe at some point there might be some other background that somebody wants to tell me, but I did notice, and this is the first time I've ever actually seen this, although I have no objection to it, the parties are working towards an agreement on fill in the blank and intend to submit a proposal to the Court shortly.

MS. BOURKE: Okay. There was an

amended scheduling order that we --

MR. LADOW: Your Honor, shortly and very shortly --

MS. BOURKE: We submitted it last night. Unfortunately, it took a while for the parties to actually agree. These are the two amended scheduling orders.

THE COURT: So these have actually been filed?

MS. BOURKE: Yes, Your Honor.

THE COURT: No worries. Does that mean that, in fact, then these points have been resolved?

MS. BOURKE: Some of them.

THE COURT: Okay.

MR. FINEMAN: Your Honor, to direct the Court's specific attention, the parties reached agreement on the Request for Admission on the interrogatories. The central dispute I think is fair to say resolves around depositions.

THE COURT: All right. So what's the most efficient way to go through this? Because you see I highlighted what was important

to me in yellow.

MS. BOURKE: Your Honor, if I can direct the Court's attention to it, the agreed-to proposal on the depositions is on Page 3 of the Par proposed amended scheduling order.

THE COURT: All right.

MS. BOURKE: So that's agreed to so --

THE COURT: Agreed to, yup, that's done.

MS. BOURKE: The competing proposals, Your Honor, are at Page 4 spilling over to Page 5 and I think plaintiffs can address their proposal first.

THE COURT: This is all under the topic of limitations for deposition discovery?

MS. BOURKE: That's correct, Your Honor.

THE COURT: So basically it's the same language in each of the two proposed amended scheduling orders or does Watson have something different?

MS. BOURKE: No, the same language.

MR. LADOW: In addition to that, I believe it's the case that both proposals are exactly the same. All the parties contemplated was that everybody would be working off the same sewing machine.

THE COURT: Did the parties contemplate that at the end of this whatever parties are left will have the same trial?

MS. BOURKE: Yes.

MR. LADOW: One thing obviously for the Court is that the trial date there is -- we do have something about that at the end of the order.

THE COURT: I saw that.

MS. BOURKE: That's the same -- the only difference between the amended scheduling order and what Your Honor has marked up is this one section on the depositions.

MR. PHILLIPS: So Pages 3 and 4.

THE COURT: Well, why don't we do this: Why don't you give me a minute to read what you've written and then probably I will ask for some oral supplementation.

If I'm reading this correctly and

I'm rounding off here, but on all of the disputed points the plaintiff and the defendants are within 10 percent of each other more or less?

MR. LADOW: No, Your Honor.

MR. FINEMAN: No, that's not --

THE COURT: Well, let's start with the plaintiff. What's the biggest dispute here that I have to resolve?

MR. LADOW: Your Honor, there are more minor disputes about certain of the hours for individual depositions. The two main issues really are the number of depositions that the plaintiffs can take of the other side of the V in a given case, the individual depositions. I will come back to that. And then the other issue is the amount of hours, 30(b)(6) depositions hours the plaintiff can take of whomever is on the other side of the V in the case, so to take those one at a time.

We're saying that we would like to be able to take up 14 individual fact depositions of whoever is on the other side of the V in a given case. So, for example, in the

Par case, there's Par and IntelGenX and there may be a company that comes in to substitute --

THE COURT: Every time a new one comes in you get 14 new depositions?

MR. LADOW: No, Your Honor. What I didn't say, and I'm sorry for glossing over this, on the prior page on the bottom of Page 3, the last paragraph, the parties basically agree that for purposes of these proposals that were floating back and forth on depositions, that all the parties on one side of the V will be considered the defendant.

THE COURT: Okay.

MR. LADOW: So when we say 14 depositions of the defendant, we're really saying everybody on the other side of the V.

THE COURT: Okay. I got that.

MR. LADOW: So if there are three parties on the other side, that would be three and change depos, four and change depos per party.

THE COURT: I got that.

MR. LADOW: And on that particular issue what the defendants were saying is that we

should be limited and I think it would be almost unprecedented in a federal case to four depositions --

THE COURT: Total.

MR. LADOW: -- per defendant which means four depositions per side. So, for example, in the Par case even if there are only two defendants if I understand their proposal correctly, they're saying we get two depositions of Par, two depositions of IntelGenX for individual fact depositions and then we're done.

THE COURT: Hold on for just a minute. In these proposals where it says defendants are limited to a total of 15 joint individual fact depositions --

MS. BOURKE: That's --

THE COURT: Oh, I'm sorry. We're talking about plaintiffs. Okay.

MS. BOURKE: The two competing proposals, Your Honor, is sort of the second paragraph of plaintiffs' proposal and what Mr. Ladow was talking about is on Page 5.

THE COURT: This is the four depositions for defendant in each case?

MS. BOURKE: Yes, Your Honor.

THE COURT: Oh, when I read that, I thought that somebody cut and paste the language.

So, defendants, why should they be limited to four depositions per defendant in each case because that does seem kind of small?

MR. PHILLIPS: Well, Your Honor, what we had originally proposed was that they get a total of 12 depositions and they didn't like that idea. So we then said four and we're willing to compromise on this, but they want 14 from each of the defendants, each defense group. Do the math. That gets you up to 42 depositions. Then in the preceding paragraph on Page 3 they're asking for 10 third-party depositions, so that's 52 depositions. That's not counting our third-party depositions.

When you get done doing all of the math here, they're talking about an excessive 80 depositions in this case. Now, that's excessive. I doubt Your Honor has seen a patent case where there has been a request for 80 depositions. So some place in the middle is

something that all the defendants can agree is reasonable.

THE COURT: So, Mr. Ladow -- is that how you pronounce it?

MR. LADOW: Yes, Your Honor.

MR. FINEMAN: I just want to supplement to what Mr. Phillips said for one moment. In addition, they are also contemplating a proposal of three days of 30(b)(6) deposition of each defendant. So in addition to 14 fact depositions, that's exclusive of the 21 hours of 30(b)(6) deposition of each of the defendants. So effectively in addition to what Mr. Phillips said, you have to add on nine more deposition days.

THE COURT: But isn't the reason they're doing these depositions of you all is presumably to find out about your proposed generic product? Aren't they all going to be different?

MR. FINEMAN: Yes, Your Honor, I think that the depositions of different defendants can be different. My point --

THE COURT: I'm just curious.

When, let's say, they're deposing Par -- and I forget who you represent -- but if they're deposing the Par people, are the Watson people going to be taking part in those too?

MR. FINEMAN: I don't think that's been resolved yet.

MR. BOURKE: My experience in the past is typically in these multiple defendant cases they don't do that because there's confidential information that Watson doesn't want to share with Par and vice versa.

MR. FINEMAN: Your Honor, let me address Par specifically because that's --

THE COURT: I was just using it as an example.

MR. FINEMAN: Absolutely. Your Honor, if followed to its logical conclusion as to Par, for example, plaintiffs would have 14 depositions of eight hours with each of the Par witnesses. They would have three days of Par 30(b)(6) depositions. Then we have a specific carve out to give additional time for Par witnesses to address Par's trade secret declaratory judgment claim in addition to the 10

third-party depositions that plaintiffs have reserved the right to take.

So for just Par exclusive of depositions that Par would affirmatively take, we would be theoretically defending 14 eight-hour depositions, three-day 30(b)(6) depositions and attending 10 third-party depositions. That seems extraordinary, Your Honor.

THE COURT: Okay. Mr. Ladow?

MR. LADOW: Your Honor, first of all, I think that you intuited this reflecting what you said. Because this film technology is new and it's not a generic tablet and based on the information that we see in the Paragraph 4 letters, it seems to us that for one thing that the formulations that the different defendants have aren't necessarily the same. So we're expecting to have different discovery as you indicated as to each defendant including as to the different manufacturing that's going on to produce this film product.

If you look at our proposal which is the second paragraph on the top of Page 4, what we're saying is and what I will say is that

the -- what Steve said is accurate, but I think that it's incomplete. Because if we take 14 depositions of, let's say, the defendants on the other side of the V in the Par case, it's not just Par. It's IntelGenX and whoever that manufacturer turns out to be. So the 14 would be spread out amongst those parties. It wouldn't be 14 among the one party.

And if it were one party, that would mean that they are also doing the manufacturing. One other point I will make, Your Honor, is with respect to Watson which is also somewhat unusual in this case. There was a precursor tablet -- the commercial product is called Suboxone sublingual film, and there was a precursor tablet that went generic and there are two purveyors of generic Suboxone, and one of them is Watson which is a defendant here.

So unlike a generic case, Watson is actually already in the Suboxone market by virtue of the generic tablet market and has a lot more information than the typical generic would, which is another reason for more deposition time. With respect to the 30(b)(6)

deposition time, this is 21 hours of each defendant. Again, it's all of the defendants on that side of the V.

So if you think of a seven-hour deposition, it would be three 30(b)(6) depositions in effect on the other side of the V which we think is completely reasonable in those circumstances. And when Mr. Phillips was addressing it before, yes, you can add up all of the time and the time may be more. You may have a number of hours in the aggregate, but these are individual cases and individual formulations and individual manufacturing and there is also potential trade secrets involved.

Par has a counterclaim that it's alleging that it has not taken plaintiff MonoSol's trade secrets so there's some extra time built into that, but there are a lot of moving parts in the case and we think the amount of hours that we proposed if you look at each case on an individual basis is quite reasonable.

MR. FINEMAN: Your Honor, if I might address one comment that Mr. Ladow has

made with regard to Par and in specific, the parties did address and contemplated specific time to be carved out for the trade secret issue. Your Honor, in both parties' proposal, I think we have a discrepancy of five hours. We proposed 35 and they proposed 30 to address Par's specific issue, and that particular issue was the trade secret claim.

But if followed with logical conclusion, when Mr. Ladow was just discussing the 14 hours and the three hours of 30(b)(6), Your Honor can quickly see the disparity here, which is Par would be sharing its time with the other defendants on what I will call the patent issues.

Therefore, we will be addressing the patent issues together with the other defendants, not using that time for our trade secrets case. If you follow it to its logical conclusion, plaintiffs could use three depositions of Par for the patent issues and then save 11 depositions in addition to the carved-out time to use on the trade secrets claim. Par would be in an enormous disadvantage

in terms of disparity for time on depositions. That's part of the problem with plaintiffs' proposal. It's a disparity of plaintiff versus defendant in terms of taking the depositions.

MR. LADOW: Your Honor, we are just at the outset of the case. We haven't received their ANDAs. We don't know how they formulated their products, how they manufactured. Insofar as trade secrets are involved, we don't know how that's intertwined with the rest of that. And one of the reasons we have structured the proposal the way that we have is because from our point of view there's a lot of uncertainty as to all of that, how much time that's going to take, what the interrelationships are and who these other manufacturers of the generics are. So we're trying to build that in so we don't have to come back to you and ask for more time later.

THE COURT: These trade secrets that are being mentioned, these are counterclaims?

MR. FINEMAN: Yes, Your Honor. This was our declaratory judgment counterclaim.

THE COURT: So there's nothing here that's causing a jury trial for anybody?

MS. BOURKE: Not at the moment.

THE COURT: Okay.

MR. PHILLIPS: Your Honor, with regard to Watson, as they have said they want 14 depositions of one defendant. Even if they add a manufacturing defendant, it's just not that much to ask of a manufacturing defendant. They're not going to take seven depositions of a manufacturing defendant. They're likely to take one, maybe two. But now they want 12 depositions of the generic drug manufacturer. That is excessive, particularly when you compare what they're asking for against what they're offering to give us. They want us to be satisfied with 15 joint depositions.

THE COURT: How many joint depositions do you want?

MR. PHILLIP: We think 15 was a reasonable number if it's kept proportionate to the number of depositions taken of us. But if they're going to add a number of patents as we go down the road, we will be coming back to ask

Your Honor for additional time.

THE COURT: What we come out here may not reflect this, but I don't think we can build in time for things that haven't happened yet.

MR. PHILLIPS: That's what the plaintiffs are doing with all due respect.

THE COURT: Not looking forward to this, but if it turns out that the two patent case becomes a three patent case becomes a seven patent case, then you will have to come back and work out a new schedule or do something. I'm not sure what, but that would be pretty reasonable. However, from my limited experience in these kinds of things, it seems to me that if you think under the world as it is right now that 15 joint individual fact depositions of plaintiffs is reasonable, then there doesn't have to be a one-to-one or some specific ratio between what you get and what they get. It's supposed to be, and it's hard for me to do, impossible really, but I'm supposed to give people what they need, right?

MR. PHILLIPS: Right.

THE COURT: So if what I'm thinking of doing is saying they can have 10 individual fact depositions per case really or per defendant, because I do think there are going to be even apart from trade secrets from what I've seen in these things, things come up. And maybe they won't need all of that. My impression is -- and maybe it's different in a case like this -- plaintiffs don't have an incentive to just depose people for no reason at all. I don't know. Maybe this is a different case.

MR. LADOW: We're not going to give you any reason to think otherwise, Your Honor.

THE COURT: So I'm kind of thinking they can have 10 individual fact depositions, three days of Rule 30(b)(6,) particularly if it turns out to be three individual defendants per case. It doesn't seem to me to be unreasonable. If you want a little more than 15 joint individual fact depositions, just say so and I will give them to you.

MR. PHILLIPS: I think what we

want, Your Honor, is a little more time. We want 10 hours of each of our individual fact depositions because there's three defendants to cross-examine or examine every fact witness and the plaintiffs have objected to that. Their proposal is for eight hours and --

THE COURT: I'm perfectly happy to give you 10 hours per witness, but I think that should be understood unless the witness agrees that's not necessarily 10 hours in one day.

MR. PHILLIPS: That's fine. We appreciate Your Honor's offer. We have conferred. We think 15 is reasonable at the moment. We're not going to overextend ourselves or take advantage of anybody here so we're contempt at 15.

THE COURT: So 15 and 10 hours per individual fact witness would give you what you think you need and give all the defendants working as a group what they think they need.

MR. PHILLIPS: But we want a little wiggle room, that is, that we might be coming back for --

THE COURT: I understand. It

seems like it's a very fluid situation, and I've got Alvogen which I assume is probably going to craft up some more -- I said craft up some order that probably will track whatever is agreed to in these two cases or whatever we decided upon in these two cases.

MR. PHILLIPS: Alvogen has actually participated in this discussion on --

MS. BOURKE: Yes, they've agreed to what he's put into --

THE COURT: Okay. Well --

MS. BOURKE: I've said that they would adopt basically whatever.

MR. FINEMAN: Your Honor, just a caveat for Par. All we're looking at on the trade secret side is that we have equal footing with plaintiffs. We're not asking for more but we also don't want less than them. In other words --

THE COURT: I don't really 100 percent or at all understand. Are you saying the way it's written up right now is not what you want?

MR. FINEMAN: Let me try to make

this really simple, Your Honor. Plaintiffs on Your Honor's ruling or tentative ruling would have 10 depositions of Par. In addition, the parties agreed that aside from the entire patent case there will be a certain amount of additional hours which is equal between plaintiffs and Par for the trade secret case. But Par has to share in the 15 depositions with its two co-defendants. So Par is not getting 10 individual depositions of plaintiffs.

So my concern is that, for example --

THE COURT: Isn't it the case the way you're saying is to the extent you're concerned about the trade secrets, that's going to wash out because you're doing equal?

MR. FINEMAN: That is exactly my point, Your Honor. So I would ask that Your Honor order that the 10 depositions of Par individually not be directed to the trade secret issue or that Par gets more depositions. It can't be the case that plaintiffs can reserve some of those 10 depositions to use on the trade secret case.

THE COURT: I thought you were saying you kind of agreed that you would have a certain amount set aside on the trade secrets which is I take it kind of implies that's what is for the trade secrets and the other stuff is for the patent issues.

MR. FINEMAN: Your Honor, I'm trying to go from implied to expressed. That's exactly what Your Honor will be clear about.

MS. BOURKE: Can I ask counsel for Par a question? Is that what you have contemplated in the last paragraph on Page 3 where you had a proposal about the language for single defendant, because I was quite frankly confused about what that meant? And if that's what your proposal is by excluding the trade secrets, then that's not it --

MR. FINEMAN: No --

MR. LADOW: I should just say one reason why we didn't want to accept that particular language is we really don't understand how it can apply to the structure that we have.

MR. FINEMAN: I can answer that

question and bring it back full circle, I think. The sole purpose of that language is that IntelGenX has nothing to do with the trade secret claim so they shouldn't be part of that in any respect.

MR. LADOW: We don't know that.

MR. FINEMAN: Well, we do. From our perspective, they have nothing to do with the claim. They're not a counterclaimant. Plaintiffs haven't sued them so they're not involved in that claim. So they should have nothing to do with the trade secret claim. They're not a party to it.

THE COURT: When you say nothing to do with it, you just mean that in the time allocation you get 100 percent?

MR. FINEMAN: Well, we represent Par and IntelGenX so it doesn't matter in that respect. My point is that we can't have IntelGenX being involved in the trade secret claim because they're not a party to it. It's a counterclaim of Par, not --

MS. BOURKE: We haven't responded to your counterclaim.

MR. FINEMAN: Yes, you have.

MR. BICKHAM: Yes, for --

MS. BOURKE: I apologize.

MR. FINEMAN: So, Your Honor, the point is there's a claim and an answer to the claim and IntelGenX is not a party to it. So when we accepted them from the discovery of the trade secrets, it's no different than if we accepted Alvogen or someone else because they're not a party to it so they shouldn't be involved in discovery on that claim, because they're not a party to it.

THE COURT: Well, I think maybe what I'm hearing is if they're not a party, then the party rules aren't going to apply to them, but I don't think you're saying that Mr. Ladow thinks that there's some reason to be deposing, he can't do that as through some other means outside of the party limits?

MR. PHILLIPS: As part of the 10 deposition limit.

MR. FINEMAN: We can cross it when we get to that bridge. In other words, whether they can take that deposition with respect to

the defense part of the DJ action. I will address that at that time. I'm just trying to answer Ms. Bourke's question which was the reason for the language of except for IntelGenX is nothing tricky other than they're not a party to that claim.

MS. BOURKE: Well, I guess the question that I have, Steven, because I'm a little confused is do you have anything in your proposal that that language such that it excludes the trade secrets from the depositions that you -- I'm not seeing it there. That's why I'm having a problem.

MR. FINEMAN: That's exactly the point I'm trying to raise with Judge Andrews. There are two buckets of deposition time in the scheduling order as with respect to Par. The first bucket is what I will call the patent case and Your Honor right now is contemplating limiting plaintiffs to 10 depositions and Par to sharing 15 with two other defendants.

In addition, the second bucket would be time that the parties have agreed to set aside as additional time only as between

plaintiffs and Par because we have the additional element of the trade secrets claim, and we have a dispute, Par proposed 35 hours for that and plaintiffs proposed 30 hours for that. I'm sure we can resolve that. That's not a major dispute. But what would be a major dispute is I'm relatively confident that our co-defendants Alvogen and Watson will not be sitting idly by while we were to use 50 percent of the defendants 15 depositions to address the trade secrets claim. So all I'm suggesting is that Par and plaintiffs should be on equal footing on the amount of deposition time for the trade secrets claim.

THE COURT: My impression that I'm getting is that there is an agreement that there are a certain amount of numbers either 30 or 35 or 32-and-a-half for doing the trade secrets stuff, and that I guess will be in your scheduling order and not in anybody else's scheduling order, right?

MR. LADOW: Your Honor, if I can just say one thing about that. From our point of view, they have a counterclaim about trade

secrets, that that issue is raised in some fashion in the case. What's not clear as at this point in the case is that if we have -- plaintiffs want to litigate a patent case. So we have to take this patent related case, depositions of all of the defense including Par, so we're not planning to take three-quarters of our time on the trade secret case and ignore the patent case. That's not going to happen.

The only thing I will be concerned about is that if something goes into the order now that somehow is an artificial demarcation to, oh, that's trade secret and this other thing isn't when, in fact, we don't know that today, if we ask about how they're manufacturing their product, they may say, oh, that's trade secret and we will say, well, no, it also goes to the patent case. And I think the point of it is --

THE COURT: I assume that trade secret is it's some claim that you stole their trade secrets.

MR. LADOW: No, that's why this is more complicated than that.

THE COURT: That they didn't

steal --

MR. BOURKE: They brought a counterclaim that says they didn't --

THE COURT: That they didn't steal your trade secrets?

MR. BICKHAM: Yes, Your Honor. I believe that the proposal does have some carve-out time which is this 30 hours and 35 hours that addresses the issue. But it sounds like the dispute here is whether plaintiffs could use some of that carved-out time for discovery against IntelGenX or if we would be limited to using the carve-out time to only Par. I believe the plaintiffs' position is we don't know what we're going to see so why limit it to --

THE COURT: Why don't we right now say it's limited to you and Par. If you start doing some discovery and you find out that there's a reason to be doing IntelGenX, come back to me if they won't agree to it. I will give you time to do IntelGenX.

MR. FINEMAN: I appreciate that, Your Honor. That's not quite the issue. Let me

try it this way: All we want, Your Honor, is to make sure we have equal time with plaintiffs on the trade secret claim. If it's 30 hours for each side, fine. If it's 35 hours for each side, fine. If it's some other hour, that's fine.

THE COURT: Isn't that something I'm going to have to count on your reasonable good sense judgment down the road because it's not always going to be crystal clear which is which, right?

MR. FINEMAN: Well, that may be the case, Your Honor. In that case, Par can just take additional time. The key is we have equal time. So --

THE COURT: So I think that everybody has agreed that we will write down you will have equal time. If it becomes a problem down the road and you can't work it out between yourselves, then come back to me. With the benefit of having some actual concrete knowledge, I don't know, maybe it will be easier to make a decision.

MR. LADOW: That's fine with us,

Your Honor.

MR. FINEMAN: Your Honor, with the understanding we will get equal time on the trade secret claim, then that's fine with Par, Your Honor.

THE COURT: All right. Do you want to do 30 hours or 35 hours or 32-and-a-half?

MR. BICKHAM: It doesn't matter to us right now, Your Honor. We will take Par's number, whatever --

MR. FINEMAN: Let me make sure that was the only dispute.

MS. BOURKE: The only dispute was the number of hours. You have 35 and we have 30. I think it's in the proposal. It's not carved out to say trade secrets for the very reason that Your Honor said, it will be probably be some overlap.

MR. BICKHAM: Mr. Ladow is a fast talker. I'm a slow talker so depending on the limit.

THE COURT: So --

MR. LADOW: Your Honor, there's

one other small thing that maybe we can get in agreement from defendants. And that is, on depositions Your Honor said that they can take 10 hours of our witnesses.

THE COURT: Yes.

MR. LADOW: With respect to their witnesses, we had proposed being able to do eight and they had proposed seven, so that was unresolved at the moment. I don't know if you guys won't agree to eight or not.

THE COURT: I kind of wonder why you picked eight because seven is what the rules envisioned. Then the eight, you got this extra hour so you're either going to tire these people out or -- you see them all the time. I see them occasionally on video and they look pretty worn out by the end, so I'm sort of inclined to say seven. Unless you're going to go enough above seven to make it worthwhile to do a second day, I don't really see the point.

MR. PHILLIPS: We arrived at seven particularly given the number of depositions that are going to be taken, you know.

THE COURT: When I hear how many

depositions that's going to be taken, I will just point at you.

MR. PHILLIPS: I mean, they've got 70 hours of depositions now.

MR. LADOW: Your Honor, with the understanding that we will try to get some reasonable agreement from our brethren, if we need to a little more time than seven --

THE COURT: You can always try to get reasonable agreement. I'm not sure about the out-of-town lawyers, but Mr. Phillips, Mr. Fineman and Mr. Brauerman, they're all reasonable people if they're present for these things. So what else?

MS. BOURKE: I think that does it with the deposition disputes.

THE COURT: There was something that was in a bracket earlier on, this business about -- this may be important in light of what you've said, Paragraph 2, defendants proposed addition, all motions to amend to supplement the pleadings -- oh, that's inequitable conduct.

MR. PHILLIPS: Yes, we wanted a separate date for inequitable conduct after fact

discovery, Your Honor.

THE COURT: When is the end of fact discovery, January 16th?

MR. PHILLIPS: Yes.

MS. BOURKE: December 15th.

THE COURT: Why don't we just move it up a little bit so that if you actually do it, there's some time to actually do fact discovery on the topic.

MR. PHILLIPS: That's fine, Your Honor. Of course recognizing when you allege inequitable conduct, the plaintiff is in possession of all of the information that --

THE COURT: You can ask them now. There was none.

MR. PHILLIPS: Right. That's why we need the fact discovery to get that --

THE COURT: I agree that that should be later. I'm just saying when you do allege it and you have a theory that you're putting forth, they may want to actually do some discovery themselves.

MR. PHILLIPS: I understand. But all of the information is in their possession

anyhow.

THE COURT: Why don't you move that up to --

MR. PHILLIPS: December 15?

THE COURT: Actually, there's no reason if they're -- December 1st, there's no reason to have a second date. I thought that was December 1st of 2013 or something.

MS. BOURKE: No.

THE COURT: A lot of times that date is a year in advance.

MR. PHILLIPS: Keep in mind, Your Honor, under the inequitable conduct pleading standards, we have to be very, very specific.

THE COURT: I do keep that in mind. You cannot actually possibly meet that standard.

MR. PHILLIPS: And that's been your holding in the past. So we need to take as much discovery as we can get in order to try to convince Your Honor that we have met that.

THE COURT: So December 1st is a year from now and you can target that discovery to get it done in time.

MR. PHILLIPS: Your Honor, what happens in these cases is things get put off until the end of the deadline and inevitably the parties are scrambling around the last month of the deadline trying to take however many depositions they haven't gotten around to, some of which -- with all due respect and not necessarily counsel on the other side of this table -- plaintiff's game is to keep the really bad witnesses to the very end of the fact discovery so that you don't get to the stuff that they don't want you to get to until it's too late.

MR. LADOW: They're actually dead.

MR. PHILLIPS: That's their hope.

MR. BICKHAM: I was going to say there are no bad witnesses.

MS. BOURKE: But, Jack, they're only 30 days apart. Can't we compromise?

MR. PHILLIPS: December 15th?

THE COURT: December 15th it is because apparently there's this spirit of compromise.

MR. PHILLIPS: Reasonable people,

there we go.

THE COURT: So --

MR. LADOW: Your Honor, there was one more on Page 6.

THE COURT: Okay.

MR. LADOW: It's Paragraph H.

THE COURT: Yes, core technical documents. This came up for me the first time -- well, tell me what you think it is.

MR. LADOW: Your Honor, we think that it can't be seriously argued when defendants produce their core technical documents in accordance with this rule, that they must produce, at least among other things, their ANDA, which we certainly need for infringement contentions, so that should be included and should be understood that they have to produce that at that time.

THE COURT: Actually, when it comes up before -- I don't know why I thought the ANDA was actually produced before then.

MS. BOURKE: These are the default standards, Your Honor. And I guess one of the big disputes between the parties is whether we

need to even encompass the default standard in the scheduling order to begin with. These are --

THE COURT: I guess what I'm wondering is the ANDAs are already in existence, correct?

MR PHILLIPS: Yes.

THE COURT: So why aren't they being produced sort of five days from now? I understand the protective order, there's a default provision for that. That means they can't go around publishing them until you actually get a real protective order.

MR. PERKOWSKI: Your Honor, Watson would be willing to produce them next week, particularly if the Paragraph G default standard could include the identification of claims to be asserted. That will certainly help us focus on the invalidity contentions later in the case if we knew what claims were being asserted in January rather than in March.

THE COURT: Well, doesn't it kind of work the other way here? You produce ANDA. They look at it and then they tell you which

claims they're going to assert against it?

MR. PERKOWSKI: Right. Under this proposal, we wouldn't know the claims until March. I'm willing to give them the ANDA tomorrow, next week, if the identification of claims could be included in the G paragraph of the default standards.

THE COURT: Well, that's not unreasonable on the surface.

MR. LADOW: I would say on the surface at best, Your Honor. They don't have to do any work to produce the ANDAs. They're ready to go. They don't have to do any analysis. They --

THE COURT: No, I understand. That's the reason why I'm kind of wondering why the production of ANDAs is even an issue.

MR. LADOW: The thing is even if these are initial infringement contentions which is we can supplement as we go along in the case, if that's so, there's no reason in a case that's not going to be over in three months to try to force the plaintiffs to rush to come to a judgment on their initial contentions after just

having received something, which they've never seen before which is a lot of the guts of the case.

THE COURT: I think the way that he was talking about it is you would have 30 days.

MR. LADOW: 30 days over Christmas when --

THE COURT: So we will throw in a few extra days. I'm not heartless.

MR. LADOW: Under this schedule if we did the default schedule, I think there's about 45 days and there is going to be at least three patents. We've got ANDAs from three different defendants and we think it's just reasonable that we shouldn't have to respond in a month with those contentions and if they're going to hold our feet to the fire because we said something and we didn't look at it or --

MR. PERKOWSKI: Let me clarify. Maybe I'm not being clear. I don't need contentions in January. I just want to know what claims are asserted so that I don't have to develop an invalidity position for every single

claim.

THE COURT: But to some extent when they know their infringement contentions is probably when they know what their claims are too, right?

MR. BICKHAM: And if we are going with the default, the invalidity contentions come after the infringement contentions where the claims are identified.

MR. PERKOWSKI: Well, I'm not going to wait to work on that until I get your infringement contentions.

THE COURT: I guess what I'm wondering is -- because as Mr. Phillips said in a slightly different context a moment ago or at least implied -- the time, there is more work to be done in these cases, and it sounds like more in this than most. So I guess what I'm wondering is why all of the defendants can't produce the ANDAs for the only patents that are actually in the case today. And by some time, say, the end of next week and you can do the claims and the infringement contentions by, say, February 15th or something gives you plenty of

time. Then you can get on to a schedule and you can create a little more time.

MR. FINEMAN: Your Honor, I need to speak from Par's perspective on this. Your Honor, this has a direct relationship to our trade secret claim. And I would direct Your Honor to defense counterclaims, Paragraphs 29 through 32 are the relevant ones, and I have to share with Your Honor my copy of --

THE COURT: I take it you're saying it like that because it's under seal?

MR. FINEMAN: No, Your Honor. I just --

THE COURT: Okay. And I don't have a copy. The way you were talking I thought you were working around the fact I'm not going to seal this transcript.

MR. FINEMAN: No. I can hand Your Honor a copy of this.

THE COURT: Why am I looking at this?

MR. FINEMAN: The relevant paragraphs 29 through 32 of the counterclaim describe the parties Par and plaintiffs'

discussions about gaining access to Par's ANDA and specifically in Paragraph 32, Your Honor, you will see that we have alleged that on August 2nd plaintiffs objected to the offer. They proposed additional modification to the offer and --

THE COURT: What are you talking about?

MR. PHILLIPS: The counterclaim.

MR. FINEMAN: It's on Page 21 of the document, Your Honor, which is Paragraph 32.

THE COURT: The counterclaim. Thank you, Mr. Phillips.

MR. FINEMAN: A few paragraphs before that are relevant, Your Honor, because they discuss the proposals on access to Par's ANDA. But the key language is the block quote at the bottom of Page 21 carrying on to 22 where it says MonoSol needs to be able to consider trade secret issues in addition to patent issues under the offer and request that and it goes on.

Your Honor, Par's perspective would be that we're happy to provide Your Honor

with more fulsome briefing on this at a later time. But we need the trade secret statement from plaintiffs as to what they contend would be the trade secrets allegedly misappropriate before they can have access to our ANDA.

THE COURT: I don't understand. You're the one who's bringing the trade secret claim.

MR. FINEMAN: It's a declaratory judgment --

THE COURT: I understand that.

MR. FINEMAN: -- that we haven't misappropriated anything. And if they contend that they have some trade secret that we misappropriated, we need to know from them before they have access to our confidential ANDA what trade secret we have allegedly misappropriated. And, Your Honor, we are happy to provide briefing on this because this is the way it works in trade secret cases.

I will concede, Your Honor, that it's not typically a DJ action. But the way it works is that a party claims that there's been alleged trade secret and before they get access

to the other party's confidential information, they have to say what that trade secret is. Otherwise, they can comb through the other party's information and work backwards as to what the trade secret is. That's why the law provides for the trade secret to be in advance.

Your Honor, we are happy to take this up separately and we're happy to brief it for Your Honor. And that's why we cannot provide the ANDA right now.

MR. LADOW: If I can say one thing and then --

THE COURT: Then your colleague who's chomping at the bit.

MR. LADOW: I just want to say these are some of the reasons why we were having some difficulty with the schedule. We didn't realize until this moment what the issue was about this and now we understand that they have this position that we can't even see the ANDA which I will let Tim speak to that.

MR. BICKHAM: Well, we precisely didn't bring a trade secret claim because we don't know what they're using or what technology

they're using in their product. As Mr. Fineman has said, there was a relationship between MonoSol my client and Par. That relationship ended and then they came out with a product with another -- with IntelGenX as a partner. And we don't know what technology they're using or may be using or are not using from MonoSol until we actually see the ANDA.

So the situation is completely reverse here. So we can't come up with our infringement contentions in the patent case without seeing the ANDA.

MR. FINEMAN: Your Honor, if I misspoke, I want to correct it. I --

MR. LADOW: Can I just say one thing before that? If there were a trade secret theft, it doesn't matter whether they identify information that they actually use in manufacturing. What matters is whether they took it or not. So I just don't see how that logically follows that they can get that kind of relief. In other words, that that issue will be determined by whether or not the Court finds they actually took something, not by them

telling us here is what we do.

By telling us here's what we do, that doesn't say that they took it. So that's not a basis for holding up the progress of the case with Watson and Alvogen and having the possibility of splintered schedules because they want to withhold their ANDA for this purpose. I'm sorry, Steve.

MR. FINEMAN: That's fine. Just to correct in case I misspoke, when I said relationship, I didn't mean prior relationship between the parties. I meant relationship between the trade secret action and the disclosure of the ANDA.

THE COURT: What is it you say is law in terms of this disclosure of --

MR. FINEMAN: As we understand it, Your Honor -- and like I said, we would like the opportunity to present this on record, not just our say so. Before they get to look at our confidential information and before they look at our ANDA and see what we do, we want to know that they're saying to us we need to be able to consider trade secret misappropriation. Well,

what is it that we misappropriated? What is the trade secret that you think we have before you look at our information? What did we allegedly misappropriate? Then you can go in and find out that it wasn't misappropriated.

THE COURT: Wouldn't that normally come up because unless they can say what they think -- has it ever come up in this context before where there's an ANDA? Because it seems like it would make sense if they filed you stole our trade secrets, then you said, no, we didn't. Then it would make sense you should say, well, you've allegedly stole trade secrets. Well, what trade secret did we steal? They should have to say it because if they can't articulate what it is you stole, then they shouldn't have filed suit. But they haven't filed suit.

MR. FINEMAN: But the problem is, Your Honor -- I know Your Honor typically permits argument from people in person. Mr. Lynch is on the phone. He can shed some better light on this than I could and if Your Honor will allow him to do so. But here is the

problem: They filed suit under Hatch-Waxman context which will give them access to our ANDA.

We have their position in writing that they want to look through our ANDA to try to find trade secret misappropriation. So if we don't file the DJ action and make the claim for no trade secret misappropriation, well then that whole procedure where they would have to identify the trade secret goes out the window because they would have had access to our ANDA under the Hatch-Waxman scheme. As I said, if Mr. Lynch can chime in with Your Honor's permission, I think he can probably elaborate it on this better.

MR. LYNCH: Thanks, Your Honor. Just very briefly, the declaratory judgment action identifies an existing dispute between the parties about whether Par is using MonoSol's trade secret. So because of the dynamics Mr. Fineman just identified, Par raised this to join the issue in this proceeding to have it resolved. Even though that's not a typical posture, the procedure for requiring the trade secret owner to identify the trade secret is

this concern or alleged that Par here has misappropriated, so I think this may be a pretty simple fix. Because we can simply ask MonoSol to identify the trade secret that supposedly may have been shared with Par and that MonoSol's concern is now being abused by Par, they would know what those are and identify the particularity that would take a procedure four to six weeks, then we can produce the ANDA at that time.

The other accommodation we could make to expedite this is to produce portions of the ANDA that we think would implicate this question, allow them to begin portions of that now and produce the balance of it once we have the identification of trade secrets that the law allows.

THE COURT: Mr. Ladow or Mr. Heaton?

MR. LADOW: Mr. Bickham.

THE COURT: Sorry, two Tims. Were you going to say something?

MR. BICKHAM: Well, we don't think that this potential trade secret issue should

hijack the patent case. And this procedure as far as identifying trade secret information, if that's to be briefed, that's to be briefed. It's something that we've never seen before. And we don't see a reason in this case for that to prevent the patent case from moving forward.

If we think there's a trade secret claim, then we're going to have to document that and bring it. We haven't done it. So to say that we're not going to be able to prosecute our patent case because of this doesn't make sense to us.

MR. LADOW: I will just add it's a fairly unusual situation. MonoSol, the holder of the information that provides the information, doesn't make the trade secret claim. They claim that they don't have it. And by claiming they don't have it, they can withhold information in the patent case that we need for our infringement contentions. That's a little Goldbergian for --

THE COURT: On the surface that doesn't make a lot of sense to me either. That doesn't necessarily mean it's not the law.

MR. FINEMAN: Let me clarify one point. We're not looking to hold up anything. If they believe that Par has misappropriated something -- the keyword is something -- identify with particularity what that something is. If they believe that has occurred, they should within a week be able to identify it.

MR. BICKHAM: I'm sorry. But we haven't said that we believe that they have taken anything. We didn't say that.

MR. FINEMAN: With all fairness, Your Honor, if they didn't believe that, there would have been no need for them to have wanted to review our ANDA for purposes of determining whether there's a trade secret misappropriation.

MR. BICKHAM: We --

THE COURT: I don't think we're accomplishing much here. Let's go back to where we were. And I guess it probably doesn't matter because Par is probably not a first filer. But if there's ever any delay here that causes a postponement of the 30-month stay, it's on Par.

So I'm not inclined to tell some of the defendants to produce their ANDAs quickly

and get going as long as Par is taking the position it's taking.

MR. PERKOWSKI: Not to interrupt, Your Honor, but Watson wouldn't mind moving forward while they work on this.

THE COURT: Well, you don't have to wait if you want to strike a deal with the plaintiffs on your own. But it doesn't make sense to me to be carving Par out here, there and everywhere.

MS. BOURKE: Your Honor, I guess I just have a question. We had proposed omitting the four paragraphs that are related to the default discovery standard. I don't know what Your Honor's preference is with that. We also provided a date and --

MR. PHILLIPS: But, Your Honor, the default standard is if the parties can't agree. That's the whole purpose of the default standard and we haven't agreed.

MS. BOURKE: I guess that's true.

THE COURT: Right. So is it basically the general gist here is just to omit Paragraphs G through J?

MR. PHILLIPS: No, that's the whole point. We want them in because they won't agree to give us these things on a schedule that we proposed or any schedule. They think we should have to get this through written discovery.

THE COURT: I don't think that's what they imagine.

MR. PHILLIPS: I think that's what they said to us.

MS. BOURKE: But we agreed on dates.

MR. PHILLIPS: As a fallback.

MS. BOURKE: As the fallback.

MR. PHILLIPS: We don't have agreement, Your Honor, so we say the default standard kicks in.

THE COURT: All right. So the default standard is something that you don't put into the scheduling order because it's the default.

MR. PHILLIPS: It's timed off this conference. Those are the dates that we have included here.

THE COURT: If I knock this out, what would the dates be?

MR. PHILLIPS: They would be the same.

MS. BOURKE: They wouldn't be there. We would operate normally what the normal scheduling orders are without the default standard in there. You would have your substantial completion of document production and then go forward with fact discovery, the way that at least a lot of cases I've --

THE COURT: You said substantial completion of document discovery, but you didn't mean that, did you?

MS. BOURKE: Document pro -- I guess that's not in your form order, but it's in other form orders, but we don't have that here.

MR. PHILLIPS: The bottom line, Your Honor, is if you knock these out --

MS. BOURKE: No, I'm sorry. I did mean that. It is here.

THE COURT: Where?

MS. BOURKE: It's 3(b), Your Honor, substantial completion of document

production is on July 25th.

THE COURT: 3(b)?

MS. BOURKE: Yes.

MR. PERKOWSKI: Page 2.

MS. BOURKE: So we have a fact discovery cut-off and --

THE COURT: Right. So you agreed on all of that?

MS. BOURKE: Yes.

MR. FINEMAN: Your Honor, I can shed some light on this. I think Mr. Phillips might have misspoken. These dates are actually agreed upon. They are not actually default dates. I think under the default dates plaintiffs have less time.

THE COURT: Well, the default dates are 30 days so --

MR. FINEMAN: Right. We have given more time than that.

THE COURT: In any event, these are the dates the defendants want, but you have an objection to these dates?

MS. BOURKE: No. We agreed to the dates to the extent the Court was going to

require these early disclosures, basically have their genesis from the New Jersey local patent rules and haven't been adopted by Delaware yet. And our initial position was except as in a default standard which is the fallback, where we said we don't need these early disclosures, we can just go under a normal scheduling order, but --

THE COURT: No, we are going to follow the default standards in that regard.

MS. BOURKE: Okay. Then we have agreed on dates for all of those.

MR. PHILLIPS: We offered these dates as a compromise so they didn't have to comply with the default standards. They now want to remove these dates which are even later.

THE COURT: In any event, you got your dates.

MR. PHILLIPS: If you're going to leave them in, yes.

THE COURT: Well, let's leave them in.

MR. FINEMAN: To bring Your Honor full circle to where we started this discussion,

Paragraph 3(h), the language is contested, that language is added to the default standard where it says core technical documents.

THE COURT: So the ANDA is included.

MR. FINEMAN: Well, I think --

THE COURT: I'm telling you the ANDA is included. What else do we need to discuss?

MS. BOURKE: The trial date, I guess.

THE COURT: Let's go ahead to the claim construction date first.

MR. LADOW: That's on Page 9.

THE COURT: Yes. I'm just looking to see what I wrote down on mine. How about December 3rd of 2014 at 9:00 a.m.? How about a trial date?

MR. PHILLIPS: Your Honor?

THE COURT: Yes.

MR. PHILLIPS: That's the Monday after Thanksgiving weekend.

THE COURT: Wait a second. Yes, I guess I must have time available then.

MR. PERKOWSKI: If you do, then I do.

MR. FINEMAN: I don't have a calendar but I may be in trial.

THE COURT: Well, if I can do two things at once, you can do two things at once.

MR. FINEMAN: Yes, Your Honor.

THE COURT: So that's the date. Honestly, the Markman dates, I pick them or they get picked. Generally speaking, I have trials scheduled and most trials go away. Actually, I'm guessing that's actually not the week after Thanksgiving. December 3rd, I don't think it would be that late. This year was as late as it gets.

MR. FINEMAN: I want to say, Your Honor, that Thanksgiving next year might be the 27th. I think it's almost as late as this year. Your Honor is correct, this was the latest for Thanksgiving, the 28th. I think next year is the 27th.

THE COURT: Well, Mr. Phillips is going to answer the question here.

MR. PHILLIPS: It's the 27th, Your

Honor.

THE COURT: So December 3rd is not a Monday.

MR. PERKOWSKI: You're right. It's a Wednesday.

MR. PHILLIPS: So we're all good.

THE COURT: Okay. So then the date that we had in mind for the trial was August 31st of 2015. Trial will start at 8:30 and not 9:30. I guess we will sort out later how long of a trial it is. But when we do sort it out, it will be three days. Unless it turns out that it's really lots of infringement issues that in all likelihood or in all fairness the fact that there are three defendants, take more time. But if the infringement issues are insurmountable, than it's three days.

MR. PERKOWSKI: You meant August 31st or 3rd?

THE COURT: I meant August 31st of 2015. What did I say?

MR. BICKHAM: You said August 31st.

THE COURT: August 3rd is not a

day that I would want to start a trial. Then the pretrial conference will be August 21st at 11:00 a.m.

Is there anything else anybody wants to talk about?

MR. PHILLIPS: Your Honor, when will we be able to start sorting out the length of this trial? Our concern is if we don't get on your calendar now, we're going to end up in a bad situation. There are going to be three patents in this case within the next month and we can end up with as many as 12 patents in this case.

Plaintiffs are talking about adding a number of additional parties. With all due respect to Your Honor's statement, this is not going to be a three-day trial hopefully in fairness to the parties. So we're going to need some time --

THE COURT: Well, typically when I schedule a trial to begin on a Monday, what it means is I have the Thursday and Friday actually not scheduled for any trial. So somewhere down the road maybe when we have the Markman or

something and you want to bring up how long it should be, that would be the time to bring it up.

MR. PHILLIPS: Just so Your Honor is aware, the 30-month stay expires in February of 2016.

THE COURT: I got January 10th for one and February 28th for the second. I assume Alvogen is going to be later.

MR. PERKOWSKI: Correct.

THE COURT: Okay. I got those dates in mind.

MR. PERKOWSKI: Thank you, Your Honor.

THE COURT: Is there anything else anybody wants to talk about? Do you think somehow or another you can reduce what was said here in writing?

MR. PHILLIPS: I have complete confidence in Mary.

THE COURT: She has complete confidence in herself so that's good.

MS. BOURKE: I'm sure they will correct me if I get something wrong.

THE COURT: Well, thank you and I will look forward to seeing you somewhere down the road, hopefully later rather than sooner but whenever you actually need me. Have a nice day.

MR. PHILLIPS: Thank you, Your Honor.

MS. BOURKE: Thank you, Your Honor.

MR. FINEMAN: Thank you, Your Honor.

MR. LADOW: Thank you, Your Honor.

MR. PERKOWSKI: Thank you, Your Honor.

MR. BICKHAM: Thank you, Your Honor.

(The proceedings ended at 3:00 p.m.)

C E R T I F I C A T I O N

I, Taneha Carroll, Professional Court Reporter, certify that the foregoing is a true and accurate transcript of the foregoing proceeding.

I further certify that I am neither attorney nor counsel for, nor related to nor employed by any of the parties to the action in which this proceeding was taken; further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

/s/Taneha Carroll
Taneha Carroll

Professional Reporter and Notary Public