UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BRISTOL-MYERS SQUIBB CO., E.R. SQUIBB & SONS L.L.C., ONO PHARMACEUTICAL CO., LTD., and TASUKU HONJO,	)	
Plaintiffs,	)	C.A. No. 14-cv-1131-GMS
v.	)	**JURY TRIAL DEMANDED**
MERCK & CO., INC. and MERCK SHARP & DOHME CORP.,	)	
Defendants.	)	

SCHEDULING ORDER

This _____ day of _____ 20____, the Court having conducted a Rule 16 Scheduling Conference pursuant to Local Rule 16.2(b) on **January 21, 2015**, 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 **January 23, 2015**.

2. **Joinder of other Parties and Amendment of Pleadings**. All motions to join other parties and amend the pleadings shall be filed on or before **December 22, 2015**.

3. **Reliance Upon Advice of Counsel**. Defendants shall inform plaintiffs whether

they intend to rely upon advice of counsel as a defense to willful infringement no later than **October 9, 2015**. If Defendants elect to rely on advice of counsel as a defense to willful infringement, defendant shall produce any such opinions on which Defendants intend to rely to Plaintiffs no later than **November 4, 2015**.

4. ***Markman* Claim Construction Hearing**. A *Markman* claim construction hearing shall be held on **March 2, 2016 at 9:30 a.m**. The *Markman* hearing is scheduled for a total of three (**3**) hours with each side having one-and-a-half (**1.5**) hours. The parties shall meet and confer regarding narrowing and reducing the number of claim construction issues. On or before **October 30, 2015**, the parties shall submit a Final Joint Claim Chart which shall include citations to intrinsic evidence. Plaintiffs shall submit to the court, a Joint Appendix of Intrinsic Evidence (the "Joint Appendix") containing all intrinsic evidence relied upon in the claim construction briefing. A sample table of contents of the Joint Appendix can be located on this court's website at www.ded.uscourts.gov. The Joint Appendix shall be filed on the same day as the answering claim construction briefs. The parties shall file opening claim construction briefs on **November 13, 2015**, and answering claim construction briefs on **December 14, 2015**. Briefing will be presented pursuant to the court's Local Rules.

5. **Discovery**. All fact discovery in this case shall be initiated so that it will be completed on or before **February 9, 2016**. The Parties shall substantially complete their document productions on or before **August 31, 2015**. Opening expert reports on issues on which a party bears the burden of proof shall be served on or before **April 1, 2016**. Rebuttal expert reports shall be served on or before **April 29, 2016**. Reply expert reports shall be served on or before **May 9, 2016**. Expert Discovery in this case shall be initiated so that it will be completed on or before **June 2, 2016**.

a. **Discovery and Scheduling Matters**: Should counsel find they are unable

to resolve a discovery[1] 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 teleconference, the parties shall file with the court, via electronic means (CM/ECF), a **Joint Letter Agenda**, which is **non-argumentative**, 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. After the parties have had three (3) discovery teleconferences, they will be required to file a joint letter showing good cause why the court should permit a fourth discovery teleconference. 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.

b. Depositions: The parties agree in principle that at least 20 depositions per side should be permitted, but have not at this time reached agreement as to whether additional depositions beyond 20 should be permitted or, if so, how many. The parties also agree in principle that more than one day will be allowed for the deposition of each named inventor, but have not at this time reached agreement as to how much additional time should be permitted for such depositions. The parties agree that during fact discovery, they will meet and confer in good faith in an attempt to reach agreement on the number of permitted depositions and the length of time for each inventor's deposition.

c. Interrogatories: Each side shall be permitted to serve up to fifty (50)

[1] **Unless the court otherwise orders, should counsel be unable to agree on the discovery of paper and electronic documents, the court's "Default Standard for Discovery, Including Discovery of Electronically Stored Information" ("ESI") shall govern.**

interrogatories.

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 within ten (10) days from the date of this order. 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 Judge for the purpose of exploring the possibility of a settlement. The parties shall wait to be contacted by the assigned United States Magistrate Judge.

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 **June 16, 2016**. Answering letter briefs shall be no longer than five (5) pages and filed with the court no later than **June 24, 2016**. Reply letter briefs shall be no longer than three (3) pages and filed with the Court on or before **July 1, 2016**. If the Court determines that argument is necessary to assist in the resolution of any request to file summary judgment, it shall notify the parties of the date and time on which the Court will conduct a telephone conference to hear such argument. **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.**

9. **Case Dispositive Motions**: To the extent permitted, all case or issue dispositive motions shall be served and filed within two (2) weeks of the Court's decision to permit the filing of such motions. Briefing will be presented pursuant to the Court's Local Rules. The parties may agree on an alternative briefing schedule. Any such agreement shall be in writing and filed with the Court for the Court's approval. Any request for extensions of time as set 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 District of Delaware Local Rule 7.1.4.

12. **Pretrial Conference**. On **October 11, 2016**, beginning at **2:00 p.m.**, the Court will hold a Pretrial Conference, in Chambers for Jury trials and via telephone for Bench trials, with counsel. Unless otherwise ordered by the Court, the parties should assume that filing the Joint Pretrial Order satisfies the pretrial disclosure requirement in Federal Rule of Civil Procedure 26(a)(3). A sample form of Pretrial Order can be located on this court's website at www.ded.uscourts.gov. Plaintiffs' counsel shall forward to Defendants' counsel a draft of the pretrial order containing the information Plaintiffs propose to include in the draft on or before **August 23, 2016**. Defendants' counsel shall, in turn, provide to Plaintiffs' counsel any comments on Plaintiffs' draft, as well as the information Defendants propose to include in the proposed

pretrial order on or before **September 16, 2016**. **Motions *in limine*[2]: NO MOTIONS *IN LIMINE* SHALL BE FILED**; instead, the parties shall be prepared to address their evidentiary issues at the Pretrial Conference and during trial (before and after the trial day). The parties shall file with the court the **joint** Proposed Final Pretrial Order in accordance with the terms and with the information required by the form of Final Pretrial Order, which can be located on this court's website at www.ded.uscourts.gov on or before **September 23, 2016 at 6 p.m**.

14. **Trial**. This matter is scheduled for an **eight (8)** day **jury** trial beginning at **9:30 a.m.** on **November 29, 2016**.

15. **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 is on the line for purposes of selecting a new date.

UNITED STATES DISTRICT JUDGE

[2] **The parties should simply list, in an Exhibit to be attached to the Pretrial order, the issues under a heading such as "Plaintiff's [name of party] List of Evidentiary Issues It Intends To Raise."**

EXHIBIT A

PROPOSED DEADLINES

Event	**Deadine**
Parties Serve Initial Rule 26(a) Disclosures	1/23/15
Parties Substantially Complete Document Production	8/31/15
Parties Exchange List of Terms to be Construed	10/2/15
Parties Exchange Proposed Constructions	10/16/15
Parties File Joint Claim Construction Chart	10/30/15
Parties File Opening Claim Construction Briefs	11/13/15
Parties File Answering Claim Construction Briefs and Plaintiffs File Joint Appendix of Intrinsic Evidence	12/14/15
Merck Discloses Whether It Intends to Rely on Advice of Counsel	10/9/15
If Merck Intends to Rely on Advice of Counsel, Merck Produces Advice of Counsel Documents	11/4/15
Joinder of other Parties and Amendment of Pleadings	12/22/15
Parties Complete Fact Discovery	2/9/16
Markman Hearing	3/2/16 9:30 a.m.
Parties Serve Opening Expert Reports on Issues which a Party Bears the Burden of Proof	4/1/16
Parties Serve Rebuttal Expert Reports	4/29/16
Parties Serve Reply Expert Reports	5/9/16
End of Expert Discovery	6/2/16
Parties File Opening Summary Judgment Letter Briefs	6/16/16
Parties File Answering Summary Judgment Letter Briefs	6/24/16
Parties File Reply Summary Judgment Letter Briefs	7/1/16
Plaintiffs Forward Draft Pretrial Order to Merck	8/23/16
Merck Comments on and Returns Draft Pretrial Order to Plaintiffs	9/16/16
Pretrial Order	9/23/16 6:00 p.m.
Pretrial Conference	10/11/16 2:00 p.m.

Trial	11/29/16 9:30 a.m.