IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ALLERGAN, INC., ALLERGAN SALES, LLC, Plaintiffs, v. ALCON, INC., ALCON LABORATORIES, INC., and ALCON RESEARCH, LTD., Defendants.	Civil Action No. 04-968-GMS **PUBLIC VERSION**

PROPOSED PRETRIAL ORDER

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Dated: January 17, 2006
Public Version filed: January 24, 2006

On February 6, 2006, counsel for Allergan, Inc. and Allergan Sales, LLC ("Allergan") and counsel for Alcon Inc., Alcon Laboratories, Inc. and Alcon Research, Ltd. ("Alcon") shall appear before the court at a pretrial conference held pursuant to Federal Rule of Civil Procedure ("Rule") 16. The names, addresses and telephone numbers of counsel for the parties are provided by the signature certifications. The following matters as to the trial commencing on March 6, 2006, are hereby ordered by the court.

I. NATURE OF THE ACTION

This is an action for patent infringement brought by Allergan, who on August 24, 2004, filed a complaint alleging infringement by Alcon of United States Patent Nos. 6,641,834 ("the '834 patent") and 6,673,337 ("the '337 patent") under 35 U.S.C. § 271(e)(2). The jurisdiction of this Court is under 28 U.S.C. §§ 1331 and 1338, as this action arises under the patent laws of the United States of America, United States Code, Title 35, Section 1, *et seq*. Jurisdiction is not disputed.

II. PARTIES' PRETRIAL SUBMISSIONS

A. The Parties' Joint Statement of Uncontested Facts

1. The Parties' Joint Statement of Uncontested Facts is attached as Tab 1 to this Order.

2. Alcon's Statement of Uncontested Facts is attached as Tab 1.1 to this order.

B. The Parties' Statements of Contested Issues of Fact and Law

1. The parties' Agreed Statement of Contested Issues of Fact and Law is attached as Tab 2 to this Order.

2. Alcon's Statement of Contested Issues of Fact and Law is attached as Tab 3 to this Order.

C. The Parties' Pre-Marked Trial Exhibits

1. Allergan's Schedule of Trial Exhibits and Alcon's objections thereto are attached as Tab 4 to this Order.

2. The parties' joint list of exhibits is attached as Tab 4.1 to this Order.

3. Alcon's Schedule of Trial Exhibits and Allergan's objections thereto are attached as Tab 5 to this Order.

4. The parties have agreed that the demonstrative exhibits the parties intend to use at trial do not need to be included on their respective lists of trial exhibits. The parties shall exchange copies (using best efforts to exchange color copies) of demonstrative exhibits and shall make available for inspection physical exhibits to be used at trial, labeled with the exhibit number, as set forth below. Exchange of large boards or transparencies is not required, and these exhibits may be exchanged on 8 1/2 by 11 inch white paper. Any demonstrative exhibit, except for demonstrative exhibits created during testimony of a witness, shall be exchanged one week prior to trial, unless the parties agree to alternate arrangements. This exchange of demonstrative exhibits does not waive any objections to them. Objections to demonstratives will be exchanged two business days prior to trial.

5. Legible photocopies of United States Patents may be offered and received into evidence in lieu of certified copies thereof, subject to all other objections which might be made to the admissibility of certified copies. Legible photocopies of United States Patent Applications, and the contents of associated Patent and Trademark File Histories may be offered and received into evidence in lieu of certified copies thereof, subject to all other objections which might be made to the admissibility of certified copies.

6. The parties reserve the right to use exhibits from either parties' exhibit list.

D. Statements of Potential Witnesses to be Called to Testify at Trial

1. Allergan's List of Potential Trial Witnesses that it will call or may call at trial is attached as Tab 6 to this Order.

2. Alcon's List of Potential Trial Witnesses that it will call or may call at trial is attached as Tab 7 to this Order.

3. The listing of a witness on a party's witness list does not require that party to call that witness to testify, either live or by deposition.

E. Statements Regarding Qualifications of Expert Witnesses

1. Allergan's Statement Regarding the Qualification of its Expert Witnesses is attached as Tab 8.

2. Alcon's Statement Regarding the Qualification of its Expert Witnesses is attached as Tab 9.

F. Deposition Designations and Counter-Designations

1. Allergan's Deposition Designations (including counter-designations) and Allergan's Objections to Alcon's Deposition Designations are attached as Tab 10.

2. Alcon's Deposition Designations (including counter-designations) and Alcon's Objections to Allergan's Deposition Designations are attached as Tab 11.

3. The parties have agreed that deposition designations need not be submitted for witnesses appearing on the Lists of Potential Trial Witnesses who do not appear at trial. A party shall provide reasonable notice if for any reason it does not intend to call a witness. In that event, each party shall be allowed to designate (including counter-designations) and offer deposition testimony from such witness.

Allergan's Position on Deposition Usage

The responding party will have the opportunity to raise any preserved (or otherwise appropriate) objection.

Alcon's Position on Deposition Usage

Depositions may be used for all purposes consistent with Fed. R. Civ. P. 32 and Fed. R. Evid. 804(b)(1). Objections may be raised consistent with the Fed. R. Civ. P.

G. Statement of Special Damages

Allergan reserves the right, in accordance with this Court's July 26, 2005, Order, to seek its attorney's fees and costs pursuant to 35 U.S.C. § 285.

Alcon reserves the right to seek its attorney's fees and costs pursuant to 35 U.S.C. § 285.

H. Waivers of Any Claims or Defenses That Have Been Abandoned by Any Party

Allergan's Position

Allergan has not waived any claims or defenses.

Alcon has waived any defenses not previously identified in its pleadings. Alcon has waived its ability to present expert testimony on any subject matter not identified in its expert reports.

Alcon's Position

Alcon has not waived any claims or defenses.

Allergan has waived any claim of infringement with respect to claims 7, 10, 15, 16, 19, 21, and 22 in the '834 patent; claims 5, 7 and 8 in the '337 patent; and waived its ability to present expert testimony on any subject matter not identified in its expert reports.

I. Proposed Findings of Fact and Conclusions of Law

1. Allergan's Proposed Findings of Fact and Conclusions of Law are attached as Tab 12.

2. Alcon's Proposed Findings of Fact and Conclusions of Law are attached as Tab 13.

J. Statement and Status of Settlement Discussions

The parties are not currently engaged in settlement discussions.

K. Statement Regarding Discovery

The parties have completed discovery, including the depositions of expert witnesses.

L. Motions in Limine

Allergan submitted its Motions *in Limine* to the Court on January 9, 2006.

Alcon submitted its Motions *in Limine* to the Court on January 9, 2006.

III. EXPECTED TIME OF TRIAL

Per the Scheduling Order of the Court, filed February 11, 2005, the trial of this case is expected to take 7 days, commencing on March 6, 2006.

IV. TYPE OF TRIAL

Non-jury trial.

V. This Order will control the course of the trial and may not be amended except by consent of the parties and the Court, or by order of the Court to prevent manifest injustice.

VI. Possibility of settlement of this case was considered by the parties.

FISH & RICHARDSON P.C.

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Attorneys for Defendants
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SO ORDERED this _____ day of _____, 2006.

_____
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2006, I electronically filed with the Clerk of Court Proposed Pretrial Order using CM/ECF which will send electronic notification of such filing(s) to the following Delaware counsel. In addition, the filing will also be sent via hand delivery:

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I hereby certify that on January 24, 2006, I have sent via electronic mail, the document(s) to the following non-registered participants:

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