

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

BOEHRINGER INGELHEIM
PHARMACEUTICALS, INC., BOEHRINGER
INGELHEIM INTERNATIONAL GMBH, and
BOEHRINGER INGELHEIM PHARMA
GMBH & CO. KG,

Plaintiffs,

v.

LUPIN ATLANTIS HOLDINGS SA and
LUPIN LIMITED,

Defendants.

C.A. No. 18-12663 (BRM)(TJB)
(consolidated)

(Filed Electronically)

STIPULATION AND ORDER CONCERNING REMOTE DEPOSITIONS

WHEREAS, government orders and health concerns concerning the global COVID-19 pandemic have reduced or prohibited Plaintiffs Boehringer Ingelheim Pharmaceuticals, Inc., Boehringer Ingelheim International GmbH, and Boehringer Ingelheim Pharma GmbH & Co. KG's (collectively, "Plaintiffs") and Defendants Lupin Atlantis Holdings SA and Lupin Limited's (collectively, "Defendants"; with Plaintiffs, the "Parties") witnesses and their counsels' ability to travel to, from, and within the United States;

WHEREAS, the parties have agreed to produce for deposition by video witnesses who will serve as corporate representatives pursuant to Federal Rule of Civil Procedure 30(b)(6), and/or witnesses who are individuals noticed for deposition pursuant to Federal Rule of Civil Procedure 30(b)(1), wherein some of the witnesses are located in India and/or Germany;

WHEREAS, as relevant to this Stipulation, in light of the global pandemic and schedule limitations, there is insufficient time to take depositions by means other than remote deposition;

WHEREAS, the Federal Rules of Civil Procedure allow the Parties to stipulate as to how, when and where the deposition may occur, *see* Fed. R. Civ. P. 29, and the Court has broad discretion to manage the discovery process;

IT IS HEREBY STIPULATED AND AGREED by the undersigned counsel for Plaintiffs and Defendants, subject to the approval of the Court, that the following protocol for conducting depositions via remote means shall apply in the above-captioned matter:

1. All depositions of fact witnesses in this action shall be conducted remotely using videoconference technology, and each deponent shall be video-recorded. The Parties will treat any video recording of the deposition as a certified recording.
2. The noticing Party(ies) will be responsible for retaining a suitable vendor (“Vendor”) for court reporting, videoconference and remote deposition services. The Parties agree that an employee from the Vendor may attend each remote deposition to video record the deposition, troubleshoot any technological issues that may arise, and administer any virtual breakout rooms.
3. The Federal Rules of Civil Procedure and the Local Civil Rules for the District of New Jersey will apply to any remote depositions, and remote depositions will be subject to these rules as if the deposition had been conducted in person in the United States. The Parties agree that these video-recorded remote depositions may be used at a trial or hearing to the same extent that an in-person deposition taken in the United States may be used at trial or hearing, and the Parties agree not to object to the use of these video recordings on the basis that the deposition was taken remotely. The Parties reserve all other objections to the use of any deposition testimony at trial.
4. The deponent, court reporter, and counsel for the Parties will each participate in the videoconference deposition remotely and separately. Each person participating in a deposition

shall be visible to all other participants, their statements shall be audible to all participants, and they should each strive to ensure their environment is free from noise and distractions.

5. No counsel shall initiate a private conference, including through text message, electronic mail, or the chat feature in the videoconferencing system, with any deponent while a question is pending, except for the purpose of determining whether a privilege should be asserted.

6. During breaks in the deposition, the Parties may use a breakout room feature, which simulates a live breakout room through videoconference. Conversations in the breakout rooms shall not be recorded, but counsel may not discuss the substance of a witness's testimony with the witness during a break in deposition except to confer about questions of privilege. The breakout rooms shall be established by the Vendor prior to the deposition and be controlled by the Vendor.

7. Remote depositions shall be recorded by stenographic means consistent with the requirements of Rule 30(b)(3), but given the COVID-19 pandemic, the court reporter will not be physically present with the witness whose deposition is being taken. The Parties agree not to challenge the validity of any oath administered by the court reporter, even if the court reporter is not a notary public in the location where the deponent resides. As is customary with in-person depositions, the witness will have the opportunity to read, review, and correct the transcript, if necessary.

8. The court reporter will stenographically record the testimony, and the court reporter's transcript shall constitute the official record. The Vendor will simultaneously videotape the deposition and preserve the video recording. The court reporter may be given a copy of the video recording and may review the video recording to improve the accuracy of any written transcript, and the court reporter will certify the transcript for accuracy.

9. The Parties agree that the court reporter is an “Officer” as defined by Federal Rule of Civil Procedure 28(a)(2) and shall be permitted to administer the oath to the witness via the videoconference. The deponent will be required to provide government-issued identification satisfactory to the court reporter, and this identification must be legible on the video record. The Parties will have no objections to the witness being placed under oath remotely, and will not later attempt to object to the admissibility of the testimony on such ground.

10. The Party that noticed the deposition shall be responsible for procuring a written transcript and video record of the remote deposition. The Parties shall bear their own costs in obtaining a transcript and/or video record of the deposition, including any costs associated with obtaining a real-time or expedited transcript.

11. The Party that noticed the deposition shall provide the Vendor with a copy of this Stipulation and Order at least twenty-four hours in advance of the deposition.

12. At the beginning of each deposition, consistent with Rule 30(b)(5)(A) of the Federal Rules of Civil Procedure, the Vendor employee responsible for video-recording the deposition shall “begin the deposition with an on-the-record statement that includes: (i) the officer’s name and company affiliation; (ii) the date, time, and place of the deposition; (iii) the deponent’s name; (iv) the officer’s administration of the oath or affirmation to the deponent; and (v) the identity of all persons present.”

13. At the beginning of each segment of the deposition, consistent with Rule 30(b)(5)(B) of the Federal Rules of Civil Procedure, the Vendor employee responsible for video-recording the deposition shall begin that segment of the remote deposition by reciting (i) the officer’s name and business address; (ii) the date, time, and place of the deposition; and (iii) the deponent’s name.

14. The Parties agree to work collaboratively and in good faith with the Vendor to assess each deponent's technological abilities and to troubleshoot any issues at least 48 hours in advance of the deposition so any adjustments can be made. The Parties also agree to work collaboratively to address and troubleshoot technological issues that arise during a deposition and make such provisions as are reasonable under the circumstances to address such issues. This provision shall not be interpreted to compel any Party to proceed with a deposition if the deponent cannot hear or understand the other participants or if the participants cannot hear or understand the deponent.

15. The deponent shall endeavor to have technology sufficient to appear for a videotaped deposition (*e.g.*, appropriate device with microphone and webcam) and WiFi bandwidth (*e.g.*, 1.2 Mbps or higher) sufficient to sustain the remote deposition. Counsel for the deponent shall consult with the deponent prior to the deposition to ensure the deponent has the required technology. If not, counsel for the deponent shall endeavor to supply the required technology to the deponent prior to the deposition.

16. To conserve bandwidth and prevent background noise, any individuals observing the depositions who are not taking or defending will mute their microphones and turn off their cameras.

17. To account for any potential lag in the audio, if counsel attempts to interpose a privilege objection that is not heard by the witness before the witness proceeds to answer, there will be no waiver of privilege. Additionally, if the witness agrees after the fact to follow an instruction not to answer on the basis of privilege, the testimony will be stricken from the record, so long as the witness's agreement to follow the instruction occurs in close proximity to the time

of the instruction—*e.g.*, after the witness hears the instruction once an audio lag is resolved, not hours later or after the conclusion of the deposition.

18. Exhibits shall be introduced electronically during the deposition by using the Vendor's document-sharing technology, by using the screensharing technology within the videoconferencing platform, and by sending the exhibit to the deponent and all individuals on the record via electronic mail. The Parties will agree upon timing and logistics for sending the exhibits electronically at least 24 hours before the start of the deposition.

19. The deponent and defending counsel shall also be provided a full and accurate physical copy of any document to be introduced in the deposition at least 24 hours prior to the deposition in sealed packaging with express instructions that such document(s) may not be opened until the date of the deposition, on the record ("local physical copy"). For depositions for which the witness is located outside of the United States, the party taking the deposition will send the local physical copies by Federal Express, International Priority, to the location of the deposition at least seven (7) days prior to the date of the deposition, where such documents will be held but not opened until the start of the deposition. Upon shipment of the local physical copies, the party taking the deposition shall provide tracking information to defending counsel.

20. If the local physical copies have not arrived at the location of the deposition at least 24 hours prior to the start of the deposition, the deposition may proceed using electronic copies. However, if the witness prefers to proceed with local physical copies, the deposition will proceed after the local physical copies have arrived at the location of the deposition on an alternative date, which will be provided to the party taking the deposition when the deposition is scheduled.

21. Notwithstanding the provisions above, it is possible that, in the course of the deposition, there may be a need to use an exhibit or exhibits that were not sent in hard copy. Counsel for each side will in good faith endeavor to keep the use of such exhibits to a minimum.

22. Counsel shall provide the witness the opportunity to review the local physical or electronic copy of the document at the time it is introduced. During questioning about the document, the relevant portion of the document shall be displayed on the videoconferencing platform (visible to all deposition participants), and counsel and the witness shall refer to the displayed document. If, at any time and for any reason, the witness desires to address any other portion of the document, or any other deposition exhibit, in order to answer such questions, the witness will do so by either requesting control of the document displayed on the videoconferencing platform or by referring to his or her local physical or electronic copy.

Dated: August 11, 2020

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IT IS SO ORDERED, this 12th day of August 2020.


THE HONORABLE TONIANNE J. SONGIOVANNI
UNITED STATES MAGISTRATE JUDGE