

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MINERVA SURGICAL, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 18-217-JFB-SRF
)	
HOLOGIC, INC. and CYTYC SURGICAL)	
PRODUCTS, LLC,)	
)	
Defendants.)	

ORDER AFTER PRETRIAL CONFERENCE

At Wilmington this **13th** day of **July, 2021**, after a Pretrial Conference and upon consideration of the Proposed Pretrial Order (D.I. 335), IT IS HEREBY ORDERED that:

1. The Proposed Pretrial Order is ADOPTED as modified by any discussion at the Pretrial Conference, and except as to issues reserved for resolution by the assigned District Judge.
2. On or before close of business on July 20, 2021, the parties shall submit to the Court a joint pretrial status report of no more than six (6) pages outlining the issues requiring resolution by the assigned District Judge prior to trial. Matters to be addressed in the joint status report include a list of the pending motions in limine and a brief description of the parties' positions regarding issues to be tried to the Court in a bench trial.
3. A 7.5-day jury trial will begin on August 9, 2021 at 9:30 a.m. with jury selection. Subsequent trial days will begin at 9:00 a.m. Each side should be prepared to present its case until 5:00 p.m. of each trial day, although the end of the trial day may, at the discretion of the Court, be earlier than 5:00 p.m.

4. The trial will be timed. Each side is allowed up to 20 hours for its opening statement, its direct and cross-examination of witnesses, closing arguments and argument of evidentiary issues. Each side shall reserve no more than 90 minutes of its allotted time for closing arguments. Time during the trial day that does not neatly fit into one of these categories will be attributed to one side or the other as the Court deems appropriate.

5. Issues that need to be addressed outside the presence of the jury will be taken up at 8:30 a.m., at the end of the day, or as otherwise scheduled by the District Judge. Those issues, including objections to anticipated exhibits or demonstratives, must be brought to the attention of the Court's judicial administrator by 7:00 a.m. on the day on which the evidence objected to will be adduced. There will be a one-hour lunch break and a fifteen-minute break in the morning and in the afternoon.

6. Each side may have no more than four (4) people in the courtroom at any given time, and only three (3) persons are permitted at counsel table per side at any given time. In its discretion, the Court may modify these limitations at any time or impose additional restrictions to ensure the safety of court personnel, the jury, and all persons attending trial.

7. In accordance with the July 13, 2021 Revised Standing Order of the Court, persons who have been fully vaccinated against COVID-19 are no longer required to wear a mask in Court. Judges retain the discretion to impose mask requirements in the courtroom as they see fit.

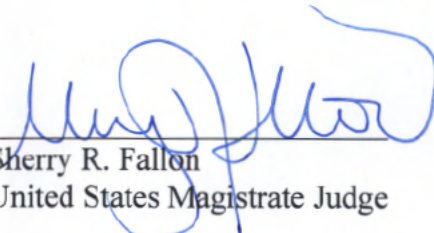
8. The parties' request for permission to set up technology to be used during trial one business day before the commencement of trial is GRANTED. (D.I. 335 at ¶ 84) The parties may access Courtroom 6A on Friday, August 6, 2021. The parties are responsible for using their own vendors to arrange for the presentation of remote witness testimony.

9. Defendants' request for leave to allow two third-party witnesses to testify live at trial via remote means is GRANTED. (D.I. 335 at ¶ 20); *see* Fed. R. Civ. P. 43(a) ("For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location."); *Guardant Health, Inc. v. Foundation Medicine, Inc.*, C.A. No. 17-1616-LPS, 2020 WL 6120186, at *3 (D. Del. Oct. 16, 2020) (finding that the ongoing COVID-19 pandemic constitutes good cause for remote live witness testimony).

10. In accordance with Federal Rule of Civil Procedure 32(a)(3), Plaintiff shall be permitted to present the Rule 30(b)(6) deposition designations of a witness who may also testify live at trial. (D.I. 335 at ¶ 31); *see* Fed. R. Civ. P. 32(a)(3) ("An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under Rule 30(b)(6). . . ."). The parties shall meet and confer about the designation of deposition testimony by Defendants.

11. Defendants' request to edit video deposition clips is DENIED without prejudice. (D.I. 335 at ¶ 38) The parties shall meet and confer on this issue to ensure consistent presentation of video deposition clips at trial.

12. A post-trial briefing schedule shall be set at the discretion of the assigned District Judge. (D.I. 335 at ¶¶ 73-74)


Sherry R. Fallon
United States Magistrate Judge