



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1415/5/7/21 (T)

BETWEEN:

- (1) THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE**
- (2) THE NATIONAL HEALTH SERVICE BUSINESS AUTHORITY**
- (3) THE WELSH MINISTERS**
- (4) SWANSEA BAY UNIVERSITY HEALTH BOARD**
- (5) CWM TAF MORGANNWG UNIVERSITY HEALTH BOARD**
- (6) ANEURIN BEVAN UNIVERSITY HEALTH BOARD**
- (7) HYWEL DDA UNIVERSITY HEALTH BOARD**
- (8) BETSI CADWALADR UNIVERSITY HEALTH BOARD**
- (9) POWYS TEACHING HEALTH BOARD**
- (10) CARDIFF & VALE UNIVERSITY HEALTH BOARD**

Claimants

- v -

- (1) LUNDBECK LIMITED**
- (2) H. LUNDBECK A/S**
- (3) GENERICS (U.K.) LIMITED**
- (4) MERCK KGAA**
- (5) ARROW GENERICS LIMITED**
- (6) ARROW GROUP APS**
- (7) RESOLUTION CHEMICALS LIMITED**
- (8) XELLIA PHARMACEUTICALS APS**
- (9) ALPHARMA LLC**
- (10) ~~A.L. INDUSTRIER AS~~**
- (11) SUN PHARMACEUTICAL INDUSTRIES LIMITED**
- (12) SUN PHARMA UK LIMITED**

Defendants

ORDER

UPON the Defendants' application dated 31 August 2023 for the question of limitation to be determined as a preliminary issue (the 'PI Application')

AND UPON the Claimants' application dated 13 September 2023 for permission to amend the Reply to plead a case based on section 32 of the Limitation Act 1980 (the "Amendment Application")

AND UPON reading the written evidence filed by the Defendants and the written evidence filed by the Claimants and hearing counsel for the Defendants and counsel for the Claimants at the first case management conference in these proceedings on 29 September 2023

IT IS ORDERED THAT:

Preliminary issue

1. The question of whether the claim in these proceedings is time-barred is to be determined as a preliminary issue ('Preliminary Issue').
2. The Preliminary Issue shall be listed for trial as soon as possible after 15 April 2024 with a time estimate of 3 days.

Amended Reply

3. By no later than 4pm on 20 October 2023, the Claimants are to provide a draft Amended Reply setting out the Claimants' case based on section 32 of the Limitation Act 1980 to the Defendants for their consent to the draft amendments and such consent is not to be unreasonably withheld.

Disclosure

4. By no later than 4pm on 6 October 2023, the Defendants shall provide the Claimants with a list of the publicly available documents on which the Defendants currently intend to rely in relation to the Preliminary Issue. The Defendants shall not be limited to relying on the documents listed at the trial of the Preliminary Issue.
5. By no later than 4pm on 3 November 2023, the Defendants shall serve on the Claimants any disclosure requests in respect of the Preliminary Issue in the form of the Redfern Schedule annexed to this order.
6. By no later than 4pm on 17 November 2023, the Claimants shall respond to the Defendants' disclosure requests indicating whether or not they are agreed and, if not agreed, the Claimants' objections.

7. By no later than 4pm on 1 December 2023, the Defendants shall reply to any objections raised by the Claimants and shall file the completed Redfern Schedule with the Tribunal.
8. The Tribunal will use its best endeavours to rule on any remaining disputed disclosure requests by no later than 4pm on 22 December 2023.
9. By no later than 4pm on 19 January 2024:
 - (a) the parties shall provide disclosure by list and inspection of all contemporaneous documents, including press reports and other publicly available material, on which they intend to rely for the purpose of the Preliminary Issue;
 - (b) the Claimants shall provide disclosure by list and inspection of all known adverse documents within the meaning of paragraph 2.8 of Practice Direction 57AD of the Civil Procedure Rules; and
 - (c) the Claimants shall provide disclosure by list and inspection of documents falling within the disclosure requests agreed by the parties or ordered by the Tribunal.

Witness evidence

10. By no later than 4pm on 1 March 2024, the parties shall file and serve the witness statements of any factual witnesses on whose evidence they wish to rely in relation to the Preliminary Issue.

Hearing arrangements

11. The parties shall liaise to agree bundles which shall be prepared by the Defendants and lodged by 4pm on the date two weeks before the hearing.
12. The parties shall liaise to produce and lodge by 4pm on the date two weeks before the hearing:
 - (a) a list of issues; and
 - (b) a statement of facts that are agreed between the parties. It is unnecessary for the parties to include a list of any facts that are not agreed.
13. Skeleton arguments shall be exchanged by 4pm on the date one week before the hearing. The page limits in paragraph 3 of the Competition Appeal Tribunal's Practice Direction 1/2021 shall apply to the parties' skeleton arguments for the hearing.

Costs

14. Costs of the PI Application in the Preliminary Issue.
15. The Claimants to bear their own costs of the Amendment Application and the amendments to the Reply. The Defendants' costs of and occasioned by the Amendment Application shall be costs in the case.

Liberty to apply

16. Liberty to apply.

Andrew Lenon KC
Chair of the Competition Appeal Tribunal

Made: 29 September 2023
Drawn: 6 October 2023