

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HERON THERAPEUTICS, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 24-830 (WCB)
)	
SLAYBACK PHARMA LLC and)	
SLAYBACK PHARMA INDIA LLP,)	
)	
Defendants.)	

SCHEDULING ORDER

The court having conducted an initial Rule 16(b) scheduling conference pursuant to Local Rule 16.1(b), 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, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) no later than one week after this scheduling order is entered. The parties shall also make their Paragraph 3 Initial Disclosures no later than one week after this scheduling order is entered.
2. Asserted Claims Disclosure. Plaintiff shall identify the asserted claims and produce the asserted patents and file histories no later than August 28, 2024.
3. Core Technical Documents. The parties shall produce core technical documents no later than September 25, 2024.
4. Invalidity Contentions. Unless otherwise agreed to, not later than October 18, 2024, Defendants shall serve their Invalidity Contentions on Plaintiff. The Invalidity Contentions shall contain the following information:

a. The identity of each item of prior art that Defendants allege anticipates each asserted claim or renders the claim obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication shall be identified by its title, date of publication, and, where feasible, author and publisher. Any alleged sale or public use shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place, or the information became known, and the identity of the person or entity that made the use or that made and received the offer, or the person or entity that made the information known or to whom it was made known.

b. Whether each item of prior art anticipates each asserted claim or renders it obvious. If obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of any combinations of prior art showing obviousness;

c. A chart identifying specifically where and how in each alleged item of prior art each limitation of each asserted claim is found, including for each limitation that such party contends is governed by 35 U.S.C. § 112(f), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

d. Any grounds of invalidity based on 35 U.S.C. § 101, indefiniteness under 35 U.S.C. § 112(b), or lack of enablement or insufficient written description under 35 U.S.C. § 112(a) of any of the asserted claims.

5. Non-Infringement Contentions. Unless otherwise agreed to by the parties, not later than October 18, 2024, Defendants shall serve their Non-Infringement Contentions on Plaintiff, and commence production of the underlying documents.

6. Infringement Contentions. Plaintiff shall serve Infringement Contentions on Defendants no later than December 19, 2024.

7. Responses to Invalidity Contentions. Unless otherwise agreed to by the parties, not later than December 19, 2024 Plaintiff shall serve its Responses to Invalidity Conventions on Defendants.

8. Amendment of Contentions. Amendment of the Invalidity Contentions, Infringement Contentions, and Noninfringement Contentions may be made only by order of the court upon a timely showing of good cause.

9. Joinder of Other Parties and Amendment of Pleadings. All motions to join parties and to amend or supplement the pleadings shall be filed on or before March 7, 2025.

10. Discovery.

a. Discovery Cut Off. All fact discovery in this case shall be initiated so that it will be completed on or before April 9, 2025.

b. Document Production. Document production shall be complete by February 14, 2025.

c. Requests for Admission. A maximum of 50 requests for admission are permitted for each party.

d. Interrogatories. A maximum of 25 interrogatories, including contention interrogatories, are permitted for each party.

e. Depositions. Each party will be limited to 10 depositions. Any party representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district. Exceptions to this general rule may be made by order of the court or by agreement of

the parties. A Defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this district court for purposes of this provision.

f. Disclosure of Expert Testimony. For the party that has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before May 9, 2025. The opposing party's responsive disclosure of expert testimony, including expert reports to be submitted by Plaintiff regarding any objective indicia of nonobviousness, is due on or before June 20, 2025. Reply expert reports from the party with the initial burden of proof are due on or before July 7, 2025. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition. Any expert depositions shall be taken no later than August 29, 2025.

g. Discovery Matters and Disputes Relating to Protective Orders. Should counsel find they are unable to resolve a discovery matter or a dispute relating to a protective order, the parties involved in the discovery matter or protective order dispute shall contact the court by email at brysonw@cafc.uscourts.gov describing the nature of the dispute. The court will then ordinarily direct the filing of letter briefs, to be followed by a Zoom hearing if the court considers a hearing necessary. Discovery-related disputes should not be addressed by motion.

11. Application to the Court for a Protective Order. Should counsel find it necessary to apply to the court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement on a proposed form of order and submit it to the court no later than two weeks after this scheduling order is entered. Should counsel be unable to reach agreement on a proposed form of order, counsel must follow the provisions of Paragraph 3(g) above.

Any proposed protective order must include the following paragraph:

Other Proceedings. By entering this order and limiting the disclosure of information in this case, the court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated as confidential pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

12. Papers Filed Under Seal. When filing papers under seal, counsel shall deliver to the Clerk an original and one copy of the papers. A redacted version of any sealed document shall be filed electronically within seven days of the filing of the sealed document. Papers should not be filed under seal unless there is a specific and substantial reason that particular materials in those papers are confidential and need to be protected from disclosure.

13. Courtesy Copies. Courtesy copies of motions or other documents filed ordinarily need not be provided to the court. However, the parties shall provide the court with one courtesy copy of all briefs relating to claim construction motions, dispositive motions or *Daubert* motions, along with a courtesy copy of any other document filed in support of any such brief (i.e., appendices, exhibits, declarations, affidavits, etc.) by mailing them to Judge Bryson's chambers, 717 Madison Place, N.W., Washington, D.C. 20439. This provision also applies to papers filed under seal.

14. Claim Construction. In advance of claim construction briefing, the parties will meet and confer to determine what, if any, issues of claim construction the court needs to address.

a. Claim Construction Briefing. On or before January 24, 2025, Plaintiff will file a brief of no more than 5000 words setting out its position on claim construction. On February 14, 2025, Defendants will file a single answering brief of no more than 7500 words setting out its position on claim construction. On March 7, 2025, Plaintiff may file a reply brief of no more than

5000 words on claim construction. On March 28, 2025, Defendants may file a sur-reply brief of no more than 2500 words on claim construction.

b. Meet and Confer on Claim Construction. On or before April 4, 2025, the parties will meet and confer to narrow their disputes as to claim construction issues. Within three business days of the meet and confer, the parties will submit to the court a joint status report indicating what, if any, issues have been resolved or narrowed regarding claim construction.

c. Hearing on Claim Construction. If, after considering the parties' briefs and the status report, the court determines that a hearing on claim construction would be useful, the court will set such a hearing at its convenience. At least 10 days in advance of the hearing, each party will advise the court and the opposing party if live testimony will be presented at the hearing. The court strongly discourages the use of PowerPoints and other demonstratives. If the parties wish to refer to exhibits or illustrations, those should be included in the materials submitted to the court with the claim construction briefs.

15. Deadlines. All documents required to be filed on a specified date (or within a specified number of days after a particular event) must be filed no later than 5 p.m. on the date specified. Any requests to extend a deadline must be filed at least three business days in advance of the deadline.

16. Case Dispositive and Daubert Motions. Each side will address all their case dispositive and *Daubert* motions in an opening brief of no more than 7500 words due for filing on September 26, 2025. Each side may file a single responsive brief of no more than 7500 words, due by October 10, 2025. The movant may then file a single reply brief of no more than 2500 words, due by October 24, 2025.

17. Applications by Motion. Except as otherwise specified herein, any application to the court shall be by written motion. Any non-dispositive motion should contain the statement required

by Local Rule 7.1.1. Any brief in support of a motion, as well as the associated response and reply briefs, should be double-spaced with 12-point Times New Roman font. All footnotes in such briefs should be double-spaced.

18. Pretrial Conference. On a date to be determined, the court will hold a final pretrial conference with counsel. The parties shall file a joint proposed pretrial order in compliance with Local Rule 16.3(c) no later than 5 p.m. on the third business day before the date of the final pretrial conference.

19. Motions in Limine. Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the joint proposed pretrial order. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three pages of argument and may be opposed by a maximum of three pages of argument. The party making the *in limine* request may file a reply of one page in support of its request.

20. Trial. This case is scheduled for a 4-day bench trial beginning at 8:30 a.m. on January 20, 2026. The trial will be timed, with each party being given 12 hours to present its case. Expiration of the 30-month stay is June 12, 2026.

IT IS SO ORDERED.

SIGNED this 23rd day of August, 2024.



WILLIAM C. BRYSON
UNITED STATES CIRCUIT JUDGE