

**U.S. District Court
District of Delaware (Wilmington)
CIVIL DOCKET FOR CASE #: 1:24-cv-00064-JLH**

Eagle Pharmaceuticals, Inc. v. Apotex Inc. et al

Assigned to: Judge Jennifer L. Hall

Related Cases: [1:17-cv-01154-CFC](#)

[1:17-cv-01164-CFC](#)

[1:17-cv-01201-CFC](#)

[1:17-cv-01790-CFC](#)

[1:18-cv-00117-CFC](#)

[1:18-cv-01074-CFC-CJB](#)

[1:18-cv-01459-CFC](#)

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[1:25-cv-00074-JLH](#)

[1:25-cv-00079-JLH](#)

[1:25-cv-00075-JLH](#)

Date Filed: 01/17/2024

Jury Demand: Plaintiff

Nature of Suit: 830 Patent

Jurisdiction: Federal Question

Cause: 35:271 Patent Infringement

Date Filed	#	Docket Text
10/02/2025	220	ORAL ORDER: With regard to Plaintiff's Motion for Teleconference to Resolve Discovery Disputes ("Motion"), filed in two related actions, (Civil Action No. 24-64-JLH (hereafter, the docket the Court will cite to unless otherwise noted), D.I. 129; Civil Action No. 24-65-JLH, D.I. 110), the Court addresses the second dispute here, in which Plaintiff requests that the Court order Defendant Apotex to produce all communications regarding the sale, marketing, pricing, and/or promotion of its NDA product between the people responsible for selling said product, (D.I. 149 at 2-3; D.I. 159-2). That request is GRANTED-IN-PART and DENIED-IN-PART for the reasons and in the manner that follows: (1) Apotex does not dispute that the requested material is relevant. (D.I. 159 at 2); (2) Otherwise, it appears this dispute boils down to whether the seven ESI custodians that Apotex has currently identified are sufficient, pursuant to the Default Standard, to ensure that Apotex has responsibly and proportionately searched for and produced

relevant ESI regarding the sales/marketing/pricing/promotion-related (“sales-related”) matters referenced above. (D.I. 152 at 2-3; D.I. 159 at 2); (3) The Court agrees that Plaintiff has sufficiently demonstrated that Apotex should be required to identify at least one additional custodian (and perhaps more) who would likely have relevant sales-related ESI documents in his/her possession. In part that is because Apotex has currently identified fewer custodians than the presumptive 10 that are referenced in the Default Standard. *See* Default Standard at ¶ 3(a). In part, it is due to the fact that it seems from the parties’ letter briefs that few such sales-related documents have been produced in the case to Plaintiff. (D.I. 149 at 2-3) And in part it is due to the fact that: (a) Apotex told Plaintiff that it does not “employ a sales force” for its bendamustine products; (b) Plaintiff then pointed the Court to Apotex documents, wherein Apotex was discussing its “[s]ales [t]eam” for these very products; and (c) yet in its briefing, Apotex obscured, by simply re-stating to the Court that it “does not employ a sales force” for the products—without addressing the documents Plaintiff pointed to, or explaining why those documents don’t show that, one way or another, Apotex works with some number of people who sell the drug on its behalf (i.e., its “sales team”). (D.I. 149 at 3 (internal quotation marks and citation omitted); *id.*, exs. 18-19; D.I. 152 at 3 (internal quotation marks omitted)); and (4) With there being no question that the sought-after sales-related ESI is relevant, with it appearing that little such material has been produced, and with Apotex seeming like it is playing word games regarding its sales-related efforts, the Court agrees that some further discovery should be permitted. But it needs more information to help it identify the relevant custodian(s) at Apotex who should be subject to its order. If Plaintiff wants Apotex to collect and search an additional custodian’s (or custodians’) ESI, then it shall identify this person (or people) in the parties’ joint letter that is due one week from today, and explain why such a request would not be unduly burdensome. (*See* D.I. 219) In that same letter, Apotex can respond as to why it would be unduly burdensome for that person/those persons’ data to be collected and searched. Ordered by Judge Christopher J. Burke on 10/02/2025. Associated Cases: 1:24-cv-00064-JLH, 1:24-cv-00065-JLH(sam) (Entered: 10/02/2025)

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