

infringement case. As Lupin correctly observes, Plaintiffs failed to argue – when the Court was evaluating Lupin’s earlier motion, leading to the Prior Order – that the [REDACTED] was somehow relevant to issues of stability and crystallinity. (*See, e.g.*, D.I. 906) (“If the presence of the [REDACTED] in Lupin’s ANDA product is relevant to their claims with respect to the [REDACTED] why was that never argued in the briefing on Lupin’s first motion?”) In the overall context of how discovery has proceeded (*see, e.g.*, D.I. 900 at 1) (“Plaintiffs never once alleged the presence of the [REDACTED] in Lupin’s ANDA product – not in contentions (initial or final) or otherwise [until the opening expert report].”), Plaintiffs’ approach to [REDACTED] issues (*see, e.g., id.* at 2) (“Plaintiffs’ counsel clearly requested that Dr. Morin perform testing on [REDACTED] after this Court’s Order prohibiting them from proffering such opinions . . .”) – including its handling of Lupin’s motions – leads the Court to conclude that Plaintiffs’ proposed use of [REDACTED] evidence as “rebuttal” would be unfairly prejudicial to Lupin.

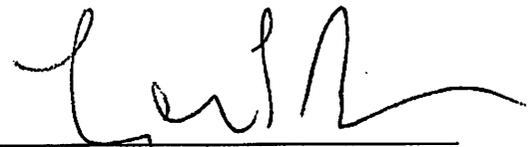
As stated in the Prior Order, Lupin could have pursued its infringement and/or invalidity cases differently had Plaintiffs disclosed their [REDACTED] contentions during fact discovery, as they should have done. Lupin does not have these opportunities now. Even assuming Plaintiffs were correct that “Lupin *never* asked this Court to exclude [REDACTED] being offered as an item of proof of Plaintiffs’ timely-asserted [REDACTED] claims” (D.I. 905 at 1) (emphasis added) – and it is not¹ – such relief is well-justified at this point.

¹ *See, e.g.*, D.I. 748 at 3 (“Lupin therefore requests that any expert opinions relating to, or alleging the presence of, the [REDACTED] in Lupin’s ANDA products be stricken.”); *see also* D.I. 905 at 5 (quoting same portion of Lupin’s letter (D.I. 748 at 3) and thereby recognizing, contrary to their assertion at page 1 of Plaintiffs’ same letter, that Lupin *did* ask Court to exclude all [REDACTED] evidence).

Having reviewed Defendants Macleods Pharmaceuticals Ltd. and Macleods Pharma USA, Inc.'s ("Macleods") recent letter (D.I. 904) related to enforcement of the Prior Order,

IT IS FURTHER ORDERED that in light of the instant Order, Macleods shall meet and confer with any party opposing the relief requested by Macleods, and then advise the Court in a timely manner as to whether judicial assistance is still required with respect to the issues raised in Macleods' letter.

IT IS FURTHER ORDERED that because this Order is issued under seal, the parties shall meet and confer and advise the Court, by no later than **noon tomorrow, August 21, 2020**, whether they request any redactions (and, if so, the nature and basis for such proposed redactions).



HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE