

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PRONOVA BIOPHARMA NORGE AS,)
)
 Plaintiff,)
)
 v.) Civ. No. 09-286-SLR
)
 TEVA PHARMACEUTICALS USA,)
 INC.,)
)
 Defendant.)

PRONOVA BIOPHARMA NORGE AS,)
)
 Plaintiff,)
)
 v.) Civ. No. 09-304-SLR
)
 APOTEX CORP. and APOTEX INC.,)
)
 Defendants.)

PRONOVA BIOPHARM NORGE AS,)
)
 Plaintiff,)
)
 v.) Civ. No. 09-305-SLR
)
 PAR PHARMACEUTICAL, INC.,)
 et al.,)
)
 Defendants.)

MEMORANDUM ORDER

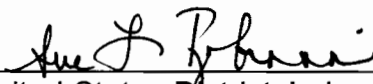
At Wilmington this 24th day of March, 2011, having reviewed the various evidentiary disputes presented by the above parties prior to commencement of trial;

IT IS ORDERED that:

1. **Dr. Kane's supplemental rebuttal report**, submitted after the deadline for expert reports and just 2 days before his deposition, contains admittedly new material. Plaintiff characterizes this material as a "clarification" of his rebuttal report; defendants characterize the material as "contradictory" to the rebuttal report. The parties shall submit copies of the two reports before **noon on Friday, March 25, 2011**, highlighting the relevant passages so that I can make the determination.

2. **Evidence of "unexpected results,"** identified for the first time **after** the pretrial conference, shall not be admitted at trial. The fact that "surprising results" were noted in the specifications of the two patents at issue does not make it so. Defendants should have been given the opportunity to vet this "claim" and the documents supporting it through discovery, whether fact or expert.

3. **Dr. Sawchuk's testimony on the signal to noise ratio** shall not be admitted at trial. In this regard, Dr. Dahl was not allowed to respond to questions directed to the materiality of the omitted data. Absent contemporaneous documentation,¹ Dr. Sawchuk's theory is nothing more than speculation.


United States District Judge

¹I requested such at the pretrial conference and plaintiff has confirmed that there is none.